



June 7, 2004

### *Comments on the Initial Settlement Agreement Offer*

The Department of Water Resources has taken the position that the failure of Oroville Dam's spillway to meet FERC's Engineering Guidelines is not properly a subject to be dealt with in the relicensing of Oroville Dam. This position is reflected in the list of ISA programs that the Department is attempting to negotiate in the Oroville ALP.

Friends of the River and other members of the Yuba Feather Task Force do not support the Department's position that compliance with FERC Engineering Guidelines and related flood control operational issues are not properly an issue to be confronted or resolved in this relicensing proceeding.

As we have repeatedly urged for several years, the Department needs to accept that these issues are properly a significant part of the Commission's and licensee's obligations under the Federal Power Act to the public. We urge the Department to add these issues to the ISA program list and begin discussions with members of the Yuba Feather Task Force.

### **Summary of the Workgroup View**

Because of the absence of Marysville dam, the "interim without Marysville dam" flood control rules at Oroville Dam are effectively the long-term established rules for dam operations. This represents a "changed condition" from the time of the original license for Oroville Dam. Oroville's flood operation rules call for effective "suspension" of a portion of the Emergency Spillway Release Diagram (ESRD) and **operational** use of the ungated spillway to gain approximately 150,000 acre feet of additional flood space (an increase of 20% over Marysville dam "in place" flood space) while still maintaining regulated releases to meet downstream flow objectives (YCWA Technical Memo p. II-5). Under "interim" (now long-term) flood operational rules, the ungated spillway fails to meet FERC's criteria for appropriate use of an emergency spillway, but rather matches the uses expected for a service or auxiliary spillway. Under FERC's service or auxiliary spillway criteria, the lack of a spillway for the ungated spillway in the circumstances prevailing at Oroville Dam does not meet FERC's Engineering Guidelines. Because Oroville Dam is currently undergoing relicensing and the Dam violates the Commission's Engineering Guidelines, it is appropriate for the Commission to establish procedures to bring the Dam into compliance as part of its relicensing review. The Workgroup, the Corps of Engineers, and the Department have also recognized the desirability of developing refinements to the flood control operating criteria for Oroville Dam. Changes in operating criteria

may (or may not) involve or require changes to the Corps Reservoir Regulation Manual, but changes in physical facilities at the Dam **will** require approval by the Commission—either in relicensing or in a post licensing action by the Commission.

***Summary of Department of Water Resources Argument***

The Department's response has been to engage in discussions with the YCWA and Corps of Engineers on refining flood control operational rules—largely focusing on aspects of coordinated operations with other dam releases and flow conditions that affect flow targets downstream of Oroville Dam. This is a positive development. However, the Department has also taken the position that addressing the physical deficiencies of Oroville Dam's flood control works should be addressed at the Department's convenience, and that the Commission should not play a role in this matter during its relicensing of Oroville Dam—or perhaps not even in a Commission directed license amendment. The reasons for the Department's position are not clear. They have offered the explanation that the ungated spillway is an emergency spillway, and is not needed to pass a 100 year storm—apparently linking a flood insurance threshold to spillway design and dam operations for the much different Inflow Design Flood. An other Department argument could be that flood control features at Oroville Dam are the business of the Corps of Engineers, not the FERC—an argument that ignores the Commission's responsibilities under section 10 of the Federal Power Act and the Commission's Engineering Guidelines on spillway design and the Inflow Design Flood.

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Attachment: Memo to DWR from Yuba Feather Workgroup