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Admitted in: MA, ME, NH

February 15, 2017

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: California Department of Water Resources, Oroville Project, Feather River, CA
FERC Project No. 2100

Dear Secretary Bose:

Attached for filing is the Emergency Petition of Butte County, California to Require Licensee to Correct Safety Deficiencies and Establish a Public Safety Program. Please bring this to the Commission's immediate attention, and please let me know if you have questions or need additional information. Thank you.

Sincerely,



Matthew D. Manahan

Enclosure
cc: Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Department of Water Resources)
Oroville Project)
Feather River, California)

FERC Project No. 2100

**EMERGENCY PETITION OF BUTTE COUNTY, CALIFORNIA
TO REQUIRE LICENSEE TO CORRECT SAFETY DEFICIENCIES
AND ESTABLISH A PUBLIC SAFETY PROGRAM**

Pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission” or “FERC”), 18 C.F.R. § 385.207, Butte County, California (“Butte County”) submits this Emergency Petition to Require Licensee to Correct Safety Deficiencies and Establish a Public Safety Program. Given the immediate threat to the personal safety of hundreds of thousands of citizens of the area below the Project spillways, Butte County requests that the Commission exercise its emergency authority to act immediately on this petition.

I. COMMUNICATIONS

All communications and correspondence regarding this matter should be addressed to:

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** Designated to receive service pursuant to Rule 203(b)(3) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.203(b)(3) (2016).

II. BACKGROUND

As has widely been reported in the press, on February 7, 2017, major damage occurred to the Oroville Dam Service Spillway. On Sunday, February 12, 2017 law enforcement authorities, including the Butte County Sheriff's Department, ordered the evacuation of tens of thousands of residents and businesses downstream of the Oroville Dam because of the imminent possible failure of the dam's emergency spillway. News reports of the situation can be found at the following links:

- February 14, 2017 Washington Post article: https://www.washingtonpost.com/news/post-nation/wp/2017/02/13/officials-were-warned-the-oroville-dam-emergency-spillway-wasnt-safe-they-didnt-listen/?utm_term=.a8188b3c2463
- February 13, 2017 New York Times article: <https://www.nytimes.com/2017/02/13/us/oroville-dam-california-spillway.html?hp&action=click&pgtype=Homepage&clickSource=story-heading&module=first-column-region®ion=top-news&WT.nav=top-news>
- February 12, 2017 Mercury News article: <http://www.mercurynews.com/2017/02/12/oroville-dam-feds-and-state-officials-ignored-warnings-12-years-ago/>
- February 12, 2017 New York Times article: <https://www.nytimes.com/2017/02/12/us/california-oroville-dam-spillway-evacuate.html?action=click&contentCollection=U.S.&module=RelatedCoverage®ion=EndOfArticle&pgtype=article>
- February 10, 2017: <http://www.krcrtv.com/news/local/butte/emergency-spillway-unecessary-for-now-2013-photo-of-damage-surfaces-supervisor-blames-dwr/325934917>

As noted in these news reports and many others, the licensee – the California Department of Water Resources (“DWR” or “Licensee”) – had been warned about the risks to public safety posed by the emergency spillway. Numerous parties have identified significant public safety concerns regarding the dam over the years, to no avail. Environmental groups warned years ago that “heavy rain and fast-rising water could overwhelm the main concrete spillway and flood

communities downstream.”¹ These groups specifically pointed out to the Commission that the “emergency spillway” was a concrete weir emptying into a hillside, which could result in flooding.² As noted in the February 10, 2017 KRCR video linked above, DWR was aware of the spillway integrity issues at least as early as 2013. And the emergency spillway integrity issue also was raised in filings with the Commission in 2005.

In addition, Butte County has raised these public safety issues before the Commission on numerous occasions in the relicensing proceeding for the Oroville Project and in other proceedings, including a complaint, identifying the potential hazards to public safety that might occur from heavy rains and flooding at the Oroville Dam. In the relicensing proceeding, Butte County repeatedly argued that there are significant public safety risks associated with the Oroville Dam, which have not been adequately addressed by the licensee. Specifically, over multiple pleadings, Butte County stated:

- “When heavy rains bring the Lake Oroville level to possible overflow conditions, it triggers major flood management operations at Oroville Dam. . . . Scenarios generated by DWR in its flood plain analysis indicate a large geographic area below the Dam would be inundated if the Dam failed.”³
- “The Project creates increased risks for flooding within Butte County, yet the Settlement proposes no action with respect to the critical relocation of the County’s Emergency Operation Center [EOC] to ensure timely coordination and response in the event of flooding or other emergencies. . . . The Project puts the EOC at great risk of flooding. . . . Additionally, the Project represents a major flood and disaster risk for the County. . . . Thus, DWR must be directed to work with the County to address these potential risks, including the provision of additional security at the Oroville Dam. . . . It is beyond dispute that warnings alone are insufficient to address the great risk posed to the

¹ See, Narayan, C., *Oroville Dam: California Officials Ignored Warnings a Decade Ago*, CNN (published Feb 13, 2017), available at <http://www.cnn.com/2017/02/13/us/oroville-dam-warnings-ignored/index.html>.

² See, Guerra, C., *The Government Was Warned that the Oroville Dam Emergency Spillway Was Unsafe. It Didn’t Listen*, Washington Post (published Feb. 14, 2017), available at https://www.washingtonpost.com/news/post-nation/wp/2017/02/13/officials-were-warned-the-oroville-dam-emergency-spillway-wasnt-safe-they-didnt-listen/?utm_term=.c14acb6814c4.

³ *Calif. Dep’t of Water Resources, Report: Operational Impacts of the Oroville Project Facilities on Butte County* at 15, 50, Docket No. P-2100 (filed Feb. 15, 2006).

County and its over 210,000 residents, particularly where the Project has rendered the County's [downstream] emergency coordination facilities functionally ineffective to respond to flood emergencies.”⁴

- “There is no question that the EOC must be available to respond to all types of emergencies, up to and including catastrophic dam failure. . . . In 1997, the County was warned by DWR to evacuate its Emergency Operations Center because of an imminent flood threat, at the same time the County was trying to assist with evacuation of the Town of Oroville. . . . Ignoring legitimate concerns of County emergency response professionals is clearly contrary to safety and the public interest.”⁵

In 2009, as its public safety concerns grew, Butte County filed a complaint against the Licensee, asserting that the Licensee is in violation of Standard Articles 7, 14, and 37 of its license, as well as the public safety requirements of section 2.7(f)(1) of the Commission’s regulations, 18 C.F.R. § 2.7(f)(1) (2009).⁶ Butte County argued that the Licensee must be required to contribute to costs for providing public safety services to the project. In that complaint, Butte County raised serious public safety concerns, alleging that the Licensee has violated its license by failing to provide for public safety at the Project, and asked the Commission to ensure that adequate public safety protections remain in place.

When the Commission denied Butte County’s complaint,⁷ Butte County filed an emergency request for rehearing, explaining that:

Due to the failure of the Licensee to reimburse the County for its Project-related expenditures, coupled with the current economic crisis and budget woes in the State of California, the County has had no choice but to curtail police, fire, and rescue protection

⁴ *Calif. Dep’t of Water Resources, Butte County, California’s Comments in Opposition to and Contest of the California Department of Water Resources’ Settlement Agreement for Licensing of the Oroville Facilities and Request for Evidentiary Hearing* at 4, 47, 48, Docket No. P-2100 (filed April 26, 2006).

⁵ *Calif. Dep’t of Water Resources, Comments of Butte County, California on Legal and Factual Errors in the Final Environmental Impact Statement for the Oroville Facilities Project* at 18-19, Docket No. P-2100 (filed June 29, 2007).

⁶ *County of Butte, CA v. Calif. Dept. of Water Resources, Emergency Complaint of Butte County, California against the California Department of Water Resources for the Immediate Reimbursement of Public Protection Costs for the Oroville Facilities Project* at 2, 13, Docket Nos. EL09-55 and P-2100-71 (filed May 22, 2009).

⁷ *County of Butte, CA v. Calif. Dept. of Water Resources*, 128 FERC ¶ 61,068 (2009).

services to the Project. As a result, the public's safety at the Project is threatened. . . . The Commission's regulations and policies clearly place ultimate responsibility for ensuring public safety on the Licensee.⁸

Butte County further argued on rehearing that safety violations have been documented through the relicensing process and in the press.⁹ The Commission denied rehearing, finding that the project was in good condition and Butte County had not alleged any instances of direct license violations. Specifically, the Commission asserted:

[S]taff found the Oroville project to be in good condition and properly maintained in its most recent dam safety inspection and identified only a few minor environmental action items, which were remedied, in the project's latest environmental inspection.¹⁰

Following the February 2017 incident, the Acting Director of the Commission's Division of Dam Safety and Inspections sent a letter to the licensee, requiring that the licensee immediately initiate design of emergency repairs, convene an independent Board of Consultants ("BOC"), and perform forensic analysis to determine the cause of the failure.¹¹ Acting Chairman Cheryl LaFleur issued a statement the following day, explaining that the Commission has a team on-site at the dam and is closely monitoring the situation. She highlighted that "the immediate focus of all involved remains on public safety, emergency repair and reducing risk."¹²

III. EMERGENCY PETITION TO CORRECT SAFETY DEFICIENCIES AND ESTABLISH A PUBLIC SAFETY PROGRAM

As demonstrated above, Butte County and others have warned of the potentially catastrophic consequences of DWR's failure to adequately address dam safety issues at the

⁸ *County of Butte, CA v. Calif. Dept. of Water Resources, Emergency Request for Rehearing* at 4-5, Docket Nos. EL09-55 and P-2100-71 (filed May 22, 2009).

⁹ *Id.* at 11.

¹⁰ *County of Butte, CA v. Calif. Dept. of Water Resources*, 129 FERC ¶ 61,133 at P 21 (2009).

¹¹ Letter regarding Emergency Repair and Board of Consultants for Oroville Dam Spillway, Docket No. P-2100 (issued Feb 13, 2017).

¹² Statement of Acting Chairman Cheryl LaFleur on Oroville Dam Situation, Docket No. P-2100 (issued Feb. 14, 2017).

Oroville Project, and we are now facing the consequences of DWR's short-sighted approach. The Commission must step in immediately to address this imminent threat to public safety. As Acting Chairman LaFleur noted, "the immediate focus of all involved remains on public safety" ¹³ Butte County requests that the Commission focus on the public safety aspects of this incident and, in particular, the need to address the underlying cause of the present situation and ensure that this will be a one-time incident.

Providing services to DWR is a severe strain on Butte County's limited resources and takes the County's emergency personnel away from their normal, already challenging duties, to provide massive levels of emergency response required to adequately address the myriad of public safety issues presented by the Oroville Project. DWR is well aware that Butte County is obligated by law and moral duty to protect the citizens of the County from harm. DWR also knows that providing such protection and emergency services comes at great cost to the County, and yet DWR, unlike other hydropower dam owners, ¹⁴ refuses to reimburse the County for such costs. When Butte County previously petitioned the Commission to direct DWR to reimburse the County for its expenses related to ensuring public safety in the face of the threats posed by the Oroville Project, however, the Commission stated that it is without authority to issue such an order: "The Commission is concerned with protecting resources through specific, enforceable provisions, rather than requiring a licensee to provide funding for agency personnel. . . ."

¹³ *Id.*

¹⁴ For example, the government operator of the Folsom Dam in Northern California, another dam designated as a Tier 1 threat, pays local law enforcement \$4.7 million annually for dam security alone. It is noteworthy that the Folsom Dam is half as high as the Oroville Dam, is located 20 miles farther from a major population center, and has only one-third of the capacity of the Oroville Dam. *See Calif. Dep't of Water Resources, Letter of Butte County, California, Regarding New Information on Dam Security at the Oroville Facilities Project, Docket No. P-2100-052 (filed Feb. 1, 2007).*

Therefore, it is our policy to require licensees to implement specific license provisions, and not to fund local agency personnel.”¹⁵

Because the Commission has refused to order DWR to do what DWR is legally¹⁶ and morally obligated to do, and what other similarly situated licensees have done, Butte County has no choice but to request the Commission to exercise its authority, articulated by the Commission in the statements above from 2009, to order DWR to take actions to effect its obligations as a Federal Power Act licensee, to protect public health, safety, and welfare. Specifically, Butte County requests that the Commission order DWR immediately to establish its own Public Safety Program, including providing for the necessary law enforcement and other personnel in lieu of the Butte County law enforcement and other personnel that have been, and continue to be, devoted to ensuring public safety in the face of threats attributable to the Oroville Project (including not just flood hazards but also fire, crime, and other emergency services), as delineated in numerous filings with the Commission over the years, as well as providing a myriad of other necessary public works services related to the Oroville Project. The Licensee-provided public safety personnel should have the capacity to organize and implement all necessary public safety measures to prevent death from a failure of the dam spillways, including the orderly evacuation of the hundreds of thousands of people from the area downstream of the dam.

As demonstrated by the current crisis, DWR’s lax attitude toward public safety will, in the absence of a Commission-imposed requirement that the Licensee must provide for the

¹⁵ *County of Butte, CA v. Calif. Dept. of Water Resources*, 129 FERC ¶ 61,133 at P 22-24 (2009).

¹⁶ The Commission has repeatedly said that ensuring public safety is the licensee’s responsibility, regardless of “whether [the licensee] enforces these measures itself or delegates enforcement responsibilities to law enforcement personnel.” *Public Utility District, No. 2*, 123 FERC ¶ 61,049 at par. 79 (2008); *Portland General Electric Co.*, 117 FERC ¶ 61, 112 at par. 83 (2006); *Settlement Policy*, 116 FERC ¶ 61,270 at par. 24 (2006).

necessary personnel presently provided by Butte County, continue to burden the County with unreimbursed – and increasing – costs attributable to the Oroville Project.

Butte County recognizes that DWR may not be capable of providing these emergency and public safety services, but Butte County has no other option but to make this request, given the Commission’s prior statements, referenced above, and the significant additional burdens imposed on Butte County by the current public safety emergency. Given this conundrum, and DWR’s intransigence in the face of its legal and moral obligation to the County, what other choice does the County have but to ask FERC to order DWR to assume these responsibilities? Can FERC force a recalcitrant licensee to negotiate with a governmental entity that provides vital public services at no cost to the licensee? It seems only fair, but the County has previously been unable to make any inroads in this matter by arguing for “fairness.”

In short, the Commission should order DWR itself to provide the safety and other public services currently provided at no cost to the Oroville Project by Butte County. If DWR acknowledges that it is not able adequately to provide such services on its own, Butte County is willing to enter into negotiations with DWR in an effort to reach an agreement under which DWR would reimburse Butte County for the costs to the County of providing such services for the Oroville Project.

Unless and until these circumstances change, Butte County will continue to provide these services to the Oroville Project and all other citizens and businesses located in Butte County. But consider whether this is, in fact, an equitable situation, when the Oroville Project provides water to over 25 million citizens of the State of California, and produces substantial billions of dollars in commerce and profit from that water, yet Butte County – a financially strapped county – bears the burden of providing services to the Project, at no cost to DWR, the contracting water districts, or the State of California. This must be remedied.

IV. CONCLUSION

For the foregoing reasons, Butte County requests that the Commission immediately order the Licensee to establish a Public Safety Program that addresses the public safety lapses identified in filings with the Commission over the last 20 years, and includes providing for the necessary public safety and public services personnel, specifically trained in public safety and evacuation procedures.

Dated: February 15, 2017



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CERTIFICATE OF SERVICE

I HEREBY certify that I have this day caused the foregoing document to be served electronically upon each person designated on the Official Service List compiled by the Secretary in these proceedings.

Dated this 15th of February, 2017.



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