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In Reply Refer To: EOL0314-121

March 28, 2014

VIA FED-EX AND E-FILE

Honorable Kimberly D. Bose
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

SUBJECT: El Dorado Hydroelectric Project – FERC Project No. 184
Request for Response to February 20, 2014 Letter

Dear Secretary Bose:

This letter serves as the El Dorado Irrigation District's (District) continued request for a response to its timely February 20, 2014 letter to the Federal Energy Regulatory Commission (Commission), in which the District requested review and consideration of previous Commission decisions that formed the basis of the District's understanding that the unprecedented drought conditions in California did in fact constitute an "operating emergency beyond the control of the licensee" within the meaning of Article 404 of the Project No. 184 license.

In its February 10, 2014 letter the Commission stated that "Although droughts may be severe and beyond the control of the licensee, the Commission does not consider drought to be an operating emergency." In its February 20, 2014 letter, the District respectfully disagreed with the Commission's statement, and cited numerous prior Commission decisions that the District believes support its position. Because this issue is likely to arise in the future, the District continues to seek a response providing the Commission's rationale for its determination, and addressing the authorities the District cited. We believe this dialogue is essential to allow the District to ensure that it continues to operate in full compliance with the Project No. 184 license.

The District is monitoring hydrologic conditions regularly and fortunately at this time anticipates being able to fully exercise its pre-Project No. 184 consumptive water rights while also meeting license-mandated instream flow requirements, albeit with considerable curtailment of power production. However, with no end to the current drought in sight, there continues to be a real

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need for further clarification. Because the interpretation given in the Commission's February 10 letter came as a surprise and without any advance notice to the District, the information provided in the District's February 20 response -- as well as in two direct oral contacts with Commission staff -- was the District's timely and urgent attempt to engage the Commission on this issue. We now renew that effort with this letter.

The District appreciates its open communications with Commission staff during this time, but it is our understanding that the Director of the Division of Hydroelectric Compliance and Administration does not plan to respond to the District's request for review and consideration. Further, the District is disappointed that the Commission cancelled a previously accepted invitation from the District to participate in a conference call to address the agencies' respective interpretations and supporting rationales. The District believes strongly that the prior Commission decisions it cited provide a clear basis to support the District's determination of an operational emergency and to date the Commission has yet to reconcile those authorities with the contradictory interpretation it expressed in its February 10, 2014 letter.

To be clear, the District did not invoke Article 404 to enhance its hydroelectric generation revenues. Rather, it took this emergency action solely to secure the District's pre-1914 drinking water rights, which have no instream flow requirements whatsoever, and address our customers' critical needs during an unprecedented drought. All parties to the negotiation of the Project No. 184 Relicensing Settlement Agreement acknowledged the criticality of these pre-Project water supplies, which is why Article 2.6 of the agreement expressly states that nothing therein "was intended, or shall be construed to, affect any Party's water rights."

The District maintains a good-faith belief that its invocation of Article 404 was fully compliant with its license obligations, and that numerous Commission precedents support that belief. We therefore renew our February 20 request that the Commission respond to those authorities and explain the basis of its February 10 statement, to further our understanding of the Commission's policies and enable responsible compliance with license conditions when this drought, or the next, causes water supply conditions to worsen.

If you have any questions, please contact Brian Deason, Hydroelectric Compliance Analyst, at (530) 642-4064 or at bdeason@eid.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brian Mueller', is written over a light blue horizontal line.

Brian Mueller, P.E.
Director of Engineering

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cc: El Dorado Irrigation District:
Jim Abercrombie, General Manager
Thomas D. Cumpston, General Counsel
Tom McKinney, Director of Engineering
Daniel M. Corcoran, Environmental Manager
Dan Gibson, Hydroelectric Manager
Brian Deason, Hydroelectric Compliance Analyst

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