



September 7, 2021

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RE: National Hydropower Association's Comments on Modified Text of Notice of Proposed Rulemaking, Add Section 306 to Article 1 and Add Articles 7 and 7.1 to Chapter 1, Division 2, Title 23, California Code of Regulation

Introduction

The National Hydropower Association¹ (NHA) thanks the State of California's Department of Water Resources for considering NHA's comments submitted on July 15, 2021 to the Department's Notice of Proposed Rulemaking (NOPR) to Add Section 306 to Article 1 and Add Articles 7 and 7.1 to Chapter 1, Division 2, Title 23, California Code of Regulation. NHA is pleased to submit the following comments in response to the enforcement regulation text revision released on August 19, 2021.

NHA commends the California Division of Safety of Dams (DSOD) for its dedication to enhance public safety and compliance in the operation of California's dams. It is important that the industry, regulators and policymakers learn from events like the Oroville dam incident and ensure compliance with California's dam safety regulations to prevent such failures from reoccurring. NHA's comments are intended to help DSOD establish a program that improves compliance and safety of dams in California.

Comments

§ 306. Information Request and § 337.4 Notice of Violation

NHA commends the department for its revision of Section 337.4, allowing an owner the opportunity to submit information to DSOD related to the violation. However, NHA reaffirms its request that an owner working in good faith to address a deficiency identified in a Notice of Violation should not be subject to an Administrative Complaint.

NHA believes DSOD can determine what "good faith" is on a case-by-case basis, but NHA requests DSOD give owners a warning prior to issuing either a Notice of Violation or Administrative Complaint.

¹National Hydropower Association (NHA) is a national non-profit trade association dedicated exclusively to representing the U.S. hydropower industry, including many dam owners and operators in California. NHA's membership consists of over 250 organizations, including consumer-owned utilities, investor-owned utilities, independent power producers, equipment manufacturers, environmental and engineering firms, and attorneys.



For example, owners often resubmit Emergency Action Plan's (EAPs) with the Office of Emergency Services (OES) based on feedback received from OES. Such practice improves safety and compliance, and should be determined as working in good faith.

§ 337.10 Assessment of Administrative Civil Penalty.

Once again, NHA requests impacts on electricity rates be given consideration in the determination of the ability of regulated utilities and public power to pay financial penalties.

§ 337.12 Request for Hearing; Waiver

NHA commends DSOD for its modification allowing dam owners thirty (30) days, instead of twenty (20) days, from the date an Administrative Complaint is served to submit a written request for a hearing. However, NHA reaffirms its request that owners be given sixty (60) calendar days to request a hearing. Internal processes and deliberations can take multiple weeks to reach an informed decision.

In General

NHA requests DSOD continue to coordinate closely with FERC D2SI. Where FERC and DSOD regulations differ, DSOD should consider the dual obligations of the owner when determining whether the owner is working in good faith.

Conclusion

Once again, thank you for the consideration of our earlier comments as well as our submittal to the modified text. We look forward to working with DSOD to ensure safety and compliance of California dams.

Please do not hesitate to contact us if you have any questions.

Sincerely,

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