



July 15, 2021

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RE: National Hydropower Association's Comments on 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

National Hydropower Association¹ (NHA) is pleased to submit the following comments in response to the State of California's Department of Water Resources 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 commends the Department 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 believes more clarity is needed as to why an information request would be sent.

NHA requests an owner working in good faith to respond to an information request not be subject to a Notice of Violation. Similarly, an owner working in good faith to address a deficiency identified in a notice of violation should not be subject to 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 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.

§ 337.8 Administrative Complaint

NHA requests owners be given 60 calendar days to requests a hearing, instead of 20 calendar days. Internal processes and deliberations can take multiple weeks to reach an informed decision. Depending on when the 20 calendar days begin, it could leave owner with half as many business days to make a determination.

§ 337.10 Assessment of Administrative Civil Penalty.

NHA request ratepayers be given a role in the determination of the ability of regulated utilities and public power to pay financial penalties.

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

Thank you for the consideration of our comments. We look forward to working with DSOD to ensure safety and compliance of California dams.