



February 5, 2013

Mr. William H. Allerton, P.E.
Director, Division of Dam Safety and Inspection
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

RE: Hydraulic Power Committee Comments on Enhancements to Hydropower Licensees Emergency Action Plans

Dear Mr. Allerton,

Thank you for the opportunity to review and comment on the Division of Dam Safety and Inspection's (D2SI) proposed letter to hydropower licensees regarding enhancements to Emergency Action Plans (EAP). We also appreciate the opportunity to discuss this proposed enhancement with you during a conference call on January 31. The Hydraulic Power Committee (HPC) believes that early collaboration between licensees and D2SI on initiatives such as this will continue to build a strong relationship and lead to mutually agreeable outcomes. We look forward to continuing this collaboration in the future.

I. Summary of Comments

D2SI states the purpose of the EAP letter is to "improve the current system for upstream and downstream inhabitants and property owners, when there is a warning of an impending high flow event so that they may take proper precautions to protect life and property." Hydropower licensees are stewards of the rivers we operate on and in the local communities we live and work. We appreciate and recognize the value of enhanced communications and planning for high flow events, and when done in a coordinated and efficient manner we agree that stakeholders potentially affected by high flow events benefit through early warning and preparedness. We commit to working with D2SI on developing the best procedures to achieve this goal. However, the HPC respectfully submits the following comments and concerns regarding the EAP enhancement letter.

We understand that recent events and more frequent and powerful storms may have prompted D2SI to draft the letter and licensees are always interested in improving operations and procedures. However, the HPC believes that as drafted, the EAP enhancement letter could lead to more, not less, liability and litigation, reduces operator flexibility which is crucial when passing high flow events, and requires licensees to take on flood control responsibilities.

II. Liability Concerns & Operational Flexibility

A. Liability Concerns

The HPC is concerned that the EAP enhancement could lead to more, not less, liability and litigation during high flow events and that the requested changes will not “reduce both the post flood event complaints and accusations that the dam owner caused the flood event...” This concern is related to the level of detail that D2SI is seeking in the letter generally and the *Notification Table* (Table) specifically. Providing the specific operational information that is included in the Table could lead one to believe that the dam owner caused the flood or downstream impacts, and is therefore liable.

Alternatively, the HPC believes that on-going public education and awareness meetings and workshops regarding dam operations is a more effective approach to reducing post flood complaints and accusations. In fact, many licensees report successful examples of working with and educating local communities about dam operations, ultimately resulting in better relationships and less accusations.

The HPC is also concerned that D2SI is asking licensees to take on flood control responsibilities, but most licensees are licensed for hydroelectric generation, not flood control, and are concerned about mitigating upstream or downstream damage through reservoir manipulation. We recognize that hydroelectric facilities do provide benefits to upstream and downstream areas, but request clarification on D2SI’s intent related to flood control.

B. Operational Flexibility

The HPC does not object to including general operating procedures in the EAP, but respectfully requests more operational flexibility during high flow events. Each facility is unique in how it passes a high flow event, and each high flow event is unique depending on the season and the size of the drainage basin. Many facilities operate with multiple gates partially or fully open at any given time in order to spread flow and discharge, avoid downstream erosion, manage and pass debris, or for dam safety, to name a few. Requiring licensees to memorialize in a table or in the EAP exact gate and operations procedures limits our ability to respond to the uniqueness of each event.

For example, if a licensee indicates in a notification table its gate operations and the licensee deviates from this procedure will the licensee be considered responsible for any resulting downstream damage? Further, the Table asks licensees to include “Downstream Impacts”, but predicting the impacts of gate operations

would require extensive modeling of many scenarios, which would be cost prohibitive and could lead to misleading results. In addition, it would be very important that downstream impacts for certain flow rates be determined by the National Weather Service (NWS) and correspond to existing NWS flood watch/alert systems.

An additional complication is events that take place outside of the licensee's control. Local land use planning and new development in low lying areas and flood plains, both upstream and downstream of a facility, are constantly changing the dynamics of a high flow event and adds to the complexity of modeling impacts. Licensees have no control over new development and considering the time and expense that will be required in updating the EAP, operational flexibility becomes considerably more important.

Finally, if D2SI proceeds with the letter in its current form will the EAP revisions be labeled confidential or considered Critical Energy Infrastructure Information?

III. Existing Procedures and Manuals

As mentioned above, the HPC agrees there is great value in increased and improved communication and planning during high flow events and as river stewards we are equally interested in achieving this goal. Many licensees already have detailed plans in place related to high flow events in Standard Operating Procedures (SOP) and Operations & Maintenance (O&M) manuals. The SOP and O&M manuals are typically used every year during the flood season, and usually for flows well below the level of a category C emergency in the EAP.

The HPC is concerned that providing the requested information in the EAP could dilute the intent and importance of EAPs. Maintaining a sharp distinction between EAPs and other procedures and manuals is crucial, and the HPC asks whether the requested EAP enhancements are a better fit in these documents.

IV. Communications

Effective, accurate and reliable emergency communications during a high flow event is critical. This is achieved by tasking a limited number of entities with this responsibility, primarily federal and state emergency management agencies. The HPC believes that existing practices and procedures, where licensees notify the appropriate government agency of anticipated and completed operations, address the coordination concern in the letter and do not need to be reflected in an EAP.

The HPC asks D2SI to clarify whether licensees are being asked to take on the additional responsibility of notifying the public in the event of an emergency (outside of situations where the emergency management agency cannot evacuate or notify the public in timely manner). Adding licensees to this mix will only cause confusion and potentially lead to liability.

By including high flow procedures or gate operations in the EAP, there is a risk of having the local emergency management agency or other agency second-guess the licensee or dictate to the licensee how to operate. Further, this could unnecessarily usurp the existing authorities and responsibilities outlined in the current Reservoir Regulation Manuals under authority of the U.S. Army Corps of Engineers (Corps). This in itself could create confusion in situations where historical practice has shown to be effective.

The HPC is also curious whether D2SI has been in contact with the NWS, the Corps, and other agencies to discuss the proposed EAP enhancements.

V. Recommendations and Clarification

Based on the above comments, the HPC respectfully submits the following recommendations or asks for clarification on the following points:

- The EAP letter should provide for additional flexibility in gate operations.
- Because many licensees already have extensive operating plans, referencing SOPs or O&M manuals in the EAP could achieve most of D2SI's objective, and also avoid internal confusion.
- Whether FERC inspections could be utilized as the compliance tool instead of the EAP.
- The EAP enhancement letter will require a lot of work, expense and coordination, likely requiring more time than just the current year to implement. The HPC respectfully asks for an extension of time for compliance until the end of 2014.
- Would a general description of flood control operations in the EAP achieve D2SI's objective?
- Rather than including the procedures in the EAP, would communicating actual discharges or reporting percent of maximum spill capacity achieve D2SI's objective, which would avoid predicting downstream impacts but create a trigger to notify.
- When D2SI developed the Owners Dam Safety Program last summer you provided an example of an ODSP. Can you provide a similar example of what you are seeking in an EAP amendment?
- Does the letter and proposed schedule apply to all dams, or just high or significant hazard dams?

- Is D2SI asking licensees to take on additional responsibility for notifying the public in the event of an emergency?

VI. Conclusion

The HPC appreciates the opportunity to review and comment on D2SI's EAP enhancement letter. We support improving operations and communications during high flow events; however, the EAP enhancements could lead to additional liability and subject licensees to additional responsibilities we are not comfortable taking on.

Although our comments reflect concerns regarding the EAP enhancement letter, licensees work closely with D2SI and FERC staff at headquarters and the regional offices and together we are seeing great improvements in dam safety procedures and overall facility operations. We look forward to continuing these relationships and commit to working with you in meeting your goals.

Respectfully Submitted,



N. Christian Porse, Chairman
Hydraulic Power Committee



Jeff Bernard, Chairman
HPC Dam Safety Subcommittee