



July 8, 2013

Tammy Vallejo
State Water Resources Control Board – Division of Water Rights
Water Quality Certification Program
P.O. Box 2000
Sacramento, CA 95812

RE: National Hydropower Association’s Comments on the California State Water Resources Control Board and Federal Energy Regulatory Commission Memorandum of Understanding Concerning Coordination of Pre-Application Activities for Non-Federal Hydropower Proposals in California

Dear Ms. Vallejo:

On June 10, the California State Water Resources Control Board (State Water Board) announced it was accepting comments on a draft memorandum of understanding between the State Water Board and the Federal Energy Regulatory Commission (FERC) regarding the *Coordination of Pre-Application Activities for Non-Federal Hydropower Proposals in California* (Draft MOU). The National Hydropower Association (NHA) is pleased to submit the following comments.

I. Introduction

NHA is a national non-profit association dedicated exclusively to advancing the interests of the U.S. hydropower industry, including conventional, pumped storage, and new marine and hydrokinetic technologies. NHA’s membership consists of more than 180 organizations, many of which are located in California, including consumer-owned utilities, investor-owned utilities, independent power producers, project developers, equipment manufacturers, environmental and engineering consultants, and attorneys.

Several recent studies have identified tremendous growth potential in the tens of thousands of megawatts of clean, renewable hydropower capacity.¹ Efforts to coordinate the non-federal hydropower licensing

¹ See, Navigant Consulting, *Job Creation Opportunities in Hydropower* (Sept. 20, 2009), http://www.hydro.org/wp-content/uploads/2010/12/NHA_JobsStudy_FinalReport.pdf. Office of Energy Efficiency and Renewable Energy, Wind and Water Power Program, U.S. Dep’t of Energy, *An Assessment of Energy Potential at Non-Powered Dams in the United States* (Apr. 2012), http://www1.eere.energy.gov/water/pdfs/npd_report.pdf; Bureau of Reclamation, U.S. Dep’t of the Interior, *Site Inventory and Hydropower Energy Assessment of Reclamation Owned Conduits* (Mar. 2012), <http://www.usbr.gov/power/CanalReport/FinalReportMarch2012.pdf>.

process between FERC and state water quality agencies are a necessary step towards realizing this potential and meeting the growing demand for clean and renewable and electricity.

NHA supports the purpose and goal outlined in the Draft MOU and commends the State Water Board and FERC for pursuing and implementing the MOU. Better coordination and communication up front in the hydropower licensing process is always encouraged and benefits all parties and stakeholders.

The Draft MOU provides an excellent opportunity to more efficiently license projects while creating a template for other states. The successful implementation of the Draft MOU has the potential to accelerate not only the approvals of hydropower projects (existing and new), but also the environmental benefits resulting from the mitigation packages associated with the project proposals.

While the Draft MOU is a positive first step and reflects good public policy, NHA is concerned it is lacking enforcement mechanisms to fully realize the benefits, purpose and goals outlined. NHA provides the following comments for your consideration aimed at ensuring timelines are met, redundancy is avoided, and studies and conditions have an appropriate scope and nexus to the project.

II. Specific Comments

- In Section II under *Communication*, subsection 4, the State Water Board and FERC agree to exchange important water quality certification and license application data on a semi-annual basis. NHA supports this exchange of information – the number of water quality certifications pending before the State Water Board, the dates by which the State Water Board needs to act, the projected dates for a final decision, and the processing status of the water quality certification and license application.

NHA recommends the State Water Board and FERC make this semi-annual exchange publicly available on their respective websites and/or posted to a public dashboard in order to make it easier to track progress on water quality certifications and license applications. Public availability of this information will provide a greater level of transparency and accountability for all involved in the process. Such action is consistent with similar proposals across the federal government. Recently, President Obama announced an infrastructure permitting dashboard for high priority projects. As part of this initiative the administration will implement an online tracking system of these projects.²

² Exec. Order No. 13604, 60 Fed. Reg. 18887 (Mar. 22, 2012). See also, <http://www.permits.performance.gov/>

Another example is contained in the Senate-passed version of the Water Resources Development Act (WRDA), authored by Senator Barbara Boxer and which passed with an overwhelming bipartisan vote of 83-14. WRDA directs the Army Corps of Engineers to report to Congress on “the status of each pending application from non-Federal entities for approval to develop hydroelectric power at Corps of Engineers civil works projects.”³

Along these lines, NHA recommends that the State Water Board and FERC include a provision in the final MOU that commits each agency to jointly review the MOU’s progress and effectiveness on a mutually agreed upon timeframe.

- The State Water Board commits to greater participation and cooperation in the hydropower licensing process in both the pre-application and post-application filing periods. In Section II under *Pre-Application Filing Activities under the ILP*, subsections 1 and 3, the State Water Board agrees that it “will participate in the Commission’s environmental scoping process” as well as “actively participate in the study plan development.”⁴ Also, in Section II under *Post-Application Filing Activities Under the ILP*, subsection 1, the State Water Board and FERC discuss the willingness to identify projects “on a case-specific basis” where a single “cooperative environmental document can be issued that satisfies, to the extent possible, the legal requirements of NEPA and CEQA...”

NHA supports these provisions in the Draft MOU and has long advocated, in various forums, examining improvements to the hydropower licensing process and the need for early and continued consultation and coordination between FERC and state agencies throughout a proceeding.

While NHA understands that the State Water Board and FERC independently exercise their legal mandates and authorities relative to hydropower licensing, experience has shown that when the two agencies are not working cooperatively with each other and with the other licensing participants, significant inefficiencies and conflicts can and do occur.

³ Water Resources Development Act of 2013, S. 603, 113th Cong. § 2009 (2013).

⁴ NHA provides a specific addition to the Draft MOU study plan provisions (subsection 3(a) – (e)). Under subsection 3(e), NHA proposes that should the State Water Board concur with the Commission’s Study Plan Determination, it issue a notification letter to the license applicant. Such notification will make the State Water Board’s expectations clear to applicants and to other participants in the process as well.

NHA believes these commitments under the Draft MOU are good public policy; however, the effectiveness of the Draft MOU will be tested should consensus be difficult to reach, in the development of the study plan for example, or should preliminary terms and conditions not be timely received in response to the Commission's Notice of Ready for Environmental Analysis.

The promise of the MOU, NHA believes, is that areas of disagreement will be significantly minimized. Though with time and experience, the State Water Board and the Commission may find that further enforceable mechanisms may be needed under the MOU to ensure improved coordination.

Lastly, NHA notes that Congress is on the verge of passing hydropower legislation that would require FERC, among other provisions, to study the feasibility of a two-year licensing process for development that adds generation to existing non-powered dams as well as closed-loop pumped storage projects.⁵ Considering this Draft MOU, NHA encourages the State Water Board to take a leadership role in working with FERC to achieve the intent of the bills, should they pass. The timing of this Draft MOU is an opportunity for both the State Water Board and FERC to consider potential pilot projects in California.

- In Section II of the Draft MOU under *Baseline*, NHA was pleased to see confirmed that the “current state of the environment, with the existing project facilities, is the baseline condition against which the proposed action and all alternatives in the environmental document(s) will be compared for purposes of NEPA and CEQA.” NHA recommends that additional clarity is needed as to what the State Water Board deems are “project-related impacts” for which its water quality certification authority extends, “notwithstanding whether those impacts are due to existing conditions.”
- In Section II, *Regulatory Deadlines*, the State Water Board and FERC will “adhere to the regulatory deadlines specified in the Commission’s ILP regulations” as well as “attempt to resolve conflicts regarding the ILP, TLP, or ALP deadlines at the staff level.” NHA supports both agencies’ assertion to conclude decision-making within the prescribed timeframes and to assertively address potential timeline conflicts as soon as possible.

The Draft MOU also notes that if “rescheduling agreements cannot be reached... staff will seek to resolve the issue at a higher level within their respective agencies.” NHA appreciates that both

⁵ See, Hydropower Regulatory Efficiency Act of 2013, H.R. 267, 113th Cong. (2013); Hydropower Regulatory Efficiency Act of 2013, S. 545, 113th Cong. (2013).

agencies will provide greater management oversight to prevent undue delays, but also notes there is no definitive procedure or timelines for reaching resolution related to staff level conflicts. NHA recommends the MOU provide greater specificity in this regard, as well as additional clarity on what “higher level” means.

III. Conclusion

Once again, NHA commends the actions of the State Water Board and FERC to improve the coordination between the agencies throughout the hydropower licensing process. The Draft MOU is a positive first step, though NHA believes that without further clarification and the possible addition of enforcing provisions, the benefits and effectiveness of the Draft MOU may not be fully realized.

California has passed aggressive climate policies and set ambitious renewable energy goals. Hydropower can play a major role in meeting these requirements. In 2012, hydropower provided approximately 26 million MWh of electricity to the state accounting for over 12 percent of all electricity generation and over 45 percent of renewable electricity generation. However, many thousands of MWs of hydropower capacity in California are waiting for approval. The timely licensing of these projects through the successful implementation of the Draft MOU will lead to thousands of domestic jobs, result in positive environmental outcomes, and meet California’s climate and renewable energy goals.

Finally, NHA is aware of several association members who have filed individual comments on the Draft MOU and we direct you to those filings.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda Church Ciocci".

Linda Church Ciocci
Executive Director