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In Reply Refer To: EOL0214-069

February 20, 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
License-specified Minimum Streamflows Resumed

Dear Secretary Bose:

This letter responds to the Commission's February 10, 2014 letter to the El Dorado Irrigation District (District) regarding the District's February 6, 2014 notification of streamflow modifications made in response to emergency drought conditions. The District is providing notification that all minimum streamflows were returned to the levels specified in the Project No. 184 license for a critically dry water year on or before February 13, 2014, consistent with the Commission's guidance provided in the February 10, 2014 letter.

The District determined this operational change was appropriate after analyzing updated forecast information that incorporated the beneficial hydrologic impacts of a storm event that brought significant precipitation to the region from February 7 – 9, 2014. The updated forecast indicates that by continuing to curtail power production, the District is quite likely to be able to obtain its pre-1914 water rights for consumptive use, meet license specified minimum streamflows, and achieve the license-specified Caples Lake end-of-year lake-level target in 2014, although intermediate lake-level targets in June and July may not be achieved.

As planned, the District consulted with the U.S. Forest Service (FS), California State Water Resources Control Board (SWRCB), California Department of Fish and Wildlife (CDFW), and the Project No. 184 Ecological Resources Committee (ERC) on February 13, 2014 to discuss drought conditions and establish the framework of a plan to respond if conditions again worsen.

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To: Kimberly Bose



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At this meeting, the District presented a Streamflow Plan Framework (Framework) that outlines the principles and process by which one or more temporary modified streamflow plans would be developed in the event they become necessary. The enclosed version of the Framework incorporates the District's understanding of comments received at the February 13, 2014 consultation.

The District will continue monitoring hydrologic conditions to evaluate whether temporary streamflow modification is necessary. If drought conditions again worsen, the District will work in consultation with the FS, SWRCB, CDFW, and ERC to develop a mutually acceptable streamflow regime based upon the Framework. As described in the Framework, the District plans to conduct an updated hydrologic analysis the week of February 24, 2014. If a modified streamflow plan is necessary at the time based on updated hydrologic conditions, the District will prepare a plan consistent with the principles established in the Framework and deliver to the stakeholders for consideration. Upon approval of the plan by the necessary entities, the District would immediately implement the modifications and provide notification to the Commission consistent with the guidance in the Commission's February 6, 2014 letter to California licensees regarding drought conditions. The Framework also establishes an iterative process to allow successive temporary streamflow modifications as circumstances dictate over time.

The District respectfully disagrees with statement in the Commission's February 10 letter that the Commission does not consider drought to be an operating emergency within the meaning of Article 404 of the Project No. 184 license. Enclosed is a summary of previous Commission decisions that helped form the basis for 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. The District carefully weighed its actions, and maintains that these prior Commission decisions support the District's brief streamflow modification, pending consultation and concurrence from the FS, SWRCB, CDFW, ERC and the Commission. The District provides this information for Commission review and consideration, and also to demonstrate the District's good-faith belief that its actions were fully compliant with its license obligations.

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'.

Brian Mueller, P.E.
Director of Engineering

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To: Kimberly Bose



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BM:BD:lk

Enclosures: February 19, 2014 Streamflow Plan Framework
FERC Authorities Supporting the District's Interpretation of Article 404

cc w/enclosures:

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El Dorado Hydroelectric Project

FERC Project 184

Streamflow Plan Framework in Response to Unprecedented Drought Conditions

February 19, 2014

Purpose and Objectives

The purpose of this document is to describe the framework to implement a modified minimum streamflow plan to conserve and manage FERC Project No. 184 water supplies in 2014 and 2015 in response to the unprecedented drought conditions that are being experienced throughout the Sierra Nevada. The El Dorado Irrigation District (District) has prepared this document to help establish the principles and criteria to be incorporated into a modified streamflow plan. This document is intended to facilitate expedited review and approval of the specifics of a future streamflow plan, in the event one becomes necessary.

The District intends the implementation of a modified streamflow plan to meet the following objectives:

- Ensure availability of consumptive water under the District's pre-1914 water rights (15,080 acre-feet)
- Ensure adequate reservoir storage for all project purposes later in 2014 and 2015

These objectives are consistent with principles established during the Project No. 184 relicensing process acknowledging that implementation of the settlement agreement and license-specified minimum streamflow releases would not affect the District's ability to deliver its pre-1914 water rights for consumptive purposes or require releases from storage after the reservoirs fill in the spring.

This document supersedes the draft version that was presented at the February 13, 2014 meeting of the Project No. 184 Ecological Resources Committee and incorporates the District's understanding of comments received on that date.

Background

At a special meeting on February 4, 2014, the El Dorado Irrigation District (District) Board of Directors approved a resolution declaring an emergency and implementing a Stage 2 Water Supply Warning, which calls for customers to reduce water usage by 30% in accordance with the District's Drought Plan. The Board of Directors also found and declared that the drought conditions constitute an emergency beyond the District's control within the meaning of Article 404 of the Project No. 184 FERC license. The objectives of the resolution are to protect existing water supplies and minimize water usage to ensure that District customers have adequate water supplies in both 2014 and 2015.

The resolution also includes operational modifications and other measures aimed at conserving water for consumptive uses, and to sustain Project No. 184's ability to maintain some level of instream flows through the latter half of 2014. The unprecedented drought conditions had already prompted the District to cease all project power production, except temporarily during storm events. The operational modifications include temporary modification to the Project No. 184 instream flow requirements, while the District consults with Project No. 184 stakeholders on a longer-term variance proposal to be submitted to the FERC for approval.

A copy of the resolution, as adopted, is included in Attachment A.

The District began implementing operational modifications on February 5, 2014. The temporary instream flow modifications were:

- Maintaining existing flows of 15 cfs below Kyburz diversion dam
- Maintaining existing 2 cfs or natural flow below the Lake Aloha main dam
- Reducing flows below the Caples Lake main dam from 5 cfs to 2 cfs
- Reducing flows below Silver Lake dam from 4 cfs or natural flow to 2 cfs or natural flow
- Reducing flows below the Echo Lake dam from 6 cfs or natural flow to 2 cfs or natural flow

The District maintains that these modifications are consistent with the provision of Article 404 that authorizes the District to temporarily modify any minimum flow requirements for the license if required by operating emergencies beyond the control of the District. The District implemented these actions solely as interim measures while consultations occurred.

After the District implemented these changes on February 5, 2014, California experienced a major storm event from February 7 through February 9, 2014. On February 12, 2014, after analyzing updated forecast information that incorporated the beneficial impacts of the storm event on projected water supply conditions, the District determined that a return to license-specified minimum flow requirements was appropriate. Minimum streamflows below Caples Lake and Silver Lake, which were not already elevated by runoff conditions (unlike Echo Lake and Kyburz Diversion Dam), were returned to levels specified in the Project No. 184 license for a critically dry water year by February 13, 2014.

Rationale

This section describes the rationale for implementing a modified minimum streamflow plan in 2014 should one become necessary. The resolution included in Attachment A provides a thorough description of the unprecedented drought conditions experienced in California in 2013 and 2014. In response to these extraordinary conditions, the District has been evaluating

implications to its water supply and other project purposes under several forecast scenarios using data from the California-Nevada River Forecast Center of the National Weather Service/National Oceanic and Atmospheric Administration.

The need for immediate action to implement a modified streamflow regime was evident as January 28th forecast data indicated that by late summer, not only would the District not be able to meet its consumptive water supply obligations, but the four Project No. 184 reservoirs could be effectively emptied with no active storage, and natural flows within the project area would also be insufficient to maintain license-prescribed streamflows (Figure 1 and Table 1). The graphs in Figure 1 assumed implementation of current minimum streamflows as specified in the Project No. 184 license for a critically dry water year under a 90% probability condition (i.e. a scenario assuming a 90% chance that conditions will be no drier than forecasted - a typical assumption used by forecasters at this time of year and especially appropriate given current conditions).

Project 184 2014 Forecast Operations

End of Month Storage (AF)

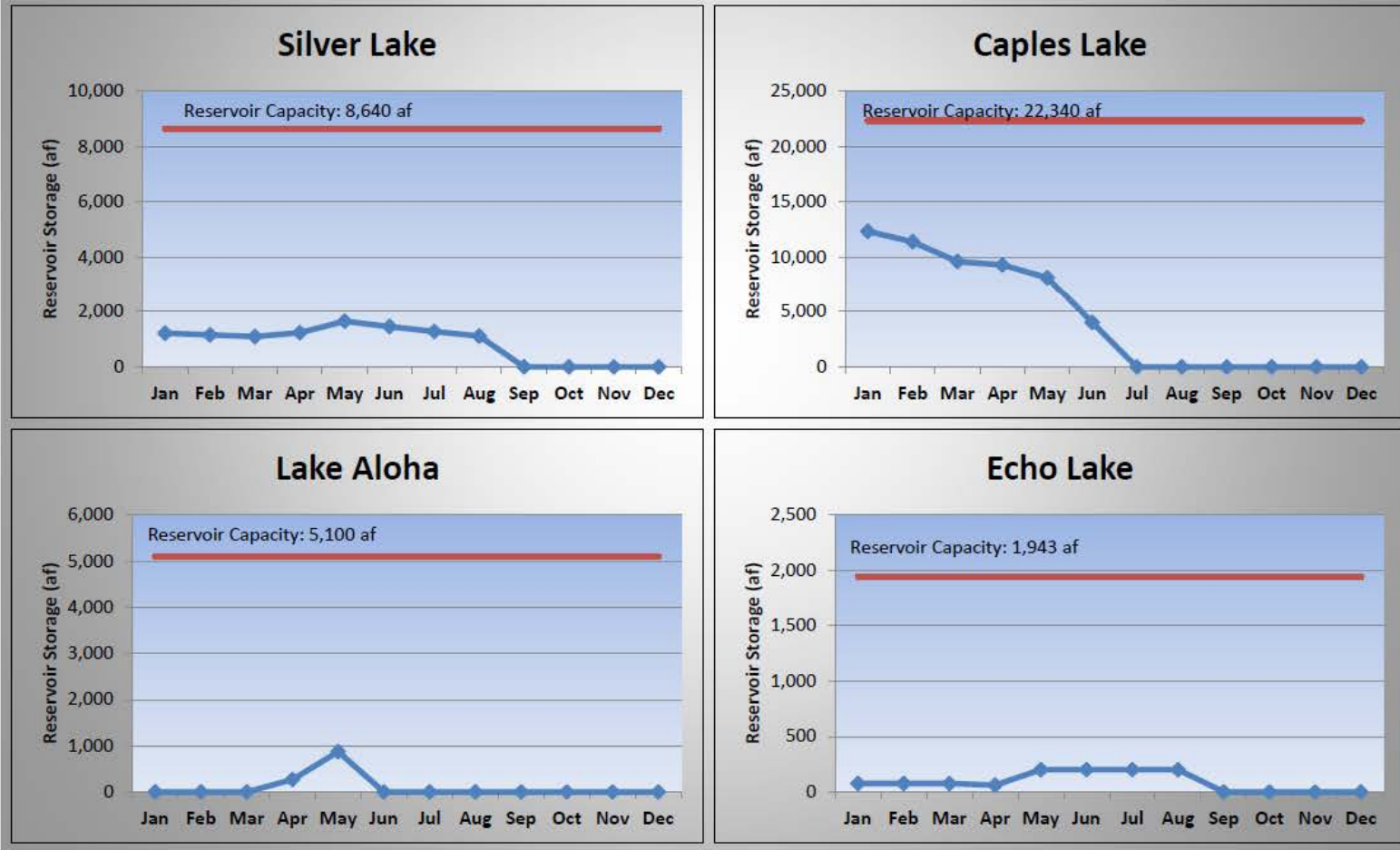


Figure 1. Projected lake levels in 2014 maintaining license specified minimum streamflows – based on January 28, 2014 California Nevada River Forecast Center data

Table 1 Project-184 2014 Forecast Operation 90% PROBABILITY

- JANUARY 28 FORECAST -		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Reservoir Storage, Releases and Direct Diversion Available to Meet EID Demands														
Silver Lake:	End of Month Storage (af)	1,216	1,154	1,095	1,233	1,649	1,457	1,278	1,111	0	0	0	0	
	Lake Level Target (af)	-	-	-	-	-	-	-	-	3,756	-	-	-	
	Inflow Forecast (af)		48	92	627	1,001	110	0	0	3	61	128	73	2,144
	Evaporation (af)		0	0	70	141	110	107	105	95	0	0	0	628
	Minimum Outlet (or Natural Flow)		333	369	357	369	357	369	369	357	369	357	369	
	Leakage (af)		62	59	61	76	82	72	63	29	0	0	0	504
	Outlet (Including Leakage, af)		110	152	418	445	192	72	63	1,019	61	128	73	2,732
Caples Lake:	End of Month Storage (af)	12,357	11,402	9,627	9,307	8,141	4,020	0	0	0	0	0	0	
	Lake Level Target (af)	-	-	-	-	-	18,704	18,413	14,376	14,376	-	-	-	
	Inflow Forecast (af)		25	48	379	1,057	157	0	0	6	43	83	80	1,878
	Evaporation (af)		0	0	105	151	166	150	171	108	51	54	32	989
	Minimum Outlet		278	307	595	861	861	738	307	307	307	307	307	
	Outlet (af)		980	1,822	595	2,071	4,112	3,870	0	6	43	83	80	13,662
	End of Month Storage (af)	0	0	0	269	874	0	0	0	0	0	0	0	0
Lake Aloha:	Inflow Forecast (af)		41	57	475	999	140	0	0	12	102	156	108	2,089
	Evaporation (af)		0	0	27	87	0	0	0	0	0	0	0	114
	Minimum Outlet (or Natural Flow)		111	123	179	307	298	123	61	60	61	60	123	
	Outlet (af)		41	57	179	307	1,014	0	0	12	102	156	108	1,975
	End of Month Storage, Pre-1914 (af)	76	76	76	61	201	201	201	201	0	0	0	0	0
Echo Lake:	Inflow Forecast (af)		23	32	266	559	78	0	0	6	57	87	60	1,168
	Evaporation (af)		0	0	15	50	0	0	0	0	0	0	0	65
	Minimum Outlet (or Natural Flow)		333	369	357	369	357	369	369	357	369	357	369	
	Import (af)		0	0	0	0	0	0	0	201	0	0	0	201
	Outlet (af)		23	32	266	369	78	0	0	6	57	87	60	978
	Direct Diversion Accretions at Kyburz (af)		591	1,135	4,790	3,203	514	0	0	27	268	678	639	11,846
Minimum Bypass Requirement at Kyburz (cfs)		20	30	60	60	60	40	18	15	15	15	15		
Minimum Bypass Requirement at Kyburz + 5% (af)		1,166	1,937	3,749	3,874	3,749	2,582	1,162	937	968	937	968		
SF American River Flow Below Kyburz (af)		1,166	1,937	3,749	3,874	3,749	2,582	63	937	475	937	900	20,369	
Total Diversion at Kyburz (af)		555	1,230	2,234	2,152	2,082	1,359	0	327	0	108	0	10,047	
Pre-1914 Deliveries														
Silver Lake:		0	95	0	0	192	72	0	99	0	0	0	0	457
Caples Lake:		0	0	0	0	1,017	1,287	0	0	0	0	0	0	2,304
Lake Aloha:		0	0	0	0	360	0	0	0	0	0	0	0	360
Echo Lake:		0	0	0	0	0	0	0	201	0	0	0	0	201
Enroute Diversions (af)		0	0	0	0	0	0	0	0	0	0	0	0	0
Direct Diversion from Accretions at Kyburz (af)		300	555	1,135	2,082	2,152	514	0	27	0	108	0	6,873	
Total Pre-1914 - DEMAND		300	555	1,230	2,082	2,152	2,082	2,152	2,152	944	587	416	430	15,082
Total Pre-1914 - DELIVERY		300	555	1,230	2,082	2,152	2,082	1,359	0	327	0	108	0	10,196
Pre-1914 Shortage		0	0	0	0	0	0	793	2,152	617	587	308	430	4,886

Assumptions

- Reservoirs are operated to release the Natural Flow when allowed.
- Hydropower generation only when direct diversion is available and Critically Dry instream flows at Kyburz are met.
- Minimum Silver Lake, Echo Lake, and Lake Aloha outlet set at minimum or Natural Flow which ever is less.
- Based on January 28, 2014 California Nevada River Forecast Center forecast of South Fork American River Flow at Kyburz.

Table 1. Forecast conditions in 2014 maintaining license specified minimum streamflows – based on January 28, 2014 California Nevada River Forecast Center data

Updated Forecasted Conditions

The District re-evaluated hydrologic conditions following the significant storm event that occurred from February 7 – 9, 2014. An updated analysis was conducted utilizing February 10th forecast data and assuming implementation of minimum streamflows as specified in the Project No. 184 license for a critically dry water year under a 90% probability condition (Figure 2 and Table 2). This analysis indicates that forecasted hydrologic conditions at reservoirs in the upper watersheds have changed considerably as a result of the February 7 – 9, 2014 storm event and that at this time, there exists a 90% probability that the District will be able to obtain its pre-1914 water rights for consumptive use, meet license specified minimum streamflows, and achieve the license-specified end-of-year lake-level target for Caples Lake, although it will miss intermediate targets in June and July.

Project 184 2014 Forecast Operations

End of Month Storage (AF) - 90% Probability

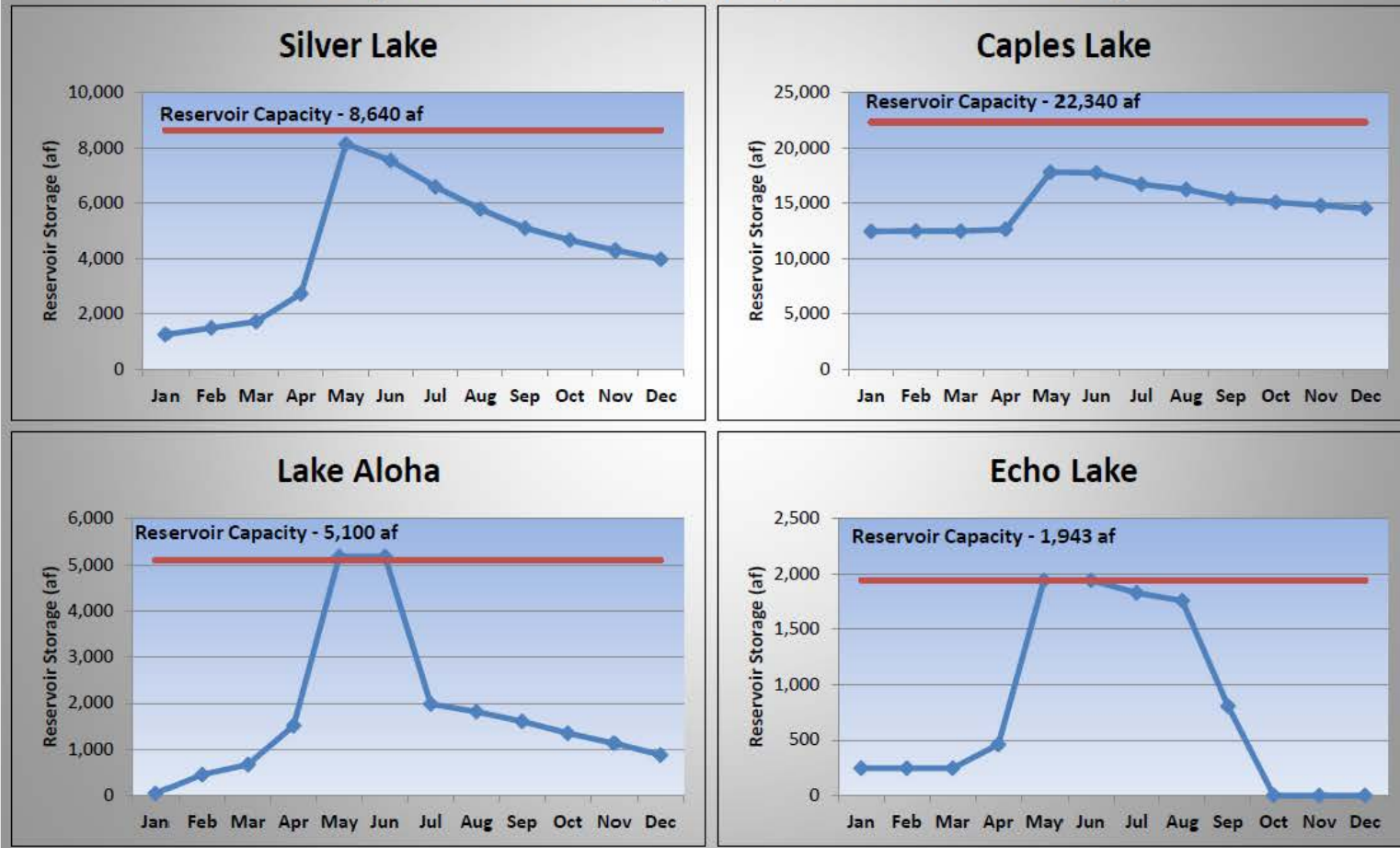


Figure 2. Projected lake levels based in 2014 maintaining license specified minimum streamflows – based on February 10, 2014 California Nevada River Forecast Center data

Table 2 Project-184 2014 Forecast Operation 90% PROBABILITY

- FEBRUARY 10 FORECAST -		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Reservoir Storage, Releases and Direct Diversion Available to Meet EID Demands														
Silver Lake:	End of Month Storage (af)	1,260	1,501	1,724	2,736	8,141	7,547	6,596	5,789	5,105	4,672	4,299	3,978	
	Lake Level Target (af)	-	-	-	-	-	-	-	-	3,756	-	-	-	
	Inflow Forecast (af)		608	554	1,443	6,321	723	27	76	38	108	160	90	10,148
	Evaporation (af)		0	0	75	155	202	191	178	167	0	0	0	968
	Leakage (af)		73	85	117	516	877	761	629	517	433	373	321	4,701
	Outlet (Including Leakage, af)		295	331	355	762	1,115	788	705	555	541	533	411	6,389
Caples Lake:	End of Month Storage (af)	12,470	12,504	12,483	12,641	17,812	17,751	16,719	16,260	15,413	15,094	14,806	14,540	
	Lake Level Target (af)	-	-	-	-	-	18,704	18,413	14,376	14,376	-	-	-	
	Inflow Forecast (af)		312	287	873	6,222	1,012	81	248	68	75	104	99	9,381
	Evaporation (af)		0	0	120	190	240	251	217	618	86	95	58	1,875
	Outlet (af)		278	307	595	861	833	862	490	298	307	298	307	5,436
Lake Aloha:	End of Month Storage (af)	44	450	669	1,513	5,179	5,179	1,983	1,816	1,604	1,348	1,130	875	
	Lake Level Minimum (af)	-	-	-	-	-	3,079	0	0	0	-	-	-	
	Inflow Forecast (af)		517	342	1,092	5,821	907	69	313	128	180	195	133	9,696
	Evaporation (af)		0	0	70	162	220	198	128	41	135	113	88	1,154
	Outlet (af)		111	123	179	1,993	687	3,067	351	300	300	300	300	7,710
Echo Lake:	End of Month Storage, Pre-1914 (af)	246	246	246	460	1,943	1,943	1,830	1,758	806	0	0	0	
	Inflow Forecast (af)		289	191	611	3,256	507	39	175	72	100	109	74	5,423
	Evaporation (af)		0	0	40	92	125	113	72	23	0	0	0	465
	Outlet to Echo Creek (af)		0	0	0	0	0	0	0	929	806	0	0	1,735
Direct Diversion Accretions at Kyburz (af)			7,464	6,805	11,021	25,245	3,418	142	736	302	470	850	791	57,246
Minimum Bypass Requirement at Kyburz (cfs)			20	30	60	60	60	40	18	15	15	15	15	
Minimum Bypass Requirement at Kyburz + 5% (af)			1,166	1,937	3,749	3,874	3,749	2,582	1,162	937	968	937	968	22,030
SF American River Flow Below Kyburz (af)			1,166	1,937	3,749	19,268	3,749	2,582	1,162	937	968	937	968	37,425
Total Diversion at Kyburz (af)			6,981	5,630	8,401	9,592	2,304	2,276	1,121	1,447	1,456	1,043	841	41,091
Pre-1914 Deliveries														
Silver Lake: (Maximum per year = 5,400 af)			0	0	0	0	0	788	385	0	0	0	0	1,172
Caples Lake: (Maximum per year = 8,000 af)			0	0	0	0	0	862	0	0	0	0	0	862
Lake Aloha: (Maximum per year = 360 af)			0	0	0	0	0	360	0	0	0	0	0	360
Echo Lake: (Maximum per year = 1,943 af)			0	0	0	0	0	0	0	591	0	0	0	591
Direct Diversion from Accretions at Kyburz (af)		300	1,388	2,460	2,380	2,152	2,082	142	736	302	0	0	154	12,097
Total Pre-1914 - DEMAND		300	1,388	2,460	2,380	2,152	2,082	2,152	1,121	893	0	0	154	15,082
Total Pre-1914 - DELIVERY		300	1,388	2,460	2,380	2,152	2,082	2,152	1,121	893	0	0	154	15,082
Total Pre-1914 - DELIVERY, cfs		5	25	40	40	35	35	35	18	15	0	0	3	
Pre-1914 Shortage		0	0	0	0	0	0	0	0	0	0	0	0	0

- Reservoirs are operated to release the Natural Flow when allowed.
- Hydropower generation only when direct diversion is available and Critically Dry instream flows at Kyburz are met.
- Minimum Silver Lake, Echo Lake, and Lake Aloha outlet set at minimum or Natural Flow which ever is less.
- Based on February 10, 2014 California Nevada River Forecast Center forecast of South Fork American River Flow at Kyburz.

Table 2. Forecast conditions in 2014 maintaining license specified minimum streamflows – based on February 10, 2014 California Nevada River Forecast Center data

Comparison of January 28 and February 10 Analysis

A comparison of the projected water supply and reservoir storage conditions from the January 28th and February 10th forecast data is summarized below. These forecasts represent projected conditions based on currently available information. They do not represent an annual operations plan for Project 184, which will be prepared separately this spring similar to previous years.

Pre-1914 Consumptive Water Rights

The January 28th forecast indicated that only 10,196 af of the 15,080 af pre-1914 consumptive water right would be available. This difference represents a shortage of 4,886 af that should be available to the District under all conditions in all years. By contrast, the February 10th forecast indicated that the full 15,080 af would be available.

Caples Lake Storage

Month	Estimated storage (af)		License target (af)
	Jan 28	Feb 10	
June	4,020	17,751	18,704
July	0	16,719	18,413
August	0	16,260	14,376
September	0	15,413	14,376
November	0	14,806	13,000

Silver Lake Storage

Month	Estimated storage (af)		License target (af)	League Agreement (af) ¹
	Jan 28	Feb 10		
September 30	0	5,105	3,756 (12.0 staff height)	4,156 (13.0 staff height)
October 15	0	4,672		3,109 (10.3 staff height)
November 1	0	4,299	2,111 (7.4 staff height)	

¹Attachment A of the League to Save Sierra Lakes Settlement Agreement

Lake Aloha

The January 28th forecast indicated Lake Aloha storage would peak at 874 af in May and be at 0 af in June through December, while the February 10th forecast indicates Lake Aloha would fill with storage at 5,179 af in June and 875 af in December.

Echo Lake

The January 28th forecast indicated Echo Lake storage would peak at 201 af in May through June and be at 0 af in June through December, while the February 10th forecast indicates Echo Lake would fill with storage at 1,943 af in June and 806 af in September.

Streamflow Plan Framework

This section describes the framework for a modified minimum streamflow plan for 2014 should one become necessary. The plan includes modifications to streamflows in order to meet the following District priorities:

1. Deliver consumptive water under the District's pre-1914 water rights (15,080 acre-feet)
2. Ensure adequate reservoir storage for all project purposes later in 2014 and 2015
3. Maintain license specified minimum streamflows
4. Generate hydroelectric power

Proposed Streamflow Modifications

The District proposes a step-wise approach to implement iterative streamflow modifications as necessary to meet the specified objectives of ensuring delivery of consumptive water supply and maintaining adequate storage in project reservoirs for all project purposes later in 2014 and 2015. The following list establishes a priority sequence by which a specific streamflow plan (i.e. a plan with specific flows identified) would be prepared. The plan would advance to the next priority step only if the prior step or steps were insufficient to achieve the objectives.

1. Reduce minimum streamflows at the South Fork American River below Kyburz (gage A-12) to a level necessary to meet pre-1914 water supply, but not below 15 cfs, which is the lowest license-specified minimum streamflow
2. Reduce minimum streamflows below the Echo Lake dam from 6 cfs or natural flow to 2 cfs or natural flow
3. Reduce minimum streamflows below Silver Lake dam from 4 cfs or natural flow to 2 cfs or natural flow
4. Maintain minimum streamflows below the Lake Aloha main dam to 2 cfs or natural flow
5. Reduce minimum streamflows below the Caples Lake main dam to 2 cfs
6. Reduce minimum streamflows at the South Fork American River below Kyburz (gage A-12) to a level necessary to meet pre-1914 water supply, including flows below 15 cfs

If a storm event temporarily increases flows in the project area, the District would take operational actions to reverse the streamflow modifications to the extent that available water makes power generation possible. Power generation would occur only after and so long as license-specified minimum streamflows were fully restored.

The District prioritized the proposed streamflow modifications with the goal of minimizing potential impacts to aquatic resources. The following discussion provides the basis for how these actions were prioritized.

The first priority action to reduce minimum streamflows at the South Fork American River below Kyburz limits the reduction to no less than 15 cfs. This level is the lowest license-specified minimum streamflow in a critically dry water year and the District therefore anticipates it to be protective of aquatic resources. This action also effectively limits the area of potential effects to the river reach below the Kyburz diversion dam and does not affect streamflows in other Project reaches.

The second through fourth priorities are focused on reducing releases from reservoirs during the spring runoff period in order to maintain reservoir storage for future releases later in 2014 and 2015. These reservoirs all have minimum streamflow requirements that include a minimum identified flow or natural flow, whichever is less. Modifying these streamflows is not anticipated to have long-term adverse effects to aquatic resources because the flow modifications would only be temporary during the spring runoff to assist in gaining reservoir storage, after which flows would transition to a natural flow condition as allowed by the Project No. 184 license. Localized accretive flows from spring runoff are also anticipated to supplement reservoir releases. Reducing streamflow releases from Echo Lake dam is second priority because it is outside the American River watershed. Reducing streamflow releases from Silver Lake dam is third priority because leakage from Silver Lake dam joins the affected reach at the confluence of Oyster Creek and the Silver Fork American River.

The fourth action involves reducing minimum streamflows below the Caples Lake main dam from a license-specified minimum of 5 cfs to 2 cfs. Minimum streamflows at Caples were reduced to the 2 - 3 cfs range in 2008 and 2009 with the approval of the FS, SWRCB, ERC, and FERC to manage limited reservoir storage and facilitate reservoir refill following an emergency repair of the outlet gates. The District monitored water quality during this time and data indicate that water quality parameters including water temperature, conductivity, dissolved oxygen, and turbidity were maintained within the specified target criteria (EID 2009). During monitoring pH was observed to be low, which is likely the result of the naturally occurring condition associated with low buffering capacity of Sierra Nevada soils (EID 2009); these observations during the reduced streamflow regime were consistent with results received during normal license-specified water quality monitoring.

The fifth action involves reducing minimum streamflows at the South Fork American River below Kyburz below 15 cfs. This action would only be proposed in the event that drought conditions worsen to the extent that all other previous actions do not adequately address a water supply shortage. The District would work with stakeholders to determine if additional

monitoring measures (beyond those described below) would be appropriate if this action becomes necessary.

The District identified and prioritized these actions to allow stakeholders to provide input on prioritization of proposed streamflow modifications at the February 13, 2014 ERC meeting. No recommended revisions to the priorities were received at the meeting. The District's goal is to create a streamflow plan that provides the operational flexibility to adequately respond to extraordinary drought conditions while at the same time balancing all project purposes.

Triggering Criteria to Implement Streamflow Modifications

The District plans to continue monitoring and evaluating forecasted hydrologic conditions as necessary to meet the specified objectives. If a forecast indicates the following two triggering criteria cannot be met, the District would initiate the development of a modified streamflow plan for agency review and approval.

1. Availability of 15,080 af of consumptive water under the District's pre-1914 water rights
2. Ability to meet November 30 storage at Caples of 13,000 acre-feet, which during Project No. 184 relicensing was the estimated level that would provide adequate storage to enable the District to meet the license-specified minimum pool requirement of 10,000 af, target lake levels in the following summer, and make license-specified minimum streamflow releases.

Monitoring

EID will monitor instream conditions in 2014 utilizing data from ongoing monitoring elements of the Project No. 184 Adaptive Management Monitoring Program. Both water temperature and water quality monitoring are scheduled to be conducted throughout the Project No. 184 area in 2014. The specifics of these monitoring efforts are provided in the approved monitoring plans (EID 2012; EID 2007).

Schedule

The District plans to conduct the next updated analysis utilizing February 24, 2014 forecast data. If a modified streamflow plan is necessary based on this forecast and the triggering criteria, the District will prepare the plan, consistent with the step-wise approach described above, and deliver to the FS, SWRCB, CDFW, and ERC for consideration by February 27, 2014. The District would request approval of the plan by March 3, 2014, so any streamflow modifications could be implemented by March 5, 2014 (the date specified in the license for completing any necessary changes to streamflows for the next month).

The District will prepare subsequent updated forecasts as often as necessary to evaluate changing hydrologic conditions, but no less frequently than monthly unless and until all parties concur that further forecasting is unnecessary. Although the District will provide as much time as possible for review and approval of any plans proposed under this framework, the District anticipates that continued drought conditions will necessitate expedited action.

References

EID 2007. Project No. 184 Water Quality Monitoring Plan. March 8, 2007. Version 3.0.
Available online at: <http://www.eid.org/index.aspx?page=87>

EID 2009. Caples Lake Main Dam Emergency Repair Project Water Quality Monitoring Report.
August 31, 2009. Available online at: <http://www.eid.org/index.aspx?page=87>

EID 2012. Project No. 184 Water Temperature Monitoring Plan. October 2012.
Version 6.0. Available online at: <http://www.eid.org/index.aspx?page=87>

ATTACHMENT A

**RESOLUTION OF THE EL DORADO IRRIGATION DISTRICT
DECLARING A STAGE 2 WATER WARNING
AND THE EXISTENCE OF AN EMERGENCY**

1 RESOLUTION OF THE BOARD OF DIRECTORS OF
2 EL DORADO IRRIGATION DISTRICT
3 DECLARING A STAGE 2 WATER WARNING
4 AND THE EXISTENCE OF AN EMERGENCY

5 OPERATIVE FACTS

6 WHEREAS, El Dorado Irrigation District (District) has experienced dry conditions since
7 2012, with unimpaired runoff in the American River basin of 74% of normal in 2012 and 41% of
8 normal in 2013; and

9
10 WHEREAS, calendar year 2013 was the driest year on record in California, and

11 WHEREAS, January 2014 was the driest January on record in California; and

12 WHEREAS, as of January 28, 2014, the United States Drought Monitor states that all of
13 El Dorado County is in an extreme drought condition, and 67% of California is in extreme or
14 exceptional drought condition, compared to 28% on January 1; and

15
16 WHEREAS, as of January 31, 2014, snow water content in the Central Sierra region was
17 18% of average, according to the state Department of Water Resources (DWR); and

18 WHEREAS, the Mother Lode region endured its longest recorded dry period during the
19 rainy season, from December 7, 2013 to January 29, 2014 (52 days); and

20 WHEREAS, January 2014 precipitation in the region was 5% of normal; and

21
22 WHEREAS, daytime high temperatures in the region were above average on every single
23 day of January 2014, the average daily high temperature was two degrees higher than the prior
24 record, and record high temperatures were recorded on twelve days, including the highest single-
25 day January temperature on record (January 24); and

1 **WHEREAS**, from January 1 through January 29, 2014, calculated natural flows in the
2 South Fork American River averaged 14 cubic feet per second, while natural flows during the
3 same period in 1976 and 1977 never fell below 18 cfs and averaged 87 and 31 cfs, respectively;
4 and
5

6 **WHEREAS**, as of January 31, 2014, storage in Folsom Reservoir was at 17% of
7 capacity, which is 32% of average, and the current lake level of 357 feet is just 10 feet higher
8 than the historic low in November 1977; and
9

10 **WHEREAS**, on January 31, 2014, the United States Bureau of Reclamation
11 (Reclamation) solicited data from the District and others to enable Reclamation to calculate the
12 minimum Central Valley Project deliveries necessary from Folsom Reservoir to protect public
13 health and safety; and
14

15 **WHEREAS**, in January 2014, storage in Jenkinson Lake, the District's largest source of
16 supply, was declining rather than rising; and
17

18 **WHEREAS**, at 63% of capacity on January 31, 2014, Jenkinson Lake was at virtually the
19 same level as on January 31, 1976, and would be at about 54%, much lower than the 1976 level,
20 if not for the transfer of 3,643 acre-feet of water through the Hazel Creek Tunnel over the past
21 twelve months; and
22

23 **WHEREAS**, at a January 23, 2014 meeting of the state Delta Stewardship Council, the
24 Delta Watermaster and representatives of DWR's drought task force, Reclamation, and the
25 Sacramento Water Forum characterized the current conditions of drought and reservoir storage as
26 worse than in 1976 and 1977, when California suffered its worst two-year drought on record; and
27
28

1 **WHEREAS**, the District and water managers throughout California suffered severe
2 hardship in 1977 due in part to their failure to take more aggressive actions in 1976 to guard
3 against a succeeding dry year; and
4

5 **WHEREAS**, on January 17, 2014, Governor Edmund G. Brown Jr. proclaimed a state of
6 emergency in California due to drought conditions, and made findings that included the
7 following:

- 8 • 2014 is projected to become the driest year on record;
- 9 • Drinking water supplies are at risk in many California communities;
- 10 • Fewer crops can be cultivated and farmers' long-term investments are put at risk;
- 11 • Extremely dry conditions have persisted since 2012 and may continue beyond this
12 year;
- 13 • The magnitude of the severe drought conditions presents threats beyond the
14 control of the services, personnel, equipment and facilities of any single local
15 government;
- 16 • Conditions of extreme peril to the safety of persons and property exist in
17 California due to water shortage and drought conditions with which local
18 authority is unable to cope; and
19
20
21

22 **WHEREAS**, the Governor's emergency proclamation included the following directives:

- 23 • Californians are called on to reduce their water usage by 20 percent;
- 24 • Local urban water suppliers are called on to implement their local water shortage
25 contingency plans immediately to avoid or forestall outright restrictions that could
26 become necessary later in the drought season;
- 27
28

Resolution No. 2014-

- 1
- 2 • DWR and the State Water Resources Control Board (Water Board) will accelerate
 - 3 funding for water supply enhancement projects and near-term water conservation
 - 4 projects;
 - 5 • The Water Board will put water rights holders throughout the state on notice that
 - 6 they may be directed to cease or reduce water diversions;
 - 7 • The Water Board will consider modifying requirements for reservoir releases or
 - 8 diversion limitations that arise from water quality control plans, to enable water to
 - 9 be conserved upstream;
 - 10 • The California Environmental Quality Act and the statutory requirement to
 - 11 comply with water quality control plans are suspended for the Water Board's
 - 12 actions to carry out the foregoing directive, on the basis that compliance will
 - 13 prevent, hinder, or delay the mitigation of the effect of the emergency; and
 - 14
 - 15

16 **WHEREAS**, the Water Board has sent its notice of potential curtailment of diversions to
17 the District and other water rights holders in California; and

18 **APPLICABLE LAW, REGULATION, AND POLICY**

19 **WHEREAS**, the District's adopted 2008 Drought Preparedness Plan and District staff's
20 updated 2012 Drought Action Plan provide for an incremental, multi-stage drought response,
21 summarized as follows:

- 22 • In a declared Stage 1 Water Supply Alert, customers are called on to voluntarily
- 23 reduce water usage by 15%;
- 24 • In a declared Stage 2 Water Supply Warning, a combination of voluntary and
- 25 mandatory actions are intended to reduce water usage by 30%;
- 26
- 27
- 28

- 1
- 2 • In a declared Stage 3 Water Supply Crisis, mandatory actions and/or water
 - 3 rationing are intended to reduce water usage by 50%; and
 - 4 • If water supplies are still insufficient, a Water Supply Emergency is declared and
 - 5 mandatory rationing is imposed to reduce water usage by more than 50%;

6 **WHEREAS**, the District's approved March 26, 2012 rate increases included the
7 authorization to impose surcharges on all water commodity charges during declared drought
8 conditions, to incentivize the water conservation sought and to maintain revenue neutrality for
9 the District to fund its ongoing operations; and

10
11 **WHEREAS**, Public Resources Code section 21080(b)(4) and CEQA Guidelines section
12 15269(c) exempt from CEQA any actions that are necessary to prevent or mitigate an emergency;
13 and

14 **WHEREAS**, CEQA Guidelines section 15359 defines "emergency" as "a sudden,
15 unexpected occurrence, involving a clear and imminent danger, demanding immediate action to
16 prevent or mitigate loss of, or damage to life, health, property, or essential public services;" and

17
18 **WHEREAS**, Article 404 of the Federal Energy Regulatory Commission (FERC)
19 operating license for the District's hydroelectric Project 184 authorizes the District to temporarily
20 modify any minimum flow requirements for the license if required by operating emergencies
21 beyond the control of the District; and

22
23 **WHEREAS**, the Condition No. 1 of the Water Board's Water Quality Certification for
24 Project 184 also authorizes the District to temporarily modify any streamflows if required by
25 operating emergencies reasonably beyond the District's control; and

Resolution No. 2014-

1 **WHEREAS**, Public Contract Code section 20567 authorizes irrigation districts to let
2 contracts without notice for bids in case of an emergency; and
3

4 **WHEREAS**, Public Contract Code section 22050(a)(2) requires that before action is
5 taken to procure equipment, services, and supplies without giving notice for bids, the governing
6 body must first make a finding, based on substantial evidence set forth in the minutes of its
7 meeting, that the emergency will not permit a delay resulting from a competitive solicitation for
8 bids, and that the action is necessary to respond to the emergency; and
9

10 **WHEREAS**, Public Contract Code section 11102 defines “emergency” as “a sudden,
11 unexpected occurrence that poses a clear and imminent danger, requiring immediate action to
12 prevent or mitigate the loss or impairment of life, health, property, or essential public services;”
13 and
14

15 **WHEREAS**, District Board Policy 2050 authorizes the District’s General Manager to act
16 “in emergency situations where no Board Policies or Administrative Regulations exist;” and
17

18 **WHEREAS**, District Administrative Regulation 3061.1, subdivision g, authorizes
19 emergency procurements of supplies, equipment, services, or construction items when there
20 exists a threat to public health, welfare, or safety, and requires Board of Directors ratification of
21 emergency procurements exceeding \$50,000; and
22

23 **NOW, THEREFORE, BE IT AND IT IS HEREBY RESOLVED** by the Board of
24 Directors of the El Dorado Irrigation District (Board) as follows:
25

- 26 1. The Board concurs with and adopts the above-stated findings of the Governor’s
27 emergency proclamation.
- 28 2. The Board approves the 2012 updated Drought Action Plan.

Resolution No. 2014-

- 1 3. The Board declares a Stage 2 Water Supply Warning, voluntary phase, effective
2 immediately.
- 3 4. The Board continues its consideration of a) a 15% drought surcharge on all water
4 and recycled water commodity charges, and b) whether to impose Stage 2 drought
5 actions on a mandatory basis, to its meeting of March 10, 2014.
- 6 7. The Board finds and declares that the current drought conditions constitute an
7 emergency within the meaning of CEQA Guidelines section 15359, Public
8 Contracts Code section 11102, District Board Policy 2050, and District
9 Administrative Regulation 3061.1, subdivision g.
- 10 6. The Board finds and declares that the drought conditions constitute an emergency
11 condition beyond the District's control within the meaning of Article 404 of the
12 Project 184 FERC operating license, and Condition No. 1 of the Water Board
13 Water Quality Certification for Project 184.
- 14 7. The Board finds and declares that the adoption of this Resolution and all of the
15 delegations, authorizations, and directions to the General Manager and District
16 staff specified in paragraph 9, below, satisfy the requirements and criteria of
17 Public Resources Code section 21080(b)(4), CEQA Guidelines section 15269(c),
18 and Public Contract Code sections 22050(a)(2) and 20567.
- 19 8. The foregoing findings and declarations are based upon all written, oral, and
20 visual evidence, including both facts and professional opinions, presented to the
21 Board at the hearing of this Resolution.
- 22 9. The Board hereby delegates, authorizes, and directs the District General Manager
23 and his designees to take all actions reasonably deemed necessary to respond to
24 and his designees to take all actions reasonably deemed necessary to respond to
25 and his designees to take all actions reasonably deemed necessary to respond to
26 and his designees to take all actions reasonably deemed necessary to respond to
27 and his designees to take all actions reasonably deemed necessary to respond to
28 and his designees to take all actions reasonably deemed necessary to respond to

Resolution No. 2014-

1 the emergency conditions declared herein, including but not limited to the
2 following specific actions:

- 3
4 a. Temporarily maintain the currently applicable instream flows of 15 cfs below
5 Project 184's Kyburz diversion dam and 2 cfs or natural flow below the Lake
6 Aloha main dam, until FERC and the Water Board each approve a temporary
7 variance to the otherwise applicable regulatory requirements for these
8 locations.
- 9
10 b. Temporarily reduce the instream flows below the Caples Lake main dam from
11 5 cfs to 2 cfs, below the Silver Lake dam from 4 cfs or natural flow to 2 cfs or
12 natural flow, and below the Echo Lake dam from 6 cfs or natural flow to 2 cfs
13 or natural flow, each until May 1 or FERC and the Water Board each approve
14 a temporary variance to the otherwise applicable regulatory requirements for
15 this location, whichever comes first.
- 16
17 c. Develop a proposal for temporary variances to the Project 184's instream flow
18 requirements for as long as drought conditions persist, in consultation with the
19 U.S. Forest Service, Water Board, the California Department of Fish and
20 Wildlife, and members of the Project 184 Ecological Resources Committee,
21 and submit the proposal to FERC and the Water Board as soon as possible.
- 22
23 d. Develop and submit a proposal to the Water Board for temporary modification
24 of the minimum instream flow requirements prescribed for the Deer Creek
25 Wastewater Treatment Plant by Water Rights Order No. WR 95-7, for as long
26 as drought conditions persist.
- 27
28

Resolution No. 2014-

- 1 e. Request a variance from the state Division of Safety of Dams' April 1 and 2
2 deadlines to allow the District to close the radial gates and install flashboards
3 at Silver Lake, and stoplogs at Echo Lake, as soon as possible in 2014.
4
- 5 f. Implement all voluntary Stage 2 drought actions, other than a rate surcharge,
6 as detailed in the 2012 updated Drought Action Plan.
- 7 g. Enter into professional services and construction contracts as reasonably
8 deemed necessary to expedite the preservation and enhancement of water
9 supply availability for the District's customers.
- 10
- 11 h. Report to and seek ratification of the Board for any actions taken in excess of
12 normal authority or authority expressly granted by this Resolution, at the first
13 regular Board meeting held after each such action.
- 14
- 15 i. Report to the Board at least monthly, and more often if necessary, on the
16 current status of the drought conditions, responsive actions taken, weekly
17 water usage data, and the need, if any, for further Board actions, including a
18 Stage 3 drought declaration and the declaration of a water supply emergency.
- 19 10. This Resolution shall take effect immediately upon adoption. Subject to the
20 ratification required by Public Contract Code sections 22050(b)(3), (c)(1), and
21 (c)(2), and by District Administrative Regulation 3061.1, subdivision g, this
22 Resolution shall remain in full force and effect until rescinded by a subsequent
23 Resolution of the Board of Directors.
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The foregoing Resolution was introduced at a special meeting of the Board of Directors of the EL DORADO IRRIGATION DISTRICT held on the 4th day of February, 2014 by Director _____, who moved its adoption. The motion was seconded by Director _____, and a poll vote was taken which stood as follows:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

The motion having a majority of votes "Aye", the Resolution was declared to have been adopted, and it was so ordered.

Alan Day
President, Board of Directors of
EL DORADO IRRIGATION DISTRICT

ATTEST:

Clerk to the Board

(SEAL)

Resolution No. 2014-

1 I, the undersigned, Clerk to the Board of the EL DORADO IRRIGATION DISTRICT hereby
2 certify that the foregoing resolution is a full, true and correct copy of a Resolution of the Board of
3 Directors of the EL DORADO IRRIGATION DISTRICT entered into and adopted at a special
4 meeting of the Board of Directors held on the 4th day of February, 2014.
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Clerk to the Board
EL DORADO IRRIGATION DISTRICT

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FERC Authorities Supporting the District's

Interpretation of Article 404

Some relevant FERC authority regarding the purpose and scope of the license article

Decision of the full Commission on rehearing of an order issuing a new license. “[Intervenor] White Meadow objects to the proviso in Article 405 that allows temporary modification of the minimum flow schedule if required by operating emergencies beyond the licensee's control, and for short periods upon agreement between the licensee and the New Jersey DEPE. This proviso is reasonable, and in some appropriate form it is standard in all minimum flow articles. It provides a limited amount of flexibility to respond to unanticipated circumstances, and with a notification requirement to prevent abuse.”

The license language in question read, “These flows may be temporarily modified, if required by operating emergencies beyond the control of the Licensee, and for short periods upon agreement between the Licensee and the New Jersey Department of Environmental Protection and Energy. If the flow is so modified, the Licensee shall notify the Commission and the White Meadow Lake Property Owners Association as soon as possible, but no later than 10 days after each such incident.”

Halecrest Co. Energy Storage Corp. Esperanza Power Ltd. P'ship, 63 FERC ¶ 61307 (June 22, 1993)

An order amending a license, issued by the Division of Hydropower Administration and Compliance, elaborated on the customary language found in Project No. 184's Article 404 in the context of a article setting reservoir levels: “This water level regime may be temporarily modified by: (1) Commission approved maintenance activities; (2) ***operating emergencies beyond the control of the licensee that may include but are not limited to, equipment failure or other temporary abnormal operating conditions resulting from extremes in inflows to the project***, power supply emergencies, and for public health and safety reasons; or (3) for short periods upon mutual agreement among the licensee and the above fishery agencies. If the water level regime is so modified, the licensee shall notify the Commission and the fishery agencies as soon as possible, but no later than 10 days after each incident.”

As will be seen below, this express language aptly capture the way that FERC has consistently interpreted “operating emergency” language found in Project No. 184's Article 404.

Cent. Maine Power Co., 88 FERC ¶ 62033 (July 12, 1999)

Also, FERC has previously advised the District that the Project No. 184 license allows “temporary deviations from those required flows for equipment malfunction ***or operating emergencies*** reasonably beyond your control. We generally consider temporary deviations to be those that last for no more than 3 weeks; deviations that last longer require Commission approval.” (emphasis added) From this

advice, the District understood that “operating emergencies” encompass more than Project-related malfunctions, and that in this instance, the District could invoke this portion of Article 404 for a period of approximately 3 weeks while notification and agency consultations occurred.

(August 18, 2008 letter from Ron Adhya, P.E., FERC Regional Engineer, to Tom Gallier, EID General Manager re: Caples Lake Main Dam Low Level Outlet Remediation.)

Some published FERC decisions in which FERC treated drought conditions as an “operating emergency beyond the licensee’s control” that justify temporary modification of instream flow requirements

Order amending license and approving operating plan, issued by the Director of the Division of Hydropower Administration and Compliance. Among other things, the approved operating plan set recreational release requirements at project reservoirs, and required an annual report on the implementation of the recreational releases. The order states, “Finally, if the above recreational releases for either the Thomson or Scanlon developments **are temporarily modified due to operating emergencies beyond the control of the licensee (e.g., electrical demand emergencies, flood control operations, droughts)**, or as necessary for scheduled maintenance work, the licensee should identify such incidents in the annual report and any measures that were taken to minimize impacts on whitewater boating and restore the required recreational releases.” (emphasis added)

Ordering paragraph C states: “Further, the annual report shall identify any instances when the approved recreational releases **are temporarily modified due to operating emergencies beyond the control of the licensee (e.g., electrical demand emergencies, flood control operations, droughts)**, or as necessary for scheduled maintenance work, and any measures that were taken to minimize impacts on whitewater boating and restore the required recreational releases.” (emphasis added)

The emphasized text demonstrates that FERC has previously considered drought conditions to be “operating emergencies beyond the control of the licensee.”

Allete, Inc., 125 FERC ¶ 62051 (Oct. 14, 2008)

Order of the Division of Hydropower Administration and Compliance approving a flow release plan for whitewater boating. Article 427 of the project license states, “The recreational flow releases required under this article may be **temporarily modified if required by operating emergencies beyond the control of the licensee (e.g., electrical demand emergencies, flood control operations, droughts)**, or for short periods of time upon mutual agreement among the licensee, NCDENR, and the Corps. If the flows are so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after such incident.” (emphasis added)

The emphasized text again shows that FERC considers drought to be one of the “operating emergencies beyond the control of the licensee” that authorizes the licensee to temporarily modify flows, subject only to a notification requirement.

Virginia Elec. & Power Co., DBA Dominion Virginia Power/dominion N. Carolina Power, 113 FERC ¶ 62198 (Dec. 13, 2005)

Order of the Director of Hydropower Licensing approving amendment to a lake-level license article. The licensee was concerned by the inflexibility of the existing article in the face of flood and drought conditions. The licensee proposed specific alternative lake-level targets for such conditions; instead, FERC ordered as follows: “[T]he licensee's proposal should be modified to state that the reservoir water surface elevations may be temporarily modified **if required by operating emergencies beyond the control of the licensee, including flood and drought conditions**, and for short periods upon mutual agreement between the licensee and the NYDEC and the FWS. The licensee's proposed amendment request, filed September 20, 1996 and supplemented on March 10, 1997, as modified, should provide additional flexibility in the wording of Article 31 **to reflect circumstances that are beyond the licensee's control** and should be approved.” (emphasis added)

Once again, this FERC precedent clearly indicates that drought constitutes an “operating emergenc[y] beyond the licensee’s control” sufficient to invoke Article 404 of the Project No. 184 license.

New York State Elec. & Gas Corp., 84 FERC ¶ 62045 (July 16, 1998)

Order of the Division of Hydropower Administration and Compliance approving a Drought Management Plan. License Article 405 required filing of the plan, but provided that “the Plan does not require a reduction to the minimum flow release of 50 cfs (as required by Article 407) at Smith, unless severe drought operations occur that result in operating emergencies beyond the control of the licensee to preserve electric system emergency capabilities.”

Therefore, Article 405 of this license clearly states FERC’s view that severe drought conditions can cause an “operating emergenc[y] beyond the control of the licensee.”

Alabama Power Co., 133 FERC ¶ 62085 (Oct. 26, 2010)

Order of the Division of Hydropower Administration and Compliance approving a temporary amendment to the rule curve for FERC Project No. 349 due to severe drought conditions. The proposed rule curve change would cause instream flows in FERC Project No. 2407, owned by the same licensee, to fall below the minimum license requirements. The license for Project No. 2407 allows the instream flows “to be temporarily modified if required by operating emergencies beyond the control of the

licensee, or for short periods upon agreement between the licensee and the Alabama Department of Conservation and Natural Resources [ADCNR]. If the flow is so modified, the licensee is required to notify the Commission as soon as possible, but no later than 10 days after each such incident.”

The licensee consulted with ADCNR and others regarding the rule curve variance and the associated instream flow modification. ADCNR responded that it “concurred with the temporary rule curve variance” for FERC Project No. 349. There is no indication ADCNR concurred with the instream flow modification to FERC Project No. 2407, or that it was asked to do so.

FERC stated that the licensee’s submittal for the rule curve variance for FERC Project No. 349 was also “notification to the Commission, under Article 401 of the Yates and Thurlow [FERC Project No. 2407] license, that upon approval of the Martin variance, the minimum flow releases at the Thurlow Project would be temporarily modified.” FERC approved the rule curve variance “and associated temporarily modified minimum flows from the Thurlow development of the Yates and Thurlow Project.”

Therefore, FERC approved the temporary modification of minimum flows for FERC Project No. 2407 without requiring a separate filing, without requiring agreement of ADCNR, and solely on the basis of severe drought conditions. This means that FERC deemed the severe drought to qualify as an “operating emergenc[y] beyond the control of the licensee” under Article 401 of the project license, providing a legitimate basis for the licensee to modify the instream flow without obtaining agency agreement.

Alabama Power, 121 FERC ¶ 62129 (Nov. 20, 2007)

See also this 2009 approval of a similar variance on the same project (and affecting the same downstream project), also during drought conditions that FERC characterized as “less severe” and those of 2007. “The licensee states that during evaluation of the rule curve variance, consideration was given to the minimum flow releases at the downstream Thurlow Project. Along with its proposed variance to the Martin rule curve, ***the licensee is providing notification to the Commission, under Article 401 of the Yates and Thurlow license, that upon approval of the Martin variance, the minimum flow releases at the Thurlow Project would be temporarily modified.***”

Alabama Power, 126 FERC ¶ 62104 (Feb. 11, 2009)

In a 2001 decision, the Commission itself took note of a licensee’s action to invoke “operating emergency” language to reduce instream flow requirements during a drought condition notwithstanding a lack of concurrence that was contemporaneously being sought (and ultimately was not granted) from a consulting agency, but expressed no view that the licensee’s action was unauthorized, and imposed no sanction against the licensee:

Article 56 provides that these flows may be temporarily modified by operating emergencies beyond the control of the licensee, or for short periods upon prior written approval from the Secretary of the Interior.

PPL Montana requests that we approve a temporary license amendment that would authorize it to deviate from its lake level and minimum flow license requirements to the extent described above. In the same May 8 filing, it requests written authorization from Interior to allow it to modify the Article 56 flows, effective as of May 9 and continuing until we approve the temporary license amendment. PPL Montana seeks this Interior concurrence under the Article 56 provision allowing temporary modification of the flows for short periods upon prior written approval from the Secretary. However, it explains that, because flow releases, once increased, could not be decreased during spring spawning season without adverse environmental consequences, it will begin implementing its proposed limitation of releases to about 9,000 cfs no later than May 9, “subject to a determination by the Commission and Interior as to how the shortages of water caused by the drought are to be apportioned” between lake levels and Article 56 provides that these flows may be temporarily modified by operating emergencies beyond the control of the licensee, or for short periods upon prior written approval from the Secretary of the Interior.

Ppl Montana, LLC, & Confederated Salish & Kootenai Tribes of the Flathead Nation, 95 FERC ¶ 61363 (June 11, 2001)

The only FERC precedents that cast any doubt on the District’s understanding of the meaning and scope of Project No. 184 license Article 404 are a set of identical decisions issued in 1991 by the Director of Hydropower Licensing. The Director denied several licensees’ requests for relief from instream flow requirements on the basis that the licensees’ claimed **financial hardship** resulting from drought conditions “does not constitute an operating emergency beyond its control that would justify a temporary reduction in minimum flow.”

These decisions did not rule out drought itself from being a sufficient cause, particularly when, as is the case for Project No. 184, the licensee is a government agency trying to maintain adequate drinking water supplies for its customers, not a for-profit corporation attempting to make a profit. Also, similar to the 2008 Regional Engineer’s letter cited above, these decisions went on to opine that the “operating emergency” exception “obviously covers situations **such as a natural disaster or equipment breakdown** that would prevent the licensees, for a short period of time, from maintaining the minimum flow.” (emphasis added) Finally, numerous and more recent FERC precedents such as those cited above are not in accord with these decisions.

Roseburg Res. Co. & Mega Renewables, 56 FERC ¶ 62104 (Aug. 9, 1991), Highland Hydro Construction, Inc., 57 FERC ¶ 62001 (Oct. 1, 1991), Roaring Creek Ranch & Mega Renewables, 57 FERC ¶ 62052 (Oct. 23, 1991)

Document Content(s)

P184LicSpecifiedMinStreamflows Resumed.PDF.....1-33