

**JOINT AGENCY SUMMARY**  
CALIFORNIA HYDROELECTRIC LICENSING WORKSHOP ON  
INTEGRATING STATE PROCESSES

Sacramento, California  
June 4, 2002

Participants:

Federal Energy Regulatory Commission  
California State Water Resources Control Board

**JOINT AGENCY SUMMARY**  
CALIFORNIA HYDROELECTRIC LICENSING WORKSHOP ON  
INTEGRATING STATE PROCESSES

The California workshop was originally scheduled for June 4 and 5, 2002, in Sacramento, California. Representatives from the California State Water Resources Control Board attended. Representatives from the U.S. Forest Service, National Park Service, Pacific Gas and Electric Company, Southern California Edison Company, and others, attended as observers. The list of individuals in attendance is attached.

To begin the workshop, Commission staff outlined the FERC licensing process. Staff explained the differences between the Traditional and ALP Processes, as well as FERC's requirements for Section 401 water quality certification. California then explained, in some detail, its 401 WQC process.

Commission staff identified the goals of the workshop as: (1) familiarize Commission staff with California's WQC process and programs; (2) familiarize California with FERC's hydro licensing process; and (3) increase efficiency of processes by (a) identifying common attributes and (b) developing potential ways to integrate processes. The following represents a synopsis of the workshop.

**FERC LICENSING PROCESS - (Presented by Ken Hogan)**

Commission staff explained that the FERC is an independent agency under DOE, and is responsible for licensing the construction and operation of non-federal hydroelectric projects.

FERC was established and derives its authority from the Federal Power Act. FERC jurisdiction over hydropower projects is affected by (a) U.S. lands, (b) navigable waters, and (c) interstate commerce.

FERC is mandated by law to (a) give equal consideration to both developmental and non-developmental resources, (b) ensure that a hydro-power project is best adapted to the comprehensive development plan of a waterway, and (c) conduct an environmental review in accordance with the National Environmental Policy Act.

FERC regulations stipulate that (a) FERC cannot issue a license without state water quality certification or a waiver, and (b) the water quality certificate is considered waived if not acted on within one year of the request for certification.

The Traditional Licensing Process typically takes about 5-8 years to complete, while the ALP takes about 4 years. Both licensing processes involve at least a 3-year pre-filing consultation period that begins with the issuance of an ICP (Initial Consultation Package), and is characterized by environmental studies and consultation. The Traditional Process is a rigid regulatory process, where additional information is almost always needed after an application has been filed and uncertainty as to environmental enhancements is common. The ALP is a flexible regulatory process that combines the pre-filing consultation and NEPA processes, improves communication among parties, and reduces the need for additional information as well as the uncertainty in the licensing process.

FERC regulations require that the Section 401 WQC, request for 401 WQC, or waiver thereof, be filed along with the license application.

The post-filing processing period is characterized by (a) staff's review of the license application, (b) NEPA scoping and review (includes preparing the environmental analysis), (c) several public notices and meetings, (d) additional information requests, if necessary, and (e) a 10(j) resolution process, if necessary.

### **CALIFORNIA'S SECTION 401 PROCESS - (Presented by Jim Canaday)<sup>1</sup>**

California provided a copy of its water quality certification regulations under California Code of Regulations, Title 23 (Waters), Division 3 (SWRCB), Chapter 28 (Certifications), Article 1 (General Provisions), Section 3830, *et seq.*

The State Water Resources Control Board's (SWRCB) mission includes preserving and enhancing the quality of California's water resources and ensuring its proper allocation and efficient use for the benefit of present and future generations. The SWRCB's functions include balancing society's and nature's needs for water by allocating rights to appropriate surface water; considering and deciding disputes over rights to water bodies; establishing water quality standards to safeguard the many beneficial uses of

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<sup>1</sup>[Click here to view Jim Canaday's MS PowerPoint presentation.](#)

California's water resources; and guiding and overseeing the nine Regional Water Quality Control Boards (RWQCBs).

RWQCBs' functions include: developing Basin Plans for hydrologic areas; writing Waste Discharge Requirements/NPDES; taking appropriate enforcement action against sources of pollution and contamination that threatens public health, safety, and welfare; monitoring the health, quality, conditions, and beneficial uses of California's surface and ground waters; and inspect dischargers and enforce state and federal laws.

Water Quality Control Plans consist of a designation or establishment for the waters within a specified area of all of the following: (1) beneficial uses to be protected; (2) water quality objectives (limits or levels of water quality constituents or characteristics which are established for the reasonable protection of the beneficial uses); and (3) a program of implementation including monitoring and reporting for achieving water quality objectives.

Beneficial Uses include but are not limited to municipal and domestic supply, agricultural supply, recreation, groundwater recharge, power generation, cold freshwater habitat, and wildlife habitat. All water quality problems can be stated in terms of whether there is water of sufficient quantity or quality to protect or enhance beneficial uses. Fish, plants and other wildlife, as well as humans, use water beneficially.

The SWRCB's 401 Water Quality Certification program regulates any applicant for a federal license or permit that may result in any discharge into navigable waters. FERC projects (licenses or material amendments or operations) must obtain certification from the SWRCB that the discharges are consistent with the Clean Water Act, California water quality standards, and any other appropriate state law. 401 certifications that include conditions must also include a monitoring plan and reporting program to ensure compliance with the conditions of the certification.

SWRCB 401 Regulations are located at Title 23, California Code of Regulations, section 3830 et seq. For the purposes of water quality certification, an application must include all information and items and the fee deposit required pursuant to Sections 3833 and 3856 of Chapter 28 of Title 23 in order to be complete. An application must be accompanied by the following: (1) a copy of the draft application (i.e. FERC license application or license amendment as per 4.38(c)(4) of Title 18 CFR; and (2) a copy of any draft or final CEQA document(s), if available (not required for making application), however the certifying agency shall be provided with and have ample time to properly

review a final copy of a valid CEQA document before taking a certification action. \*The State can use a NEPA document if it conforms to sections required by CEQA.

Resource issues commonly raised in FERC relicensing proceedings are: (1) Hydrology-historical data (unimpaired hydrology), impaired hydrology (mean daily, monthly & average annual), adequate gaging stations, reservoir data (minimum pool & seasonal fluctuations)); (2) Flow-Related Issues-flows to protect instream biological resources (fish/macroinvertebrates), flows necessary for on-water recreation, ramping criteria, Run-of-River vs Peaking Operations); (3) Riverine processes (flows necessary to maintain riverine ecosystem processes, channel maintenance, gravel recruitment & sediment budgets, maintain riparian vegetation corridors, timing of flows, replicates natural hydrograph, ramping criteria); and (4) Water Quality (Basin Plan Beneficial Uses and Objectives, Historical data-background water quality (reference conditions), current water quality with project (project related impairment if any), and controllable factors).

#### JOINT DISCUSSION OF INTEGRATING CALIFORNIA'S WATER QUALITY CERTIFICATION AND THE FERC LICENSING PROCESSES

SWRCB identified several FERC process issues that merited further discussion as follows:

Identification and participation of appropriate stakeholders including Tribes and NGOs: FERC should send a letter to licensees well in advance of the notice of intent deadline to identify issues likely to be raised on relicensing (perhaps to preliminary permittees, as well)

FERC staff participation: FERC staff involvement is needed during the pre-filing process.

Water quality baseline: SWRCB requires licensees to characterize natural background water quality conditions (reference conditions). This is necessary to understand current water quality conditions and any associated impairments.

Study protocols: SWRCB must be involved in the creation of study protocols so that applicants do not waste time/money completing studies that can not be used.

Timing of the various licensing actions (AIRs-REA): A FERC- published schedule and more rigid time frames would help to eliminate some uncertainty associated with the licensing process.

Timing of study completion: Agreed upon studies are often not completed on time and do not appear in the draft application. FERC should disallow delay on part of applicants.

Timing for filing the 401 certification request: The FERC regulations require a water quality certificate application too early in process (end of 2<sup>nd</sup> stage), when information needs have not been fully developed. FERC and agencies often ask for additional information after the application is filed, information that the SWRCB needs to issue certification. FERC should require the filing of certification applications after adequate information has been developed.

Timing of environmental analysis/CEQA/NEPA Compliance: Published schedules would be helpful.

Cumulative impact assessment: Hydropower impact analysis on water quality must take place on the watershed scale.

Use of appropriate adaptive management: Adaptive management should not be used to delay an impact assessment because not enough information has been gathered. Adaptive management should be science-based.

Reopeners: Any license incorporating adaptive management strategies needs clear reopeners for FERC and the SWRCB.

Annual licenses: Annual licenses can go on for years and are seen as an incentive for licensees to delay completion of studies, etc.

The SWRCB also identified some issues relating to New Unconstructed Projects, including the stockpiling of project sites with preliminary permits, permittees' failure to contact appropriate agencies and stakeholders, the lack of due diligence by permittees in developing the ISCD and holding Agency scoping meeting, the filing of progress reports by permittees that misstates consultation or study activities, some Permittees' failure to complete studies in time for agency review prior to filing the license application, and some permittees' failure to comply with FERC regulations regarding "The 3-Stage Consultation Requirements" (18 CFR, Section 4.38).

## CALIFORNIA AND FERC AREAS OF POTENTIAL COLLABORATION

Early involvement of common stakeholders: There was some discussion that

perhaps FERC could conduct scoping earlier and call it outreach. FERC indicated that it was considering scoping prior to application filing.

SWRCB indicated that it is working on a website. FERC suggested that SWRCB identify common water quality issues and post them on that website for potential applicants.

Commitment of Agency staff resources early in the process: As noted above, SWRCB indicated that it is helpful to have FERC staff involved early on.

Development of project related resource issues: SWRCB suggested going through issue scoping process prior to the issuance of the NOI. SWRCB suggested that FERC be involved in this process. FERC noted that it was considering sending a letter to perspective applicants identifying basic information needs.

Development of study scope and protocols: SWRCB pointed out that agencies with mandatory conditioning authority must be involved with the development of study scope and protocols. SWRCB suggested that FERC become involved in this process.

Oversight of the completion of the required studies: SWRCB suggested it would be helpful if FERC required schedules for completion of applicant studies.

Development of schedule of actions: SWRCB suggested it would be helpful if FERC set up schedules for its review of the license application (including studies), and its issuance of AIRs and subsequent REAs.

Development of a common Environmental Document: SWRCB and FERC discussed what CEQA requires that is different from NEPA requirements. For example, CEQA requires a separate discussion of growth inducing impacts and mitigation measures, sections that must be added in order to use an EIS as an EIR. The group also discussed intervenor status v. cooperating agency and FERC indicated that if SWRCB wanted to be a cooperator on a NEPA document, it could not intervene in a proceeding under the Commission's ex-parte rules. The Forest Service (Bob Hawkins) explained how the Service decides on which projects to cooperate and on which to intervene. SWRCB suggested it may be able to do the same.

Development of timely conditions for 401 Certification: SWRCB indicated that it would be prepared to provide 401 conditions after preparation of the NEPA document, similar to the Forest Service. FERC explained that the Forest Service provides

preliminary conditions in response to the Ready for Environmental Analysis (REA) notice. SWRCB suggested that it may be able to do the same as long as there was some reservation of authority to alter the conditions based on the final NEPA document. The SWRCB commented that its ability to issue preliminary conditions would be greatly facilitated if the problems with the timeliness of studies (identified above) were corrected. SWRCB staff suggested that FERC regulations be changed to require that the licensee make application for the 401 certification after FERC issues the REA.

Use of adaptive management with appropriate reopeners: Again, SWRCB approves of the use of adaptive management but not as a substitute for necessary pre-filing studies. Clear reopeners for FERC and SWRCB must be included in the license.

Development of appropriate project monitoring/reporting: SWRCB explained that, in addition to being required under CEQA, under the Clean Water Act, it would be valuable to have good long-term baseline water quality data for use at the next relicense.

Development of appropriate annual license conditions: SWRCB is looking at what it will need to do in anticipation of a court decision holding that that annual licenses would require water quality certification and suggests that FERC do so as well.

The group also discussed the possibility of using FERC's scoping meeting as a public meeting for the CEQA/401 process as well. SWRCB agreed to assist FERC in developing language that could be used in the scoping meeting public notice.

**LIST OF ATTENDEES**  
**California Hydropower Workshop on**  
**Integrating State Processes**  
**June 4, 2002**  
**Sacramento, California**

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