

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 5737-007-California
Anderson Hydroelectric Project
Santa Clara Valley Water District

March 16, 2020

VIA USPS First Class Mail

Dr. Jennifer Norris
Field Supervisor
U.S. Fish and Wildlife Service
2800 Cottage Way, Rm W-2605
Sacramento, CA 95825

Mr. Barry Thom
West Coast Regional Administrator
National Marine Fisheries Service
1201 Northeast Lloyd Blvd., Suite 1100
Portland, OR 97232

Subject: Request for Concurrence on Emergency Consultation under the Endangered
Species Act and Magnuson-Stevens Fishery Conservation and Management Act

Dear Dr. Norris and Mr. Thom:

This letter is to inform you of the February 20, 2020 dam safety directives issued by the Federal Energy Regulatory Commission's (Commission) Director of Dam Safety and Inspections, which require risk reduction measures at the Anderson Dam Hydroelectric Project (FERC No. 5737).¹ These directives require Santa Clara Valley Water District (District), exemptee for the Anderson Dam Hydroelectric Project, to draw down the project reservoir and construct a low-level outlet. As discussed together with each agency's staff on February 24 and 26, 2020, we seek concurrence that the use of emergency consultation procedures under section 7 of the Endangered Species Act

¹ February 20, 2020 Commission staff letter to Santa Clara Valley Water District available through the following link:

<https://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=15467271>.

(ESA)² and section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for Essential Fish Habitat (EFH)³ would be appropriate, as the standard consultation procedures would not allow for the required October 1, 2020 drawdown of the Anderson Dam reservoir.

On February 20, 2020, Commission staff determined that, due to the limited outlet capacity at the Anderson Dam Project and the presence of densely populated areas downstream of the dam, the District must take all measures available to reduce the risk of failure from an earthquake as much as possible until the project is fully mitigated. Commission staff ordered the District to maintain the reservoir elevation no higher than 565 feet⁴ and take all appropriate measures to maintain and quickly lower the reservoir to elevation 565 feet if the reservoir rises in the event of significant inflow. Additionally, prior to the 2020 winter rainy season, and no later than October 1, 2020, the District must begin lowering the reservoir to elevation 488 feet (deadpool). Once elevation 488 is reached, the District must take all appropriate measures to maintain and quickly lower the reservoir to deadpool in the event of significant inflow. The District is also required to file with the Commission a plan and schedule for constructing a low-level outlet at the project as soon as possible as an additional risk reduction measure, which will allow the District to more reliably and quickly draw down the reservoir after an earthquake and/or during significant precipitation.

The dam safety directives requiring the District to draw down the reservoir to deadpool and construct a low-level outlet have the potential to adversely affect federally-listed species and critical habitat in the project area, including: Bay checkerspot butterfly, California tiger salamander, California red-legged frog, Tiburon Indian paintbrush, Coyote Ceanothus, Santa Clara Valley dudleya, Metcalf Canyon jewelflower, and the Central California coast distinct population segment of steelhead. The dam safety risk reduction measures also have the potential to effect EFH downstream of the dam for species managed by the Pacific Coast Salmon Fishery Management Plan.

ESA and MSA regulations recognize that certain actions may require expedited consultation. We seek your concurrence that emergency consultation procedures are warranted for this action because the dam safety directive requiring the District to draw down the reservoir to deadpool and to expedite the construction of a low-level outlet does not allow sufficient time to complete standard formal consultation under the ESA or

² 50 C.F.R. § 402.05 (2019).

³ 50 C.F.R. § 600.920 (2019).

⁴ All elevations in this letter are in North American Vertical Datum of 1988.

consultation under the MSA. We are therefore requesting your concurrence on the use of emergency consultation procedures specified in NMFS's and FWS's joint regulations at 50 C.F.R. § 402.05 for ESA, and 50 C.F.R. § 600.920 for MSA.

We look forward to conferring with you as soon as possible in order to identify the measures necessary to comply with the ESA and MSA and to continue discussions as the District completes the risk reduction measures and dam safety work. We request your concurrence on the use of emergency consultation procedures and that you provide technical advice and conservation recommendations, including Best Management Practices, for minimizing adverse effects to listed species, critical habitat, and EFH during the District's implementation of the risk reduction measures.

Please file your response to this letter within 7 days noting your concurrence with the use of emergency consultation procedures. The Commission strongly encourages electronic filing using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426. The first page of any filing should include docket number P-5737-007.

We appreciate your assistance with ESA and MSA consultation regarding these dam safety risk reduction measures. Commission staff will continue to work with you to address ESA and MSA concerns. If you have any questions regarding this matter, please contact Dr. Jennifer Ambler at (202) 502-8586 or jennifer.ambler@ferc.gov.

Sincerely,



Andrea Claros, Acting Branch Chief
Environmental and Project Review Branch
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and Compliance

cc:

VIA ELECTRONIC MAIL

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