



BILLING CODE 6717-01-P

FEDERAL ENERGY REGULATORY COMMISSION

Turlock Irrigation District, &  
Modesto Irrigation District

Project No. 2299-075  
Don Pedro Hydroelectric Project

NOTICE OF DISPUTE RESOLUTION PROCESS SCHEDULE,  
PANEL, TECHNICAL CONFERENCE, AND MODIFIED FILING TIMES FOR  
PANEL RECOMMENDATIONS AND DISPUTE DETERMINATION

On January 11, 2012, the National Oceanic and Atmospheric Administration's, National Marine Fisheries Service (NMFS) and the California Water Resources Control Board (Water Board) (collectively, the Agencies), filed a Notice of Study Dispute to initiate the Federal Energy Regulatory Commission's (Commission) formal study dispute resolution process, pursuant to 18 CFR 5.14, in the relicensing proceeding for the Don Pedro Hydroelectric Project No. 2299-075.<sup>1</sup> Turlock Irrigation District and the Modesto Irrigation District (collectively, the Districts), are co-licensees for the Don Pedro Hydroelectric Project.

In its Notice of Study Dispute, NMFS disputes the December 22, 2011 Study Plan Determination's treatment of eight of its June 10, 2011 study requests. NMFS identified study requests 1 – 4 and 7 – 9 as being in dispute. Specifically, the disputed study requests are: Request 1 – *Effects of the Project and Related LaGrange Complex Facilities on Anadromous Fish*; Request 2 - *Effects of the Project and Related Facilities Evaluated Through an Operations Model*; Request 3 - *Effects of the Project and Related Activities on Fish Passage for Anadromous Fish*; Request 4 - *Effects of the Project and Related Facilities Hydrology for Anadromous Fish: Magnitude, Timing, Duration, and Rate of Change*; Request 7 - *Evaluation of the Upper Tuolumne Habitats for Anadromous Fish*; Request 8 - *Salmon and Steelhead Full Life-Cycle Population Models*; and Request 9 - *Effects of the Project and Related Facilities on Ecosystem/Marine-Derived Nutrients for Anadromous Fish*.

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<sup>1</sup> The U.S. Fish and Wildlife Service (FWS) also requested dispute resolution on two studies requested by the California Department of Fish and Game (Cal Fish and Game) and one study requested by NMFS. Additionally, NMFS requested dispute resolution on one of the Cal Fish and Game studies. In a March 9, 2012, letter the Director of the Office of Energy Projects determined that the Cal Fish and Game's studies would not be referred to dispute resolution because a disputing agency can only dispute a study request that it has made itself. The dispute regarding the study requested by NMFS and endorsed by FWS will go forward as a NMFS study dispute.

The Water Board's Notice of Study Dispute seeks to have the Districts' Study W&AR-2 - *Project Operations/Water Balance Model* modified to address constraints in timing and magnitude of flows related to water rights.

On February 10, 2012, Commission staff designated Mr. Stephen Bowler to serve as the Commission staff Dispute Resolution Panel (Panel) chair. On March 2, 2012, NMFS designated Mr. David White as the Agency Dispute Resolution Panel member.<sup>2</sup> From an established list of potential third party panelists, Mr. Bowler and Mr. White selected Mr. Richard Craven and requested that he serve on the Panel. Mr. Craven agreed to serve and the Panel convened on March 10, 2012. Mr. Craven's statement certifying that he has no conflict of interest, which also summarizes his qualifications, has been filed into the record. None of the three panelists have been involved previously in the Don Pedro Hydroelectric Project relicensing proceeding.

By letter filed March 15, 2012, the Panel requested that the Director of the Office of Energy Projects (Director) modify the timeframe for submission of the Panel's recommendations from 50 to 60 days from the start of the dispute resolution process, specifically from April 24, 2012 to May 4, 2012. The Panel also recommended the modification of the deadline for the Director's determination on the study dispute from 70 to 80 days from the start of the dispute resolution process, specifically from May 14, 2012 to May 24, 2012. By this notice, the Director modifies the schedule as recommended and requested by the Panel under his authority provided in 18 CFR 5.29(f)(2) of the Commission's regulations. The resulting process plan for dispute resolution is as follows:

<b>Responsible Party</b>	<b>Pre-Filing Milestone</b>	<b>Date</b>	<b>FERC Regulation</b>
Agencies	Designation of Agency Panelist (Actual)	3/2/2012	5.14(d)(2)
Agencies	Designation of Agency Panelist (Deadline) (Start of Dispute Resolution Process)	3/5/2012	5.14(d)(2)

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<sup>2</sup> Mr. White's designation followed two previous designations of NMFS staff members who were determined to have prior involvement in the Don Pedro proceeding and were deemed ineligible to serve on the Panel. Mr. White's designation came one business day ahead of the deadline established by the Commission of March 5, 2012. Because of the delay in establishing an eligible agency panel member, March 5, 2012 will serve as the date of initiation of the dispute resolution process rather than the dispute notice date of January 11, 2011. Mr. White was designated to represent the Water Board as well as NMFS.

<b>Responsible Party</b>	<b>Pre-Filing Milestone</b>	<b>Date</b>	<b>FERC Regulation</b>
Dispute Panel	Third Dispute Panel Member Selected	3/5/2012	5.14(d)(3)
Dispute Panel	Dispute Resolution Panel Convened	3/12/2012	5.14(d)
FERC	Notice of Dispute Resolution Panel Technical Conference	3/16/2012	Guidance
Districts	Applicant Comments on Study Disputes Due	3/28/2012	5.14(i)
Dispute Panel	Dispute Resolution Panel Technical Conference	4/17/2012	5.14(j)
Dispute Panel	Dispute Resolution Panel Findings Issued	5/4/2012	5.14(k)
FERC	Director's Study Dispute Determination	5/24/2012	5.14(l)

The Panel will hold an all-day technical conference on the disputed studies on April 17, 2012. The conference will be held in Sacramento, CA. Further details will be supplied in a future notice. The purpose of the technical conference is for the disputing agencies, the applicant, and the Commission to provide the Panel with additional information necessary to evaluate the disputed studies. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The Panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The Panel will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the Panel may, at its discretion, limit the speaking time for each participant.

For more information, please contact Stephen Bowler, the Dispute Resolution Panel Chair, at [stephen.bowler@ferc.gov](mailto:stephen.bowler@ferc.gov) or 202-502-6861.

Dated: March 16, 2012

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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