Congress of the United States
Washington, DC 20515

February 7, 2019

Mr. Robert Fenton, Jr.
Regional Administrator, Region IX
Federal Emergency Management Agency
1111 Broadway, Suite 200
Oakland, California 94607-4052

Dear Mr. Fenton:

Per our constituents' request, we urge you to carefully consider their comments (enclosed) as you make a final determination, consistent with existing law and regulation, regarding the reimbursement levels for the repairs to the Oroville Dam spillway to the State of California. Failure to approve the State's request for reimbursement at 75% Federal cost-share would result in approximately $350 million in costs being passed on directly to our constituents. It is our belief that the enclosed letter outlines certain key elements that clarify in detail the work done to make the spillway safe and operational. Based on the enclosed letter and other information we have received, we believe the repair costs to Oroville Dam, which were based on guidelines for dam and spillway construction developed jointly by the U.S. Army Corps of Engineers, Federal Energy Regulatory Commission, California Division of Safety of Dams, and the Association of State Dam Safety Officials, are consistent with Section 406 of the Stafford Act and should be eligible for the Federal cost-share.

Given the importance of this project to California and the direct impact your decision will have on our constituents, we respectfully request that you carefully and thoroughly review the enclosed letter and keep us informed as you make a decision.

Thank you for your attention to this matter.

Sincerely,

Kevin McCarthy

KEVIN McCARTHY
House Republican Leader

Ken Calvert

KEN CALVERT
Member of Congress

CC: The Honorable Brock Long
Administrator, Federal Emergency Management Agency

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February 4, 2019

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
2468 Rayburn House Office Building
Washington, DC 20515

The Honorable Ken Calvert
U.S. House of Representatives
2205 Rayburn
Washington, DC 20515

Re: Repair and Recovery Efforts at the Oroville Dam

Dear Mr. McCarthy and Mr. Calvert:

The Federal Emergency Management Agency (FEMA) is assisting the State of California in the response, repair and recovery efforts related to the failure of the main spillway and emergency spillway at Oroville Dam. These efforts are nearing completion and the State of California acting through its Department of Water Resources (DWR) is requesting full reimbursement under the Stafford Act for 75 percent of the costs associated with the repair and recovery necessary to return the main and emergency spillways to their pre-disaster condition. However, the Kern County Water Agency and the Metropolitan Water District of Southern California (collectively "Agencies") understand FEMA staff may recommend significantly less than full reimbursement for a significant portion of the repair and recovery work.

It is our understanding that, in part, FEMA believes the repair and recovery work at the main spillway can be divided into two projects and that FEMA may apply different levels of reimbursement. In addition, DWR's decision to proceed with the reconstruction of the main spillway in two phases may be incorrectly construed by FEMA staff to support the idea that the repair and recovery work on the main spillway is two projects instead of one. We also are aware that FEMA may reduce or eliminate reimbursement for repair and recovery work on the emergency spillway which was damaged at the same time and under the same circumstances as the main spillway.

Our agencies would like to make you aware of facts we think should compel full reimbursement of the repair and recovery efforts on the main spillway and the emergency spillway. These facts are described below in greater detail. We respectfully request that your offices engage with FEMA staff about the status of their review and determine if they have understood these facts correctly. If FEMA staff understand these facts differently than described below, we would appreciate an opportunity to meet with FEMA staff before they convey a recommendation up their chain of command.

The Main Spillway

It is our understanding that FEMA staff is considering a reimbursement determination that distinguishes between the "upper" and "lower" portions of the main spillway. We think such a distinction is not supported by the facts for the three reasons described below.

1. **Terms of Convenience** - The use of terms necessary for communication in an emergency should not serve as an artificial distinction justifying differing levels of reimbursement within one project. Oroville Dam only has one main spillway. During the emergency it was convenient for the purposes of communication to refer to the spillway as having "upper" and "lower" halves. These terms of convenience persisted throughout the project simply to facilitate communication. Unfortunately, the use of these terms introduced an artificial and erroneous distinction about the main spillway that leads others to misunderstand the way in which the damage to the spillway occurred, how the repair was undertaken, how the costs were incurred and how reimbursement should be determined. The damage occurred to the entire spillway and its effects run the length of the spillway from top to bottom. Our Agencies believe that FEMA's reimbursement determination should not rest on terms of convenience which imply there are two halves of the project, but rather on the physical attributes of the facility and the damage it sustained over its entire length and as a result, reimbursement should be for the entire length of the main spillway.

2. **Visual Difference in Damage** - The visual difference in damage to the upper and lower portions of the main spillway does not justify treating them differently for the purpose of determining reimbursement. The damage to the main spillway occurred roughly at the mid-point between the gates at the top of the spillway and the energy dissipation structures at the bottom. As a result, the integrity of the entire spillway was compromised. The downslope reaches of the spillway sustained significantly greater visible damage than reaches upslope of the original damage. While the visible damage to the lower reaches of the spillway is dramatic, and the damage to the upper reaches less so, the difference in visible damage does not warrant separation of the project into two halves with differing levels of reimbursement. The spillway functions as one facility and our Agencies think that the repair costs for damage over the entire length of the main spillway should qualify for reimbursement.

3. **Two Construction Phases** - Proceeding with repair of the main spillway in two phases does not make it a separable project requiring different levels of reimbursement. The integrity of the entire length of the spillway was compromised during the emergency and repair was required over the full length of the main spillway. However, due to construction limitations during the rainy season and the need to preserve flood protection for downstream communities, the repair work proceeded in two phases. Some reviewers have interpreted the phased construction as support for the idea that there are two separate halves of the project. The repair was one project spread over two construction seasons. Our Agencies think that repair of the entire length of the main spillway over two construction seasons should qualify for reimbursement.

Neither the convenient nomenclature used to distinguish work on the "upper" portion from work on the "lower" portion, the visible difference in the extent of damage to upper and lower portions of the spillway nor the division of repair work across two construction seasons support a determination that repair of the main spillway upslope of the original damage site should be treated differently than the repair work on the downslope portions for the purpose of reimbursement. The main spillway was constructed as one integrated structure, has been operated and maintained as one structure for the past 50 years, and was damaged and repaired as one structure. As allowed by FEMA statutes, and mandated by both the Federal Energy Regulatory Commission and the California Division of Safety of Dams (CDSOD), the repairs in

some cases modernized the design consistent with current standards. However, the repairs did not expand or enlarge the geometry or capacity of the spillway beyond its original pre-disaster parameters. The repairs to the entire main spillway should be eligible for full reimbursement because they are limited to returning the facility to its pre-disaster condition.

The Emergency Spillway

Our Agencies also are aware that FEMA staff is considering the exclusion of costs related to repair of the emergency spillway based on a belief that repair of the emergency spillway is a "betterment" of the facility. Our Agencies think such a determination is not supported by the facts.

Damage to the main spillway significantly reduced its operational range and when coupled with rainfall events that exceeded forecasts, resulted in flow over the emergency spillway. During this period, DWR engineers noticed erosion threatening the bedrock that makes up the foundation of the emergency spillway. Flow over the emergency spillway was stopped and inspections revealed that water flows over the emergency spillway caused unanticipated erosion of its bedrock foundation rendering the emergency spillway unuseable until the bedrock foundation was repaired.

To return the emergency spillway to its pre-disaster condition, it was necessary to repair its bedrock foundation and protect it from further erosion. Because it was not possible to replace the soil and fractured rock originally protecting the bedrock foundation, DWR engineers in consultation with FERC, CDSOD and the U.S. Army Corp of Engineers designed a repair that replaced the eroded areas with concrete to meet modern dam safety standards. The completed repair provided the quickest and most cost effective way to return the emergency spillway to its pre-disaster condition. The repair work did not increase the emergency spillway capacity or improve its geometry and should not be considered a "betterment." Rather, the repair simply returned the emergency spillway to service at the same height and width as its pre-disaster condition.

The FEMA Appeals Process

Our Agencies are aware that FEMA offers an administrative appeal process for applicants who believe new information could result in a change in a final reimbursement determination by FEMA. While we appreciate the option of an appeal, such a process will not assist our Agencies in this situation. The appeals process allows for introduction of new information that could change FEMA's determination. However, the repair and recovery work at Oroville Dam is almost complete and there is little chance significant new information will be available to serve as the basis for appeal.

Our Agencies think these factors require a determination that repair of the main and emergency spillways at Oroville Dam qualify for full reimbursement. We appreciate any assistance you can offer by discussing these points with FEMA staff. If FEMA staff disagrees with our views, we would appreciate the opportunity to discuss this issue with FEMA staff prior to a determination being made at the FEMA's staff level or above.

Sincerely,

Curtis Creel, General Manager

Jeff Kightlinger, General Manager