

File H000184



United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

**INFORMATION ONLY
THIS COPY MAY
BE DISCARDED**

Memorandum

To: Director, National Park Service
From: Assistant Solicitor, Parks and Recreation
Subject: Yosemite National Park-Kirkwood Power House Agreement
Enclosed is a copy of:

MODIFICATION FOR KIRKWOOD POWERHOUSE UNIT NO. 3
TO STIPULATION FOR AMENDMENT OF RIGHTS-OF-WAY FOR
CANYON POWER PROJECT APPROVED BY SECRETARY OF THE
INTERIOR ON MAY 26, 1961 TO FULFILL THE CONDITIONS
SET FORTH IN PROVISION 6 OF SAID AMENDED PERMIT.

Please retain the original (which had previously been sent to Dave Jervis of your office) in your permanent records for the Park and the Hetch-Hetchy Project.

David A. Watts

Attachment

cc:
Western Regional Director, FNP]
Superintendent, Yosemite]
Director, Bureau of Reclamation]
Assistant Secretary, FW]w/attachment
San Francisco Field Solicitor]
Tom Berliner, San Francisco City Attorney]

MODIFICATION FOR KIRKWOOD POWERHOUSE UNIT NO. 3
TO STIPULATION FOR AMENDMENT OF RIGHTS-OF-WAY FOR
CANYON POWER PROJECT APPROVED BY SECRETARY OF THE
INTERIOR ON MAY 26, 1961 TO FULFILL THE CONDITIONS
SET FORTH IN PROVISION 6 OF SAID AMENDED PERMIT

Pursuant to the Act of December 19, 1913 (38 Stat. 242), and in consideration of relocation and installation of its facilities and the granting to it by the United States of amended rights-of-way applied for, the City and County of San Francisco ("City"), a municipal corporation of the State of California, on May 23, 1961 stipulated and agreed and did bind itself, its successors and assigns to the terms, conditions and obligations set forth in the amended rights-of-way approved May 26, 1961 and amendments or modifications subsequent thereto.

Condition number 6 of said amended rights-of-way provided, among other things, that the interim stream flow releases would be subject to a study for a recommended flow schedule.

On December 13, 1984, the City, acting through the General Manager of its Public Utilities Commission, executed a further stipulation to fulfill the conditions set forth in condition number 6 and bound itself, its successors and assigns, to the terms, conditions and obligations, consisting of six provisions, including a water release schedule set forth on Exhibit A, contained therein. Condition number 6 of this Stipulation provided, in part, that the City agreed that any proposed expansion, alteration, or other modification of the water and

power supply facilities which could alter flow along the stretch of river in issue would be subject to review by the Department of the Interior ("Department") for the purpose of determining what change, if any, should be made in the agreed upon flow release schedule. This Stipulation was approved by the Department on January 31, 1985. (hereinafter "1985 Stipulation")

By letter of July 3, 1985, the City, acting through the General Manager, San Francisco Water Department, requested the Department's review and concurrence with a proposal to add a third generator to the Kirkwood Powerhouse on the Tuolumne River in accordance with condition number 6 of the 1985 Stipulation.

Following discussions with the Department, the City now hereby agrees to supplement and amend said 1985 Stipulation, to provide for additional protection of fishery resources and to provide variability in the water releases resulting from spring runoff to the extent practicable so as to enhance park resources and visitor enjoyment, and to bind itself, its successors and assigns, to each of the following terms, conditions, and obligations, consisting of 8 provisions, as follows:

1. At the direction of the Department, the U.S. Fish and Wildlife Service, or the City, shall conduct studies to make a determination as to what effect, if any, the Kirkwood Powerhouse Project and the Kirkwood Addition would have or have had on habitat for and populations of resident fish species, between

O'Shaughnessy Dam and Early Intake. The studies will include information compiled since 1967. The studies will be conducted over a four-year period; the consequent reports and analyses shall be published by December, 1992. This deadline shall be extended in the event that the U.S. Fish and Wildlife Service determines that because of climatic or other environmental conditions, the results of said studies would result in inaccurate or inconclusive data.

2. If, as a result of the foregoing studies, the U.S. Fish and Wildlife Service preliminarily determines on or after December 31, 1986, that flows in the upper region of the Tuolumne River between O'Shaughnessy Dam and Early Intake should be increased, the City will adjust its minimum releases as set forth in Exhibit A to the document known as "Stipulation for Amendment of Rights-Of-Way for Canyon Power Project Approved by Secretary of the Interior on May 26, 1961 to Fulfill the Conditions Set Forth in Provision 6 of Said Amended Permit", as dated January 31, 1985, (also referred to herein as the "1985 Stipulation") in the following manner.

Under Schedule "A" to include the following:

- a. Anytime the draft through the Canyon Tunnel exceeds 920 CFS the flow release schedule at O'Shaughnessy Dam will be increased an additional 64 CFS.

bcc SOLADocrytting Room after May 1st, 15,000 acre-feet will be
Secy' Rdg File (2) - Room 6025-A
SOL RF - available to mitigate any deficiency in the existing flow
SOL Chron - Room 6352
SOL-C release schedule shown to be required as a result of the
studies, as provided for in paragraph 1, above.

- c. Increases to the March through July portion of the flow release schedule in addition to those specified in paragraphs "a" and "b" above necessary to protect habitat for or populations of resident fish species in any year the draft through the Canyon Tunnel exceeds 920 CFS.

Under Schedule "B" to include the following:

- a. Anytime the draft through the Canyon Tunnel exceeds 920 CFS the flow release schedule at O'Shaughnessy Dam will be increased an additional 64 CFS.
- b. At anytime after May 1st 6,500 acre-feet will be available to mitigate any deficiency in the existing flow release schedule shown to be required as a result of the studies, as provided for in paragraph 1, above.
- c. Increases to the March through July portion of the flow release schedule in addition to those specified in paragraphs "a" and "b" above necessary to protect habitat for or population of resident fish species in any year the draft through the Canyon Tunnel exceeds 920 CFS.

Under Schedule "C" to include the following:

- a. On July 1st if the water storage behind O'Shaughnessy Dam is at or above 210,000 acre-feet (the highest storage reached in 1976), 4,400 acre-feet will be available to mitigate any deficiency in the existing flow release schedule shown to be required as a result of the studies, as provided for in paragraph 1, above.
- b. Additional increases to the March through July portion of the flow releases schedule necessary to protect habitat for or populations of resident fish species in any year the draft through the Canyon Tunnel exceeds 920 CFS.

It is understood and agreed that water releases made by the City at Hetch Hetchy provided herein shall remain in the Tuolumne River between O'Shaughnessy Dam and New Don Pedro Reservoir, and the timing of these releases will be such as to coincide with the documented causes for the decrease in the habitat for or populations of resident fish species in the affected stretch of the river. The extent of these releases shall be determined by the U.S. Fish and Wildlife Service, in consultation with the City, Commission staff, appropriate state and federal agencies, and interested members of the public.

3. The four-year study(s) to be conducted shall be as determined by the U.S. Fish and Wildlife Service, in consultation with the California Department of Fish and Game, the U.S. Forest Service and the National Park Service. It is anticipated that the types of fisheries studies to be conducted will include fish population, habitat preference, and IFIM studies. The studies will be conducted by the U.S. Fish and Wildlife Service; the California Department of Fish and Game; or, a private consultant selected by the U.S. Fish and Wildlife Service in consultation with the City, the Commission, and the above state and federal agencies, and with interested members of the public. The U.S. Fish and Wildlife Service shall have the right to undertake these studies itself should it elect to do so. If so directed, the City shall conduct these studies through a private consultant selected by the U.S. Fish and Wildlife Service in consultation with the City, the Commission and the above state and federal agencies, and with interested members of the public. The population and preference studies will be conducted over the next four years, or longer if necessary, as provided for in paragraph 1, above. The IFIM study, analysis and report will be concluded by the end of the fourth year, or as extended if necessary, as provided for in paragraph 1, above. The purpose of delaying the IFIM study toward the end of the fourth year is to allow the techniques associated with the study to reach a more refined level, thereby producing more accurate quantifications. Should the above studies not produce the results anticipated, other necessary studies may be undertaken.

4. In the event that the results and analysis of all studies dictate an increase to the present flow regime as determined by the U.S. Fish and Wildlife Service, such an increase shall be implemented by the City, without right to any appeal, administrative hearing or further review, up to the limits set forth in paragraph 2 above, except that any changes to the spring portion of the flow release schedule specified in paragraph 2, Schedules A and B, subpart "c" and Schedule C, subpart "b" shall be afforded such review as provided for in paragraph 5 of this Modification.

5. Both the City and the Department specifically recognize and agree that the issue of changes in the flow release schedule will be studied by the U.S. Fish and Wildlife Service or its designee consistent with the terms of this Modification. In the event that the U.S. Fish and Wildlife Service shall determine that changes to the March through July portion of the flow release schedule specified in paragraph 2, Schedules A and B, subpart "c" and Schedule C, subpart "b" may be necessary based upon these studies, it will recommend to the Secretary of the Interior such changes in the flow release schedule as may be necessary to protect the habitat for or population of resident fish species during the March through July portion of the flow release schedule. Such recommendations shall become part of these provisions, unless the City, within thirty (30) days from receipt of notice of the recommendations, shall file with the Secretary of the Interior, its objections thereto. In such event, at its

request, the City shall be afforded a hearing regarding these objections before a special hearing officer who will render proposed findings of fact. The Secretary, after considering the proposed findings of fact and the record, shall determine what additional flows, if any, shall be required.

6. The City agrees to fund the studies determined to be appropriate by the U.S. Fish and Wildlife Service under the terms of this Modification at a cost not to exceed \$200,000, unless otherwise mutually agreed by the parties hereto.

7. In an attempt to enhance park resources and visitor enjoyment, each year within ten days of the completion of the City's March 1 snow survey, the Superintendent of Yosemite National Park ("Superintendent") and the General Manager of the Hetch Hetchy project ("General Manager") shall meet, together with a representative of the U.S. Fish and Wildlife Service.

At the outset of the meeting, the General Manager shall explain whether the City's operating criteria for the Hetch Hetchy project indicate that the year will be a normal water year (as defined by a "Schedule A" year pursuant to the Flow Release Schedule set forth in the 1985 Stipulation), that is, a year when the snow survey indicates that the reservoir will fill and spill by July 1.

If such operating criteria indicate that the year will be a normal water year (Schedule A), the above-named persons shall make best efforts to develop a framework for the timing and quantity of releases from Hetch Hetchy Reservoir that will enhance the variability of flows and consider other measures to simulate to the extent possible the natural conditions of the Tuolumne River, and to the extent that such variability and other measures will not affect the City's operating and water requirements.

If the General Manager, at any time, determines that climatic or other conditions require a departure from said framework or Schedules to meet the City's operating and water requirements, the General Manager will convene another meeting of the above-named persons in order to review whatever adjustments to the framework may be necessary. Provided, however, the City will not exceed 920 CFS through the Canyon Tunnel in a non-normal (Schedule B or C) year.

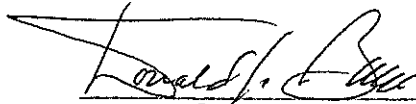
After ten years of operating pursuant to these procedures, the parties, based upon their experiences during this time period, shall meet and attempt to develop supplemental criteria to be incorporated, as an amendment to this Modification, that will establish variances in the release regime sought by the National Park Service, subject to the limits of the City's operating and

water requirements and the fisheries requirements as discussed above. This ten year period may be extended for such additional periods as the parties may deem necessary.

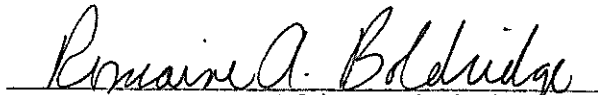
No action shall be taken pursuant to this section which will adversely affect the fishery resource protections set forth elsewhere in this Modification.

8. It is further agreed that this Modification is solely concerned with the operations of a third generator at the Kirkwood Powerhouse within the Hetch Hetchy Water and Power System as it is presently configured and that the provisions of other Raker Act Stipulations, including condition 6 of the 1985 Stipulation, remain in effect in accordance with their terms and amendments thereto.

IN WITNESS WHEREOF, the City and County of San Francisco has caused this instrument to be executed in the City of San Francisco, California, this 10 day of March, 1987.

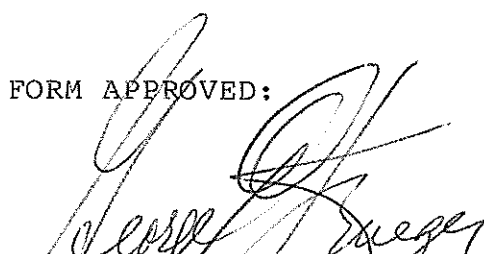


General Manager of Public
Utilities Commission, City and
County of San Francisco
SUBSCRIBED AND SWORN to before
me this 10th day of March,
1987.



Secretary, Public Utilities
Commission, City and County of
San Francisco

FORM APPROVED:


Utilities General Counsel
City and County of San Francisco

DATE:

March 10, 1987

DATE:

March 10, 1987


Assistant Secretary for Fish
and Wildlife and Parks (Sgd) P. Daniel Smith.

DATE:

March 11, 1987