

September 21, 2020



Dear Tulloch Reservoir Landowners:

For the last 41 years, the Tri-Dam Project (“Tri-Dam”) has been responsible for permitting docks on Tulloch Reservoir. Tri-Dam has recently been made aware of a petition being circulated by a group of landowners in an attempt to alter Tri-Dam’s permitting authority. While we appreciate feedback from local residents and government agencies, we must address misleading information contained in that petition, and clarify Tri-Dam’s roles and responsibilities under its Tulloch Federal Energy Regulatory Commission (FERC) License.

In 2006, the FERC issued a license to Tri-Dam for the Tulloch Dam and Reservoir. As a condition of the license, Tri-Dam was required to adopt a FERC-approved Shoreline Management Plan (SMP), which governs shoreline development on federally-licensed hydropower projects and ensures that associated lands and waters are protected to maintain project purposes. In 2014, Tri-Dam’s SMP was updated in accordance with FERC procedures, which included public participation by interested property owners, counties, and homeowner’s associations. The SMP was approved by FERC in September 2016.

To comply with its FERC license, Tri-Dam is required to adhere to the SMP and administer a permitting process for all on-reservoir facilities (e.g. docks, boat-lifts, etc.) at the 515’ contour elevation and below. If Tri-Dam does not follow the provisions of the SMP, Tri-Dam is subject to enforcement action by FERC. There is no ability for Tri-Dam to delegate the shoreline regulation and permitting on Tulloch Reservoir to Calaveras County. While Calaveras County has general land use jurisdiction within the County, the Federal Supremacy Clause makes federal regulation the controlling authority within the FERC boundary, including lands adjacent to Tulloch Reservoir at and below 515’ elevation.

The question of local or county-level ability to issue dock permits has been discussed with FERC on numerous occasions on other FERC projects throughout the country. In 2014, the matter was examined for the Smith Mountain Pumped Storage Project of the Appalachian Power Company. In *Smith Mountain*, the local lake association questioned the licensee’s authority and ability to administer the SMP, and requested that a neutral third-party govern the SMP process.

In response to that request, FERC made it abundantly clear that a licensee is solely responsible for complying with its license, including the operation and maintenance of the lands and waters within a licensed hydropower project’s boundary, and that responsibility includes the approval or denial of docks and other private facilities in accordance with its license conditions (see *Appalachian Power Company* (2014) 146 F.E.R.C. ¶62,083, at p. 27). The situation in Smith Mountain is similar to that at Tulloch. Tri-Dam, as the FERC licensee, cannot delegate its responsibilities to other parties, including the County or other local agencies.

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We hope that Tri-Dam and residents can continue to work together to effectively manage the shoreline on Tulloch Reservoir, and we appreciate the coordination and cooperation between Tri-Dam, local landowners, and Calaveras County. We receive many compliments from local landowners and others who appreciate Tri-Dam's role and consistency at Tulloch in making sure docks on the reservoir are compliant and orderly so that the reservoir can be enjoyed by homeowners and visitors alike.

TRI-DAM PROJECT



Jarom Zimmerman
General Manager