

## MEMORANDUM

TO: Doug Bird  
FROM: Janet K. Goldsmith  
DATE: February 23, 2009  
RE: Issues related to raising Lopez Dam

FILE NO.: 9557.4

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**New water right?** Lopez's current storage permit, no.12814 ("Permit") on Application No. 18375, authorizes diversion of 50,000 acre feet of water from October 1 through July 1. If raising the spill gate would increase storage beyond 50,000 acre feet, a new water right permit would be needed. (You'll recall that the application for direct diversion is still pending before the SWRCB.)

**Water Availability Analysis.** In order to obtain a new water right permit, the District must show that water is available for diversion without causing harm to senior water rights or public trust resources such as fish, recreation, or navigation uses. The State Water Resources Control Board has determined that Arroyo Grande Creek and its tributaries are "fully appropriated" – meaning no water is available for new appropriations – from July 1 through August 31 each year. (SWRCB WR Decision No. 109.) Lopez Creek has been declared fully appropriated upstream from the confluence with Arroyo Grande Creek (at Lopez Reservoir) from May 1 through October 31 each year. (SWRCB WR Decision No. 109.) New water appropriations must come from outside of these time periods, and the State Board still must find that new appropriations protect senior rights and public trust uses.

It appears that water is available for new appropriation from both Arroyo Grande and Lopez Creeks during the wet season. It will be necessary to work with a water resources specialist, and perhaps a biologist, to determine how much water may be available without harming other uses.

**Property acquisition.** Title or an easement to flood the land that would be newly submerged by the higher water levels would need to be acquired.

**Davis-Grunsky Grant.** If the newly submerged land would affect the recreational facilities installed with funds from the Davis-Grunsky grant, an amendment may be needed. However, since the grant contract terminates in 2009, it is likely no action will be necessary.

**Endangered Species Act (Federal).** SLO has not yet obtained approval of its proposed HCP (and the incidental take authorization that would go with it). Proposing to capture even

more wet-season water could suggest to the feds that they should require for the HCP more water than SLO is proposing to release. This is probably just a matter of timing, but even after the HCP is approved, a dam-raise may trigger a reconsultation.

In addition, SLO should consider whether to expand the proposed HCP upstream of Lopez Dam to include lands that would be inundated as a result of a dam raise. There may be vegetative species and/or frogs that might be impacted, and should be included in the HCP.

**Endangered Species Act (State).** As you have probably noticed from recent news accounts, the California Endangered Species Act must also be complied with. It has been my thought that once the HCP was final, DFG would simply certify that it also satisfied the California ESA. Nevertheless, both acts must be complied with.

**Division of Safety of Dams approval.** The dam raise would need to be approved by the California Division of Safety of Dams.

**Streambed Alteration Agreement.** Because there is already a dam on the stream, it is questionable whether a new SAA would be required. The DFG should be notified of the plans, however, and will advise whether a new SAA is needed.

**CEQA.** Of course an EIR will probably be required, and potential impact to archaeological sites must be considered.