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State blocks review of Oroville Dam crisis



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Workers assess damage to Oroville Dam's main spillway in late February. Documents regarding the spillway's fracture and repair, as well as Gov. Jerry Brown's response to the crisis, have been kept from public view.

Won't release details on spillway or reaction by Governor's Office

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Gov. Jerry Brown's administration is using federal security regulations written to thwart terrorism to deny public access to records that experts say could guide repairs to the Oroville Dam and provide insight into what led to the near catastrophic failure of its emergency spillway.

The administration also is blocking public review of records that would show how Brown's office handled the February crisis at Oroville Dam that led to the two-day evacuation of nearly 200,000 Northern Californians.

Days after the evacuation orders were lifted in February, The Sacramento Bee filed requests to the state under the California Public Records Act. In one request, the newspaper sought design specifications, federal inspection reports, technical

documents, the results of rock sampling and other information. Outside engineers told The Bee such records would likely provide an accounting of what caused a gaping chasm to form in the dam's main concrete spillway on Feb. 7 and the near collapse of the dam's emergency spillway a few days later.

The Bee also sought internal communications and emails from Brown's office. Those records could show how Brown and his top staff members were coordinating the ongoing crisis with each other, with outside agencies and with members of the public.

The administration denied the request for technical information about the dam and provided a limited response to the request for internal communications. Its secrecy has outraged state and federal lawmakers representing the people living below the dam, who frantically fled the area after officials warned of a "30-foot wall of water"

cascading down the Feather River when the dam's emergency spillway nearly gave way on Feb. 12.

"This is very, very disturbing to me," said Assemblyman James Gallagher, R-Yuba City. "We just want transparency. We want to know what happened up there and why this happened in the first place."

Oroville resident Beth Bello said the state owes it to residents to provide full disclosure of what happened. Bello's cellphone video of concrete debris and water blasting off the crumbling spillway in February went viral during the crisis. She said Tuesday she is far more concerned about state officials' inability to maintain their facilities than she was about terrorism.

"The terrorist issue is irrelevant – completely irrelevant – to what happened to the spillway and the damage to it," she said. "The structural integrity of it is much more of a threat than ever a terrorist, especially at this point in time."

In denying the request for information about the dam itself, Brown's Department of Water Resources cited provisions in state and federal law that allow government officials to block certain records because of security concerns.

"There is going to be a level of security over certain types of information," acting DWR Director Bill Croyle said last week.

As for the internal discussions at Brown's office, state lawyers cited exemptions to the public records law that allow the Governor's Office to hide from public review any records centered around attorney-client discussions, "the records of correspondence of or to the governor's staff," and records that would show how officials were coming to a decision.

Brown's office did provide The Bee a copy of 1,827 emails that didn't fall under those exemptions, but they reveal next to nothing about how the state officials were discussing the crisis. Most of the emails consisted of electronic links to stories about Oroville in The Bee and other media outlets, copies of DWR news releases and memos summoning officials to the Governor's Office or the State Operations Center at Mather airport.

The Bee requested an interview from Brown or a senior member of his staff on Monday. Brown spokesman Evan Westrup said he would check but he did not "anticipate an interview will be doable." DWR didn't respond to a request for comment.

The denials from Brown and his staff came after The Bee used public records to reveal that a team of consultants overseeing repairs at Oroville harbored serious doubts that state officials could complete repairs in a single season. The records, filed by DWR with the Federal Energy Regulatory Commission in March, also noted disturbing design flaws that could have caused the main spillway's failure.

Until that point, DWR officials had been saying they believed they could completely repair the spillway by Nov. 1, the start of the next rainy season. They also said they still didn't know the likely reason for the spillway's failure.

Croyle, the acting DWR director, later said the report "shouldn't have been made public" and defended the decision to file subsequent reports with the federal agency under seal. Those include two more recent reports from the outside consul-

tants, one of which was filed Tuesday, as well as a pair of reports last month on the spillway gates and "project safety compliance."

DWR also defended the decision to keep under wraps the bid documents that have been circulated among the four contracting firms that are bidding to do the repair work. "Because these designs are sensitive, the contents of those bid documents have been considered critical electrical and energy infrastructure ... so they're not made public," said Jeanne Kuttel, DWR's chief engineer.

Croyle said he has been consulting with Butte County Sheriff Kory Honea on keeping information under wraps. "We're here to help with that balance between transparency and also security," Honea said last week. "There are security issues associated with the design of these structures. If they were to be made public or fell into the wrong hands, they could be used to create havoc or harm."

Although the design plans are still being finalized, and no price tag has yet been established, Croyle said he hopes to have signed contracts by next Monday. The tentative plan calls for leaving in place the giant chasm that's been carved out of the adjacent hillside by misdirected water flows since the main spillway fractured Feb. 7. The chasm would be used next winter as a kind of safety valve for handling excessive outflows of water over the partially repaired spillway.

Croyle said DWR also plans to partially line the adjacent emergency spillway with concrete. That structure currently consists of a concrete lip and an unlined hillside.

The fracture of the main spillway led to a near disaster five days later, after Lake Oroville filled up and water flowed over the dam's never-before-used emergency spillway. When it looked like the emergency spillway would falter because of severe erosion, unleashing a wall of water out of the dam, Honea ordered the evacuations of 188,000 downstream residents.

By no means are the Oroville documents the only records sealed under FERC's "critical energy infrastructure information" regulations, or CEII. According to the commission, each year about 7,000 documents are filed under the CEII rules by pipeline operators, hydro-plant operators, electric utilities and others. DWR has to file the documents with FERC because the federal agency is in charge of the dam's operating license.

Environmentalists and others have chafed under these rules, saying the regulations give dam operators and others too much leeway to keep documents sealed. "As a government entity, you shouldn't be able to hide information when the information doesn't have anything to do with critical infrastructure," said Rupak Thapaliya of an environmental group called Hydropower Reform Coalition.

The regulations date to the aftermath of the Sept. 11, 2001, terrorist attacks, when FERC was concerned about terror groups obtaining information that could be used to undermine the nation's energy infrastructure. The regulations were toughened last year in response to the Fixing America's Surface Transportation Act, signed into law in 2015 by former President Barack Obama, which is designed to strengthen energy infrastructure security during emergencies.

“The Commission’s current Critical Energy Infrastructure Information process is designed to limit the distribution of sensitive infrastructure information to those individuals with a need to know in order to avoid having sensitive information fall into the hands of those who may use it to attack the Nation’s infrastructure,” FERC wrote in its update to the regulations last fall.

Among other things, the revised regulations say FERC employees who make unauthorized disclosures of critical infrastructure documents could lose their jobs or face criminal prosecution. Members of the public can sometimes be allowed to review the records if they sign a nondisclosure agreement – a requirement that apparently also extends to members of Congress.

U.S. Rep. Doug LaMalfa, R-Richvale, said he was told he’d need to sign one if he wanted to review the reports the state sent to federal regulators.

“Keeping these documents sealed further undermines what’s left of the state’s credibility and does nothing to assure residents that the situation is being addressed responsibly,” LaMalfa said in a written statement. “As the Representative of the area in Congress, the concept of signing a nondisclosure agreement which could prevent me from alerting my constituents and neighbors to potential dangers is not just inappropriate, but offensive.”

Wayne Dyok, former project manager of a major hydroelectric facility in Alaska who now lives in Rocklin, said he understands the need to keep sensitive dams and other facilities safe, so he supports some secrecy on the government’s behalf. But he said officials can use their ability to block all records to avoid legitimate outside scrutiny.

He said he believes the state and federal officials could redact some of the most sensitive information while also giving outsiders the ability to review documents that offer insights.

“There’s a balance. That’s the bottom line,” Dyok said. “There needs to be a balance between what is disseminated and what is held.”

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