January 11, 2017

Meiling Colombano
State Water Board Resources Control Board
Division of Water Rights
Meiling.Colombano@waterboards.ca.gov
Via e-mail

Re: Comments of American Whitewater and the California Sportfishing Protection Alliance on the Draft Water Quality Certification for the Relicensing of South Feather Water and Power Agency's South Feather Power Project, Federal Energy Regulatory Commission Project No. 2088

Dear Ms. Colombano:

American Whitewater (AW) and the California Sportfishing Protection Alliance (CSPA) respectfully submit comments on the Draft Water Quality Certification (Draft Certification) for the Relicensing of South Feather Water and Power Agency's (Licensee) South Feather Power Project (Project), Federal Energy Regulatory Commission Project No. 2088. AW participated throughout the FERC relicensing process for the South Feather Power Project. Both AW and CSPA have been active stakeholders for many years in every other FERC project in the Feather River Basin.

In general, both organizations support the Draft Certification. However, there are several components within the document that were not discussed during relicensing that give us cause for concern. AW and CSPA provide comment below on Draft Certification conditions 1, 3, 12, and 14.

Condition 1: Minimum Instream Flow Requirements

Water Year Type

Condition 1 outlines minimum instream flow requirements by water year type for all Project reaches in Tables 1-5. The streamflow schedules are separated into four water year types (wet, above normal, below normal and dry), and the Licensee is to determine the water year type based upon the DWR Bulletin 120 water year forecast (Feather River at Oroville). The Draft Certification fails to define the water year type. We recommend that Condition 1 include the

criteria that the U.S. Forest Service specifies in its 4(e) conditions.[1] The Forest Service defines water year types as follows:

> Wet = greater than or equal to 7.1 MAF
> AN = greater than or equal to 4.0 MAF but less than 7.1 MAF
> BN = greater than 2.4 MAF or equal to but less than 4.0 MAF
> Dry = less than or equal to 2.4 MAF

Water Year Modification

Condition 1 states:

> *After consultation with State Water Board staff and participating agencies, the Licensee may submit to the Deputy Director for review and approval a request to modify how water year types are defined (Water Year Modification).*

Section 4.1 of the Draft Certification explains that Condition 1 contains this language because it may be necessary to modify the water year type as ambient temperatures increase and precipitation amounts decrease. AW and CSPA agree that ambient temperatures are likely to increase with a changing climate. We also agree that precipitation patterns are likely to change, although how they will change in the Feather River watershed is somewhat less clear. However, it is unclear why these changes necessitate a reclassification of water year types. If there are more successive dry years in the future, the flow requirements associated with those years will continue to apply. It does not mean that because dry years occur more frequently they should now be categorized as above normal or wet years. Additionally, if there is some future logic under which it makes sense to re-categorize water year types, the Board can address this through its reserved authority for this certification.

AW and CSPA recommend removing this section in Condition 1.

Evaluation of MIFs

Condition 1 states:

> *After six years of MIF implementation, associated monitoring, and data collection, the Licensee shall consult with State Water Board staff, participating agencies, and interested stakeholders, to evaluate the MIFs in meeting resource goals and objectives, and to determine if adjustments are needed.*

During relicensing discussions for the South Fork Feather Project, stakeholders did not develop an adaptive management process for setting streamflows. Our experience with implementing adaptive management suggests that the eleventh hour inclusion of a largely undefined adaptive

[1] FINAL SECTION 4(e) TERMS AND CONDITIONS South Feather Power Project, FERC No. 2088 (FERC eLibrary Accession No. 20090306-5179).

management process is an unwise addition that the Board should delete from its final Certification.

For context, AW and CSPA provide some lessons we have learned from seventeen years of adaptive license implementation for the Rock Creek/Cresta Project (FERC No. P-1962) on the North Fork of the Feather River. The Rock Creek/Cresta license was one of the first hydropower projects in California to utilize an adaptive management strategy for setting flow requirements. The Rock Creek/Cresta Settlement Agreement and license required three five-year test periods. In each of these test periods, the licensee has collected monitoring data. Based on the results of this data, the Licensee, resource agencies and other stakeholders are tasked with using this data to determine flow for the next five-year period and ultimately for the duration of the license.

Based on our experience in this process with the Licensee and resource agencies, including staff from the State Water Resources Control Board, we have several important takeaways. First, it is important to base resource management decisions on a dataset that is collected over an appropriate length of time. Given the stochastic nature of aquatic organisms, hydrology and even project operations, we found that five years provided far too short of a dataset to evaluate most resources. Second, it is necessary to establish management metrics and thresholds (such as fish per mile or angler catch rate) at the beginning of the process (see below for an example). This allows stakeholders to clearly evaluate whether management actions are successful or modifications are needed. The Draft Certification appears to propose that stakeholders will know what changes to make when they see the data. In our experience, this approach simply will not work. When participants fail to set metrics and thresholds at the beginning of the process, they inevitably mine the data for information that supports their particular interest. The likelihood of reaching a consensus opinion in those circumstances is very low.

If this section of Condition 1 were to be part of the final Certification, it would require significantly more structure. For example, the language would have to spell out in detail the process for developing metrics and thresholds, and include the range of possible adjustments. On the Rock Creek/Cresta Project, the group established the following clear fishery objectives:

> *Achieve a desired goal of an excellent trout fishery and functioning ecosystem to all naturally occurring species. According to the best available information on conditions prior to the Project, fishery performance criteria will include:*
>
> *a. Wild rainbow trout population with 4 age classes.*
> *b. Fish catch 80% wild trout/ 20% non-game fish.*
> *c. Average wild trout caught > 9.7 inches fork length.*
> *d. Adult rainbow trout available for catch > 17 inches.*
> *e. Harvestable component of 595 lbs/mile wild trout.*
> *f. Wild trout biomass 62 lbs/acre (catch).*
> *g. Angler catch rate of one fish per angling hour including catch and release.*

However, inserting a complete adaptive management process into the license at this juncture would involve nothing short of reinitiating the flow negotiations covered during relicensing. In view of both the short-term and long-term costs and level of effort that development and

implementation of an adaptive management program would require, AW and CSPA recommend removing the *de novo* requirement for adaptive management of flows from Condition 1.

Extremely Dry Conditions

Condition 1 states that the Licensee may request a modification of instream flow requirements in the event of extremely dry conditions. The Condition describes extremely dry conditions as ones that "may include a year in which the Governor…declares a drought or multiple consecutive dry years…" It requires the Licensee to "notify the State Water Board and participating agencies" of concerns relating to flows or reservoir levels, and if necessary, "develop a Revised Operations Plan in consultation with" them.

Generally, AW and CSPA do not object to establishing a default response in operations on this or any other project in the event of drought. Any condition that modifies streamflows during drought or dry year sequences should clearly define both the river-specific, objective conditions that would trigger a change and what the changed flow regime will be. It needs to demonstrate that the hydrologic conditions are outside of what was evaluated during relicensing.

Condition 1 as currently written fails to meet this standard. It is vague about the conditions in which the Board may apply exceptions to the flow requirements, and fails to define what the default flows would be in the event of drought conditions or sequential dry years. Instead, Condition 1 refers to general circumstances, including the Governor declaring a drought emergency. Calling out a gubernatorial declaration of emergency as a potential trigger is inappropriate because it substitutes the opinion of a politician in place of a defined, objective condition. It also does not account for the specifics of the South Fork Feather River watershed or the water balance of the South Feather Power Project.

AW and CSPA also object to making resource agencies the sole, real-time decision makers about the propriety of a flow variance, particularly because Condition 1 defines dry conditions generally rather than specifically. At minimum, in the event that the Licensee requests a flow variance, interested parties should have an opportunity to engage with the Licensee and resource agencies to develop appropriate revised flow requirements. In addition, there should be an opportunity for public comment in a formal proceeding before the Board.

In February 2014, FERC wrote a letter to all hydropower licensees in California in light of the ongoing extreme drought, communicating that it was prepared to act quickly to review requests to temporarily amend licenses to implement water conservation measures.[2] This letter opened the door for flow variances during the drought, and did not specify any requirements for these license modifications. In response, the Board issued specific requirements that needed to be met before it would approve flow variances.[3] These requirements gave structure to what had become a flow-amendment free-for-all fueled by fears relating to the drought.

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[2] FERC eLibrary Accession No. 20140206-3033.

[3] https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/abrams_ferc_03112014.pdf

Overall, AW and CSPA recommend that the Board establish a formal process for licensees requesting a flow variance that includes thresholds for when such a variance is warranted. Doing so will expedite the process of issuing flow variances during extremely dry conditions.

Specific to Condition 1, AW and CSPA recommend that this part remain within the Final Certification, but that it contain more specificity pertaining to the conditions under which a Licensee may change streamflows.

Condition 3: Ramping Rates

Condition 3 describes the development of a long-term ramping rate adaptive management plan (RAMP). AW and CSPA support the development of this plan. Over the past decade, researchers and hydropower stakeholders have learned a great deal about how flow fluctuations, particularly during the spring snowmelt recession, can negatively impact aquatic resources. AW and CSPA have a proven track record in working collaboratively with resource agencies (including the State Board) and licensees to develop measures similar to Condition 3 on a host of hydroelectric projects across the state of California. It is especially important to work with licensee operations staff familiar with the real-time operation of these hydro projects. Together, we have improved ramping measures both within a relicensing and post licensing context, and have a lot to offer to the process on this Project.

AW and CSPA request to be included in the consultation for developing the RAMP. Our organizations can either be called out specifically or generally in the condition as "other interested parties."

Condition 12: Recreational Resource Management

American Whitewater offers specific comments on the consultation, optimum flow ranges, timing and access requirements outlined in Condition 12.

<u>Consultation</u>

Condition 12 requires the Licensee to consult with and receive comment and recommendations from State Water Board staff, USFS, CDFW and USFWS on the development of the Recreation Management Plan. Whitewater recreation is a significant component of the managed recreational resources for the Project. Therefore, American Whitewater should also be consulted during this process.

Condition 12 describes three whitewater recreation reaches (below Little Grass Valley Dam, below South Fork Diversion Dam, and below Forbestown Diversion Dam), and requires the Licensee to consult with State Water Board staff, USFWS and CDFW each August in order to set target recreational stream flows on the Little Grass Valley reach. (We note that the Draft Certification calls for consultation with USFWS twice, but not with USFS. This apparent typo should be corrected). American Whitewater should be included as a consultation party on the Little Grass Valley Dam reach.

Additionally, we note that the Draft Certification does not require the Licensee to consult with anyone on setting the flow levels for the South Fork Diversion Dam and Forbestown Diversion Dam reaches. The Final Certification should require the Licensee to set flow levels each year in consultation with state and federal agencies and American Whitewater on these reaches as well.

Optimal Flows

Condition 12 identifies broader boatable flow ranges for recreational stream flows below Little Grass Valley Dam, South Fork Diversion Dam and Forbestown Diversion Dam, but fails to describe ideal optimum boating flow ranges. The Licensee identified these ranges for each reach in its whitewater boating study, found in the application for a new license. It does not make sense for the Licensee to release recreational flows outside of the ideal optimum boating flow range, as paddlers will be less likely to utilize them. Condition 12 should include the optimum ranges for each resource and these ranges should be targeted as much as possible during the recreational flow period.

The Final Certification should list the optimal flow ranges as follows:

- Downstream of Little Grass Valley Dam: 350-450 cfs
- Downstream of South Fork Diversion Dam: 250-400 cfs
- Downstream of Forbestown Dam: 300-400 cfs

American Whitewater notes that it has been over 10 years since the whitewater boating study was completed, and since that time, boaters have become more familiar with both the Little Grass Valley and Forbestown reaches. In this time, we have been working with the Licensee on recreational flows on the Little Grass Valley reach in particular, and have surveyed boaters about the optimal flow range for both of these reaches. On both reaches, the preferred flow range is higher than what was outlined in the whitewater boating study. On the Forbestown reach in particular, boaters actually preferred a higher flow range than what is listed above. However, we acknowledge that the Project is only capable of providing flows up to 400 cfs and have adjusted our recommended optimal flow range accordingly.

Timing of Recreational Flows

Condition 12 specifies that recreational flows shall be implemented on September 16 each year on the Little Grass Valley reach. Using a specific start date will mean that recreational flow releases will frequently begin on a weekday. In order to ensure that paddlers can make maximum use of the recreational flows, the Final Certification should instead specify that they will begin on the first Friday after September 16th in order to ensure that flows encompass, at a minimum, two consecutive weekends of flows.

Access Locations

Condition 12 should identify existing put-ins and take-outs, and require that they remain open for river access for the lifetime of the license. The current put-ins and take-outs are the only points

of access to the whitewater resources affected by the Project. The current access points are as follows:

- Downstream of Little Grass Valley Dam: The put-in for this reach is at the base of Little Grass Valley Dam, accessed from County Road 514. The take-out is on the left bank of the South Fork Diversion Dam Impoundment, accessed from the west via Lumpkin Ridge Road and USFS Roads 22N24, 21N16 and 21N11Y.
- Downstream of South Fork Diversion Dam: The put-in for this reach is at the base of the South Fork Diversion Dam which boaters access from LaPorte Road via USFS Road 20N05, 21N16 and 22N24. The take-out is at the New Golden Trout Crossing where USFS Road 22N24 crosses the SFFR.
- Downstream of Forbestown Diversion Dam: The put-in for this reach is at the base of Forbestown Diversion Dam which boaters access from Forbestown Road via USFS Road 20N29. The take-out is at Ponderosa Reservoir on the right bank just below Forbestown Powerhouse accessed from Forbestown Road, Lower Forbestown Road to USFS Road 20N24 (Ponderosa Way).

Public Availability of Stream Flow Information (Condition 12(E))

Condition 12(E)(3) states:

> *From May 1 through November 30, the daily average stream flow for the South Fork Feather River downstream of: Little Grass Valley Dam (USGS gage no. 11395030), South Fork Diversion Dam (USGS gage no. 11395200), and Forbestown Diversion Dam (USGS gage no. 11396200); Lost Creek downstream of Lost Creek Dam (USGS gage no. 1139600); and Slate Creek downstream of Slate Creek Diversion Dam (USGS gage no. 11413300). The flow information shall be updated at least weekly. As appropriate, data, including any plots and tables, shall be labeled: "These provisional data have not been reviewed or edited and may be subject to significant change."*

The final Certification should require year-round gage operations at all locations. Annual flow information taken at historic locations is important for scientific purposes and promoting understanding of the watershed. Additionally, a variety of recreationists, including whitewater boaters and anglers, utilize this information to determine whether conditions are safe and appropriate to recreate on. As a result, it is ineffective and potentially dangerous to require that daily average streamflows be updated on a weekly basis. The final Certification should require the Licensee to provide flow data that is gathered and made publicly available in 15-minute intervals. Alternatively, if 15-minute data is unavailable, then the Licensee should be required to provide hourly flow information instead. This information should be provided for the South Fork Feather River downstream of Little Grass Valley Dam, South Fork Diversion Dam, Forbestown Diversion Dam, Lost Creek downstream of Lost Creek Dam, and Slate Creek downstream of Slate Creek Diversion Dam.

FERC licensees throughout California commonly use the California Data Exchange Center (CDEC) to provide streamflow and reservoir level information to the public. (See, for example

the Mokelumne River Project (P-137), Rock Creek Cresta Project (P-1962), Pit 3, 4, 5 Project (P-233) and the Upper American River Project (P-2101)).

The Licensee currently uses CDEC to provide information about streamflows and reservoir levels to the public. AW recommends that the Final Certification specify that the Licensee continue to provide information from CDEC using language that has become standard for this type of condition:

> *Flow information shall be available to the public via the internet and the California Data Exchange Center (CDEC), or at such time that CDEC is no longer viable, another publicly available source of similar information agreed upon by the Deputy Director, participating agencies, and interested stakeholders.*

Condition 14: Annual Consultation

AW and CSPA appreciate and support the annual consultation condition in the Draft Certification. In particular, AW and CSPA appreciate the opportunity for our organizations, other NGOs, and members of the public to meaningfully, efficiently and effectively participate in the implementation of the new license where they might not otherwise have an opportunity to do so.

The annual consultation meeting will provide a forum for NGOs and interested stakeholders to directly hear from the Licensee and resource agencies about issues and concerns relating to the project. It will also allow the public to ask questions, participate in a dialogue, make suggestions and express concerns about the project in an informal setting. It will also benefit the Licensee by creating a standing group that facilitates expedient review of any license compliance issues.

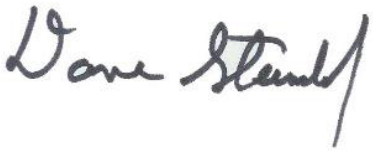
We have two areas of concern with Condition 14 as written. First, it does not explicitly state that interested parties should also receive draft monitoring reports and studies at least 60 days in advance of the annual meeting, as is required for the participating agencies. If other interested parties are to be able to participate meaningfully, they must have access to the meeting materials in advance.

Second, as currently formulated, the consultation group will only meet once a year. AW and CSPA recommend that Condition 14 be amended to require that the consultation group meet at least once a year, and allow for additional meetings if needed. As such, we also recommend that the condition be changed from an "Annual Meeting" to a "Public Consultation Meeting."

Conclusion

AW and CSPA appreciate the Division of Water Rights' production and circulation the Draft Certification for the South Feather Power Project. Thank you for considering our comments.

Respectfully submitted,



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