

FERC 2100
TV**DEPARTMENT OF WATER RESOURCES**1416 NINTH STREET, P.O. BOX 942836
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(916) 653-5791

July 13, 2012

Ms. Barbara Evoy, Deputy Director
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, California 95812-2000STATE WATER RESOURCES
CONTROL BOARD
2012 JUL 16 AM 11:00
DIV OF WATER RIGHTS
SACRAMENTOGolden Gate Salmon Association Request to Reopen and Amend the Water Quality Certification for the Oroville Facilities, FERC Project No. 2100

Dear Ms. Evoy:

On April 26, 2012, the State Water Resources Control Board (State Water Board) received a request to reopen and amend the water quality certification for the Oroville Facilities (Federal Energy Regulatory Commission (FERC) Project No. 2100) from the Golden Gate Salmon Association (GGSA). In response to the request, the State Water Board sent inquiries on May 23, 2012 to the California Department of Fish and Game (DFG) and the National Marine Fisheries Service (NMFS) requesting opinions regarding the allegations and supporting evidence concerning North American green sturgeon. Both DFG and NMFS provided responses to the State Water Board's request; however, DFG and NMFS did not provide specific opinions as requested.

The GGSA request is premature and the State Water Board should not consider amending the water quality certification at this time. The NMFS Biological Opinion (BiOp) is the final regulatory input needed before FERC can issue a new license for the Oroville Facilities. As you know the Settlement Agreement for the Oroville Facilities was signed by over 50 stakeholders, including DFG and NMFS. State Water Board staff also contributed to the development of the Settlement Agreement. The benefits from the estimated \$1 billion in recreational, environmental, and cultural protections will not be realized until the new license is issued. The Department of Water Resources (DWR) is concerned about any additional processes that could delay license issuance.

The GGSA request is predicated on observations of green sturgeon in the Feather and Yuba Rivers in 2011. DWR has been monitoring green sturgeon since 2003 and began using high definition imaging sonar (DIDSON) in 2010. Both the availability of the DIDSON equipment and the extremely wet hydrologic conditions in 2011 contributed to the observations of green sturgeon. Despite the allegation by GGSA, there is no evidence to support claims that the beneficial uses are not supported, and will not be improved under the conditions of the pending new license.

Flows in the lower Feather River are controlled by operation of the Oroville Facilities and also by operation of Engelbright Dam and hydropower projects in the Yuba River. Conditions in the Biological Opinion for Engelbright Dam require the U.S. Army Corps of Engineers to coordinate operations with DWR. GGSA alleges that "DWR does not pass sufficient flow for green sturgeon to ascend several upstream barriers, including

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Shanghai Bench, Sunset Pumps, and Steep Riffle". Shanghai Bench collapsed in early 2012, and is no longer a passage barrier. Additionally, Sunset Pumps diversion barrier is not owned or operated by DWR and Steep Riffle is not a passage barrier.

We do not believe holding a workshop is necessary or will provide information to the State Water Board that is not already available. It is premature to consider amending the water quality certification before the new license is even issued. As stated by NMFS, the certification does not conflict with, and is not preventing, NMFS from completing the BiOp. DWR has openly shared all information gathered on green sturgeon with NMFS. NMFS states in its letter they are in the process of analyzing new green sturgeon information and are finalizing the BiOp.

The State Water Board should deny GGSA's request since the issues being raised should have been considered during issuance of the certification. DWR is not currently operating consistent with the application for new FERC license and water quality certification because the new license has not been issued. The State Water Board has reserved authority to modify the certification if monitoring shows the operation of the project violates water quality objectives or impairs the beneficial uses. Monitoring of the new conditions has not occurred and will not be possible until the conditions are in effect under the new FERC license. GGSA has failed to support the contention that the conditions in the 401 certification will not adequately protect green sturgeon.

The Settlement Agreement provides a process for parties to resolve conditions in the BiOp that are inconsistent with the agreement. Conditions in the Settlement Agreement provide a forum for agency input and/or approval of plans and programs. DWR believes issues concerning future operation of the project and management of green sturgeon is best resolved through this process.

Thank you for considering DWR's perspective regarding GGSA's request. If you have any questions regarding this transmittal, please contact me at (916) 657-3864, or your staff may contact Russ Kanz at (916) 653-8726.

Sincerely,



Ted Craddock, Acting Chief
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