

SGM/AV
FERC 803

**MINASIAN, MEITH,
SOARES, SEXTON &
COOPER, LLP**

ATTORNEYS AT LAW
A Partnership Including Professional Corporations

1681 BIRD STREET
P.O. BOX 1679
OROVILLE, CALIFORNIA 95965-1679

Writer's e-mail: dcooper@minasianlaw.com

PAUL R. MINASIAN, INC.
JEFFREY A. MEITH
M. ANTHONY SOARES
DUSTIN C. COOPER
EMILY E. LaMOE
PETER C. HARMAN
ANDREW J. McCLURE

TELEPHONE:
(530) 533-2885

FACSIMILE:
(530) 533-0197

WILLIAM H. SPRUANCE,
Retired

MICHAEL V. SEXTON,
Retired

August 6, 2015

Clint Snyder, Assistant Executive Officer
Central Valley Regional Water Quality Control Board
364 Knollcrest Drive, Suite 205
Redding, CA 96002

Ms. Amber Villalobos – Division of Water Rights
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814-2828

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
SACRAMENTO
2015 AUG 10 AM 10:28

Re: **De-Sabla Centerville Hydroelectric Project, FERC Project No. 803**
Water Quality Certification

Dear Mr. Snyder and Ms. Villalobos:

Our firm has been retained to assist homeowners with water rights and rights to service from Pacific Gas & Electric Company ("PG&E") and its Upper Centerville Canal, part of the above-referenced power project. On April 8, 2015, the State Water Resources Control Board (State Board) issued its Final Water Quality Certification to PG&E for the De-Sabla Centerville Hydroelectric Project, FERC Project No. 803. The State Board premised its analysis of Project No.803, and in turn, its approval of Water Quality Certification, on the assumption that PG&E would continue to deliver 1.175 cfs of water to users through the Upper Centerville Canal. As a matter of fact, PG&E has delivered water to homeowners on the Upper Centerville Canal for over 100 years.

However, PG&E in its May 8, 2015 'Request for Reconsideration' seeks an amendment to Water Quality Certification Mitigation Measure 3 which would suggest that the commitment to deliver water through the Upper Centerville Canal applies "only if PG&E chooses" to operate that portion of the Centerville Development. If approved, PG&E may argue that the State Board's Water Quality Certification allows it to unilaterally cease water deliveries through the Upper Centerville Canal component of its system and force the landowners that currently rely on that service to look elsewhere for water. That outcome was not contemplated in the CEQA analysis prepared in support of the Water Quality Certification, is inconsistent with 100+ years of

Clint Snyder and Amber Villalobos

August 6, 2015

Re: *De-Sabla Centerville Hydroelectric Project, FERC Project No. 803 Water Quality Certification*

Page 2.

past practice, and is especially troubling to the affected homeowners that rely on PG&E to deliver water through the Upper Centerville Canal.

The concern that PG&E may rely on the suggested modifications to the Water Quality Certification to support cessation of water deliveries through the Upper Centerville Canal are heightened by PG&E's December 24, 2014, correspondence to the Federal Energy Regulatory Commission (FERC), in which PG&E advised of a plan to begin proceedings in late 2016 to remove the Centerville Development from the FERC License for De - Sabla Centerville Project. We urge the State Board to reject PG&E's proposed modification to Water Quality Certification Mitigation Measure 3, and require PG&E to seek State Board analysis and approval of any future plans to cease deliveries through the Upper Centerville Canal.

1. Introduction and Background

Our clients (and their predecessors) have received water deliveries from PG&E through the Upper Centerville Canal for over 100 years. Their water rights and rights to service were formalized in the 1942 judgment and decree of water rights to Butte Creek. The Decree granted PG&E a first priority right to divert 1.175 cfs of water from Butte Creek "for public service delivery to consumers . . . through appropriate openings or taps in the Upper Centerville Canal . . . and said consumers shall be entitled to use said amounts of water for domestic, stock watering and irrigation purposes."

Admittedly, the Decree made these rights contingent upon the use of the Upper Centerville Canal (also known as Old Cherokee Ditch) by PG&E or its successors as a conduit for conveying water, but confirmed that consumers are entitled to service as provided at all times when water is flowing in the canal. Ceasing water deliveries through the Upper Centerville Canal would require landowners currently served from that system to obtain a substitute source of supply. That contingency was not analyzed in the CEQA document prepared in support of the State Board's Water Quality Certification.

2. The State Board's Water Quality Certification Environmental Review Assumed Continued Operation of the Centerville Development

To receive a new FERC operating license, PG&E is required to request and receive Water Quality Certification pursuant to Section 401 of the federal Clean Water Act from the State Board. Prior to issuing its 401 certification, the State Board is required to perform an environmental analysis under the California Environmental Quality Act (CEQA). The State Board issued its 'Final Water Quality Certification' in April of 2015, which incorporated findings and conclusions from the CEQA Initial Study and Mitigated Negative Declaration, also

Clint Snyder and Amber Villalobos

August 6, 2015

Re: *De-Sabla Centerville Hydroelectric Project, FERC Project No. 803 Water Quality Certification*

Page 3.

completed in April, 2015. That document analyzed the environmental impacts associated with the 'Existing Project' – that is Project 803 FERC License under its pre - relicensing condition, and the 'Proposed Project' – meaning Project 803 following relicensing.

Consistent with 100+ years of operating conditions, the CEQA document describes the "Existing Project" as including the Upper Centerville Canal and advises that "PG&E provides 1.175 cfs of water from the DeSabla Forebay to the Upper Centerville Canal to satisfy local water rights along the Upper Centerville Canal."¹ The CEQA document then set forth a comprehensive list of "Operational Changes" which would be incorporated into the 'Proposed Project.' Notably absent from the list of "Operational Changes" is any decommissioning or surrender of the Centerville Development or other indication that PG&E planned to stop serving water through the Upper Centerville Canal. Based on the assumption that PG&E would continue serving water through the Upper Centerville Canal, the State Board concluded that the proposed project (Project 803 after relicensing) would have **No Impact** with respect to Utilities and Service systems.²²

The State Board's conclusion included specific 'No Impact' findings on the following issues: 1) whether the Proposed Project would require or result in the construction of new water or wastewater treatment facilities, the construction of which could cause significant environmental effects; and 2) whether the Proposed Project would have sufficient water supplies available to serve the Proposed Project from existing entitlements and resources, or are new or expanded entitlements needed. With respect to the foregoing question, the State Board determined, "PG&E holds all necessary water rights to operate the Proposed Project. PG&E will also construct a tap off of the DeSabla forebay temperature reduction device to supply any flows to Upper Centerville Canal for local water users."³³ In other words, up to April of this year, State officials (and interested stakeholders) reviewing PG&E's plans for the Centerville Development were operating under the assumption that PG&E would continue to serve customers water through the Upper Centerville Canal as it had for the previous 100+ years, and the proposed water quality certification reflects that assumption.

¹ California State Water Resources Control Board, DeSabla - Centerville Mitigated Negative Declaration and Initial Study, Checklist, at pp. 12, 14.

² *Id.* at pp. 67-68.

³ Mitigated Negative Declaration and Initial Study at pp. 68-69.

Clint Snyder and Amber Villalobos

August 6, 2015

Re: *De-Sabla Centerville Hydroelectric Project, FERC Project No. 803 Water Quality Certification*

Page 4.

PG&E's May 8, 2015 Petition for Reconsideration of the Water Quality Certification for the DeSabla Centerville Hydroelectric Project asks the State Board to revise language related to the Upper Centerville Canal water deliveries to more closely track language from the Butte Creek adjudication discussed above. The problem with PG&E's proposed revision, and the implicit suggestion that PG&E's obligation to deliver water through the Upper Centerville Canal is discretionary, is that the environmental review supporting the Water Quality Certification did not incorporate those assumptions into its analysis. Rather, as indicated, the environmental analysis made specific "No Impact" findings with respect to the proposed project requiring construction of additional water facilities, and sufficiency of water supplies. PG&E's proposed revision is substantive, not editorial, and it cannot be adopted without additional environmental analysis (including opportunity for public comment) of the impacts of a project which would cease water deliveries through the Upper Centerville Canal.

Shortly after PG&E filed its petition for reconsideration, it discontinued delivering water into the homeowners served from the Upper Centerville Canal⁴. PG&E has recently begun trucking water to the homeowners, but in quantities far below the landowners' water rights and rights to service. Additionally, while PG&E has styled the Canal outage as a necessary drought mitigation measure, in fact, we have been told that PG&E has stated in nonpublic meetings and in correspondence to FERC (but not to homeowners) that it intends to *permanently* cease deliveries to the Canal. PG&E has not accurately described its true proposed relicensing project to the State Board, to FERC, to the Public Utilities Commission⁵, or to homeowners and other interested stakeholders with rights to water and water service from the Canal.

Conclusion

PG&E has requested reconsideration of the State Board's April 2015 Final Water Quality Certification for the De-Sabla Centerville Hydroelectric Project. PG&E's requested revisions suggest that PG&E's obligation to deliver water through the Upper Centerville Canal is purely discretionary. However, the State Board did not analyze the environmental impacts associated with cessation of deliveries (i.e., discontinuance of 100+ years of practice) through the Upper Centerville Canal, and in fact, the Initial Study/Mitigated Negative Declaration supporting the Certification incorporated is based on the assumption that PG&E would continue serving a minimum of 1.175 cfs to water users along the Upper Centerville Canal. We urge the State

⁴ But PG&E continues to use upper portions of the "old Cherokee Ditch" for project operations, thus entitling the water users under contracts with PG&E and pursuant to the adjudication to continued delivery of water.

⁵ Public Utilities Code section 851 requires PG&E, as a public utility, to notify and receive permission to sell, lease, assign, or otherwise dispose the Upper Centerville Canal because it is property necessary in the useful performance of duties to the public. To our knowledge, no such notification or approval of the California PUC has been obtained.

Clint Snyder and Amber Villalobos

August 6, 2015

Re: *De-Sabla Centerville Hydroelectric Project, FERC Project No. 803 Water Quality Certification*

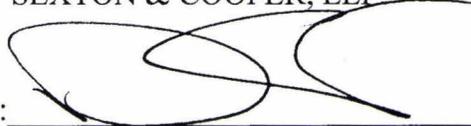
Page 5.

Board should reject PG&E's proposed modification on the ground that the proposed revisions require additional environmental review and an opportunity for public comment.

This letter advises you of our clients' sincere concerns, and our expectation that adequate and thorough environmental review with opportunity for public comment will precede any proposed revisions to the State Board's Final Water Quality Certification.

Very truly yours,

MINASIAN, MEITH, SOARES,
SEXTON & COOPER, LLP

By: 

DUSTIN C. COOPER

DCC:AJM:aw

cc: Judi K. Mosley
Law Department
PACIFIC GAS AND ELECTRIC COMPANY
77 Beale Street, B30A
San Francisco, CA 94105

Mathew Joseph
PG&E License Coordinator
Mail Code: N13 E, P.O. Box 770000
San Francisco, CA 94177