



Anglers for Hydropower Reform

"protecting aquatic habitat, fisheries and fishers rights"



Amber Villalobos
State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
P.O. Box 2000
Sacramento, CA 95812-2000

November 30, 2012
Submitted Electronically

Re: Federal Energy Regulatory Commission (FERC) Project 2106
California Environmental Quality Act (CEQA)
Clean Water Act – 401 Certification
California Wild & Scenic Rivers Act
California Public Resource Code 5093.542 (a-e)

Dear Amber Villalobos:

The Anglers for Hydropower Reform (AHR) [formally the McCloud RiverKeepers (MRK)] are herein responding to the State Water Resources Control Board's (SWB) "Notice of Section 15063(g) Informal Consultation" ("Notice") dated October 26, 2012 in connection with the FERC's relicensing of Project 2106 (P-2106).

Quoting from the SWB's above referenced Notice ... "In accordance with section 401 of the Clean Water Act, PG&E also applied to the State Water Board for a water quality certification (certification) for the Project. PG&E's request for certification for the Project was received by the State Water Board on December 20, 2011. The State Water Board must comply with the CEQA prior to issuing a certification".

AHR position is that all California (CA) agencies and departments must comply with all CA State law with respect to their individual participation, authority and decisions in hydropower relicensings. Please see AHR's "Response to USFS Preliminary Section 4e Conditions" ("Response") dated April 13, 2010, and attachment titled "MRK Flow Proposal" (FP) dated/revised August 5, 2010. Both documents were submitted to the FERC and served on the P-2106 Service List including the SWB. Specifically referenced here is AHR's "Response", section "Habitat Protection, Power Production & Beneficial Use Policy" on pages 12-16; and section "Protection of McCloud Flow Regime" on pages 16 & 17.

The purpose of AHR's response to the SWB's "Notice" is to restate the AHR's positions as detailed in AHR's previous submittals referenced above and below, as well as in AHR's April 21, 2010 submittal to the FERC regarding the pending "Violation of California State Law".¹ AHR additionally wishes to provide input on "Other Uses of the Resource" policy; the negative economic impacts of the USFS's Flow Rule; and lastly, the resource issues relative to the SWB's CEQA document and 401 Water Quality Certification.

A directly related, intrinsic economic issue is that PG&E does not prefer to increase flows into the Lower McCloud River (LMR) for sound corporate economic reasons that likewise result in economic benefits to all affected electric ratepayers. As explained in AHR's above referenced "Response", section "Habitat Protection, Power Production & Beneficial Use Policy", pages 12-16. The results of the USFS proposed, unnecessary and

¹ Copies of any referenced AHR submittals are available via dennis@dennisamato.com.

unwarranted increased flows into the LMR would be an approximate 6% loss of hydropower production in PG&E's largest power production facility. This would in turn result in hundreds of millions of dollars, or more?, in relicensing costs being passed on by law and regulation to CA electric ratepayers. It is AHR's position that this over-site (?) and/or disrespected fact (?) during this relicensing process and NEQA document needs be given full, proper consideration in the SWB's resource analysis in the CEQA process for the benefit of the resource and CA electric consumers. As well as by the FERC in its relicensing decision.²

The USFS's proposed Flow Rule results in unnecessary, unwarranted flow regime alterations to what the Habitat and Fish Population relicensing studies have scientifically proven to be a near-perfect 50-year existing flow regime in the LMR.³ The proposed Flow Rule alteration to the existing flow regime would also be in direct conflict with the intent of and a violation of CA State law. The California Wild & Scenic Rivers Act (WSRA) in Public Resources Code (PRC) 5093.542 (a-e) specifically guarantees protection to the 50-year existing LMR flow regime below McCloud Reservoir Diversion Dam (MRDD); which has been historically monitored at stream gauge MC-1 above AhDiNa campground.

The USFS's Flow Rule and the federal, FERC NEPA process is again proposing, as it has in the past twenty years of FERC CA relicensings, to over-compensate "Other Uses" of the (our) natural resources; the most recent example being Pit Project 233. While on the other hand, understating and ignoring its other responsibility for the "Economic Impacts" that result from the USFS's mandating flow changes to the FERC by means of its Federal Power Act authority. AHR believes this is an obvious misappropriation of authority in that it usurps the FERC of authority in its' mandated purpose in relicensings to a) maximize the production of hydropower, and b) provide protection to electric ratepayers; ex. the Electric Consumers Protection Act, ref. first three paragraphs, page 13, AHR "Response".

With respect for "Other Users" of our resources, AHR suggests and requests the SWB review AHR's "Response", "Habitat Protection, Power Production & Beneficial Use Policy", beginning with the last paragraph on page 12 through the second paragraph on page 16, which provides factual information on the declining population of whitewater kayakers (only flat-water use has increased slightly); the declining usage of artificially created whitewater flows in CA; the cost impacts to electric ratepayers; and the dangers associated not only to aquatic habitat and the fisheries they support, but to the gross majority of lesser experienced kayakers (ex. fatalities on the North Fork Feather, P-1962) who in total make-up a tiny 0.4% of the population as compared to the 21.7% of freshwater anglers.

Licensed fee paying anglers have for the past twenty years been losing opportunities for walk and wade angling mainly as a result of hydropower relicensings. While at the same time, the infinitesimal smaller group of unlicensed non-fee paying kayakers have had their opportunities grow exponentially through millions, possibly billions of dollars in costs unknowingly paid by electric ratepayers through the FERC relicensing process. As referenced in AHR's "Response", "Habitat Protection, Power Production & Beneficial Use Policy", beginning with the second paragraph on page 15 through the second paragraph on page 16; and the second paragraph in the section "Boating Ban" on page 16.

² See AHR "Response", "MRK Flow Proposal", last paragraph page 3; and, "Habitat Protection, Power Production & Beneficial Use Policy", beginning with the first paragraph on page 13 through the first paragraph on page 14, and from the second paragraph on page 15 through 16.

³ See AHR "Response", "MRK Flow Proposal", beginning with the 2nd paragraph on page 4 through page 8.

The AHR believes that the SWB must address and comply with the intent of the CA WSRA in its CEQA process and Clean Water Act consideration of section 401 Water Quality Certification. The currently proposed USFS Flow Rule is in direct conflict with CA PRC 5093.542 (e), “..... if the operation of the facility *does not alter the existing flow regime* below the dam”, and therefore must be denied SWB 401 Water Quality Certification.

AHR respectfully requests that the SWB review and consider the AHR’s Flow Proposal (FP) dated 8-5-10. AHR believes our proposed FP accomplishes all that is required to protect the near-perfect aquatic habit and fishery of the world-renowned LMR and the world’s most widely distributed, species-specific native rainbow trout which goes to the core of the cause and intent of the CA legislature’s inclusion of the 50-year existing flow regime in CA’s Wild & Scenic Rivers Act in 1989.

Primarily from the collaborative relicensing process, AHR’s FP does include the possibility of minor additional regulated releases from MRDD only during the months of December to May, based upon natural accretion volume below MRDD to Hawkins Creek. As detailed in footnote 2, page 2 of AHR’s FP. Based upon 33 years of average accretion the minor releases would amount to 18cfs to 60cfs during the winter to early spring. As fully explained in FP footnote 4, pages 2 and 3, this minor speculative (benefit to risk) proposal, if implemented and tested, needs be studied for results in the LMR’s reach from MRDD to Hawkins Creek. AHR proposes a study group that would measure the results of native rainbow spawning below MRDD and this minor regulated increase would be terminated absent a significant measurable outcome.

Please be advised that the AHR will pursue legal recourse to defend and up-hold the purpose and intent of PRC 5093.542 (a-e) for the protection of the LMR’s aquatic habitat and fishery, fishers and electric ratepayers.

Very truly yours,

Dennis Amato
Director, Anglers for Hydropower Reform

PS: Please include Brian Momen, bmomsen@pacific.net and Douglas R. McFadyen dmcfadyen@shearman.com in any related future correspondence with AHR.

Cc:
Brian Momen, Partner, Carter & Momen
Charles R. Hoppin, Chairman SWB
Douglas R. McFadyen, Partner, Shearman & Sterling
Erin Ragazzi, Certification Program Manager SWB
Nancy Aquino
Thomas Howard, Executive Director SWB

