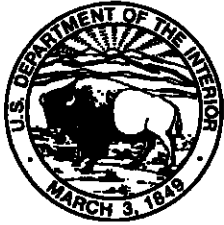


ORIGINAL

United States Department of the Interior

FISH AND WILDLIFE SERVICE
 Sacramento Fish and Wildlife Office
 2800 Cottage Way, Room W-2605
 Sacramento, California 95825-1846



In Reply Refer To:
 81420-2008-I-1103-2

DEC 17 2009

Ms. Kimberly D. Bose, Secretary
 Federal Energy Regulatory Commission
 888 First Street, N.E.
 Washington, D.C. 20426

FILED
 SECRETARY OF THE
 COMMISSION
 2009 DEC 18 A 10:29
 FEDERAL ENERGY
 REGULATORY COMMISSION

**Subject: Lapse in Incidental Take Authorization for the Pit 1 Hydroelectric Project
 FERC Project No. 2687, Shasta County, California**

Dear Ms. Bose:

This letter is to inform the Federal Energy Regulatory Commission (FERC) of two issues associated with project operations for Pacific Gas and Electric's (PG&E) Pit 1 Hydroelectric Project, FERC Project No. 2687, that require immediate reinitiation of Endangered Species Act section 7 consultation with the U.S. Fish and Wildlife Service (Service) for incidental take of federally endangered Shasta crayfish (*Pacifastacus fortis*). This letter is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. §1531 *et. seq.*)(Act), and the regulations governing interagency consultations (50 CFR § 402).

The FERC License and the 401 Certification for the Pit 1 Hydroelectric Project require that PG&E release flushing flows in the summer period; it is the Service's opinion that these flows are adversely affecting Shasta crayfish and their habitat. The effects of the flushing flows were not analyzed in the October 24, 2004, biological opinion for the Pit 1 Hydroelectric Project (Service File No. 1-1-00-F-0210) and appropriate take authorization has not been obtained for this action. Accordingly, the Service would like to request a modification to the FERC license to retract this requirement, and to suspend all flushing flows.

In addition, the Service's Incidental Take Statement issued in the October 24, 2004, biological opinion has expired. The Service and PG&E have been working collaboratively and in close coordination with the Shasta Crayfish Technical Review Committee (TRC) to prevent adverse affects to the species, including work on issues such as nonnative crayfish barriers. However, it has recently come to our attention there is no authorized incidental take for the Shasta crayfish for this project, excluding the consultations for the Upper Fall River Crayfish Barrier Plan (Service File No. 1-1-07-F-0206 and 1-1-07-F-0333).

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Ms. Kimberly D. Bose, Secretary

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Our biological opinion addressed the potential adverse effects of the project on the Shasta crayfish. Permanent loss of suitable habitat was not authorized and the effects analyzed were to be temporary in nature. We issued a three-year interim incidental take authorization for the Shasta crayfish to be treated as a "programmatic" consultation. Subsequent incidental take for the project and associated activities was to have been authorized in tiered consultations with FERC and PG&E as additional information became available. The incidental take authorization for this Project expired in 2007. To date, only the invasive crayfish barrier activity has received additional incidental take authorization (Upper Fall River Crayfish Barrier Plan (Service File No. 1-1-07-F-0206 and 1-1-07-F-0333)).

On May 19, 2009, we issued the enclosed letter to you and the California State Water Resources Control Board (CSWRCB) discussing our concerns regarding the effects of the summer flushing flows on coldwater refugia in the Pit 1 bypass reach and requested a cessation of these flows. Article 401 of the license and Condition 13 of the State Water Resources Control Board 401 Water Quality Certification require that flushing flows occur three times a year annually during the summer months. The flushing flows have been shown to immediately reduce/remove coldwater habitat and change the day-to-night water temperature fluctuation (Spring Rivers Ecological Sciences LLC 2009a). PG&E, the licensee, has been implementing these summer flushing flows annually since 2003.

The CSWRCB responded to our letter stating their belief that the declines in Shasta crayfish are due to invasive crayfish, not the flushing flows, and additional species monitoring should be conducted. The Service does not concur with their assertion. We believe that the flushing flows are reducing/eliminating coldwater habitat for the Shasta crayfish and providing beneficial habitat for the competitor/predator signal and fantail crayfish (Spring Rivers Ecological Sciences LLC 2009a, 2009b). Enclosed is the Spring Rivers Ecological Sciences LLC letter to the Service responding to the CSWRCB request for additional surveys. Maria J. Ellis, Ph.D. of Spring Rivers Ecological Sciences LLC is a specialist in Shasta crayfish.

The Shasta crayfish is a species at risk of extinction. The Service's August 2009, 5-Year Review discusses the decline in observed numbers of Shasta crayfish, the increase of competitor/predator non-native crayfish species, and the water flow regime change in both the Pit River and Hat Creek systems that alter the water temperatures and favor non-native crayfish. These adverse effects have been identified by the TRC, the Shasta Crayfish Recovery Team, the species expert, and the May 2009, report commissioned by PG&E entitled "A Biological Evaluation of Thermal Effects from Summer Flushing/Whitewater Flows on Spring-influenced Aquatic Habitat in the Pit 1 Bypass Reach." This report was provided to the CSWRCB on May 11, 2009.

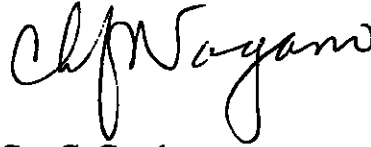
We believe that the reoccurring flushing flows likely are resulting in take and are facilitating the decline of the critically endangered Shasta crayfish in the Pit 1 bypass reach. Therefore, pursuant to 50 CFR 402, we request FERC temporarily cease the summer flushing flow releases that may be the cause of unauthorized take of Shasta crayfish and immediately and without delay reinstate formal consultation for operations of Pit 1 Hydroelectric Project.

Ms. Kimberly D. Bose, Secretary

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Please address any questions or concerns regarding this request to Kim Squires, Senior Endangered Species Biologist or Arnold Roessler, Forest and Foothills Branch Chief, (916) 414-6600.

Sincerely,



Cay C. Goude
Assistant Field Supervisor

Enclosures

cc:

FERC Project 2687 Service List

Dorothy Rice, California State Water Resources Control Board, Sacramento, California

Victoria Whitney, California State Water Resources Control Board, Sacramento, California

Ms. Kimberly D. Bose, Secretary

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Literature Cited

- Spring Rivers Ecological Sciences LLC. 2009a. A Biological Evaluation of Thermal Effects from Summer Flushing/Whitewater Flows on Spring-influenced Aquatic Habitat in the Pit 1 Bypass Reach. Prepared for Pacific Gas and Electric Company Environmental Services, San Ramon, California. May 2009. 43 pages.**
- Spring Rivers Ecological Sciences LLC. 2009b. Shasta Crayfish Technical Review Committee Summary Report. Prepared for Pacific Gas and Electric Company Environmental Services, San Ramon, California. May 2009.**

**BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

CERTIFICATE OF SERVICE

I hereby certify that the U.S. Fish and Wildlife Service, regarding the Lapse in Incidental Take Authorization for the Pit 1 Hydroelectric Project FERC Project No. 2687, Shasta County, California, FERC Project Number 2687, Shasta County, California, has this day been sent by Federal Express overnight service for filing with the Federal Energy Regulatory Commission and served, via deposit in U.S. mail, first-class postage paid, upon each person designated on the service list for Project No. 2687 compiled by the Commission Secretary.

Dated at Sacramento, California, this 17th of December 2009

Eileen Lopez
Name: Eileen Lopez
Office Assistant
US Fish and Wildlife Service
2800 Cottage Way, Rm.W-2605
Sacramento, CA 95825
(916) 414-6600

**FILED
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