

**WATER AND POWER
LAW GROUP PC**

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July 17, 2017

By Electronic Mail

Nathan Fisch
Water Quality Certification Program
Division of Water Rights
State Water Resources Control Board
P.O. Box 2000
Sacramento, CA 95812-2000
Nathan.Fisch@waterboards.ca.gov

Re: **Pacific Gas and Electric Company, Poe Project (FERC P-2107) – Draft Water Quality Certification**

Dear Mr. Fisch:

On behalf of Butte County, we comment on this draft water quality certification in response to the June 14, 2017 notice.

The project occupies lands and waters of the North Fork Feather River within the County. This river is one of the County's most valuable natural resources. As a result, the County has a direct and substantial interest in assuring that the new license, including the water quality certification, provides reasonable protection for all beneficial uses of these waters. Among other things, the County seeks to assure that the new license contributes to substantial betterment of recreational use, which has been limited by Project operations under the original license, including the minimum flow schedule of 50 cubic feet per second (cfs). The County has actively participated in the relicensing proceeding and related stakeholder discussions since 2002.

We generally support the conditions in the draft certification. The conditions will substantially improve baseline water quality in the project reaches. That said, we request that the State Water Board publish a revised draft certification that addresses the following comments.

RATIONALE

1. The State Water Board has not issued an environmental document under the California Environmental Quality Act (CEQA) in this proceeding. We request that you prepare such a document and publish it for public comment, so that parties may review and respond to the factual findings that are the basis for the certification.

As you know, such a document is a required basis for the final action. An Initial Study is a necessary next step. See 14 C.C.R. §§15060, 15070. There is no applicable categorical exemption under CEQA. And the State Water Board may not exclusively rely on the Final Environmental Assessment (2007) published by Federal Energy Regulatory Commission (FERC) in the relicensing proceeding. That document is a decade old, did not expressly analyze compliance with California's water quality objectives, and did not address the cumulative impacts of PG&E's hydropower system (P-2105, P-1962, and P-2107) on those objectives as required by CEQA. See SWRCB, "Comments on Draft Environmental Assessment Document" (September 15, 2006); and Butte County and American Whitewater, "Amended Comments on Draft Environmental Assessment" (September 19, 2006).

2. The State Water Board should disclose your schedule for completing the Environmental Impact Report for water quality certification for the North Fork Feather Project (P-2105). If you intend to publish that EIR after the final action in this proceeding, we request that the CEQA document in this proceeding specifically address the cumulative impacts of PG&E's hydropower system on the water quality conditions in the Poe reaches.

3. We request that an expanded Rationale or CEQA document demonstrate how the conditions will comply with applicable water quality objectives. We request that you respond to specific comments on factual issues that have arisen in this proceeding.

Section 3.1. The Rationale concludes that the flow schedule in Condition 1 will "lower" water temperature relative to the original license. See p. 5. That is undoubtedly true. But the Rationale does not estimate resulting water temperatures (expressed as averages, ranges, or frequencies) and does not attempt to demonstrate that the project will comply with applicable objectives, including the designation as coldwater habitat, the listing of the reach as impaired due to high water temperatures, and the Water Quality Control Plan's requirement that the new license not increase receiving water temperature by more than 5 degrees Fahrenheit at any time. The Rationale does not address the cumulative impacts of PG&E's hydropower system on water temperature in the Project reaches. For prior analysis of this issue, see memo by Robert Hughes (California Department of Fish and Game) and Elizabeth Lawson (SWRCB), "PG&E Poe Project Temperature Modeling" (September 5, 2006), attached as Exhibit 1 to Butte County's "Amended Comments on Draft Environmental Assessment," *supra*; California Sportfishing Protection Alliance, "Comments on the Draft Environmental Impact Report for the North Fork Feather Project" (March 26, 2015).

Sections 3.2 – 3.3. The Rationale concludes that climate change has the potential to affect hydrology and water temperature in the Project reaches. See p. 5. We agree. However, it does not provide your analysis of such impacts or potential mitigation.

Section 3.5. The Rationale concludes that the ramping rates in Condition 5 will protect foothill yellow-legged frog (FYLF). It cites to general studies regarding scouring and stranding

of egg masses, impacts of water velocity on breeding and rearing, and other impacts of peaking operations. See p. 6. It cites to more specific studies done for the Rock Creek-Cresta Project. See p. 7. However, it does not provide your analysis demonstrating that these specific ramping rates will adequately mitigate those impacts.

Section 3.6. The Rationale finds that Condition 6 (in concert with Condition 5) will result in more recreational use of the Project reaches. See p. 7. We agree. However, the Rationale does not estimate how many days of suitable flows will be available. As a result, it does not demonstrate the extent of mitigation of Project impacts on such use.

Section 3.8. The Rationale projects a 75 to 100% increase in recreational use under the new license, citing to PG&E's 2003 license application. See p. 7. That estimate reflects PG&E's proposed flow schedule of 150 cfs, which is less than the minimum for navigability. Butte County has submitted expert evidence that recreational use will increase substantially more than that estimate, under a higher and more stable flow schedule. See Declaration of David Steindorf, Exhibit 5 to Butte County, "Amended Comments on Draft Environmental Assessment," *supra*. We also submitted evidence estimating the economic value of such recreation relative to any reduction in power generation. See Declarations of Chuck Watson (Attachment 3) and Jeffrey Payne (Attachment 6), in Butte County, "Recommended Conditions for a New License" (April 2005).

Section 3.8.2. The Rationale does not address PG&E's use of Bardee's Bar Road for maintenance of the Poe Powerhouse, including surface wear and erosion run-off. We note that Figure 2 does correctly describe this as the access road. See Declaration of Shawn O'Brien, Exhibit 17 to Butte County's "Amended Comments on Draft Environmental Assessment," *supra*.

Section 3.8.3. The Rationale does not address the continuing adverse impacts of Big Bend Dam on water quality and fish passage. See SWRCB, "Comments on the Supplement to First-Stage Consultation Package" (March 12, 2003).

Section 3.9 – 3.10. The Rationale discusses the need for monitoring to determine the water temperature impacts of increased minimum flows in PG&E's hydropower system. Even given the benefit of such post-licensing monitoring, we do not understand why the Rationale does not apply an available model to predict the water temperature impacts in Project reaches, as the basis for the certification decision. See "PG&E Poe Project Temperature Modeling," *supra*.

4. We request that the amended Rationale or CEQA document address the specific recommendations for certification conditions, as filed since this proceeding began in 2005. The Rationale covers some recommendations but does not address others, including: (1) construction of a new trail from Bardee's Bar to Poe Beach; (2) further upgrades of recreational facilities, such as picnic tables, if actual usage of Project reaches under the new flow schedule exceeds the capacity of the available facilities; (3) repair and maintenance of Bardee's Bar Road; (4) funding for law enforcement related to increased recreation in the Project reaches; (5) mitigation of the

impacts of Big Bend Dam; and (6) establishment of the North Fork Enhancement Fund to support off-site mitigation of otherwise unmitigated Project impacts. See generally, Butte County and American Whitewater, “Proposed Conditions for the Poe Project” (August 2, 2013) and “Proposed Non-Flow Recreation Measures” (October 18, 2013); “Recommended Conditions for a New License,” *supra*.

CONDITIONS

We generally support the certification conditions, which will substantially improve the baseline conditions of the Project reaches for designated beneficial uses, including recreation. We recommend changes, as follows.

Condition 3. We request that the condition be amended to include Butte County in the consultation regarding any variance, which will directly affect the County’s interests, including recreation. We request that the condition be amended to specify the potential grounds for variance (e.g., infeasibility of compliance with minimum flow schedule). The draft is open-ended as to such potential grounds.

Condition 5. We request that the condition be amended to include Butte County in the consultation regarding any potential modification of the ramping rates. Any such modification will affect the County’s interests, including recreation. Such consultation will address policy issues (what is “appropriate” to balance multiple beneficial uses), in addition to the technical issues related to protection of FYLF.

Condition 6. We request that the certification be amended to confirm that flow releases from Poe Dam for recreation, and controllable spills associated with power operations under Condition 5, will be subject to the same requirements for protection of FYLF. This draft could be read to suggest that the Recreation Technical Review Group may recommend different ramping requirements than stated in Condition 5, or even recommend against any recreational flow releases during the FYLF spawning window.

Condition 8. We request that the condition be amended to provide that actual recreational use may trigger upgrades of appropriate recreational facilities, not just sanitation facilities. We further request that you amend subsections 8.1 – 8.3 to include measures discussed under Comment 4.

Condition 10. We request that the condition be amended to include the County in the consultation regarding any modification of the minimum instream flows required by Condition 1.

Condition 14. As discussed under Comment 4, we request that this condition be amended to address the erosion from Bardee’s Bar Road that results from Project uses, including PG&E’s use of heavy trucks for maintenance of Poe Powerhouse.

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We see promise in the proposal by California Sportfishing Protection Alliance and American Whitewater that the State Water Board convene a workshop to address disputed factual issues and options for resolving them. We recommend a broader scope than Condition 5.1. In any event, we are confident that the issues raised above are resolvable in an expeditious and efficient manner, in light of the extensive record in this proceeding, the available models, and the helpful stakeholder discussions over the past decade.

Thank you for considering these comments.

Respectfully submitted,

Bruce Alpert
Butte County Counsel



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Cc: Service list, P-2107