

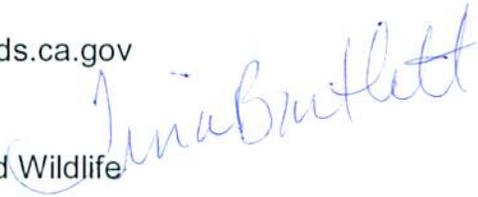
State of California  
Department of Fish and Wildlife

## Memorandum

Date: July 26, 2017

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From: Tina Bartlett, Regional Manager  
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Subject: COMMENTS ON DRAFT WATER QUALITY CERTIFICATION, POE  
HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION  
PROJECT NO. 2107, NORTH FORK FEATHER RIVER, BUTTE COUNTY

The California Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Draft Water Quality Certification (DWQC) for the Pacific Gas and Electric Company (PG&E) Poe Hydroelectric Project (Project) operating under the existing Federal Energy Regulatory Commission (FERC) License No. 2107, on the North Fork Feather River (NFFR), in Butte County. The Department was an active participant in relicensing proceedings for this Project and has an extensive history addressing natural resources issues associated with the NFFR watershed. This history includes substantial involvement in relicensing as well as post-license implementation and monitoring of other PG&E projects in the NFFR watershed.

The Department largely supports the conditions in the DWQC, and feels that these conditions should significantly improve aquatic habitat in the reach below Poe Dam. However, we request that the State Water Resources Control Board (Board) consider the following comments in the final Water Quality Certification for this Project:

### California Endangered Species Act

Subsequent to the release of the DWQC, the California Endangered Species Act (CESA) status of the foothill yellow-legged frog (*Rana boylei*) (FYLF) changed, as noted below:

On June 27, 2017, the California Fish and Game Commission (Commission) published a Notice of Findings regarding FYLF and accepted for consideration a petition from the Center for Biological Diversity to list this species as threatened under the CESA. Simultaneously, the Commission also provided notice that the FYLF is now a candidate species as defined by Section 2068 of the Fish and Game Code. Within one year of the date of publication of the notice of findings, the Department will submit a written report, pursuant to Section 2074.6 of the Fish and Game Code, indicating whether the petitioned action is warranted. Until the Department makes a final decision, candidates for listing under CESA are afforded the same protections as listed species; therefore, the FYLF will currently be treated as Threatened under CESA.

A CESA (FGC §2081(b)) permit should be obtained by the Licensee if the Project has the potential to result in incidental take of species of plants or animals listed under CESA, either during any construction, or over the life of the Project. Issuance of a CESA permit is subject to the California Environmental Quality Act (CEQA) documentation; therefore, the Department requests that the CEQA document for this Project evaluate activities that may result in direct or indirect incidental take, identify measures to avoid and minimize take, identify measures to fully mitigate the take, and include a mitigation monitoring and reporting program. A CESA permit may only be obtained if the impacts of the authorized take of the species is minimized and fully mitigated and adequate funding has been ensured to implement the mitigation measures. The Department may only issue a CESA permit if the Department determines that issuance of the permit does not jeopardize the continued existence of the species. The Department will make this determination based on the best scientific information available, and shall include consideration of the species' capability to survive and reproduce, including the species known population trends and known threats to the species.

## **Comments on Draft Water Quality Certification Conditions**

### Condition 2

Condition 2 states in part:

*"...it may be necessary to revise water year types during the life of the license. After consultation with the State Water Board, Forest Service, and CDFW, the Licensee may submit ... a request to modify how water year types are defined (Water Year Modification)."*

The rationale for Condition 2 (Section 3.2 Water Year Types) indicates that this necessity may come about due to climate change, and that a "*modification of water year types may result in modification of instream flows.*" The Department feels that there should be an open, public process for modifying water year type thresholds. If the

Licensee determines that there is a need to revise water year types at some point during the life of the license, the Department recommends that the Licensee set up a committee or workshop and have a collaborative discussion with all interested parties to discuss this license amendment – particularly since instream flow requirements may be affected.

#### Condition 4

Condition 4 indicates that the following is a requirement of the Licensee implementing pulse flows:

*“Pulse flows shall also not take place if rainbow trout spawning in the Poe bypass reach is observed and reported to the Licensee by CDFW or Forest Service.”*

Department and FS personnel may or may not be present in the reach prior to a pulse flow. The Department recommends that the Licensee conduct a redd survey immediately prior to any license required pulse flow. We also recommend that the Licensee be required to notify the Department and the Forest Service at least two weeks prior to the release of any Licensee generated pulse flow.

#### Condition 5

As noted above, since the Board released the DWQC for comment, the status of the FYLF has changed from a California Species of Special Concern to a Candidate for Listing under CESA with a concomitant change in take threshold. The Department appreciates the Board including this recession rate term in the DWQC for the protection of FYLF; however, to determine whether these terms are protective enough, the Department proposes to meet with the Board, the Forest Service and other interested parties prior to the issuance of the final WQC to discuss the details of Condition 5.

#### Condition 6

The DWQC states that a:

*“Recreation Technical Review Group (RTRG) will schedule whitewater recreational flows in the Poe bypass reach when biological monitoring indicates flows will not impact FYLF.”*

The Rock Creek – Cresta Ecological Resources Committee (ERC) has been discussing the issues of both recreational flows and FYLF with the interested parties for many years. These discussions have included FYLF studies in the Poe Reach; consequently, the Rock Creek - Cresta ERC has acted as a de facto operations discussion group for the Poe Project. The

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Department recommends that the Poe RTRG meetings be held concurrently with the Rock Creek – Cresta ERC meetings to reduce duplication of effort and make the best use of limited time.

### **Conclusion**

Thank you again for considering these comments. The Department looks forward to participating in any future discussions or workshops regarding this Project and to reviewing the forthcoming CEQA document. If you have any questions, please contact Laurie Hatton at (916) 358-2847 or [Laurie.Hatton@wildlife.ca.gov](mailto:Laurie.Hatton@wildlife.ca.gov).

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