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August 2, 2013

To: Peter Barnes

From: Nicholas Niiro

Cc: Bruce Alpert
Dave Steindorf
Richard Roos-Collins
Julie Gantenbein

Re: Butte County and American Whitewater's Proposed Conditions for the Poe Project (P-2107)

Butte County and American Whitewater (AW) have actively participated in the relicensing of Pacific Gas and Electric's (PG&E) Poe Project on the North Fork Feather River. Both intend to actively participate in the related Clean Water Act section 401 water quality certification proceeding before the State Water Board. In order to help prepare for the certification proceeding, we have summarized the County and AW's proposed conditions below.

The relicensing began in 2003. FERC's Office of Energy Projects (OEP) issued the final Environmental Assessment (EA) in 2007. The following proposed conditions are based on our comments on the draft EA, with some modifications based on the Forest Service's final mandatory conditions under Federal Power Act (FPA) section 4(e). We believe that the State Water Board has the authority to adopt all measures in our proposal under Clean Water Act section 401(a).

We attach the following documents filed by Butte County in the FERC docket¹: Butte County NREA Comments, eLibrary no. 20050411-5081 (Apr. 11, 2005) (Attachment 1); Amended Draft Environmental Assessment Comments, FERC eLibrary no. 20060919-5052 (Sept. 19, 2006) (Attachment 2); Butte County 10(j) Meeting Summary Comments, eLibrary no. 20070315-5052 (Mar. 15, 2007) (Attachment 3); and Comments on the Final 4(e) Conditions and Hearing Request, eLibrary no. 20070626-5040 (June 26, 2007) (Attachment 4).

¹ We served these documents on the State Water Board, but we are unsure which are in the Board's docket.

I. Flows

A. Minimum Flows

We have proposed the following minimum flow schedule,² which is consistent with the U.S. Forest Service’s FPA section 4(e) conditions:

Release from Poe Dam				
Month	Water Year			
	Wet	Normal	Dry	Critically Dry
October	250	250	180	180
November	275	275	180	180
December	300	300	180	180
January	325	300	180	180
February	350	325	225	225
March	350	350	300	300
April	400	400	325	300
May	500	400	350	300
June	500	400	350	300
July	500	400	350	300
August	500	400	350	300
September	400	350	300	250

B. Recreational Flows

The County and AW requested recreational flows in addition to the minimum flows.

- Flow releases will occur one weekend per month in July, August, September, and October.
- A test period of flow releases (not less than 600 cfs) and volume (not more or less than 4000 acre-feet per year, including ramping) will occur. Forest Service will determine the length of the test period.
- Site-specific studies will be conducted to monitor and assess impacts to FYLF tadpoles resulting from: (A) this boating schedule and (B) Project flow fluctuations. The study protocols will be developed by the resource agencies, in consultation with PG&E, the County, and American Whitewater.
- Given that these flows are far below flows recommended in the Poe Whitewater Flow Study included in the New License Application, the Forest Service will monitor these releases, in consultation with the County and American Whitewater, to determine the acceptability of these initial flow levels for whitewater recreation.

² We made a lower minimum flow recommendation in our DEA Comments but supported the Forest Service’s recommendations in our Comments on the Final 4(e) Conditions.

- The above flow schedule is subject to amendment by: (A) agreement between the resource agencies, the County, and American Whitewater and (B) any necessary license amendment.³

The Forest Service did not adopt the County and AW's recommendations. It required the following recreational flow conditions under its Federal Power Act 4(e) authority:

Licensee shall provide 6,000 acre-feet of water annually during Normal and Wet water years for the purpose of providing recreational boating flows in the Poe reach. These flows shall only be provided at times in which there are no adverse effects on biota in the Poe reach. For the protection of Foothill Yellow-Legged Frogs (FYLF) and macroinvertebrate populations, recreational boating flows from onset of FYLF breeding through metamorph emigration from the Poe main channel may not cause more than a 0.2 foot stage change (approximately 100 cfs). The annual amount of 6,000 acre-feet may be accumulated over time if not released. The accumulated amount can be released in Normal or Wet water years as a supplement to the instream flow requirement if the augmented flows would not affect existing agreements for reservoir water level management in the Upper North Fork Feather River Watershed.

Recreation river flow releases at Poe Dam and measured at NF-23 shall occur in general between the hours of 10 AM and 4 PM or as agreed. Modifications to the recreation flow protocols may be modified if other methods or timeframes are jointly determined to be more appropriate by the Licensee, Forest Service, and other interested governmental agencies.⁴

C. Downramping

The Forest Service developed spill cessation and flow fluctuation measures that factor in FYLF in its Draft 4(e) Conditions for the Drum-Spaulding (P-2310) and Yuba-Bear (P-2266) Hydroelectric Projects.⁵ The Forest Service explains how it structures downramping from spring high-flow releases or spills that builds a "natural recession" based on the flow starting point, rate of change, targeting at least a three-week recession, averaging 8% to 10% per day, and allowing flow steps to be no more than two to three days long, but not exceeding a 20% to 25% decrease on any single flow step down. It evaluates: project operational and safety constraints to determine how many steps and how long the steps could be while still mimicking the natural recession pattern; water depth (stage) change downstream of the dam at known frog breeding sites to confirm that the threshold of "1 foot of stage decrease over 3 week period" is not exceeded; and how to optimize recreational boating opportunities during recession periods.

³ Amended Draft EA Comments at 29.

⁴ Forest Service Final 4(e) Conditions, eLibrary no. 20070528-5003, p. 20.

⁵ Draft Rationale Report for Preliminary License Conditions and Recommendations, eLibrary no. 20120731-5124 (July 27, 2012) (Attachment 5), pp. 271-72.

The Forest Service issued its Final 4(e) conditions in the Poe Project before new information regarding FYLF sensitivity to downramping became available.⁶ Its Final 4(e) conditions recommend three different downramping rates depending on various conditions, roughly 1.0 to 0.5 feet per hour. However, the Forest Service has been supportive of more gradual downramping rates, as discussed above, in other relicensing proceedings. The State Water Board, Forest Service, OEP, and parties should consider the new evidence, which bears on power operations as well as environmental and recreational flows.

II. Non-Flow Conditions

In addition to flow improvements, we have proposed the following capital improvements to protect and enhance recreation at the project. OEP has recommended these improvements, which we support:

- Prepare a recreation management plan for State Water Board and Commission approval
- Conduct a feasibility study on improving an existing abandoned trail between Bardee's Bar and the Poe powerhouse road, and compare the results of this study with the information provided in PG&E's September 2006 feasibility report on modifying the abandoned construction road for use as a trail, and based on the results of the study, develop an all-weather hiking trail in one of the two locations;
- Implement measures to improve and protect public access for angling, such as additional public parking, public rest rooms, and public hiking trails to allow anglers to safely access the NFFR; and
- Provide stream flow information from gage NF23 to the public via a toll-free phone number and/or via the Internet.⁷

We proposed other measures, which OEP has not recommended.⁸ These measures are necessary to mitigate project impacts on recreation, and to otherwise protect and enhance recreational use at the project:

Management

- Forming a recreation committee whose focus is solely on the Poe Project.
- Establishing and maintaining a cooperative program for management of recreational use, law enforcement, and emergency communication at the Poe Project.

⁶ See California Sportfishing Protection Alliance and American Whitewater Comment Letter (July 29, 2011) (Attachment 6).

⁷ Final Environmental Assessment, eLibrary no. 20070329-3045, pp. 248-49.

⁸ *Id.* at 251-52.

Recreational Facilities

- Providing recreational enhancements at Sandy Beach in addition to those proposed by PG&E, including a second restroom, as specified by the Forest Service in its preliminary section 4(e) condition no. 29E, improved road signage on Highway 70, and an extended traffic barrier along north side of Highway 70 into access road alignment to prevent right turns onto westbound Highway 70.
- Providing recreational enhancements at Bardee’s Bar in addition to those proposed by PG&E, including additional picnic tables and fire rings, and road maintenance as necessary.
- Providing recreational enhancements at Poe Beach in addition to those proposed by PG&E, including a trail along the east side of the NFFR channel and directional signs for boaters.
- Providing recreational enhancements at the Poe powerhouse in addition to those proposed by PG&E, including additional parking and a trail on the east side of the NFFR.
- Providing recreational flow releases in the Poe bypassed reach.
- Constructing and maintaining recreational facilities in the vicinity of the Cresta powerhouse, as proposed by PG&E and recommended by the Forest Service in its preliminary section 10(a) recommendation no. 29D.
- Constructing and maintaining a 3-mile-long trail between Bardee’s Bar and Poe Beach.

Debris Removal

- Inventorying and removing any debris in the project reach that is a risk to public health and safety in cooperation with Caltrans and Union Pacific.

Funding

- Providing annual funding to the Forest Service for a river ranger position, as specified in its preliminary section 4(e) condition no. 30.
- Providing a one-time contribution of seed money to a government agency or non- profit organization for possible development of a visitor center in the Feather River canyon, as recommended by PG&E and the Forest Service in its preliminary section 10(a) recommendation no. 29H.
- Establishing and funding a Recreation Account as part of a “North Fork Feather Enhancement Fund” to be used for enhancement of river recreation in the Feather River Basin and elsewhere in Butte County, as offsite mitigation for otherwise unmitigated impacts.⁹

⁹ Without recreational flows, the Project would reduce by more than 90% the frequency of boatable days. See NREA Comments at 19.