



April 22, 2014

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

Sent via e-mail to: jeff.parks@waterboards.ca.gov

Re: Middle Fork Stanislaus River Supplemental Flows Variance (part of the Spring Gap-Stanislaus and the Beardsley/Donnells Hydroelectric Projects)

Dear Mr. Parks,

American Whitewater, California Sportfishing Protection Alliance and Trout Unlimited (Conservation Groups) write to provide comment on the State Water Resources Control Board's (SWRCB) April 4, 2014 notice of PG&E and Tri-Dam Project's (Licensees) request for a variance from supplemental spring and recreational boating flow conditions outlined in the 401 Water Quality Certification for PG&E's Spring Gap-Stanislaus (FERC # P-2130) and Tri-Dam Project's Beardsley/Donnells (FERC # P-2005) Hydroelectric Projects. Licensees' variance request is insufficient to determine whether cancelling supplemental and recreational flows is warranted. Additionally, licensees raise issues regarding Foothill Yellow-legged Frogs (FYLFs) that are inappropriate for a variance request and are better suited for a license amendment.

The Variance Request Provides Insufficient Hydrologic Information

In a March 11, 2014 letter to the Federal Energy Regulatory Commission (FERC), the SWRCB outlined their criteria for drought-related amendments to hydropower licenses. This information includes 1) the quantity of water that is expected to be saved for later use that would not be available without the change; 2) the location where the saved water will ultimately be used; and 3) the purpose for which the saved water will be used. Licensees state that the variance is needed to continue to provide instream flows for the 2014 water year, plan for the 2015 water year, and supply benefits to the FYLF. However, licensees fail to provide relevant hydrologic information to support their request.

For example, the variance request fails to describe what type of water year it is and outline the relevant flow schedule. It only outlines the supplemental flow schedule for a Dry year, if it had been implemented. While it is our understanding that this is a Dry

water year, PG&E should provide the threshold requirements and the projected run off to confirm the water year. PG&E's April 23, 2010 *Initial Water Temperature Trigger Recommendation for Implementing Supplemental Flows*¹ describes the conditions for supplemental flows in years that Beardsley Reservoir is not forecast to spill. In Dry years, the supplemental flow period is to last thirteen weeks, with the peak flow in week eight. The document recommends that supplemental flows either be initiated when the mean daily water temperature at Sand Bar Diversion Dam is greater than or equal to 5 °C for six continuous days, or on March 13th if the temperature trigger has not yet been met. The variance request and the SWRCB's notice do not specify whether the temperature threshold (5 °C for six continuous days) was met before the March 13th trigger date, and if it was, when that occurred. Licensees' variance request should contain this information. Further, if the temperature trigger was met before March 13th, we urge the Water Board to question why the supplemental flows were not implemented at this time, or alternatively, why licensees failed to submit a variance request beforehand.

Licensees state that all "conserved water will be utilized for instream flow releases in the MFSR and for power generation purposes in the future." However, the variance request fails to provide any analysis of the amount of water that is required to meet minimum instream flows during the remainder of the water year, and whether there is sufficient water to meet these flows. Licensees fail to provide a description of and breakdown between the two purposes, and a description of how much of the conserved water is needed to maintain instream flows.

At the April 3rd meeting with resource agencies, licensees provided additional reasons for cancelling the recreation flows that were not outlined in their April 9, 2014 variance request. Licensees stated that there was insufficient head in Beardsley Reservoir to produce the minimum recreation streamflow of 500 cfs. The specifics of this inability to meet the recreation streamflow condition should be included in the variance request. Additionally, PG&E mentioned that there is no access to the put-in location to the river at Sand Bar Flat Dam due to construction activities. Although Conservation Groups note that this is not the only means of accessing the reach, and this is not a valid reason to cancel the recreation streamflow event, we believe that this should be part of the public record. Licensees should include it in their variance request.

The Variance Request Provides Insufficient FYLF Information

The SWRCB's April 4, 2014 notice states that PG&E has concerns that the dry conditions and warm water temperatures have allowed the FYLF to begin breeding, and that an increase in flows could scour egg masses. Licensees fail to clearly describe where the FYLF is found in the Project reaches. We note that the DEIS for the Beardsley/Donnells project stated that no FYLFs were observed in the Donnells Reach.² If new information is available and FYLFs have been found in this reach, or alternatively, if there is concern for FYLFs only in the Sand Flat reach, the variance request should

¹ PG&E. 2010. *Initial Water Temperature Trigger Recommendation for Implementing Supplemental Flows*. FERC Accession No. 20100423-5106.

² FERC. Draft Environmental Impact Statement for Hydropower Licenses, Stanislaus River Projects. 2004. At 182. FERC Accession No. 20040930-4017.

specify this. Further, PG&E and Tri-Dam do not contend that there is danger of imminent mortality of FYLF. The primary goal of providing the supplemental flow was to create conditions that mimic the natural hydrograph for the benefit of FYLFs and the entirety of the aquatic ecosystem.

In contrast to the rationale provided in the SWRCB's notice, Licensees' "Notification of Planned Deviation from License Requirements" on April 9th, 2014 states that supplemental flows decrease water temperatures, which can be less conducive to FYLF breeding and rearing. Licensees suggest that the variance will be beneficial for the FYLF because cancelling the supplemental flows will provide a prolonged opportunity for breeding and rearing.

A temporary variance order is an inappropriate venue for addressing Licensees' general concerns about water temperature, supplemental flows and their potential impact on FYLF. These complex issues should instead be raised in longer-term discussions with resource agencies, licensees and interested stakeholders. We believe that these conversations are timely, not only to discuss the issues raised in the variance request, but also because of new scientific information that has been published since the new license was implemented.³ Conservation groups have been working with resource agencies to restore the spring snowmelt recession on hydropower projects throughout California. At the April 3, 2014 Annual Consultation Meeting, we discussed the need to address all of the flow conditions in the Spring Gap-Stanislaus license that could affect FYLFs, and were happy to hear that Licensees are interested in engaging in these discussions this fall. We look forward to working together to ensure that the Spring Gap-Stanislaus and Beardsley/Donnells Hydroelectric Projects operate in a way that is protective of FYLF's and other important ecological needs for the Middle Fork Stanislaus River.

Conclusion

We support cancelling the supplemental and recreational flows on the Spring Gap-Stanislaus Project for the reasons outlined by the SWRCB—i.e. because of the ongoing drought and in order to protect potential FYLF egg masses that may have been prematurely laid during this year's abnormally dry spring. We also support this variance with the understanding that Licensees, agencies and other stakeholders will be developing improved temperature triggers for supplemental flows, and improved ramping rates (and potentially other flow measures) that will be more protective of FYLFs.

We recommend that the SWRCB require that Licensees redraft their request in order to describe 1) the quantity of water that is expected to be saved for later use that would not be available without the change; 2) the location where the saved water will ultimately be used; and 3) the purpose for which the saved water will be used (i.e. the terms outlined in the SWRCB's March 11, 2014 letter to FERC). Due to the complex nature of the projects, we also recommend that Licensees include an explanation of where the water will be stored during the variance period. A more complete variance request is important

³ Yarnell, S.M., Viers, J.H. and Mount, J.F. 2010. Ecology and Management of the Spring Snowmelt Recession. *BioScience* 60: 114-127.

not only to provide a clear rationale for the request at hand, but also to provide a clear record of the existing conditions should the Board need to consider variance requests in the future.

Sincerely,



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