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SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

MAY 01 2014

Mr. Richard Doble
Pacific Gas and Electric Company
P. O. Box 770000, Mail Code N11C
San Francisco, CA 94177

Mr. Ron Berry
Tri Dam Project
P.O. Box 1158
Pinecrest, CA 95364

Dear Mr. Doble and Mr. Berry:

RESPONSE TO REQUEST FOR SUPPLEMENTAL AND RECREATIONAL FLOW VARIANCES ON THE MIDDLE FORK STANISLAUS RIVER; SPRING GAP-STANISLAUS HYDROELECTRIC PROJECT AND BEARDSLEY/DONNELLS PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NOS. 2130 AND 2005; TUOLUMNE COUNTY

On April 4, 2014, the State Water Resources Control Board (State Water Board) provided public notice that Pacific Gas and Electric Company (PG&E) and Tri Dam Project (Tri Dam) had requested to forego the supplemental¹ and recreational² flows required by the water quality certifications (certifications) issued for the Spring Gap-Stanislaus Hydroelectric Project (Spring Gap Project; Federal Energy Regulatory Commission [FERC] Project No. 2130), and Beardsley/Donnells Hydroelectric Project (Beardsley Project; FERC Project No. 2005). The State Water Board received an initial request for the supplemental and recreational flows variance via email on March 6, 2014 from PG&E. PG&E and Tri Dam provided a draft joint request letter on March 28, 2014, and provided a final joint letter requesting the variance for both projects on April 10, 2014.³ Two comment letters were received within the 21-day notice period (i.e., by April 25, 2014).

Background

Condition 3 of the Spring Gap Project certification requires supplemental flows below the Sand Bar Diversion Dam on the Middle Fork Stanislaus River (MFSR), and states in part:

The Supplemental Flow period shall be 13 continuous weeks in length (seven weeks in Critically Dry water-years). For years in which Beardsley Reservoir is forecast to spill, the Licensee may initiate the Supplemental Flow period any time between March 1 and May 1 to best coincide with the period of spill (Date Trigger). For years in which Beardsley Reservoir is forecast not to spill, the Licensee shall initiate the Supplemental Flow period at a time between March 1 and May 1 so that the peak Supplemental Flow will occur approximately two weeks after the then-forecast peak inflow to Donnells Reservoir (Peak Flow Trigger).

¹ Supplemental flows are required to mitigate the effects the dams on the spring hydrograph of the Middle Fork Stanislaus River. In a natural system, spring snow-melt runoff generally produces a period characterized by increased flows followed by a gradual decline in flows.

² Only PG&E's certification contains the recreational flow condition. However, to satisfy the recreational flows PG&E relies on releases from the Beardsley Project, which normally coincide with the supplemental flow release.

³ PG&E and Tri Dam provided a draft request on March 28, 2014, and subsequently met with State Water Board staff on April 3, 2014 to discuss the supplemental flow conditions in their respective certifications. The State Water Board provided public notice based on the draft letter in order to meet the full 21-day comment period, as well as the request for action on the variance requests by May 1, 2014. The joint request letter received on April 10, 2014 did not substantially change the previous requests.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Condition 7 of the Beardsley Project certification contains similar language, requiring supplemental flows below Donnell's Reservoir on the MFSR. The certifications for each project also require a coordinated operations agreement between PG&E and Tri Dam, as the projects operate "in line" with each other on the MFSR. The Beardsley Project is upstream of the Sand Bar Diversion Dam. Similar to other reservoirs in California this water year, the Donnell's and Beardsley reservoirs have experienced reduced storage and inflow due to the extremely dry winter and spring. The Sand Bar Diversion Dam operates off of the flows received from Tri Dam operations, and has no independent storage capacity.

Condition 11 of the Spring Gap Project certification requires PG&E to provide a recreational flow event, if it has not occurred naturally, of between 700 and 2,000 cubic feet per second (cfs). This recreational flow must occur at the same time as the peak of the supplement flows. While the certification already allows PG&E relief from providing the recreation flows if unavailable from the Beardsley Project or with Deputy Director of Water Rights approval, the variance is being considered as part of this request due to the overlapping requirements and related efficiencies of providing one comprehensive response.

Discussion

Supplemental Flow:

The supplemental flow regime for both projects would require approximately 18,000 acre-feet (AF) of water to be released over a period of 13 weeks. This water would come from Donnell's Reservoir, which on April 27, 2014⁴ held approximately 43,000 AF of water (67 percent of capacity). The supplemental flows would require almost half of the water held in Donnell's Reservoir and approximately one-quarter of the combined water currently stored in both Donnell's and Beardsley reservoirs. During the April 3 meeting, Tri Dam staff stated that the water stored in their reservoirs would be generally held this year for hydropower production in late summer 2014. The Beardsley Project, combined with the Spring Gap Project's Spring Gap Powerhouse, represents a source of on-demand energy for the statewide electrical grid. PG&E and Tri Dam propose that the 18,000 AF of water that would be used for the supplemental and recreational flows would be more beneficial to the public if stored for power production later in the year, when other hydropower sources may be limited or unavailable due to the overall drought conditions in California.

Additionally, uncertainty about the 2014-2015 water year conditions has Tri Dam concerned about the carry-over storage at Beardsley Project reservoirs. The 18,000 AF of supplemental flow water may be beneficially stored in case of continued drought, ensuring that minimum instream flows in the MFSR are continuously satisfied, instead of using the water for a single event.

Another concern described in the request to forego the supplemental flow regime is the Foothill Yellow-legged Frog (FYLF) population located below the Sand Bar Diversion Dam. PG&E staff have identified that water temperatures have been warmer than average, and that breeding triggered by water temperature has likely already occurred below Sand Bar Diversion Dam. Increasing flows after egg masses have been laid has a high likelihood of scouring those egg masses, destroying the eggs. PG&E developed alternate flow schedules with reduced length and magnitude, which were discussed at the April 3 meeting. However, it was generally agreed at the meeting that even flow magnitudes lower than those otherwise required could have a potential detrimental effect to any FYLF egg masses present in the MFSR below Sand Bar Diversion Dam.

⁴ Data gathered from <http://cdec.water.ca.gov/>

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Recreation Flows:

For the recreation flows, Tri Dam stated at the April 3 meeting that the Beardsley Reservoir's water surface elevation is not high enough to provide the 700 cfs minimum required for a two-day event. Tri Dam staff estimated that the maximum release it could make at the time was 430 cfs. In addition to the water volume that would be retained in storage by forgoing the recreational flow, the Spring Gap Project certification states that PG&E does not have to provide the recreation flows if less than 600 cfs (100 cfs to keep Stanislaus Power Tunnel watered and 500 cfs absolute minimum boating flow) is available. As of April 27, 2014, Beardsley Reservoir water storage was at approximately 35% of capacity.

California Environmental Quality Act (CEQA):

The State Water Board has reviewed the proposed variance to both PG&E's and Tri Dam's certifications and has determined that the variance will not have a significant adverse effect and is categorically exempt from the requirements to prepare environmental documents under California Code of Regulations, title 14, section 15307 (Actions taken by Regulatory Agencies for Protection of Natural Resources). The variance will protect against potential harm to FYLF breeding in the MFSR. A Notice of Exemption has been prepared. The State Water Board will file the Notice of Exemption within five days of issuance of this approval.

Comments

The State Water Board received two comment letters in response to the notice posted on April 4, 2014. The first letter consisted of joint comments submitted by representatives of American Whitewater, California Sportfishing Protection Alliance, and Trout Unlimited (joint comment letter). The joint comment letter pointed out two main concerns: 1) the variance request provided insufficient hydrologic information; and 2) the variance request provided insufficient FYLF information. The joint comment letter supported the supplemental and recreational flow variance, but also pointed out that an entity applying for a variance needs to provide adequate information to fully evaluate both the probable effects of the action and to prove the need for the variance.

While the draft and final request letters may not have provided explicit information about the current hydrologic conditions, and the expected amount of water retained in storage if the variance was granted, State Water Board staff did obtain and consider such information in order to evaluate the requests. The joint comment letter requested that PG&E and Tri Dam resubmit their request letter with the appropriate information. The State Water Board recognizes and supports requests that provide complete information that allow for timely evaluation of the requests. However, the State Water Board was working to meet the May 1, 2014 timeframe requested by the licensees and chose to obtain and consider the information in order to facilitate timely action on the request.

The State Water Board appreciates that the joint comment letter references the March 11, 2014 letter to FERC, in which the State Water Board outlines information that should accompany requests for variances from FERC license conditions due to the California drought. The State Water Board will continue to look for the information requested in that letter when considering requests for variances from FERC license conditions.

The second comment letter was submitted by the California Department of Fish and Wildlife (CDFW). CDFW stated that it did not oppose foregoing the recreational flows, but that it recommended a reduced supplemental flow schedule in place of no supplemental flows in 2014. The reasoning

provided was that even in a critically dry year supplemental flows would provide an ecological benefit to the MFSR. State Water Board staff agrees that there is an ecological benefit in mimicking a natural hydrograph in dry years, but does not agree that the benefit of a reduced supplemental flow schedule outweighs the benefit of maximizing storage in Donnell's Reservoir in 2014. There are two main reasons State Water Board staff recommend suspension of the supplemental flows in 2014, as proposed, in addition to the FYLF concern stated above:

- 1) The watershed above the Beardsley Project has already experienced its peak snowmelt runoff due to warmer than normal air temperature conditions. One of the goals of the supplemental flows is to time them with the natural peak runoff, which has already occurred for this year. Additionally, the reach of the MFSR below Donnell's Reservoir has experienced a small natural increase in flows from smaller tributaries, which provides at least some of the benefits that would be associated with the supplemental flow release.
- 2) As the snowmelt has already occurred in the project areas, current reservoir storage is what can be expected for the remainder of the 2013-2014 water year. As explained in the Discussion section, there is a benefit to storing this water in Donnell's Reservoir for both instream flow releases throughout the remainder of the year and potentially 2015, and for hydropower generation in late summer.

Conditional Approval of Variance from the Supplemental Flows

Based on review of available information, the State Water Board grants a one-time variance for 2014 from the supplemental and recreational flows required in the Spring Gap Project and Beardsley Project certifications, under the following conditions.

1. It was identified at the April 3 meeting that the triggers for the supplemental flows developed as part of each certification may not be effective at protecting FYLFs. Therefore, PG&E and Tri Dam shall schedule a meeting with the appropriate parties, including the US Forest Service, CDFW, and the State Water Board, by November 1, 2014, to discuss potential modifications to the supplemental flow triggers. Following the meeting, PG&E and Tri Dam shall submit a summary of the meeting and proposed next steps to all participating parties and FERC. The summary shall include comments and recommendations provided by the agencies. If there is agency concurrence on a revised supplemental flow trigger to protect FYLFs, PG&E and Tri Dam shall actively pursue the necessary agency approvals and FERC amendment, as necessary to ensure that the new trigger(s) is in place no later than 2016.
2. None of the water stored in lieu of the supplemental and recreational flows shall be sold and/or transferred to another party, except under emergency public health and safety situations and following approval by the Deputy Director for Water Rights.
3. This variance is conditioned upon total payment of any fee required under Article 4, Title 23 of the California Code of Regulations.
4. With exception to the supplemental and recreational flow conditions listed above, this variance is not intended and shall not be construed as approval to deviate from the existing conditions of the licensees' certifications.

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Mr. Doble and Mr. Berry

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If you have questions regarding this letter please contact Mr. Jeffrey Parks at (916) 341-5319 or by email at jeff.parks@waterboards.ca.gov. Written correspondence should be directed to: State Water Resources Control Board, Division of Water Rights, Water Quality Certification Program, Attention: Jeffrey Parks, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,



Thomas Howard
Executive Director

Enclosure: Notice of Exemption

cc: Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Mr. Adam Laputz
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

ec: Ms. Beth Martinez
United States Forest Service
Email: bethmartinez@fs.fed.us

Ms. Deborah Giglio
US Fish and Wildlife Service
Email: Deborah.Giglio@fws.gov

Ms. Sarah Bahm
California Department of Fish and Wildlife
Email: Sarah.Bahm@wildlife.ca.gov

Mr. Richard Doble
Pacific Gas and Electric Company
Email: RJD2@pge.com

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk
County of Tuolumne
2 South Green Street
Sonora, CA 95370

From (Public Agency):
State Water Resources Control Board
Division of Water Rights
Attention: Mr. Jeffrey Parks
P.O. Box 2000
Sacramento, CA 95812

Project Title: Spring Gap-Stanislaus Hydroelectric Project (Spring Gap Project) and Beardsley/Donnells Hydroelectric Project (Beardsley Project), Federal Energy Regulatory Commission (FERC) Project Nos. 2130, 2005 - 401 Water Quality Certification (certification) Request for Temporary Cessation of Supplemental (Conditions 3, 7) and Recreation (Condition 11) Flows in 2014

Project Applicant: Pacific Gas and Electric Company (PG&E) and Tri Dam Project (Tri Dam)

Project Location - Specific: PG&E's Spring Gap Project is located on the Middle and South Fork Stanislaus River near the city of Strawberry in Tuolumne County, California. The Sand Bar Diversion Dam, below which the supplemental flows in certification condition 3 would be released, is located on the Middle Fork Stanislaus River (MFSR) below Beardsley Reservoir. Tri Dam's Beardsley Project is located above the Sand Bar Diversion Dam on the MFSR. The supplemental flows required in certification Condition 7 would be released in the MFSR between Donnells and Beardsley Reservoirs.

Project Location - City: Strawberry

Project Location - County: Tuolumne

Description of Nature, Purpose, and Beneficiaries of Project: PG&E operates the Spring Gap Project, FERC Project No. 2130, for which FERC issued a new operating license on January 13, 2010. The FERC license for the Project includes the State Water Resources Control Board's (State Water Board's) certification, which requires PG&E to release supplemental flows below Sand Bar Diversion Dam to mimic a natural hydrograph in that reach of the MFSR. Tri Dam's Beardsley Project, FERC Project No. 2005 was issued a new operating license on January 30, 2006, with a State Water Board certification that requires both supplemental flows in the MFSR below Donnells Reservoir (Condition 7) and coordinated operations with the Spring Gap Project. This proposed action is for the temporary suspension of supplemental flows required under certification Conditions 3 and 7 of the respective Project's certifications in order to protect Foothill Yellow-legged Frogs (FYLFs), which have a highly increased chance of breeding earlier than normal due to dry water year conditions. The water stored in lieu of providing the supplemental and recreation flows will also be used to maintain minimum instream flows throughout the summer, and provide hydroelectric generation in late summer.

Name of Public Agency Approving Project: State Water Resources Control Board

Name of Person or Agency Carrying Out Project: PG&E and Tri Dam

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: Class 7, §15307
- Statutory Exemptions. State code number: _____

Reasons why project is exempt: The temporary suspension of supplemental and recreation flows for one year will not have a significant adverse effect and is categorically exempt from the requirements to prepare environmental documents under California Code of Regulations, title 14, section 15307, (Class 7, Actions by Regulatory Agencies for Protection of Natural Resources). The suspension of supplemental and recreation flows is being implemented to protect FYLFs in the MFSR, and to store water for instream flows and hydropower generation during late summer.

Lead Agency

Contact Person: Jeffrey Parks

Area Code/Telephone/Extension: (916) 841-5246

Signature: Tom Howard **Date:** 5/1/14 **Title:** Executive Director

