



Cal/EPA

State Water
Resources
Control Board

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MAY 29 1998



Pete Wilson
Governor

Mr. Tom Johnson
Henwood Energy Services, Inc.
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Dear Mr. Johnson:

CLEAN WATER ACT SECTION 401 CERTIFICATION FOR THE UTICA POWER
AUTHORITY'S FERC RELICENSE APPLICATIONS FOR THE ANGELS
HYDROELECTRIC POWER PROJECT (FERC NO. 2699) AND THE UTICA
HYDROELECTRIC POWER PROJECT (FERC NO. 2019)

On May 29, 1997, the State Water Resources Control Board (SWRCB) received a request for water quality certification pursuant to section 401 of the Federal Clean Water Act for FERC Project Nos. 2699 and 2019. The SWRCB previously issued a section 401 Certification for the FERC relicensing of the Utica Project (FERC No. 2019) on April 19, 1995 and waived certification for the Angels Project (FERC No. 2699). The SWRCB has determined that it is appropriate to issue the enclosed certification for both FERC projects due to significant modifications in the proposed operation of the project facilities and the July 22, 1997 amendment of the FERC license applications.

Originally, the Pacific Gas and Electric Company (PG&E) owned and operated both the Angels and the Utica Projects. Water was released from storage in Lake Alpine, Union Reservoir or Utica Reservoir and was also directly diverted from the North Fork Stanislaus River utilizing the project facilities of the Calaveras County Water District's (CCWD) North Fork Stanislaus Project (FERC No. 2409). CCWD facilities convey PG&E's water from the North Fork Stanislaus River (including the reservoir releases) to the Utica Conduit, then the Hunters Reservoir. Water either flows into Hunters Reservoir or is bypassed around it and delivered to the lower section of the Utica Conduit. Lower Utica Conduit carries water from Hunters Reservoir to Murphys Forebay, thence to the Utica powerhouse (FERC No. 2019). From Murphys Afterbay, water flows in Angels Creek for approximately 3 miles, through the town of Murphys until it reaches Angels Diversion Dam. The dam routes the water into the Angels Project facilities (FERC No. 2699). The Angels Project consists of the upper Angels Canal, Ross Reservoir, lower Angels Canal, Angels forebay, penstock and powerhouse.

PG&E sold its project facilities to two different entities. Utica Power Authority purchased the Utica powerhouse and Angels powerhouse and appurtenant direct diversion facilities, and Northern California Power Agency (NCPA) purchased the three upper reservoirs (Lake Alpine, Union Reservoir and Utica Reservoir), together with 28 cubic feet per second of the direct diversion water rights. NCPA utilizes this water to enhance power production through the existing Collierville Penstock (FERC No. 2409) located on

Mr. Tom Johnson

-2-

MAY 29 1998

the North Fork Stanislaus River. On March 11, 1996, the SWRCB issued a section 401 Certification to NCPA for operation of its project elements under FERC No. 11563.

Due to the present operational configuration, there is less water entering the Utica Project and the Angels Project than there was at the time of SWRCB certification of the Utica Project of PG&E. Thus, the Utica Power Authority has requested the new section 401 certification that is enclosed.

If we can be of further assistance, the SWRCB's Section 401 Coordinators can be contacted at the following telephone numbers: Ms. Katherine Mrowka at (916) 657-1951, or Mr. Jim Canaday at (916) 657-2208.

Sincerely,

ORIGINAL SIGNED BY:

Walt Pettit
Executive Director

Enclosure

cc: Ms. Carol Sampson (all w/encl)
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(continued next page)

Mr. Tom Johnson

-3-

cc: Mr. Mike Ammon
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bc: Andy Sawyer (all w/encl)
Ed Anton
Jerry Johns
Mike Falkenstein
Jim Canaday

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

**In the Matter of Water Quality Certification For
The Angels And Utica Hydroelectric Projects
For Purposes of Federal Energy Regulatory Commission (FERC) Licensing**

**UTICA POWER AUTHORITY
FERC PROJECT NOS. 2699 AND 2019**

Certification Requested by Utica Power Authority

SOURCES: North Fork Stanislaus River, Angels Creek, Mill Creek

COUNTY: Calaveras

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

1. The Utica Power Authority (UPA) has applied to the Federal Energy Regulatory Commission (FERC) for licenses under the Federal Power Act (16 USC §791(a), et seq.) to operate two existing major hydroelectric power projects in Calaveras County and to the State Water Resources Control Board (SWRCB) for Water Quality Certification under section 401 of the Clean Water Act (33 USC §1344).
2. For project purposes, water will be directly diverted or rediverted from the North Fork Stanislaus River (NF Stanislaus River) utilizing the project facilities of the Calaveras County Water District's (CCWD) North Fork Stanislaus Project (FERC No. 2409). A maximum of 60 cfs will be diverted into the Utica Conduit via a tunnel tap on the Collierville Penstock. After the water is discharged from the tunnel tap to the Utica Conduit, it is conveyed through the project works of FERC Project Nos. 2019 thence 2699, as described below. After release from the tunnel tap, there is no further use of FERC No. 2409 project facilities for purposes of operating the Utica and Angels Hydroelectric Power Projects (Utica and Angels Projects).

The Utica Conduit (FERC No. 2019) conveys water discharged at the tunnel tap to the Hunters Reservoir. Water either flows into Hunters Reservoir or is bypassed around it and delivered to the lower section of the Utica Conduit. Lower Utica Conduit carries water from Hunters Reservoir to Murphys Forebay,

thence to the Utica powerhouse (FERC No. 2019). From Murphys Afterbay water flows in Angels Creek for approximately 3 miles through the town of Murphys until it reaches Angels Diversion Dam. The dam routes the water into the Angels Project facilities (FERC No. 2699).

The Angels Diversion Dam routes a maximum of 45 cfs into the Upper Angels Canal. The Upper Angels Canal terminates in Ross Reservoir. Water is released from Ross Reservoir into Lower Angels Canal, thence Angels Forebay. The forebay directs water into Angels Penstock, thence Angels Powerhouse (FERC No. 2699).

PG&E owned and operated these facilities until 1995. CCWD purchased the PG&E facilities in 1995, and FERC approved the assignment of the PG&E licenses to CCWD by Order dated November 29, 1995. Subsequent to that action, CCWD assigned its rights to UPA. That assignment was approved by FERC in an Order dated March 18, 1997. On July 22, 1997, UPA filed amended FERC license applications for both projects in order to obtain federal licenses consistent with the project descriptions above.

When PG&E owned these facilities, it utilized storage from Union and Utica Reservoirs and Lake Alpine for purposes of project operation. PG&E sold these three reservoirs, together with 28 cfs of the direct diversion water rights that it had utilized to operate the Utica and Angels Projects to the Northern California Power Agency (NCPA). These project works and water rights enhance the flows through FERC Project No. 11563, which subsequently reduces the available water supply for FERC Project Nos. 2019 and 2699.

On April 29, 1995, the SWRCB issued section 401 Certification to PG&E for its FERC license application for operation of the Utica Project. Furthermore, the SWRCB waived 401 Certification for PG&E's Angels Project for the FERC license application. The UPA project description varies significantly from the PG&E project description; consequently, UPA filed its amended FERC license applications on July 22, 1997. The FERC license applications were amended subsequent to the SWRCB's 1995 actions on certification of the PG&E projects. The FERC license applicant, UPA, submitted a May 29, 1997 request for section 401 Certification to the SWRCB in order to obtain revised certification for both the Utica and Angels Projects that conforms to the revised project operations. The SWRCB concludes that it is appropriate to issue new certification pursuant to the July 22, 1997 amended FERC license applications. The FERC licensee shall operate the Utica and Angels Projects solely in conformance with the terms and conditions of this certification, and shall not utilize any of the 401 Certifications (or waiver thereof) of PG&E for purposes of operating these projects.

This certification shall be utilized for operation of the following project works and facilities: Utica Canal facilities, including the Mill Creek Tap Diversions into Utica Canal, Hunters Reservoir releases into Mill Creek, Hunters Reservoir releases into Lower Utica Canal, Murphys Afterbay releases into Angels Creek, Angels Dam releases into Angels Creek, Angels Dam diversions into Angels Canal and Angels Powerhouse releases into Angels Creek.

3. The water rights used for Projects No. 2019 and 2699 are pre-1914 appropriative rights that were confirmed by the court on November 14, 1929 in the Stanislaus River decree, "Order Determining and Establishing the Several Rights by Appropriation of the Waters of the Stanislaus River and Its Tributaries". As noted above, PG&E sold its water rights to two entities. UPA is limited to utilizing a maximum of 60 cfs by direct diversion from the North Fork Stanislaus of PG&E's original 88 cfs¹ water right. PG&E also maintained consumptive use rights that it utilized in conjunction with operation of the Utica and Angels Project facilities. UPA intends to continue serving PG&E's domestic and agricultural water customers under the terms of the former PG&E contracts. The decree identifies the sources of water, quantity, season of diversion, place of use and purpose of use. UPA has indicated to SWRCB staff that it intends to enter into contracts to provide domestic and/or irrigation water to new customers. The approval of the court is needed prior to making any modifications to the pre-1914 appropriative right that UPA obtained from PG&E. A supplemental decree should be obtained from the court prior to making any changes in the use of water.

Once the water is discharged from the Angels powerhouse, the Calaveras County Water District (a member of UPA) maintains that it can utilize the water for its own purposes. However, any use of water must be made under a water right that is valid under state law. Under the historic mode of operation of PG&E, the water was abandoned into the stream system at the tailrace of the Angels powerhouse and continued downstream into New Melones Reservoir where it is utilized under the water rights of the U.S. Bureau of Reclamation or other persons. A change in the quantity rate, or timing of flows downstream of the powerhouse could impact other water right holders and might result in the initiation of a new water right, requiring the approval of the SWRCB.

4. The Federal Clean Water Act (33 USC §1251, *et seq.*) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33USC §1251(a)). Section 101(g) (33 USC §1251(g)) requires federal agencies

¹ The decree states that PG&E could divert a maximum of 88 cfs into the Utica Ditch by direct diversion and water released from storage in the three upper reservoirs, Utica Reservoir, Union Reservoir and Lake Alpine.

to "cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources". Section 401 (33 USC §1341) requires every applicant for a federal license or permit to provide the responsible federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including section 303 ("Water Quality Standards and Implementation Plans", 33 USC §1313); directs the state agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law; and provides that state certification conditions shall become conditions of any federal license or permit for the project.

5. The SWRCB is the agency responsible for water quality certification in California (section 13160 of the California Water Code); and has delegated this function to the Executive Director by regulation (section 3838 of Title 23 of the California Code of Regulations (CCR)).
6. On May 29, 1997, the SWRCB received a request from UPA for certification that the Utica Project and the Angels Project would be in compliance with state and local water quality requirements, including requirements that satisfy the specified provisions of the Federal Clean Water Act.
7. This certification is for the purpose of generating hydroelectric power, subject to prior vested rights and maintenance of existing consumptive use deliveries to the entities presently served by the Utica and Angels Projects.
8. The Utica and Angels Projects are existing projects and no new construction is contemplated. The projects will be reoperated in accordance with the new FERC license application descriptions. These revised operations are described in the Final Environmental Impact Report (EIR) for the Utica/Angels Hydroelectric Project dated January 1996 (State Clearinghouse No. SCH 94032036) prepared by NCPA, in compliance with the requirements of the California Environmental Quality Act. On October 26, 1995, NCPA issued Resolution No. 95-27 which certified the adequacy of its EIR for the Utica/Angels Hydroelectric Project and states that NCPA agrees to implement the mitigation measures identified in Table 2-2 of the Final EIR. On November 6, 1995, NCPA issued a Notice of Determination (NOD) which finds that the project will not have a significant effect on the environment, provided that the certified mitigation measures are implemented. SWRCB staff reviewed the final EIR and the findings in the NOD. Since the date of preparation of the Final EIR, UPA has determined that it will be the federal licensee for the Utica and Angels Projects. In order to ensure that the

mitigation measures identified in Table 2-2 of the Final EIR are implemented, those measures pertaining to the Utica and Angels Projects are incorporated in this water quality certification for the projects.

9. The California Regional Water Quality Control Boards have adopted, and the State Board has approved, Water Quality Control Plans (Basin Plans) for each watershed basin in accordance with provisions of section 303 of the Clean Water Act, related to the establishment of water quality standards and planning (33 USC §§1313). Basin Plans identify beneficial uses of the waters within each Region.
10. The California Regional Water Quality Control Board (RWQCB), Central Valley Region, in its Water Quality Control Plan for the Sacramento River and the San Joaquin River Basins has identified the beneficial uses of the NF Stanislaus River, Mill Creek and Angels Creek as municipal, irrigation, stockwatering, hydroelectric generation, contact and non-contact recreation, and freshwater habitat (warm and cold).
11. Protection of the chemical, physical, and biological integrity of waters of the state for instream beneficial uses identified in the Basin Plans requires maintenance of adequate stream flows as well as effluent limitations and other limitation on discharges of pollutants from point and nonpoint sources to navigable waters and their tributaries.
12. SWRCB staff has reviewed the FERC license applications for the Utica and Angels Projects. (SWRCB files).

ACCORDINGLY, THE SWRCB CERTIFIES THAT the Utica and Angels Projects will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law provided UPA complies with the following terms and conditions:

1. For protection of water quality and beneficial uses, UPA shall provide minimum bypass or release flows of: (a) 5.0 cfs below the Angels Project diversion on Angels Creek; (b) 1.0 cfs minimum flow below the Angels Project diversion on Angels Creek during maintenance outages; and, (c) 1.5 cfs from May 1 through October 31 and 0.5 cfs from November 1 through April 30 for Mill Creek below Hunters Dam.

Maintain records of daily streamflow in Angels Creek below the Angels Project diversion and Mill Creek below Hunters Dam. Submit stream records to the Chief of the Division of Water Rights and the Director of the DFG by November 15 of each year.

2. The permittee or licensee shall maintain adequate flows in Angels Creek at Murphys Park during the recreation season (April 1 to September 3 and weekends from September 4 to November 1) to maintain the recreational beneficial uses. To maintain the recreational benefit of Angels Creek through the community of Murphys, the project shall release a flow rate equal to the full quantity of water available by contract (including amendments) to the FERC licensee through the Collierville penstock tunnel tap, less incidental losses and existing (historic) deliveries to domestic and irrigation customers for consumptive use. The flows through Murphys Park may be reduced if changes in the pre-1914 appropriative right are approved by the court in a Supplemental Decree. Any reduction shall comply with any modifications in the water right approved by the court.

In the event of a scheduled or unscheduled outage, the maximum prudent releases shall be maintained using available storage.

3. In order to protect the beneficial use designations identified in the Basin Plan, operation of the project, including construction of any new or replacement project facilities, shall not add the following substances to surface waters:
 - a. Taste or odor-producing substances to impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin or to cause nuisance or adversely affect beneficial uses;
 - b. Perceptible floating material including, but not limited to, solids, liquids, foams or scums which could result in degradation of water quality;
 - c. Suspended or settleable material in concentrations that cause a nuisance or adversely affect beneficial uses;
 - d. Oil, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water;
 - e. Toxic pollutants present in the water column, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal, or aquatic life; or that bioaccumulate in aquatic resources at levels which are harmful to human health; and,
 - f. Coliform organisms attributable to human wastes.
4. If the permittee or licensee initiates any activities requiring installation of concrete or grout, no concrete that has not set, nor grout that has not set, shall be allowed to contact or enter surface water.

5. Any project dewatering activities shall be coordinated with DFG and shall utilize the flow ramping plan and schedule developed by UPA and DFG as identified in the July 22, 1997 amended FERC License Applications for Project Nos. 2019 and 2699.
6. Only water used for power generation is authorized for discharge. Discharge of any other materials is prohibited.
7. This order certifies the licensee or permittee's compliance with section 401 of the Clean Water Act only for purposes of diversion and use of water from the Utica and Angels Project facilities for hydropower generation, incidental domestic and irrigation purposes of use and compliance with the limits on existing water rights and applicable requirements to avoid adverse impacts on instream beneficial uses. The current water use for domestic and irrigation purposes is 8.91 cfs from the natural flow in Angels Creek downstream of Murphys Powerhouse (NCPA, Final EIR, Table 6-1) and 4.7 cfs from the Angels Hydroelectric Project facilities (NCPA, Final EIR, Table 6-2). If project operations are modified to divert additional water in the future for irrigation, domestic use, or other non-hydropower uses, the appropriator of the water must obtain a valid water right under state law. This order is valid only for the purposes listed above and cannot be used by FERC or any other federal agency as certification for any change in project operations. Furthermore, this certification cannot be used for purposes of obtaining federal authorization to construct new diversion works at or below the Angels Powerhouse tailrace.
8. Prior to initiating any construction activities which may result in temporary or long-term impacts to area soil resources and soil erosion, the permittee or licensee shall prepare a construction erosion control plan, in coordination with FERC and the RWQCB, and implement the measures identified in the plan.
9. The permittee or licensee shall be responsible for ensuring that water delivered to the intake facilities of water purveyors after being stored in or passing through the Utica and/or Angels Project facilities is no less suitable for domestic use than water arriving at these facilities. The water quality standard is the domestic use parameters identified in the Basin Plan. At a minimum, water quality shall be monitored for turbidity due to project operations. The licensee or permittee shall monitor quality entering its project facilities from the Collierville penstock tunnel tap (Utica Project background condition) and Angels Dam diversions into Angels Canal (Angels Project background condition). To determine project impacts on water quality for domestic use, the permittee or licensee shall compare the background measurements to measurements obtained from water exiting the Hunters Reservoir (Utica Project) and Ross Reservoir (Angels Project). The water quality shall be measured during any system outage or other period when



water may become stagnant, and within 24 hours of receiving a complaint from any water purveyor that the project is impacting water quality for domestic use. For scheduled system outages, the water quality shall be measured immediately prior to and within 24 hours after the system outage. If the water quality is adversely affected by project operations, the licensee or permittee shall take immediate measures (e.g. system flushing flows or alternative treatment) to restore or maintain water quality at the background level entering the project facilities.

10. In the event of a system outage, the permittee or licensee shall assist in the restoration of water delivery to the domestic water purveyors that receive water from the Utica and/or Angels Project facilities in accordance with existing emergency contingency plans and policies of the water purveyors.

ORIGINAL SIGNED BY:

Walt Pettit
Executive Director

Date: **MAY 29 1998**