



# State Water Resources Control Board



## Division of Water Rights

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Linda S. Adams  
Secretary for  
Environmental Protection

Arnold Schwarzenegger  
Governor

**DEC 12 2008**

Mary Marshall  
Bureau of Reclamation  
2800 Cottage Way, MP-200  
Sacramento, California 95825-1898

Dear Ms. Marshall:

### APPLICATION FOR A 401 WATER QUALITY CERTIFICATION FOR THE BATTLE CREEK SALMON AND STEELHEAD RESTORATION PROJECT IN SHASTA COUNTY

The State Water Board Executive Director has issued a Water Quality Certification (Certification) pursuant to section 401 of the Clean Water Act for the Battle Creek Salmon and Steelhead Restoration Project. A copy of the Certification and a copy of the Notice of Determination are enclosed for your records.

If you have any questions, please contact Jeff Parks of the Division of Water Rights at (916) 341-5319 or at [jparks@waterboards.ca.gov](mailto:jparks@waterboards.ca.gov).

Sincerely,

Leslie F. Grober, Manager  
Hearings and Special Programs Section

Enclosures: 401 Water Quality Certification  
Notice of Determination

cc: Magalie R. Salas, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N. E.  
Washington, DC 20426

Alexis Strauss  
U.S. EPA Region 9  
75 Hawthorne Street  
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James Pedri  
Assistant Executive Officer  
Central Valley Regional Water Quality  
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Pacific Gas & Electric Company  
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Tom Schumann  
US Army Corp of Engineers  
152 Hartnell Avenue  
Redding, CA 96002

*California Environmental Protection Agency*

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

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In the Matter of Water Quality Certification for the

**BATTLE CREEK SALMON AND STEELHEAD RESTORATION PROJECT**

**ARMY CORPS OF ENGINEERS NATIONWIDE PERMITS 14, 25, 27, 33/ LOP  
COLEMAN DIVERSION DAM/INSKIP POWERHOUSE, JEFFCOAT PIPELINE**

SOURCES: Battle Creek

COUNTY: Shasta County

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**WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE**

BY THE EXECUTIVE DIRECTOR:

This matter comes before the State Water Resources Control Board (State Water Board) upon the U.S. Department of the Interior, Bureau of Reclamation's (Reclamation) request for water quality certification under section 401 of the Clean Water Act (33 U.S.C. § 1341) to accompany several Clean Water Act section 404 permits and Letters of Permission (LOP) issued by the Army Corps of Engineers (Corps) for the implementation of the Battle Creek Salmon and Steelhead Restoration Project (Restoration Project or Project). The Restoration Project is a joint proposal by Pacific Gas & Electric Company (PG&E), the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), California Department of Fish and Game (DFG), U.S. Fish and Wildlife Service (USFWS) and NOAA Fisheries, to reestablish naturally producing salmon and steelhead habitat on Battle Creek and its tributaries.

The Restoration Project will reestablish approximately 42 miles of Chinook salmon and steelhead habit in the north and south forks of Battle Creek, plus an additional 6 miles of habitat on its tributaries. Habitat restoration will restore ecological process that will allow safe passage for naturally-producing salmonids and facilitate their growth and recovery within the restoration area and the Sacramento River. Restoration will be accomplished primarily through the modification of the existing Battle Creek Hydroelectric Project (Hydroelectric Project) facilities and operations, including instream flow releases. Facility and operational modifications will be on a scale where habitat improvement goals can be met without excessive loss of renewable electric generation. Specifically, the Restoration Project is intended to benefit the Central Valley spring-run Chinook salmon, state and federally listed as threatened; the Sacramento River winter-run Chinook salmon, state and federally listed as endangered; and the Central Valley steelhead, state and federally listed as threatened.

The Restoration Project includes modifications to facilities at nine dam sites located on the north and south forks of Battle Creek and its tributaries. Project proponents have decided to implement the Restoration Project in Phases, each with independent ecological and environmental benefits. During Phase 1A, fish passage improvements on the North Fork of Battle Creek will be achieved by installing fish screens and ladders at the North Battle Creek Feeder and Eagle Canyon Diversion Dams; installing the Eagle Canyon Canal pipeline; removing the Wildcat Diversion Dam and appurtenant conveyance systems; and modifying the Asbury Dam. Phase 1B includes improvements on the lower South Fork of Battle Creek by installing a tailrace connector from Inskip Powerhouse to Coleman Canal and a new Inskip Powerhouse bypass. Phase 2 includes completion of the remaining Restoration Project improvements including the removal of the Coleman Diversion Dam, Lower Ripley Creek Feeder Diversion Dam, Soap Creek Feeder Diversion Dam, and South Canal/South Diversion Dam.

1. The federal Clean Water Act (33 U.S.C. §§ 1251-1387) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Clean Water Act section 401 directs the 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. Section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project.
2. The California Regional Water Quality Control Boards have adopted, and the State Water Board has approved, water quality control plans (basin plans) for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin and water quality objectives designed to protect those uses. Section 303 of the Clean Water Act requires the states to develop and adopt water quality standards. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans constitute state water quality standards under section 303.
3. The basin plan for the Central Valley-Sacramento/San Joaquin River Basins identifies irrigation, stock watering, power, contact recreation, canoeing and rafting, non-contact recreation, warm and cold freshwater habitat, cold migration, warm and cold spawning, and wildlife habitat as existing beneficial uses of Battle Creek. Protection of the instream beneficial uses identified in the basin plan requires maintenance of adequate instream flows as well as effluent limitations and other

limitations on discharges of pollutants from point and non-point sources to Battle Creek and its tributaries.

4. The authority to issue or deny water quality certification is delegated to the Executive Director of the State Water Board. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)
5. The State Water Board analyzed the environmental impacts associated with implementation of the entire Restoration Project in the *Battle Creek Salmon and Steelhead Restoration Project Final Environmental Impact Statement/Environmental Impact Report* (July 2005) (State Clearinghouse No. 2000042043) (Final EIS/R). The State Water Board released the Restoration Project Draft EIS/R for public review on July 21, 2003. After the close of the comment period and during subsequent reviews, it became evident that significant new information would be added to a portion of the Draft EIS/R. When only a portion of an EIS and/or EIR is revised, that portion alone may be recirculated. (40 CFR 1502.9(c)(1); CEQA Guidelines § 15088.5(f).) On March 1, 2005, Reclamation and the State Water Board released the Draft Supplemental EIS/Revised EIR. After reviewing and considering all of the comments and information, the State Water Board certified the adequacy of the Final EIS/R on September 19, 2006. (*State Water Resources Control Board Certification, Pursuant to the California Environmental Quality Act, of the Final Environmental Impact Report for the Battle Creek Salmon and Steelhead Restoration Project.*) CEQA findings for the Restoration Project are detailed in Attachment A of this document. The State Water Board will file a Notice of Determination within five days from the issuance of this order.

**ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER BOARD CERTIFIES THAT THE IMPLEMENTATION OF THE BATTLE CREEK SALMON AND STEELHEAD RESTORATION PROJECT**, as described in the Final EIS/R, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that Pacific Gas and Electric Company complies with the following terms and conditions:

1. The conditions and monitoring and reporting requirements detailed in the CEQA findings section (Attachment A) are hereby adopted and incorporated by reference. Reclamation shall comply with mitigation measures identified in the CEQA findings and the mitigation monitoring and reporting plan in Attachment A. Violation of conditions subject Licensee to enforcement actions, including administrative civil liability under Water Code section 13385.
2. Reclamation shall provide a copy of this permit and attachments to the Contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. Reclamation shall be responsible for work conducted by its Contractor or subcontractors.

3. Reclamation shall provide State Water Board staff access to Project sites to document compliance with this certification. Where necessary for access to unmanned or otherwise inaccessible project facilities, State Water Board staff will provide at least 72 hours advance notice.
4. This certification is contingent on compliance with all applicable requirements of the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, except as may be modified by the specific conditions of the certification.
5. Reclamation shall submit any change to the Restoration Project that would have a significant or material effect on the findings, conclusions, or conditions of this certification, to the Deputy Director for Water Rights for prior review and written approval.
6. Notwithstanding any more specific conditions in this certification, the Restoration Project shall be conducted in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act. Reclamation shall take all reasonable measures to protect the beneficial uses of water of Battle Creek.
7. The authorization to implement the Restoration Project pursuant to this certification is conditioned upon payment of all applicable fees for review and processing of the application for water quality certification and administering the State's water quality certification program, including but not limited to: timely payment of any annual fees or similar charges that may be imposed by future statutes or regulations for the State's reasonable costs of a program to monitor and oversee compliance with conditions of water quality certification.
8. This certification is not intended and shall not be construed to apply to issuance of any FERC license or FERC license amendment other than the FERC license specifically identified in the Licensee's application for certification described above.
9. This certification does not authorize any act which results in the "taking" of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531 - 1544). If a "take" will result from any act authorized under this certification or water rights held by the Licensee, the Licensee shall obtain authorization for the take prior to any construction. Reclamation shall be responsible for meeting all requirements of the applicable Endangered Species Act for the the Restoration Project authorized under this certification.
10. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any

State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this certification, the State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

11. This certification is subject to modification upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with § 3867).
12. The State Water Board reserves authority to modify this certification if monitoring results indicate that implementation of the Restoration Project would violate water quality objectives or impair the beneficial uses of Battle Creek.
13. The State Water Board may add to or modify the conditions of this certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
14. The State Water Board may add to or modify the conditions of this certification as appropriate to coordinate the operations of the Restoration Project and other water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water.
15. The State Water Board shall provide notice and an opportunity for hearing in exercising its authority under conditions 12, 13, and 14 above.

  
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Dorothy Rice  
Executive Director

Date: **DEC - 9 2008**