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SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

APR 27 2015

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 February 25, 2015, the State Water Resources Control Board (State Water Board) received Pacific Gas and Electric Company's (PG&E) and Tri Dam Project's (Tri Dam) request 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 variance request was publically noticed on March 25, 2015 and one comment letter was received within the 21-day notice period (April 15, 2015).

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 of 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.

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 cubic feet per second (cfs) and 2,000 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 14, 2015³ held approximately 29,000 AF of water (45 percent of capacity). The supplemental flows would require two thirds of the water held in Donnell's Reservoir and approximately one third of the combined water currently stored in Donnell's and Beardsley reservoirs.⁴ The Beardsley Project, combined with the Spring Gap Project's Spring Gap Powerhouse, represent 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 2015-2016 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 has identified that water temperatures have been warmer than average, and monitoring data from the last five years indicates that FYLF breeding will likely occur in mid to late April or early May 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.

³ Data gathered from <http://cdec.water.ca.gov/>

⁴ As of April 14, 2015 Beardsley Reservoir held approximately 32,000 AF of water, making the combined Beardsley Project capacity 62,000 AF.

In 2014 PG&E and Tri Dam requested the same variance to forego the supplemental flows. The State Water Board approved that variance request on May 1, 2014, including the following condition:

It was identified at the April 3 [2014] 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 [California Department of Fish and Wildlife], 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.

PG&E and Tri Dam held the meeting required above on October 23, 2014, and on April 2, 2015 presented the final FYLF monitoring and temperature trigger data to the US Forest Service and State Water Board staff. According to PG&E's data, a temperature trigger alone is not protective of FYLF for determining the starting date of the supplemental flows. To date there has been no proposed alternative to replace the temperature trigger for the supplemental flows. Any replacement condition will require an amendment to both PG&E's and Tri Dam's respective certifications on the MFSR. The temperature trigger is not part of this approval. However the requirement to actively pursue agency approvals to revise the supplemental flow conditions, as required in Condition 1 of the May 1, 2014 certification variance approval, remains in effect.

Recreation Flows:

For the recreation flows, Tri Dam and PG&E state in the variance request that the inflow to the Sand Bar Diversion Dam, which is where the recreation flows would be released, will not be sufficient to provide the required flows. 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 stated in the Supplemental Flow section, the water storage in the Donnells and Beardsley reservoirs is extremely low and the flows are not available in the magnitude needed for the recreation flows.

California Environmental Quality Act (CEQA)

Governor Edmund G. Brown's January 2014 drought proclamation and declaration of emergency suspended CEQA as it relates to the State Water Board's approval of a variance to streamflow requirements imposed to meet water quality control plans. Executive Order B-29-15, issued April 1, 2015, continues this suspension. The supplemental/recreational streamflow requirements for which PG&E and Tri Dam request variance were imposed to meet requirements in the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*.

CEQA has therefore been suspended for this conditional approval.

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Comments

The State Water Board received one comment letter in response to the notice posted on March 25, 2015. The letter, dated April 2, 2015, 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 provides insufficient hydrologic information; and 2) the variance request provides 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 request letter 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, 2015 timeframe required in the certifications and in this instance chose itself to obtain and consider the information in order to facilitate timely action on the requests.

Conditional Approval of Variance from the Supplemental Flows and Recreational Flows

The State Water Board finds that, with the conditions and limitations imposed herein, this certification action will be protective of the state water quality standards and other appropriate requirements of state law. Based on review of available information, the State Water Board grants a one-time variance for 2015 from the supplemental and recreational flows required in the Spring Gap Project and Beardsley Project certifications, under the following conditions.

1. 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.
2. With exception of 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 Spring Gap Project and the Beardsley Project certifications.

Required Conditions

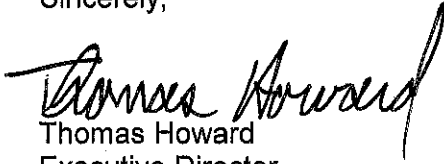
3. This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).
4. This certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

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5. This certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, chapter 28.

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,


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Executive Director

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