

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2010-0009-EXEC

In the Matter of the Request to Amend Water Quality Certification for the
**PIT 1 HYDROELECTRIC PROJECT FOR
PACIFIC GAS AND ELECTRIC COMPANY
FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2687**

SOURCE: Pit River
COUNTY: Shasta

ORDER APPROVING TEMPORARY SUSPENSION OF FLUSHING FLOW REQUIREMENTS

BY THE EXECUTIVE DIRECTOR:

The State Water Resources Control Board (State Water Board) issued water quality certification for the Pit 1 Hydroelectric Project, Federal Energy Regulatory Commission (FERC or Commission) No. 2687 on December 4, 2001. This water quality certification was incorporated in the license issued March 19, 2003. Condition 13 of the water quality certification requires Pacific Gas and Electric Company (PG&E) to release flushing flows to control vegetation growth in the Fall River Pond. The flows are required to be released during one weekend in each of May or June, July, and August to reduce nuisance aquatic growth and control mosquito populations in the Fall River Pond. Condition 14 of the water quality certification requires PG&E to monitor the effectiveness of the flushing flows and allows the Deputy Director for Water Rights¹ to modify or terminate the monitoring requirements.

The U.S. Fish and Wildlife Service (FWS) submitted a letter (received May 21, 2009) to the State Water Board requesting suspension of the flushing flows for the summer of 2009 because of concerns the flows were facilitating the decline of Shasta crayfish (*Pacifastacus fortis*). The Shasta crayfish was listed as endangered under both the California and Federal Endangered Species Acts in 1988. In 2003, PG&E formed a technical review committee (TRC) to oversee management activities throughout the range of the crayfish. The FWS formed the Shasta Crayfish Recovery Team that includes a subset of the TRC members. According to The Recovery Plan for Shasta Crayfish the primary threats to Shasta crayfish are the introduction and expansion of non-native species of crayfish and fishes, and disturbances related to land use practices. The FWS Biological Opinion (BO) provided to the Commission on October 24, 2002, included an incidental take statement with terms and conditions to minimize incidental take of Shasta crayfish. The BO concluded that approval of a new license for operation of the Pit 1 Hydroelectric Project, as proposed in the final Environmental Assessment, would not

¹ The State Water Board now refers to the Chief of the Division of Water Rights as the Deputy Director for Water Rights.

jeopardize the continued existence of the Shasta crayfish. On June 17, 2009, the State Water Board responded to FWS's request, advising FWS that if PG&E determines the flushing flows are no longer necessary for controlling aquatic vegetation and mosquito production in Fall River Pond, PG&E could request termination of the flushing flows pursuant to Condition 14 of the water quality certification.

On June 24, 2009, PG&E submitted a request to the State Water Board to amend the water quality certification to remove Conditions 13 (flushing flows) and 14 (flushing flow effectiveness monitoring). The request is based on monitoring results showing that surface vegetation in the Fall River Pond has been reduced under new license conditions that require a higher base flow of 150 cubic feet per second. In addition to requiring PG&E to monitor the effectiveness of releasing flushing flows to control aquatic vegetation and mosquito production in Fall River Pond, Condition 14 also allows the Deputy Director for Water Rights to modify or terminate the flushing flow monitoring program after review of the 5-year monitoring report prepared by the licensee. PG&E monitored the effectiveness of flushing flows at reducing aquatic vegetation from 2005 to 2008. The results indicate that increased base flows may be more effective at reducing vegetation than flushing flows. Additional monitoring may be required to isolate the effectiveness of the base flows without flushing flows at reducing aquatic vegetation and mosquito production.

By letter dated August 28, 2009, State Water Board staff notified PG&E that before an amendment of the water quality certification can be considered, the State Water Board must comply with the California Environmental Quality Act (CEQA). State Water Board staff provided PG&E with a Memorandum of Understanding (MOU) for the preparation of environmental documents.

The FWS submitted a letter to the Commission dated December 17, 2009, stating that the BO issued on October 24, 2004 has expired, and there is no authorized incidental take for Shasta crayfish for the Project. FWS also stated its belief that flushing flows are likely resulting in take, and are facilitating the decline of the endangered Shasta crayfish in the Pit 1 Bypass Reach.

By letter dated April 15, 2010, Commission staff submitted a letter to the State Water Board requesting a temporary suspension of the flushing flows for 2010. The Commission's letter recognized that the Commission cannot unilaterally amend a water quality certification condition.

PG&E has monitored Shasta crayfish populations at multiple locations within the Project and the Hat Creek Hydroelectric Projects. The TRC Summary Report, May 2009, (Report) includes a summary of surveys that have been conducted on population characteristics. Three locations on the mainstem Pit River within the Pit 1 Project area have been surveyed. No live Shasta crayfish have been found at the Canyon Spring site. In 1978, eight Shasta crayfish were found at Sand Pit, none were found in 2004-2007 surveys, and the site was not surveyed in 2007-2009. At the Pit River Falls site, four Shasta crayfish and many fantail crayfish were observed in 1995, and 21 were found in 2004-2007 along with 10 signals and 12 fantails. During the 2008 survey, one dead Shasta crayfish was found along with 29 signals and 23 fantails. The Report states that there has been a general decline in Shasta crayfish distribution and abundance at all sites. Introduced Signal crayfish have continued to expand their range and are now abundant through almost all of the Shasta crayfish habitats. Most efforts at recovery have involved measures to exclude invasive crayfish species.

While the flushing flows have provided an incidental whitewater recreational opportunity, a precautionary approach to endangered species protection is warranted, and it is reasonable to temporarily suspend flushing flows for 2010 and 2011 while the CEQA process is completed for a permanent suspension of these flows. The State Water Board's conclusion that amendment of the water quality certification to remove the flushing flows requires compliance with CEQA was based on the potential for a significant environmental impact by removing this requirement permanently. If the requirement for flushing flows is suspended for a limited period, with adequate safeguards to prevent the suspension from becoming permanent except after full compliance with CEQA, there will not be any significant impacts. The State Water Board has determined the temporary suspension of flushing flows will not have a significant environmental effect and is categorically exempt from the requirements to prepare environmental documents under California Code of Regulations section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources). A Notice of Exemption will be filed for this action.

This temporary amendment to the water quality certification shall be dependent on PG&E's timely completion of the required CEQA documentation (pursuant to the most recently provided MOU). In addition to undertaking sufficient studies, through the CEQA process, to determine whether there would be significant impacts due to permanent elimination of the requirement for flushing flows, PG&E shall conduct sufficient studies to evaluate the potential for flushing flows to cause a "take" in violation of either the federal or California Endangered Species Acts.

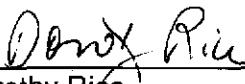
ORDER

IT IS HEREBY ORDERED THAT:

1. PG&E shall finalize the CEQA MOU within 60 days of issuance of this order.
2. PG&E shall continue monitoring the effectiveness of the higher base flows at controlling aquatic vegetation and mosquito production in Fall River Pond during 2010 and 2011 consistent with the procedures in the Flushing Flow Effectiveness Monitoring Plan.
3. Within 120 days of issuance of this order, PG&E shall submit a proposed Shasta crayfish study plan to the Deputy Director for Water Rights for modification or approval. The study plan shall be developed in cooperation with appropriate Resource Agencies, including State Water Board Staff. The study shall evaluate the impact of non-native crayfish, changes in Shasta crayfish habitat during flushing flows, the effect of daily peaking flows on Shasta crayfish, and other potential impacts to Shasta crayfish in the Pit 1 Peaking Reach and Bypass Reach. The goal of the study is to develop information on potential impacts of current operations on Shasta crayfish.

7-06-10

Date



Dorothy Rice
Executive Director