

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WQ 2026-0018**

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In the Matter of Petition for Reconsideration of Water Quality Certification for the  
**PACIFIC GAS AND ELECTRIC COMPANY AND CITY OF SANTA CLARA**  
**BUCKS CREEK HYDROELECTRIC PROJECT**  
**FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 619**

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SOURCES Bucks Creek, Grizzly Creek, Milk Ranch Creek, and Unnamed Milk Ranch  
Creek tributaries

COUNTY: Plumas

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**ORDER GRANTING IN PART AND DENYING IN PART PETITION FOR**  
**RECONSIDERATION**

BY THE BOARD:

**1.0 INTRODUCTION**

Pacific Gas and Electric Company (PG&E) and the City of Santa Clara (Santa Clara) (together, Licensees or Petitioners) jointly petition the State Water Resources Control Board (State Water Board or Board) for reconsideration of the October 22, 2020 water quality certification (certification) issued by the Executive Director of the State Water Board (Executive Director) associated with the Federal Energy Regulatory Commission's (FERC) relicensing of the Bucks Creek Hydroelectric Project, FERC Project No. 619 (Project).

The State Water Board finds that portions of the petition for reconsideration (Petition) have merit and thus incorporates changes to the Project certification as described below and shown in Attachment 1. (Cal. Code Regs., tit. 23, § 3869.)

## 2.0 FACTUAL BACKGROUND

PG&E and Santa Clara own, and PG&E operates the Project, which is located on Bucks Creek, Grizzly Creek, Milk Ranch Creek, and Unnamed Milk Ranch Creek tributaries in the North Fork Feather River watershed in Plumas County. The Project was originally licensed on April 14, 1926, and as further described in Attachment 1, is comprised of two developments (Bucks Creek Development and Grizzly Development) with an installed capacity of 84.8 megawatts.<sup>1</sup>

On December 12, 2016, as supplemented on May 22, 2018,<sup>2</sup> PG&E and Santa Clara applied to FERC for a new license for the Project.<sup>3</sup> In addition to continued operations, PG&E and Santa Clara's proposed relicensing of the Project included updates to the FERC boundary and new Protection, Mitigation, and Enhancement Measures (PM&Es).<sup>4</sup> FERC issued a draft environmental impact statement (EIS) to support its decision regarding the Project's relicensing on June 14, 2019, and issued a Final EIS on January 28, 2020. Santa Clara issued a draft California Environmental Quality Act (CEQA) Supplement on June 3, 2020, and the final CEQA Supplement was adopted by Santa Clara's Council on September 29, 2020, and signed by Santa Clara's City Manager on October 5, 2020.

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<sup>1</sup> The major components of the Bucks Creek Development include Bucks Lake Dam, Bucks Lake Reservoir, Bucks Creek Penstocks, Bucks Powerhouse and Switchyard, Three Lakes Dam, Three Lakes (i.e., Lower Lake, Middle Lake, and Upper Lake), Milk Ranch Conduit, Lower Bucks Lake Dam, Lower Bucks Lake, Grizzly Forebay, Grizzly Forebay Dam, and Grizzly Forebay Tunnel. The major components of the Grizzly Development include the Grizzly Powerhouse Tunnel and the Grizzly Powerhouse.

<sup>2</sup> Licensees submitted an amended Final License Application (FLA) because, subsequent to filing the FLA, Licensees reached agreement with interested stakeholders on all 37 Protection, Mitigation, and Enhancement Measures.

<sup>3</sup> PG&E and Santa Clara subsequently filed an errata to the amended FLA on July 27, 2018.

<sup>4</sup> The proposed PM&Es include measures for the Project (such as minimum instream flows, Project reservoir operations, etc.).

On August 14, 2018, PG&E and Santa Clara filed with the State Water Board a Clean Water Act section 401 (Section 401) (33 U.S.C. § 1341) certification application for the Project. On August 13, 2019, the State Water Board denied without prejudice the Project's 2018 certification application. PG&E and Santa Clara subsequently filed a new certification application for the Project on October 23, 2019.

The Executive Director issued the Project certification on October 22, 2020. On November 20, 2020, Petitioners filed the Petition pursuant to California Code of Regulations, title 23, section 3867. Petitioners note that "because there was no draft [Project certification] circulated for review, [they] did not have the opportunity to review and comment on the conditions of the [Project certification] or correct any factual inaccuracies prior to issuance." (Petition, p. 3.) Petitioners request several changes to the Project certification, focused primarily on asserted conflicts between Project certification conditions and other conditions of the Project's FERC license (specifically conditions imposed by the United States Forest Service (Forest Service) pursuant to section 4(e) of the Federal Power Act (FPA)) and the State Water Board's authority to modify and require implementation of plans under certain circumstances.

On June 16, 2022, FERC issued an order approving a new license for the Project. Conditions of the Project certification were incorporated into the license and are mandatory requirements.

The State Water Board issued a notice regarding the Petition on March 24, 2026, specifying that comments on or responses to the Petition must be received by April 13, 2026. One comment letter was received during the comment period from the California Department of Fish and Wildlife (CDFW). CDFW's comment letter included one comment pertaining to Condition 11: *Fish Stocking*, agreeing with Petitioners' request to remove language regarding impacts to "native species" to prevent confusion and potential delays in implementing the Project's Fish Stocking Plan.

On May 5, 2026, the State Water Board issued a Draft Order Granting in Part and Denying in Part Petition for Reconsideration that included responses to the Petition

along with proposed certification revisions. Comments on the draft order were due by Noon on May 21, 2026. No comments were received.

Separate from their November 2020 Petition, on December 12, 2024, PG&E and Santa Clara applied for a Project certification amendment. PG&E and Santa Clara requested revisions to Condition 1: *Minimum Instream Flows* (MIFs) to: (1) allow for temporary MIF changes for planned maintenance activities below Lower Bucks Lake and Grizzly Creek Forebay; and (2) update the deadline for submitting the MIF annual report from December 15 to January 31 to align with Forest Service 4(e) Condition 31. On December 11, 2025, the Executive Director issued a Project certification amendment addressing the requests. The December 2025 Project certification amendment updated the deadline for Licensees to provide the MIF annual report to January 31 and provides for temporary changes to MIFs for planned maintenance activities with approval from the Deputy Director of the Division of Water Rights (Deputy Director).

### **3.0 LEGAL BACKGROUND**

#### **3.1 Federal Power Act (16 USC §§ 791 et seq)**

The FPA establishes the federal government as the paramount regulator of most hydroelectric production in the United States and establishes procedures and requirements for the issuance of termed licenses for hydroelectric projects. FERC has approval and oversight authority for such licenses, but the FPA provides for other agencies to set license conditions or provide input regarding licensing determinations. Section 4(e) of the FPA requires that licenses for projects within federal reservations (such as National Forests) include conditions deemed to be necessary by the federal agency that manages the reservation. Section 10(j) of the FPA establishes a process for consideration of hydroelectric license conditions based on recommendations from federal or state fish and wildlife agencies regarding the protection or enhancement of fish and wildlife resources. Section 18 of the FPA provides that licensees must construct, operate, and maintain fishways prescribed by the secretaries of the Department of Commerce and the Department of the Interior.

### **3.2 Clean Water Act Section 401 (33 U.S.C. § 1341)**

The Clean Water Act recognizes and maintains states as the primary authority over water quality within their boundaries. (33 U.S.C. § 1251 (b).) Section 401 of the Clean Water Act creates an exception to the FPA's preemption of state authority to regulate privately owned single-purpose hydroelectric projects. It requires every applicant for a federal license or permit that may result in a discharge to waters of the United States to obtain certification from the appropriate state agency that the project will comply with Clean Water Act requirements including water quality standards adopted by the state in accordance with the Clean Water Act. The state may issue a certification subject to conditions that the state determines to be necessary to comply with those Clean Water Act requirements or any other appropriate requirement of state law. If the state denies certification the federal licensing or permitting agency cannot issue the license or permit. If the state issues certification with conditions those become conditions of the federal license or permit.

### **3.3 Reconsideration**

An interested person may petition the State Water Board for reconsideration of the Executive Director's action or failure to act in connection with a certification request. (Cal. Code Regs., tit. 23, § 3867.) Following a petition, the State Water Board may:

1. refuse to reconsider the action or failure to act if the petition fails to raise substantial issues that are appropriate for reconsideration;
2. deny the petition upon a finding that the original action or failure to act was appropriate and proper;
3. set aside or modify, if possible, the previous action or take new appropriate action; or
4. direct the executive director to take appropriate action.

(Cal. Code Regs., tit. 23, § 3869, subd. (a).)

## **4.0 DISCUSSION**

### **4.1 Petitioners' General Comments**

Petitioners state that Project certification conditions should have undergone CEQA review for potential environmental impacts before the Executive Director issued the final Project certification. Petitioners suggest that the State Water Board's reliance on the CEQA Supplement is insufficient because the Project certification conditions introduce measures not evaluated in the CEQA Supplement.

Santa Clara, as co-owner of the Project, is the lead agency for purposes of CEQA and prepared a CEQA Supplement for the Project's relicensing effort. As the CEQA lead agency, Santa Clara is responsible for ensuring that the Project certification conditions are adequately analyzed. The Board is a responsible agency for purposes of CEQA. On October 5, 2018, the Board submitted Preliminary Terms and Conditions to FERC in response to its Ready for Environmental Analysis for the Project, identifying potential certification conditions that may be necessary to protect water quality prior to Santa Clara completing its CEQA supplement to support the Board's certification action. Petitioners have not raised any specific certification conditions that would warrant additional environmental analysis.

### **4.2 Scope of Authority Under Clean Water Act Section 401**

Petitioners assert that several Project certification conditions exceed the Board's and/or FERC's authority and are unrelated to water quality or impose requirements not directly tied to discharges. Petitioners cite the United States Environmental Protection Agency's (USEPA) Clean Water Act Section 401 Certification Rule, 85 Fed. Reg. 42,210 at 42,257 (July 13, 2020) (2020 Rule) for their proposition that conditions such as monitoring plan approvals and fish stocking requirements exceed the certification's permissible scope.

The State Water Board's authority under Section 401 includes ensuring compliance with water quality standards, which encompass beneficial uses, water quality objectives, and

antidegradation policies applicable to affected waters. Conditions addressing fish stocking and water quality monitoring, for example, fall squarely within this authority.

#### **4.3 Deputy Director Authority to Require Changes**

Petitioners contend that “Several conditions in the [certification] allow the Deputy Director to modify important certification requirements unilaterally and outside of normal legal parameters, even requirements that have been carefully developed with other State and Federal agencies and interested parties or are not within the State [Water] Board’s expertise.” (Petition, p.15.) Petitioners also contend that “Facilities and operations may not be designed for the modifications mandated by a Deputy Director, who may not have expertise in hydroelectric facility safety or engineering matters.”

*(Ibid.)*

In making this contention, Petitioners misconstrue the referenced conditions. Specifically, these conditions do not allow the State Water Board to *change unilaterally* the certification; they allow the Board to exercise its authority granted by the Clean Water Act to protect water quality, at an appropriate time in the future. The provisions Petitioners specifically identify in their Petition are provisions that apply in limited circumstances that were not included in the Project certification application or that cannot be specifically conditioned at the time of certification issuance, and therefore are not otherwise specifically covered by the certification, including: activities needed to correct noncompliance (Condition 1) and approval of plans that have not yet been created or submitted to the Board (Condition 11). Ensuring flexibility for adaptive management via delegation of authority to the Deputy Director in these situations is necessary to ensure the Project is operated in a manner that is protective of water quality for the duration of the Project’s FERC license.<sup>5</sup> Petitioners also overlook that, in

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<sup>5</sup> Petitioners also assert that the Board’s regulations prohibit the Board from including in certifications conditions that allow for this type of adaptive management. (Petition, p. 16, citing California Code of Regulations, title 23, section 3867, subdivision (b).) Petitioners misread the Board’s regulations. Section 3867 identifies the process for reconsideration of certain actions (or failure to act) by the Board’s Executive Director, a Regional Water

exercising this authority, the Deputy Director is not precluded from coordinating with Licensees and any other entity with “expertise in hydroelectric facility safety or engineering matters.” Any assumption that the Deputy Director will exercise this authority in a manner that ignores Licensees’ expertise as operator of the Project is unfounded.

Section 401 anticipates that water quality certifications will not only set limits on operations but will also monitor operations on an ongoing basis. (33 U.S.C. § 1341 (d).) It would be counter to the Clean Water Act to read into it a limitation that states are prohibited from acting to ensure that a facility continues to comply with water quality standards.

Furthermore, the courts have already addressed reservations of authority in the context of section 6 of the Federal Power Act. In *State of California v. Federal Power Commission* (1965) 345 F.2d 917, the 9<sup>th</sup> Circuit Court of Appeal addressed, in part, the contention that the Federal Power Commission’s reservation of authority to modify stream flows at some time in the future violated section 6. In that case, Turlock and Modesto Irrigation Districts asserted that the Federal Power Commission violated section 6 “by ordering the issuance of a license which did not state all of its terms and conditions.” (*Id.*, at p. 924.) The court, in upholding the license condition reserving the Federal Power Commission’s authority to modify the license under certain circumstances in the future, concluded:

The section 6 requirement that the terms and conditions of a license be expressed in the license must not be given a construction which is impracticable of application. When the [Federal Power] Commission reasonably foresees the possibility that a need may develop years in the future requiring, in the public interest, the imposition of a burden upon the licensee at that time, but either the dimensions of the need or the way of

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Board, or a Regional Water Board’s Executive Officer; it is not a limitation on conditions that may properly be included in a certification or how the Board addresses the need for potential adaptive management when issuing a certification that must ensure the protection of water quality by a project for, in some cases, in excess of 50 years from the time of issuance of the license.

meeting it is not presently ascertainable, the license terms cannot possibly speak with definiteness and precision concerning the matter. Under these circumstances, it is sufficient, under section 6, to include in the license a condition reserving the problem, including the licensees' rights to test the validity of any future action taken.

The principle applicable here is analogous to that which obtains in determining whether the Commission order must contain specific findings of fact as to future conditions. We dealt with that problem in *Portland General Electric Co. v. F.P.C.*, 9 Cir., 328 F.2d 165, 175. We there held that it is not arbitrary, unreasonable, or a deprivation of due process to refrain from making findings as to what conditions may be in the future, at least where no present burden is imposed.

(*Id.*, at pp. 924-25; see also *Wisconsin Public Service Corp. v. FERC* (7th Cir. 1994) 32 F.3d 1165, 1168-69 [upholding reopener clauses requiring construction and operation of fishways as may be prescribed in the future by the United States Fish and Wildlife Service.]) Petitioners cite to no legal authority supporting a different conclusion.

The alternative would be that the Board conditions its certifications in such a way that ensures the construction and operation of a project under a 30- to 50-year FERC license would be protective of water quality for the duration of that license, taking into account potential changes to the baseline assumptions and current conditions. The conditions of such a certification would likely be prohibitively burdensome and be tantamount to a denial of certification in many cases.

For the reasons discussed above, no change is needed with respect to the Board's delegation of authority to the Deputy Director, including the authority to modify plans or require actions as appropriate as part of any approval.

#### **4.4 Consistency with Forest Service 4(e) Conditions**

Petitioners assert that several certification conditions either conflict with or are not consist with the timing, operational, and/or procedural requirements listed in Forest Service 4(e) conditions. Petitioners assert that differences between certification conditions and Forest Service 4(e) requirements regarding reporting deadlines, flow release timing, management plan revision processes, and conduit closure requirements create operational conflicts that complicate compliance and inadvertently undermine the

licensing framework developed through multi-year relicensing consultation. Petitioners request that to avoid confusion and dual standards, Project certification conditions conform to the corresponding Forest Service 4(e) conditions.

This order evaluates these issues and, where appropriate, aligns Project certification conditions with the corresponding federal conditions to improve clarity while maintaining water quality protections. There are specific Project certification conditions where updates are appropriate and others where retaining the State Water Board's existing language is necessary to preserve enforceability and ensure adequate protection of beneficial uses. Where alignment with federal conditions enhances consistency without reducing environmental safeguards, Project certification conditions are updated as requested. Where differences reflect distinct regulatory mandates or are needed to maintain water quality protections, the certification is not changed and/or is updated to clarify requirements in a different way than requested by Petitioners.

#### **4.5 Certification Condition 1 — Minimum Instream Flows**

Condition 1 establishes MIFs for Project reaches, compliance points, and reporting requirements and timing. Condition 1 also provides procedures for temporary flow modifications and Deputy Director oversight of MIF deviations.

Petitioners request several changes, specifically that the Board: (1) increase flexibility of MIF compliance at facilities with manually operated valves where access can be limited by weather and road conditions; (2) remove language authorizing the Deputy Director to require corrective actions following future flow deviations; (3) expand temporary flow modification provisions to include additional reaches and remove language authorizing the Deputy Director to defer a flow modification; and (4) revise annual MIF reporting timelines and specify Licensees reporting requirements for MIF annual reports.

Petitioners request that MIF flexibility at manually operated valves and annual reporting timelines align with requirements of Forest Service 4(e) Condition 31.

For Petitioners' first comment, Board staff note that current certification language allows for flexibility for MIFs at manually operated valves during limited weather/access

conditions, consistent with Forest Service 4(e) Condition 31. Forest Service 4(e) Condition 31 states "...releases made through manually operated valves may be subject to weather and road conditions affecting access or operability," while footnote 9 in certification Condition 1 states "Releases made through manually operated valves may be subject to weather and road conditions affecting access or operability, and they shall be made as soon as reasonably practicable given the circumstances." Given Petitioners' requested flexibility for MIF compliance at manually operated valves is already present in Condition 1, no change is necessary to address this item.

For Petitioners' second comment, Condition 1 also requires reporting flow deviations to FERC, Forest Service, United States Fish and Wildlife Service (USFWS), CDFW, and the Deputy Director within 30 days of the deviation. Among other items, reporting must describe corrective actions taken to address the deviation and include proposed actions to prevent future deviations. Condition 1 provides in part that the "Deputy Director may require the Licensee to implement corrective actions to prevent similar future deviations in instream flow." As already discussed in section 4.3, *supra*, Deputy Director authority to require corrective actions as necessary to prevent future flow deviations supports adaptive management and is important for ensuring water quality protection over the 50-year license term.

Petitioners' third and fourth comments on Condition 1 have been resolved. On December 12, 2024, PG&E submitted a certification amendment request for items related to the MIF (Condition 1) elements of the Petition, and on December 11, 2025, the Executive Director issued a certification amendment resolving these items. No petition was received on the Project's certification amendment.

#### **4.6 Certification Condition 3 — Annual Drawdown of Three Lakes**

Condition 3 requires annual drawdown of Three Lakes in mid-August to avoid dewatering of brook trout spawning/rearing habitat. Additionally, this condition requires Licensees to submit a draft report describing the water surface elevation and drawdown timing of Lower Three Lakes.

Petitioners request several changes to Condition 3, noting the requested changes would be consistent with Forest Service 4(e) Condition 37. Specifically, Petitioners request that the Board: (1) update the deadline for initiation of Three Lakes drawdown from the current Project certification requirement of “on August 15” to “on or about August 15” and change the annual water elevation reporting from the current certification requirement of “on or preceding August 15 (if access is precluded)” to “about August 15”; and (2) decrease the timeframe for agency consultation on the draft report to 45 days and require that the draft report be provided to the Deputy Director within 90 days of beginning agency consultation. Petitioners indicate that weather and/or access can prevent Licensees’ staff from obtaining measurements precisely on prescribed dates, and flexibility in the condition can help address these concerns.

To streamline compliance while maintaining protections for water quality and beneficial uses, Condition 3 is updated to require the verification of Lower Three Lakes water surface elevation “between August 1-15 each year” (rather than “on August 15”), and initiation of drawdown<sup>6</sup> “as early as August 15,” to ensure that Three Lakes reaches Winter Setting<sup>7</sup> by September 1. This revision also provides Licensees with the flexibility needed to safely initiate and complete Lower Three Lakes drawdown. Finally, though unnecessary as Condition 3 references review timelines established in Condition 25, Condition 3 is updated to directly specify the timelines in Condition 25 consistent with the Petitioners’ request, and provides at least 45 days for agency review of the draft report and requires that the final report be submitted to the Deputy Director within 90 days of beginning agency consultation.

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<sup>6</sup> The purpose of drawing down Three Lakes by September 1 is to prevent trout from spawning in areas of Three Lakes that dry up following completion of drawdown.

<sup>7</sup> Winter Setting operations refers to when the low-level outlet valve is fully-open and the natural inflow equals the outflow of the reservoir.

#### **4.7 Certification Condition 4 — Channel Maintenance Flows**

Condition 4 requires channel maintenance flows (such as High Spill events – events of 200-300 cubic feet per second (cfs) for at least 18 hours in duration) to mobilize spawning gravels and large woody material, flush fine sediment, and provide for vegetation scour events. Condition 4 also requires that Licensees create a High Spill event if an event has not occurred for the previous five years and the current year is classified as a Normal or Wet water year, and that Licensees down-ramp flows following High Spill events consistent with requirements of Condition 6 – Spill Management at Grizzly Forebay and Lower Bucks Lake.

Petitioners request several changes to Condition 4, including: (1) correcting the condition’s incorrect gage reference for measuring natural spills above 70 cfs; and (2) updating the requirements for implementing a high spill event to require that Licensees only implement a “good faith effort” (consistent with Forest Service 4(e) Condition 34), recognizing situations in which implementation of channel maintenance flows may not always be feasible due to emergency or safety conditions.

For Petitioners’ first comment, Condition 4 is updated to replace the incorrect gage (NF57) with the appropriate compliance gage (NFC12).

For Petitioners’ second comment, “good faith effort” does not provide regulatory assurance that High Spill events consistent with requirements of certification Conditions 4 and 6<sup>8</sup> will be implemented. Since Lower Bucks Lake Dam rarely spills, channel-maintenance flows (including High Spill events) are required every five years<sup>9</sup>

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<sup>8</sup> To minimize the impacts of the channel-maintenance flows required by Condition 4, Condition 6 requires Licensees to draw down reservoir levels in advance of forecasted spill events to the extent possible to minimize the impacts of channel-maintenance flows on foothill yellow-legged frog populations in the North Fork Feather River.

<sup>9</sup> Condition 6 requires Licensees to monitor stream stage and calculated instream flow in Bucks and Grizzly Creeks for the first five years of the license or until all three down-

on Bucks Creek below Lower Bucks Lake to periodically flush fine sediments, move spawning gravels and large woody material, and reshape the streambed to improve aquatic habitat. Condition 4 already includes an emergency conditions- provision consistent with Petitioners' request that states:

The Licensees are not required to implement a High Spill if flows at Gage NF57<sup>[10]</sup> in excess of 3,000 cfs are not available or the Licensees cannot reasonably accommodate a High Spill at a time when 3,000 cfs may be available due to safety or emergency conditions that exist at the time. In such an event, the Licensees may consider a High Spill concurrent with a flow at Gage NF57 of less than 3,000 cfs but in no event less than 1,600 cfs, recognizing that this further consideration may result in a postponement of the High Spill to a future year.

Accordingly, Condition 4 is not changed to remove the requirement that Licensees provide a High Spill event if one has not occurred for the previous five years and the current water year is Normal or Wet.

#### **4.8 Certification Condition 5 — Project Reservoirs Water Surface Elevations**

Condition 5 of the Project certification requires minimum water surface elevations for Project reservoirs to protect aquatic habitat and recreation and identifies the gages to be used for compliance monitoring.

Petitioners' Exhibit C, attached to the Petition, requests revisions to Condition 5 that were not expressly discussed in the Petition. Petitioners seek to remove reference to Middle Three Lakes because Licensees have no operational control of Middle Three Lakes below 6,057 feet above mean sea level, and PG&E Gage NF10 measures only the elevation of Lower Three Lakes. Specifically, Petitioners request revisions to correct an erroneous gage reference for Middle Three Lakes and to reflect Licensees' operational control over Three Lakes subject to this condition. Because Licensees do

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ramping scenarios have been implemented (whichever comes first) to document the effects of Project operations on reaches below Project facilities.

<sup>10</sup> As noted earlier in this section, the reference to gage NF57 is updated to NFC12.

not control the elevation of Middle Three Lakes, nor does gage NF10 measure the elevation of the lake, Petitioners' proposed change will improve efficient implementation of the certification and license and is therefore likely to lead to greater protection of water quality. Accordingly, Condition 5 is revised to remove reference to Middle Three Lakes for the Project's drawdown requirements.

#### **4.9 Certification Condition 6 — Spill Management at Grizzly Forebay and Lower Bucks Lake**

Condition 6 establishes requirements for managing spills from Grizzly Forebay and Lower Bucks Lake to improve habitat conditions for foothill yellow-legged frogs and riparian vegetation. The condition requires spill management to extend the descending limb of the hydrograph following spills and better coordinate managed spills with hydrologic conditions in the North Fork Feather River. Condition 6 currently prohibits scheduling managed spills during the first five business days or last two business days of the Rock Creek-Cresta Project's Cresta Reach 21-day Spill Recession schedule.<sup>11</sup> Additionally, Condition 6 requires a report "no later than five years after license issuance" summarizing the effects of spill management measures.

Petitioners request removal of the term "business days," suggesting that use of calendar days in Forest Service 4(e) Condition 35 supports consistent implementation of environmental protective measures and simplifies coordination with other Projects that follow the same hydrologic schedule. Furthermore, Petitioners state that because the prescribed flow steps are intended as an environmental protective measure, they need not be measured in business days.

Because Petitioners' proposed change will improve efficient implementation of the certification and license, and therefore is likely to lead to greater protection of water

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<sup>11</sup> The Rock Creek-Cresta Project's Cresta Reach 21-day Spill Recession schedule is a 21-day recession in the Cresta reach during the transition period from 1,000 cfs to base flows in the North Fork Feather River.

quality, Condition 6 is updated to remove references to “business days” and instead references the beginning and end of the prescribed daily steps.

Additionally, Petitioners request that the Board change the timing of a report summarizing the effects of spill management measures from “no later than five years after license issuance” to “after License Year 5,” (consistent with Forest Service 4(e) Condition 35), explaining that all five years of operational data must be available before the report is prepared.

Though well intentioned to align reporting requirements of Condition 6 with Forest Service Condition 35, Petitioners’ proposed language of “after License Year 5” is too open ended and could result in reporting provided well after data are collected (e.g., License Year 25). Accordingly, Condition 6 is updated to require that Licensees provide the draft report in License Year 6 (rather than “after” License Year 5) which allows adequate time for draft report development following stream stage and instream flow monitoring.

#### **4.10 Certification Condition 9 — Milk Ranch Conduit Closure**

Condition 9 requires temporary closure of specified Milk Ranch Conduit diversions during Wet water years to restore spring and summer flows to tributaries downstream of the conduit. In Wet years, this condition returns all spring and summer flows from Milk Ranch Creek and North Fork Grouse Hollow Creek to their original channels.

Petitioners request the timing of conduit closure be revised to match Forest Service 4(e) Condition 33. Additionally, the requested change would better align with the requirements of Condition 3 (Annual Drawdown of Three Lakes). Under Petitioners’ request, the timing of conduit closure would be expanded to accommodate conduit closure when Licensees initiate the annual Three Lakes drawdown or, consistent with the existing timing, within two business days of the April Bulletin 120 forecast through August 15.

Because Petitioners’ proposed change will improve efficient implementation of the certification and license and therefore is likely to lead to greater protection of water

quality, Condition 9 is changed to be consistent with Forest Service 4(e) Condition 33 and align with Condition 3 with respect to the timing of Milk Ranch Conduit closure. Condition 9 has been updated to provide for conduit closure when Licensees initiates drawdown of Three Lakes, consistent with Condition 3, Petitioners' request, and Forest Service 4(e) Condition 33.

#### **4.11 Certification Condition 11 — Fish Stocking**

Condition 11 requires the development and implementation of a Fish Stocking Plan in coordination with the State Water Board, Forest Service, USFWS, and CDFW. The condition requires that the plan be submitted to the Deputy Director for review and consideration of approval prior to implementation. Additionally, the condition requires that stocked trout species not impair water quality or beneficial uses related to native fish.

Petitioners request removal of language granting the Deputy Director authority to require changes to the Fish Stocking Plan as part of approval, as Petitioners claim that this allows the Deputy Director to unilaterally modify the plan.<sup>12</sup> Petitioners further assert that certification Condition 11 “does not address the water quality issues of a discharge.” (Petition, p. 18.) Specifically, Petitioners contend that Condition 11 is outside of the Board’s authority under USEPA’s 2020 Rule. (Petition, p. 18, citing 85 Fed. Reg. 42,210 at 42,257.)

The 2020 Rule became effective on September 11, 2020, and USEPA guidance issued prior to that date distinguished requests for certification submitted or being processed by certifying authorities prior to the 2020 Rule’s effective date, which “should continue to be processed in accordance with existing law,” from certification requests submitted after the 2020 Rule’s effective date, which should be processed in accordance with the 2020 Rule. (85 Fed.Reg. 42210 (July 13, 2020); U.S. Environmental Protection Agency,

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<sup>12</sup> On July 21, 2023, the Deputy Director approved the Fish Stocking Plan, and FERC approved it on September 8, 2023.

Clean Water Act Section 401 Certification Final Rule Fact Sheet (June 2020) p. 2.) Because Petitioners' application for certification was submitted on October 23, 2019, this order need not address Petitioners' legal argument about the Board's authority to include Condition 11 under the 2020 Rule.

Deputy Director authority to require changes as part of the approval of plans required by the certification is essential to ensuring that requirements of the certification are being implemented appropriately and adequately protect water quality and beneficial uses throughout the term of the new FERC license. Accordingly, the certification will not be changed to remove the Deputy Director's authority to require changes as part of any Fish Stocking Plan approval. Nevertheless, to ensure that the Deputy Director exercises this authority in a manner consistent with the certification and the Board's authority, Condition 11 is updated to include language that clarifies the Deputy Director may require changes as part of approval to ensure protection of water quality and beneficial uses.<sup>13</sup>

Petitioners also contend language in Condition 11 presents an operational problem in that it requires fish stocking, and that the fish stocking not impair beneficial uses related to "native fish." Petitioners flag that this creates an inherent internal conflict because CDFW determines which trout species will be stocked pursuant to Condition 11, but trout are not "native" to Project waters and therefore, since trout consume native aquatic invertebrates, fish stocking required by Condition 11 would inevitably impair water quality and beneficial uses. CDFW provided similar comments in both its initial response to the Petition and its response to the State Water Board's March 24, 2026 *Notice of Opportunity to Respond to Petition for Reconsideration of Water Quality Certification for Bucks Creek Hydroelectric Project*. Accordingly, Condition 11 is revised to remove the sentence related to the selection of trout species.

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<sup>13</sup> For consistency, conditions with similar language are updated accordingly, including certification Conditions 2, 8, 23, 24, and 48.

#### **4.12 Certification Condition 24 — Extremely Dry Conditions**

Condition 24 establishes a process for modifying flow, lake water surface elevation, and related certification requirements during extremely dry conditions, including multiple consecutive Dry or Critically Dry water years or a drought emergency declared for Plumas County. The condition enables Licensees to request approval of a Revised Operations Plan to guide Project operations during extremely dry periods with limited water availability.

Petitioners seek revisions to more closely align certification Condition 24 with the consultation structure in Forest Service 4(e) Condition 62, asserting that the language in certification Condition 24 “conflicts” with the requirements of Forest Service 4(e) Condition 62. Petitioners request updates to who is required to be notified and consulted with during development of a Revised Operations Plan. Specifically, Petitioners request that the Board replace the existing requirement for notification to “Relicensing Participants” with notification to “Forest Service, State Water Board, USFWS, and other interested stakeholders.” Additionally, Petitioners request replacing the consultation requirement from “Relicensing Participants” to “the agencies.”

Petitioners argue Licensees should only be required to consult with agencies, because agencies are the best decisionmakers for determining how to use a limited resource during drought conditions. Although the notification and consultation requirements described in Condition 24 incorporate a larger list than Forest Service 4(e) Condition 62, the current language does not create a conflict; Licensees can comply with both conditions. Nevertheless, Petitioners’ argument that agencies are the best decisionmakers regarding limited water resources during extremely dry conditions has merit with respect to the consultation requirement for developing any Revised Operations Plan during extremely dry conditions. The merits of that argument do not, however, extend to the notification requirement; providing notification of proposed modifications to the flow, lake water surface elevation, and related certification requirements to other parties such as California Native American Tribes, agencies, nongovernmental organization, and public water users is appropriate and does not

create an excessive additional burden when notification is already required to be provided to others. Accordingly, Condition 24 need not be changed to remove the requirement that Licensees notify all Relicensing Participants. Relicensing Participants are defined in footnote 6 of the Project certification, which states “Relicensing Participants that were involved in the development of PG&E and Santa Clara’s proposed measures include: United States Department of Agriculture, Forest Service (Forest Service), United States Department of the Interior, Fish and Wildlife Service (USFWS); California Department of Fish and Wildlife (CDFW); American Whitewater (AW), the Bucks Lake Homeowners Association (BLHOA), and State Water Board staff.” These Relicensing Participants should be informed of potential flow or lake elevation changes as well as other more recent interested parties that have notified Licensees of their interest in the Project. Condition 24 is updated to add notification of interested parties. Condition 24 is also updated to only require consultation regarding the development of a Revised Operations Plan with the State Water Board, USFWS, CDFW, and Forest Service staff.

Additionally, Petitioners request removal of the March 15 deadline for notifying the Deputy Director and Relicensing Participants (and interested parties per the change discussed above) of Licensees’ intent to request an operational modification, as operational forecasting may require flexibility. While this condition is designed to provide for early assessment and planning during extremely dry periods, Petitioners are correct that drought and/or dry conditions could occur beyond March 15. The intent of Condition 24 is to provide adequate time for notice, consultation, and planning while giving Licensees appropriate operational flexibility during drought and/or dry conditions. The strict March 15 deadline restricts such flexibility.

Because Petitioners’ proposed changes will improve efficient implementation of the certification and license and increase adaptive management over the term of the Project’s 50-year FERC license term towards responding to drought and/or dry conditions for water quality and beneficial use protections, Condition 24 is updated to remove the March 15 deadline.

#### **4.13 Certification Condition 25 — General Reporting**

Condition 25 establishes general reporting requirements applicable to all plans and reports required under the Project certification. It specifies that draft reports must be provided to the Forest Service, CDFW, USFWS, and the State Water Board for review, and that final reports must be submitted to the Deputy Director within 90 days of distributing the draft report to reviewing agencies.

Petitioners request removal of the 45- and 90-day time periods and that they be replaced with time periods identified in applicable Forest Service 4(e) conditions. Petitioners also assert that Condition 25 is inconsistent with agency comment periods identified in specific conditions of the certification.

Condition 25 as adopted is intended to provide overarching schedules for agency review when Licensees provide plans or reports required by the Project certification to the Deputy Director that are not otherwise covered by specific certification conditions. Petitioners request that the Board remove the time periods for Licensees to provide draft and final reports established in Condition 25 and replace them with those specified in the associated Forest Service 4(e) condition. Specifically, Petitioners request replacing the time periods with "...time to provide input on the draft report as stated within the associated 4(e) condition" and "...within the timeline of the associated 4(e) condition" for draft and final reports, respectively. While the State Water Board's certification conditions and the Forest Service's 4(e) conditions may operate in concert through similar terminology to ease implementation of the license, each agency is responsible for implementing its own authority and charge. For the State Water Board that means that the Board's certification, as already discussed, must ensure that the Project is operated in a manner that is protective of water quality and designated beneficial uses for the duration of the Project's FERC license. Because changes to Forest Service 4(e) conditions are not within the State Water Board's control, it cannot generally delegate to the Forest Service or otherwise defer to Forest Service conditions in all cases but does review 4(e) conditions to determine whether exact alignment is possible and would be protective of water quality and beneficial uses. In this case,

Petitioners' request generally has merit, at least as to timelines required by other conditions of the certification, because Condition 25 requires "Any report developed as a condition of this certification" to adhere to the 45- and 90-day time periods and does not include language addressing reports that already have specific reporting requirements identified in other certification conditions.

Because additional clarification will improve efficient implementation of the certification and license, and therefore is likely to lead to greater protection of water quality, Condition 25 is updated to reference other certification conditions and plans that are directly incorporated into the certification and/or approved by the Deputy Director that may have other timelines than the one specified in Condition 25.

#### **4.14 Certification Condition 26 — Management Plan Revisions**

Condition 26 requires Licensees to submit any management plan amendments to the Deputy Director for review and consideration of approval, with a minimum 60-day period for written comments and recommendations from required entities.

Petitioners request that any changes identified by the Deputy Director be treated as recommendations only, with final incorporation of Deputy Director recommendations to be determined through FERC approval. Petitioners argue Condition 26 inappropriately allows the Deputy Director to unilaterally require modifications to collaboratively developed management plans.

Revisions to management plans required as a condition of the Project certification could result in unintended water quality impacts. Deputy Director review, consideration of approval, and ability to make changes as part of approval are necessary to ensure ongoing water quality and beneficial use protections over the term of the Project's 50-year FERC license. The Board and the Deputy Director have expertise and experience in ensuring water quality protection. Condition 26 is appropriate as issued.

Nevertheless, it is appropriate that the condition more clearly express the basis for any Deputy Director change made as part of any approval. Accordingly, to clarify the scope of changes the Deputy Director may make as part of any approval, Condition 25 is

updated to clarify that changes made by the Deputy Director as part of any approval are to ensure the protection of water quality and beneficial uses.

#### **4.15 Certification Condition 48 — Water Quality Monitoring and Protection Plans**

Condition 48 requires Licensees to: (1) comply with the Construction General Permit and amendments thereto; and (2) for any construction or maintenance activities with the potential to impact water quality or beneficial uses that are not subject to the Construction General Permit, to prepare and implement Water Quality Monitoring and Protection Plans.

Petitioners request removal of the Water Quality Monitoring and Protection Plans requirement. Petitioners assert that because water quality protections are already addressed through existing management plans (e.g., Aquatic Invasive Species Plan and the Aquatic Resources Monitoring Plan), requiring Water Quality Monitoring and Protection Plans is redundant. Petitioners also assert that requirements of Water Quality Monitoring and Protection Plans are not supported by the CEQA analysis.

Water Quality Monitoring and Protection Plans are included to address future unanticipated Project activities that, without a Water Quality Monitoring and Protection Plan provision, may require an amendment to the Project certification. Inclusion of this provision provides Licensees with flexibility over the Project's 50-year FERC license to conduct needed Project maintenance activities while ensuring ongoing water quality protections.

Additionally, Santa Clara's CEQA analysis evaluated the Project in relation to existing environmental conditions while the certification evaluated the Project in relation to water quality standards. Santa Clara's CEQA analysis does not bind or limit the Board's certification authority to require conditions necessary to ensure the Project complies with water quality standards. Santa Clara's (and FERC's) conclusion that there are no significant adverse effects related to water quality as compared to a baseline of existing conditions, as required by CEQA and the National Environmental Policy Act, does not answer the separate and distinct question of whether the Project will be operated in a

manner that is protective of water quality for the duration of a new FERC license for the Project. That is the question a certification must answer, and conditions may need to be imposed in a certification to ensure that occurs. Condition 48 is one such condition. Future exercise of certification conditions related to adaptive management need not be completely covered by Santa Clara's CEQA analysis at the time of certification issuance; projects that are not anticipated at the time of certification issuance will need to be evaluated for CEQA compliance prior to approval.

Activities that have not been expressly identified and evaluated in the Project certification, including maintenance activities, cannot yet have been determined to be protective of water quality. Compliance with the Construction General Permit, which is incorporated into the certification for certain types of not-yet-identified activities, is one way for the Board to determine that those activities will be conducted in a manner that is protective of water quality. However, the Board cannot make a finding that compliance with the Construction General Permit will ensure protection of water quality for activities that are not covered by the permit and therefore are not conducted in accordance with its requirements. Without Condition 48 or a similar condition, Licensees may need to seek a certification amendment for those activities that are not incorporated into the certification or covered by the Construction General Permit. Hence, Condition 48 is necessary to ensure that these activities are protective of water quality.

While Petitioners' request to remove Water Quality Monitoring and Protection Plans from the Project certification is not granted, clarification to note that such plans are only required when the activities are not covered by the Construction General Permit or other Project certification conditions is appropriate. Accordingly, Condition 48 is updated to note that Water Quality Monitoring and Protection Plans are required when the construction or maintenance activities are not covered by the Construction General Permit and/or another condition of the Project certification.

## 5.0 CONCLUSION

For the reasons discussed above, the petition for reconsideration is granted in part. The certification is amended as described in this order. As amended by and attached to this order, the certification is appropriate and proper.

## 6.0 ORDER

**IT IS HEREBY ORDERED** that the certification for the Bucks Creek Hydroelectric Project, FERC Project No. 619, is amended as attached to this order.

### CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 17, 2026.

AYE: Chair E. Joaquin Esquivel  
Board Member Sean Maguire  
Board Member Laurel Firestone  
Board Member Nichole Morgan

NAY: None

ABSENT: Vice Chair Dorene D'Adamo

ABSTAIN: None

  
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Courtney Tyler  
Clerk to the Board

Attachment 1: Water Quality Certification for Federal Permit or License (Part of Order Responding to Petition for Reconsideration) for the Bucks Creek Hydroelectric Project (Strikethrough/Underline Version)

Attachment 2: Water Quality Certification for Federal Permit or License (Part of Order Responding to Petition for Reconsideration) for the Bucks Creek Hydroelectric Project (Clean Version)

## **Attachment 1**

**Water Quality Certification for Federal Permit or License  
(Part of Order Responding to  
Petition for Reconsideration)  
for the Bucks Creek Hydroelectric Project  
(Strikethrough/Underline Version)**

## **Attachment 2**

**Water Quality Certification for Federal Permit or License  
(Part of Order Responding to  
Petition for Reconsideration)  
for the Bucks Creek Hydroelectric Project  
(Clean Version)**