

In the Proposed Order on Reconsideration, at page 9, modify the last full paragraph as follows:

Conditions of certification must be reviewed by the state court system. (See *American Rivers Inc. v. FERC* (2nd Cir. 1997) 129 F.3d 99 [overruling FERC’s refusal to incorporate conditions of water quality certification, including reservations of authority].) Although the State Water Board has routinely included reservations of authority in the water quality certifications it issues, the issue has not reached the California appellate courts, so there is no California precedent specifically addressing the issue. There are precedents in other states, however. The high courts of Maine ~~and New York have, for example, has~~ upheld conditions allowing the reopening or amendment of water quality certification. (*S.D. Warren Co. v. Bd. of Environmental Protection* (Me. 2005) 868 A.2d 210, 218-220 aff’d on other grounds (2006) 547 U.S. 370; ~~*de Rahm v. Diamond* (1973) 295 N.E.2d 763.~~) Similarly, federal agencies with mandatory conditioning authority over FERC licenses may adopt conditions that reserve authority to require additional approvals under specified conditions. (See, e.g. *Southern California Edison Co. v. FERC* (D.C. Cir. 1997) 116 F.3d 507, 519.)

In the Water Quality Certification, at page 25, Table 2, modify footnote 1 as follows:

¹ No diversion may occur until the minimum instream flows are satisfied, unless requested by the Operations Group and approved by the Deputy Director, including any Deputy Director approval pursuant to Condition 1.F. of this certification.

Modify Attachment A, Mitigation Measure 3, as follows:

The water temperature reduction device in the DeSabra Forebay will reduce water circulation and could cause a reduction in water quality. ~~PG&E is required to provide 1.175 cubic feet per second (cfs) flow to water users along the Upper Centerville Canal from the current release point in the forebay dam in the manner identified in the Butte Creek water rights decree⁴. Neither this Mitigation Measure nor the water quality certification alters any rights or requirements of that decree.~~ A bypassed flow of at least 2 cubic feet per second (cfs) (a portion of which may also serve the water rights decree requirement) shall be released into DeSabra Forebay at the upstream end of the temperature reduction device when in operation, providing some circulation through the forebay and reducing the risk of stagnation in the forebay pool. The circulation through the forebay would be further enhanced by operating the forebay at a lower elevation during the time when the temperature reduction device is operating to reduce retention time in the reservoir. Monitoring and reporting associated with this mitigation measure are required in the WQC plan outlined in Condition 9, DeSabra Forebay Water Temperature Improvements.

⁴ ~~Butte Creek Judgment and Decree, November 6, 1942.~~

The Butte Creek water rights decree¹ identifies parameters under which PG&E is required to provide 1.175 cfs flow to water users along the Upper Centerville Canal from the current release point in the forebay dam. Neither this Mitigation Measure nor the water quality certification alters any rights or requirements of that decree. However, a portion of the bypassed flow of at least 2 cfs under this Mitigation Measure may also serve the water rights decree requirement.

¹ Butte Creek Judgment and Decree, November 6, 1942.