
State Water Resources Control Board

July 12, 2023

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Pacific Gas and Electric Company
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Ms. Tiffany Begaye, Project Manager
Pacific Gas and Electric Company
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**Spring Gap-Stanislaus Hydroelectric Project
Federal Energy Regulatory Commission Project No. 2130
Tuolumne County
Middle and South Forks of the Stanislaus River and Tributaries**

COMPLIANCE CONCERNS WITH SPRING GAP-STANISLAUS HYDROELECTRIC PROJECT WATER QUALITY CERTIFICATION CONDITIONS

Dear Ms. Brunswick and Ms. Begaye:

On June 16, 2009, the State Water Resources Control Board (State Water Board) issued Order WR 2009-0039, a Clean Water Act section 401 water quality certification (certification) for Pacific Gas & Electric Company's (PG&E's) Spring Gap-Stanislaus Hydroelectric Project (Project)¹. On April 24, 2009, the Federal Energy Regulatory Commission (FERC) issued PG&E a new license for the Project's continued operations for a 38-year term. FERC's license order (paragraph D) requires PG&E to comply with conditions of the Project certification. Conditions of the Project certification are mandatory requirements for water quality protections pursuant to Clean Water Act section 401 and the FERC license.

Since April 21, 2022, PG&E staff have been in communication with State Water Board staff regarding provisions of the Project certification, specifically Conditions 1, 3, 11, and 20. PG&E has requested variances to the certification conditions and also notified State Water Board staff that PG&E failed to comply with several of the Project's certification conditions in 2022.

This letter is intended to notify PG&E of the formal process to request an amendment to the Project certification and to document PG&E's noncompliance with Project certification conditions. State Water Board staff appreciate that PG&E has been active

¹ The certification was amended on June 16, 2009; May 1, 2014; April 27, 2015; and August 6, 2020.

in pursuing meetings to discuss its compliance with certification conditions and has held meetings with State Water Board staff and other agencies on April 25, 2022; October 17, 2022; and January 25, 2023. State Water Board staff encourage PG&E to continue working with State Water Board staff and all affected agencies and parties to be transparent and proactive about any compliance issues, and to diligently pursue a certification amendment for any condition modifications that PG&E would like to propose, while also working to resolve issues without a certification amendment where possible.

Below, organized by certification condition number, is a summary of non-compliance and PG&E staff's request for variances.

Condition 11 and Condition 3

In part, Condition 11, requires PG&E to provide a Recreation Streamflow Event immediately below Sand Bar Diversion Dam between May 15 and June 15, if such a flow event has not occurred naturally for three consecutive years. Condition 11 requires that the Recreation Streamflow Event occur no later than the date of the peak Supplemental Flow (Condition 3)², with at least one month's prior public notice. Additionally, Condition 11 allows for deviations from the required Recreation Streamflow Event after consultation with and upon approval of the Deputy Director of the Division of Water Rights (Deputy Director). Additionally, Condition 3 requires PG&E to develop and recommend a water temperature trigger to inform initiation of Supplemental Flows in years that Beardsley Dam is forecast not to spill.

On April 21, 2022, PG&E staff notified State Water Board staff that PG&E expected to not comply with Condition 11's Recreation Streamflow Event because of an oversight. Following PG&E staff's notification, on April 25, 2022, State Water Board and PG&E staff met to further discuss the 2022 Recreation Streamflow Event. During the April 25, 2022 meeting, State Water Board staff reminded PG&E staff of the Recreation Streamflow Event and public noticing requirements, and encouraged PG&E to comply with Condition 11 as there was sufficient time remaining to provide a Recreation Streamflow Event with public notice. PG&E staff explained that they would attempt to meet Condition 11 requirements but doubted that a Recreation Streamflow Event was possible prior to June 15. Additionally, PG&E staff expressed concern with providing a Recreation Streamflow Event after June 15 because of water supply concerns and the foothill yellow-legged frog (FYLF) breeding season. PG&E cited, as a comparison, the Rock Creek-Cresta Project (FERC Project No. 1962) where seasonal pulse flows were discontinued in 2005 due to impacts on the FYLF population.

² Condition 3 of the Project certification defines Supplemental Flows as a 13-week-long period of elevated minimum instream flows in the Sand Bar Dam Reach, with peak Supplemental Flows scheduled to coincide with the period of spill from Beardsley Reservoir or with peak inflows to Beardsley Reservoir when Beardsley Reservoir is not forecast to spill.

On April 28, 2022, State Water Board staff sent an email to PG&E staff recommending that PG&E: (1) notify stakeholders that PG&E did not anticipate providing a 2022 Recreation Streamflow Event; (2) consult with the United States Forest Service (USFS) and California Department of Fish and Wildlife (CDFW) to discuss PG&E's concerns about FYLFs; and (3) request approval from the Deputy Director pursuant to Condition 11 of the certification.

State Water Board staff sent emails³ to PG&E staff on several occasions, requesting updates and received no substantive response from PG&E related to Condition 11 compliance until August 31, 2022, when PG&E notified interested agencies⁴ that it would not be providing a Recreation Flow Event in 2022. Subsequently, on September 26, 2022, PG&E sent another email to State Water Board staff affirming that a 2022 Recreation Streamflow Event would not occur and expressed desire to further analyze the existing temperature trigger for FYLF breeding as it relates to Condition 3 and certification flow requirements.

On February 14, 2023, PG&E sent a letter to the Deputy Director addressing its failure to provide a 2022 Recreation Streamflow Event. PG&E's letter claimed that this failure was due solely to an overlap in the breeding season of FYLF and the Recreation Flow Event window. PG&E's letter does not explain why PG&E did not conduct a Recreation Stream Event between May 15 and June 15, prior to the FYLF breeding season.

PG&E is not in compliance with Condition 11 of the Project certification. The Project certification does not allow PG&E to replace the FYLF breeding temperature trigger specified in Condition 3 with a calendar trigger as requested by PG&E. PG&E should pursue a certification amendment if it would like to modify requirements of Condition 3.

Please note, that as early as April 2015, the Deputy Director has explained that to change the certification temperature trigger requirements, a certification amendment would be necessary. On April 27, 2015, the Deputy Director provided PG&E with a Conditional Approval of Variance from the Supplemental Flows and Recreational Flows. In its letter, the Deputy Director reminded PG&E that "Any replacement condition will require an amendment to both PG&E's and Tri Dam's respective certification on the MFSR [Middle Fork Stanislaus River]. Though on September 10, 2015, PG&E recommended the temperature trigger be replaced with a date trigger for Supplemental Flows, no amendment has been sought and the requirement for a temperature trigger per Condition 3, remains in effect.

³ State Water Board staff sent emails to PG&E regarding Condition 11 on: May 17, 2022; May 18, 2022; June 3, 2022; June 15, 2022; August 26, 2022; August 30, 2022; September 21, 2022; September 27, 2022.

⁴ Notice provided via filing in the FERC Docket P-2130 and hard copy mailing to the Deputy Director.

Condition 20

Condition 20 requires PG&E to maintain and operate the Philadelphia Diversion fish screen. Per Condition 20, PG&E is allowed to remove the upper screen panels from the fish screen from December 1 through March 15 when ice and snow conditions may exist to prevent damage to the screen.

On November 9, 2022, PG&E reported to the USFS, CDFW, and State Water Board staff that the Philadelphia Diversion fish screen was prematurely removed on November 7, 2022, to protect the fish screen from impacts of snow and ice expected from an anticipated storm. Per the conditions included in the Project's FERC license as required by USFS Condition 40 and Condition 20 of the Project certification, the fish screen is only allowed to be removed from December 1 through March 15. Operational flexibility associated with fish screen removal outside of the December 1 through March 15 period requires a certification amendment.

Condition 1

Condition 1 defines the Project water year types as a factor of the California Department of Water Resources' forecast for the anticipated annual inflow to New Melones Reservoir. The water year types are used throughout the Project's certification to appropriately implement certification conditions based on the amount of water available to the Project in any given water year.

On August 22, 2022, PG&E staff requested a variance to change the water year type applicable to the Project from Normal to Dry due to a combination of low snowpack at the start of the summer season and the operating conditions of the Sand Bar Hydroelectric Project (FERC Project No. 2975). The Sand Bar Hydroelectric Project is upstream of the Project's Relief Dam and is operated by TriDam⁵ under a separate FERC license and certification. For water year 2022, Sand Bar Hydroelectric Project operated under a Dry water year type while the Project's water year was classified as a Normal water year⁶. This led to a reduced amount of water flowing downstream to Project works relative to what would be expected if the Sand Bar Hydroelectric Project was also operating under a Normal water year.

⁵ Tri-Dam Project is a partnership between the Oakdale Irrigation District and the South San Joaquin Irrigation District.

⁶ The Project and the Sand Bar Hydroelectric Project both use the May 15 California Department of Water Resources' forecast to determine their project-specific water year types; however, the two projects were licensed at different times and have different thresholds defined for Dry versus Normal water year types. Accordingly, it is possible for the water year type to be defined as Normal under the Project certification while the water year type would be defined as Dry per the Sand Bar Hydroelectric Project certification. In such an instance, the flows released from the Sand Bar Hydroelectric Project are reduced, thereby providing less flow to the downstream Project.

On August 25, 2022, State Water Board staff replied to PG&E staff that the Project's water year type is determined by Condition 1 and is independent of the Sand Bar Hydroelectric Project's water year type determinations. State Water Board staff clarified that the Project's certification does not provide a mechanism for the State Water Board to grant PG&E staff's variance request, and that a certification amendment request is the appropriate mechanism for the requested variance.

Summary

State Water Board staff understand that PG&E has encountered difficulties in executing some provisions of the Project certification. However, PG&E is required to comply with conditions of the certification unless and until an amendment to the certification is requested and subsequently issued. In 2022, PG&E was noncompliant with certification Conditions 11 and 20. Given PG&E did not request or meet the criteria for relief from providing the 2022 Recreation Streamflow Event (as noted in Condition 11), the State Water Board expects PG&E to submit plan for how PG&E plans to rectify its noncompliance by providing additional boating opportunities to address the missed 2022 Recreation Streamflow Event.

As discussed previously in this letter, PG&E has submitted multiple variance requests, including requests to replace the FYLF temperature breeding trigger for peak flows and to make changes to water year types. The certification does not provide for Deputy Director or other staff-level approval of these requests. Accordingly, State Water Board staff strongly recommend that PG&E consider submitting a certification amendment request to the extent PG&E believes these conditions and factors outside of PG&E's control will continue to pose obstacles to compliance with the Project certification moving forward.

If you have questions regarding this letter, please contact Garrett Long, Project Manager, by email to: Garrett.Long@waterboards.ca.gov. Written correspondence or inquiries should be mailed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program;
Attn: Garrett Long;
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Sincerely,

Parker Thaler
Water Quality Certification Program Manager
Division of Water Rights

ec: Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
Via efile to Project Docket P-2130

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