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STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

NORTHERN CALIFORNIA POWER AGENCY Applicant	SOURCES:	Silver Creek, North Fork Stanislaus River
Hydroelectric Project, FERC No. 11563	COUNTY:	Tuolumne, Calaveras, Alpine

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE
BY THE EXECUTIVE DIRECTOR:

1. The Northern California Power Agency (NCPA) has applied to the Federal Energy Regulatory Commission (FERC) for a license under the Federal Power Act (16 USC 791(a)) to operate an existing major hydroelectric power project in Tuolumne, Calaveras, and Alpine Counties and to the State Water Resources Control Board (SWRCB) for Water Quality Certification under section 401 of the Clean Water Act (33 USC 1344).

2. The Federal Clean Water Act (33 USC 1251) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (33 USC 1251(a)). Section 101(g) (33 USC 1251(g)) requires federal agencies to "cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources." Section 401 (33 USC 1341) requires every applicant for a federal license or permit to provide the responsible federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including section 303 ("Water Quality Standards and Implementation Plans," 33 USC 1313); directs the state agency responsible for certification to prescribe effluent limitations and other limitations necessary to

ensure compliance with the Clean Water Act and with any other appropriate requirement of state law; and provides that state certification conditions shall become conditions of any federal license or permit for the project.

3. The SWRCB is the agency responsible for water quality certification in California (section 13160 of the California Water Code); and has delegated this function to the Executive Director by regulation (section 3838 of Title 23 of the California Code of Regulations (CCR)).

4. On June 27, 1995, the SWRCB received a second request from NCPA for certification that the Upper Utica Hydroelectric Project (FERC Project No. 11477)(Upper Utica Project) would be in compliance with state and local water quality requirements, including requirements that satisfy the specified provisions of the Federal Clean Water Act. By letter dated January 16, 1996, NCPA informed the SWRCB that it would be pursuing the Upper Utica Project under FERC Docket No. 11563 instead of FERC Docket No. 11477 and requested 401 certification. The June 27, 1995 and subsequent January 16, 1996 certification requests for the Upper Utica Project will be utilized for purposes of certifying the Upper Utica Project under FERC No. 11563. When FERC approved the transfer of this project from PG&E to NCPA on November 29, 1995, FERC changed the project number to FERC No. 11563.

5. For project purposes, water is released from Lake Alpine, Union Reservoir or Utica Reservoir and is also directly diverted from the North Fork Stanislaus River utilizing the project facilities of the Calaveras County Water District's (CCWD) North Fork Stanislaus Project (FERC No. 2409).

Reservoirs releases, together with water directly diverted from the North Fork of the Stanislaus River (NF Stanislaus River), will be utilized to divert about 20,000[1] acre-feet of water per annum (afa) at a rate of 28 cubic feet per second from the NF Stanislaus River into the existing Collierville Penstock (FERC No. 2409) for hydroelectric power generation at the existing Collierville Powerhouse. After generating power, the water will be discharged into the NF Stanislaus River above New Melones Reservoir.

The existing direct diversion and rediversion from storage into the Utica Canal of Pacific Gas and Electric Company (PG&E) is limited to 88 cubic feet per second (cfs) from North Fork Stanislaus River and its tributaries Beaver Creek and Mill Creek for hydroelectric power generation at Utica Powerhouse[2] based upon PG&E's pre-1914 appropriative rights.

PG&E is modifying the existing Utica Project by transferring its water rights to: (1) NCPA for its Upper Utica Project which diverts water from the NF Stanislaus River into the Collierville Penstock; and, (2) CCWD for continued power generation utilizing the existing Utica Canal, Angels and Murphy Powerhouses. The combined diversions under these projects cannot exceed PG&E's original water right. Consequently, the transfer to NCPA of 28 cfs should result in reduction in Utica Canal diversions by CCWD to a maximum of 60 cfs by direct diversion and rediversion from storage.

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[1] NCPA Final Environmental Impact Report (EIR) for the Utica/Angels Hydroelectric Project, January 1996, State Clearinghouse No. SCH 94032036, section 2, page 3.

[2] The 88 cfs includes both water directly diverted and the following amounts released from storage: (1) 2,000 afa in Union Reservoir; (2) 4,600 afa in Lake Alpine; and, (3) 2,400 afa in Utica Reservoir. These quantities were determined by the court on November 14, 1929 in the Stanislaus River Decree, "Order Determining and Establishing the Several Rights by Appropriation of the Waters of the Stanislaus River and Its Tributaries".

On April 19, 1995, the SWRCB issued a section 401 certification for existing operation of the Utica Project,[3] FERC Project No. 2019. This certification was for the limited purpose of continuing the existing operation, including the existing pattern of diversion into the Utica Canal. Further, the April 19 certification included use of water from Union Reservoir, Utica Reservoir or Lake Alpine, which are also described as project facilities for purposes of the NCPA certification of FERC Project No. 11563.

FERC approved transfer of the PG&E facilities identified herein to NCPA by order dated November 29, 1995, and this action was subsequent to issuance of the April 19, 1995 certification to PG&E. Since the projects of PG&E and NCPA involve different diversion patterns and utilize different powerhouses to generate hydroelectric energy, the terms of the April 19, 1995 certification to PG&E and this certification are not the same. The Upper Utica Project of NCPA shall be operated, at all times, to comply solely with the terms of this certification. The April 19 PG&E certification terms shall not be utilized for operation of the Upper Utica Project of NCPA.

NCPA has not requested section 401 certification for reoperation of the existing Utica Canal facilities. Therefore, this certification is not valid for operation of the existing Utica Canal facilities, including the Mill Creek Tap Diversions into Utica Canal, Hunters Reservoir releases into Mill Creek, Hunters Reservoir releases into Lower Utica Canal, Murphys Afterbay releases into Angels Creek, Angels Dam releases into Angels Creek, Angels Dam diversions into Angels Canal and Angels Powerhouse releases into Angels Creek.

[3] To distinguish the NCPA project from the PG&E project, NCPA refers to its project as the Upper Utica Project.

6. As described by NCPA in requesting this certification, the project operation includes only hydropower generation. NCPA is acquiring the hydropower water rights for the project from PG&E. The project operations may be modified in the future to accommodate consumptive uses of water such as irrigation, domestic use, or other non-hydropower uses. An additional valid water right under state law would be necessary to operate the project for those consumptive non-hydropower uses. If the SWRCB approves a water right that will result in such modifications, the SWRCB will, concurrently with its water right approval, issue a new certification to the hydropower project under section 401 of the Clean Water Act to cover the revised hydropower operations.

7. The Utica Project is an existing project of PG&E. The NCPA project alternative will result in modified operation of the existing project facilities, including modifications in the pattern of water diversion from the NF Stanislaus River. The project is subject to the provisions of the California Environmental Quality Act (CEQA). NCPA prepared a Final EIR for the Utica/Angels Hydroelectric Project dated January 1996 (State Clearinghouse No. SCH 94032036), in compliance with the requirements of CEQA. On October 26, 1995, NCPA issued Resolution No. 95-27 which certified the adequacy of its EIR for the Utica/Angels Hydroelectric Project and states that NCPA agrees to implement the mitigation measures identified in Table 2-2 of the Final EIR. On November 6, 1995, NCPA issued a Notice of Determination (NOD) which finds that the project will not have a significant effect on the environment, provided that the certified mitigation measures are implemented. SWRCB staff reviewed the final EIR and the findings in the NOD.

8. The California Regional Water Quality Control Boards have adopted, and the SWRCB has approved, Water Quality Control Plans (Basin Plans) for each watershed basin in accordance with provisions of section 303 of the Clean Water Act, related to the establishment of water quality standards and planning (33 USC 1313). Basin Plans identify beneficial uses of the waters within each Region.

9. The California Regional Water Quality Control Board (CRWQCB), Central Valley Region, in its Basin Plan for the Sacramento River and the San Joaquin River Basins has identified the beneficial uses of the NF Stanislaus River and Silver Creek as municipal, irrigation, stockwatering, hydroelectric generation, contact and non-contact recreation, and freshwater habitat (warm and cold).

10. Protection of the chemical, physical, and biological integrity of waters of the state for instream beneficial uses identified in the Basin Plans requires maintenance of adequate stream flows as well as effluent limitations and other limitation on discharges of pollutants from point and nonpoint sources to navigable waters and their tributaries.

11. SWRCB staff has reviewed NCPA's FERC license application for Upper Utica Project (SWRCB files).

12. The SWRCB section 401 Certification dated February 14, 1992 for the McKay's micro-turbine (FERC Project No. 2409-CA) prohibits operation for peaking power generation purposes and limits use of the micro-turbine to incidental power generation. This certification shall be consistent with the certification for FERC Project No. 2409-CA.

ACCORDINGLY, THE SWRCB CERTIFIES THAT the Upper Utica Hydroelectric Project will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law provided NCPA complies with the following terms and conditions:

1. In order to meet "COLD" water temperature objective of 68 degrees fahrenheit as defined in the Basin Plan, NCPA shall:

   a. Coordinate the operation of the Union Reservoir, Utica Reservoir and Lake Alpine, including the water which is discharged from these reservoirs and subsequently routed through the existing New Spicer Meadows Reservoir of CCWD (which is operated pursuant to a revised power purchase contract between NCPA and CCWD dated March 1, 1985) for release into Highland Creek, thence NF Stanislaus River with the existing operation of FERC Project No. 2019 to maintain the "COLD" water designation throughout the bypassed stream reach, which is identified as the following stream segments: (1) Silver Creek from the North Fork Diversion Dam to the confluence of NF Stanislaus River and Highland Creek; (2) NF Stanislaus River from the North Fork Diversion Dam to the confluence of Highland Creek and NF Stanislaus River; and (3) NF Stanislaus River from McKay's Point Diversion Dam to the point of discharge from the Collierville Powerhouse.

For protection of water quality and beneficial uses, NCPA shall provide a minimum bypass or release flow of 5 cfs[4] for Silver Creek. NCPA also shall provide a minimum bypass or release flow of 3 cfs on the North Fork Stanislaus downstream of Utica Reservoir.

b. Develop and implement a plan, in consultation with the Department of Fish and Game (DFG) and RWQCB subject to approval by the Chief, Division of Water Rights of the SWRCB, for monitoring water temperatures from May 1 through October 15 of each year for a minimum period of 5 years. The plan shall identify the required frequency of water temperature monitoring and shall identify the number and location of the temperature gages. The monitoring plan shall be implemented within 180 days of issuance of a FERC License for Project No. 11563. The plan shall include, but not be limited to, installing and maintaining temperature monitoring gages capable of maintaining continuous records of daily maximums, minimums and average water temperature for each of the three bypassed stream reaches.

c. Maintain records of daily streamflow in each of the three stream segments specified in Item 1a above.

d. Submit streamflow and water temperature records to the Executive Director of the SWRCB and the Director of the DFG by November 15 of each year.

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[4] The minimum release to Silver Creek during dry years shall be 3 cfs. A dry year is defined as one for which the California Department of Water Resources' April 1 or May 1 forecast, whichever is most recent, indicates that the unimpaired inflow for the entire water year into New Melones Reservoir will be 500,000 af or less.

2. In order to protect the beneficial use designations identified in the Basin Plan, operation of the project, including construction of any new project facilities, shall not add the following substances to surface waters:

   a. Taste or odor-producing substances to impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin or to cause nuisance or adversely affect beneficial uses;

   b. Perceptible floating material including, but not limited to, solids, liquids, foams or scums which could result in degradation of water quality;

   c. Suspended or settleable material in concentrations that cause a nuisance or adversely affect beneficial uses;

   d. Oil, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water;

   e. Toxic pollutants, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal, or aquatic life; or that bioaccumulate in aquatic resources at levels which are harmful to human health; and;

   f. Coliform organisms attributable to human wastes.

3. In order to maintain the recreational beneficial use, the permittee or licensee shall operate Lake Alpine, Utica and Union Reservoirs in compliance with the requirements of the U.S. Forest Service regarding maintenance of specified lake level elevations for recreational purposes.

4. If the permittee or licensee initiates any activities requiring installation of concrete or grout, no concrete that has not set, nor grout that has not set, shall be allowed to contact or enter surface water.

5. Only water used for power generation is authorized for discharge. Discharge of any other materials is prohibited.

6. This order certifies NCPA's compliance with section 401 of the Clean Water Act only for purposes of diversion and use of water for hydropower generation and compliance with applicable requirements to avoid adverse impacts on instream beneficial uses. If project operations are modified to divert water for irrigation, domestic use, or other non-hydropower uses, NCPA must first obtain a new certification for any changes in the FERC licensed project, and the appropriator of the water must obtain a valid water right under state law. This order is valid only for the purpose of certifying NCPA's compliance under section 401 of the Clean Water Act with respect to its obtaining a license under the Federal Power Act for hydropower operations as proposed in NCPA's application for certification, and cannot be used by FERC or any other federal agency as certification for any change in project operations.

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7. Prior to initiating any construction activities which may result in temporary or long-term impacts to area soil resources and soil erosion, the permittee or licensee shall prepare a construction erosion control plan, in coordination with FERC and the RWQCB, and implement the measures identified in the plan.

8. This certification does not authorize peaking power generation at the McKay's micro-turbine.

Walt Pettit
Executive Director

Date: 3-11-96