



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

APR 27 2018

Mr. Darold Perry
Supervisor, Hydro License Implementation
Sacramento Municipal Utility District
P.O. Box 1500
Pollock Pines, CA 95726-1500

WATER QUALITY CERTIFICATION AMENDMENT RELATED TO CONDITIONS 1.K. AND 5.H.; UPPER AMERICAN RIVER PROJECT; FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2101; EL DORADO AND SACRAMENTO COUNTIES

Dear Mr. Perry:

On December 1, 2017, the State Water Resources Control Board (State Water Board) received a letter from the Sacramento Municipal Utility District (SMUD) requesting amendments to Conditions 1.K. and 5.H. of the water quality certification (certification) for the Upper American River Project (UARP). The UARP is also referred to as Federal Energy Regulatory Commission (FERC) Project No. 2101. SMUD requests: 1) a two-year extension to implement Condition 1.K., minimum instream flows (MIFs) on the South Fork American River below Slab Creek Reservoir Dam; and 2) amendment of Condition 5.H., interim modifications to reservoir levels, to allow for Deputy Director approval of interim reservoir level modification during UARP construction and maintenance activities.

Background

The State Water Board issued a certification for the UARP on October 4, 2013, which was incorporated into the new license FERC issued for UARP on July 23, 2014. A brief summary of the amendment request for the two conditions is provided below.

Condition 1.K. Amendment Request: MIF Requirement on the South Fork American River Below Slab Creek Reservoir Dam

Condition 1.K. of the certification specifies two sets of MIF requirements below Slab Creek Reservoir Dam: (i) "Year 1 through Year 3" following license issuance; and (ii) Year 4 through the term of the FERC license ("Year 4"). The "Year 4" MIF requirements are higher than the "Year 1 through Year 3" MIF requirements. SMUD must modify its facilities to implement the "Year 4" MIFs. Although the UARP license was issued in 2014, facility modifications were not authorized until 2016, when the South Fork Powerhouse Project license¹ was issued. Because of this delay, the timeframe for SMUD to complete facility modifications was effectively reduced

¹ The South Fork Powerhouse Project certification includes conditions for the proposed facility modifications necessary to implement "Year 4" MIFs in the South Fork American River below Slab Creek Dam. The proposed facility modifications could not be implemented until the South Fork Powerhouse Project license was issued.

from four years to two years. Despite SMUD's efforts to begin modifications as early as possible, it is apparent that facility modifications will not be completed by Year 4. SMUD therefore proposes to extend the "Year 1 through Year 3" MIF requirements through Year 5. The "Year 4" MIFs would apply as soon as reasonably practicable, but no later than Year 6. This revised timeframe will provide SMUD with enough time to complete necessary facility modifications to implement the "Year 4" MIF requirements no later than Year 6 of the UARP license.

Condition 5.H. Amendment Request: Interim Reservoir Level Modification

Condition 5.H. of the certification allows for interim modifications to reservoir levels during emergency events, equipment malfunctions, or system events affecting power grid reliability. All other activities requiring temporary reservoir level reductions require a certification amendment.

SMUD anticipates non-emergency construction or maintenance of multiple UARP facilities throughout the license term, including the Ice House auxiliary dam toe drain replacement and Union Valley Reservoir boat ramp improvements scheduled for 2018. These activities cannot be completed safely or efficiently without lowering reservoir water levels. SMUD suggests that requesting temporary amendments for every construction or maintenance activity requiring reservoir level modification is a costly and inefficient process. SMUD is therefore requesting certification amendment to allow for interim reservoir level modifications for construction and maintenance activities upon receipt of Deputy Director approval.

Noticing and California Environmental Quality Act

On December 15, 2017, the State Water Board posted public notice of the amendment request (request) online and notified interested parties via email. No comments were received on the request.

Issuance of a certification and amendment thereof is a discretionary action that requires the State Water Board to comply with the California Environmental Quality Act (CEQA). SMUD is lead agency for CEQA review. On September 18, 2008, SMUD adopted a resolution certifying that the Final Environmental Impact Statement (EIS) and Final CEQA Supplement comply with the requirements of CEQA, including the CEQA Guidelines, and reflect the independent judgment and analysis of the SMUD Board. On July 19, 2012, the SMUD Board adopted a resolution approving the UARP and CEQA findings².

On January 30, 2018, SMUD submitted an addendum to the Final CEQA Supplement which details the potential impacts of the proposed amendments. SMUD determined that the proposed amendments would not result in any new significant impacts or substantially worsen previously identified significant impacts. Further, SMUD found that mitigation measures in the Final EIS and Final CEQA Supplement will continue to ensure that any potential impacts from UARP implementation and the proposed amendments are less than significant.

As a responsible agency under CEQA, the State Water Board has prepared a Notice of Determination, which will be filed with the Office of Planning and Research within five days of issuance of this certification amendment. (Cal. Code Regs., tit. 14, § 15094, subd. (d).)

² The July 19, 2012 resolution also approved an addendum to the Final CEQA Supplement which details the UARP greenhouse gas impacts.

Conditional Approval

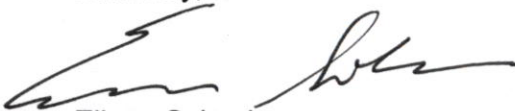
The State Water Board finds the requested amendments, with implementation of the conditions specified below and in Attachments A and B, to be protective of state water quality standards and in compliance with other appropriate requirements of state law. The requested amendment to Condition 1.K., modifying the implementation date for "Year 4" MIF requirements to no later than Year 6 of the UARP license, is hereby approved. The requested amendment to Condition 5.H. is hereby conditionally approved, as shown in Attachments A and B³ of this certification amendment. Additionally, SMUD, the Licensee, shall comply with the conditions outlined below. Failure to comply with the conditions outlined in this amendment constitutes a violation of the certification and may result in enforcement.

1. This certification amendment is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).
2. This certification amendment is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b), and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This certification amendment is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28 and owed by SMUD.

All documents and other information that constitute the public record for this certification amendment will be maintained by the Division of Water Rights and are available for public review at the following address: State Water Board, Division of Water Rights, 1001 I Street, Sacramento, California, 95814.

If you have questions regarding this amendment please contact Savannah Downey, UARP Manager, at (916) 322-1585 or by email at Savannah.Downey@waterboards.ca.gov. Written correspondence should be directed to: State Water Resources Control Board, Division of Water Rights - Water Quality Certification Program, Attn: Savannah Downey, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,



Eileen Sobeck
Executive Director

Enclosures: Attachment A: Amendment to Condition 5.H.: Interim Modifications (Track Changes Version)
Attachment B: Amendment to Condition 5.H.: Interim Modifications (Clean Version)

³ Attachment A includes a track changes markup of the approved amendment to Condition 5.H. Attachment B includes a clean copy of updated Condition 5.H. with the amendments incorporated.

cc: Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
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75 Hawthorne Street
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Ms. Beth Brenneman
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BLM Folsom Resource Area
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Mr. Jeff Horn
U.S. Bureau of Land Management
BLM Folsom Resource Area
5152 Hillside Circle
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ATTACHMENT A
Amendment to Condition 5.H.: Interim Modifications
Upper American River Hydroelectric Project Water Quality Certification
Federal Energy Regulatory Commission Project No. 2101
(Track Changes)

Text from the October 4, 2013 Upper American River Hydroelectric Project (UARP) water quality certification is referenced in *italicized* text, with new amendments shown as follows: deletions shown in ~~strike-out~~; and additions shown as ***bolded, italicized, and underlined*** text.

5.H.: Interim Modifications

Reservoir elevations may be modified as outlined below:

A. Reservoir elevations may be modified following Deputy Director approval for the following activities:

- **Construction and/or maintenance of recreation facilities, such as boat ramps, under Condition 14 (Recreation Implementation Plan); and**
- **Non-emergency maintenance to non-recreation features associated with UARP reservoirs, such as dams, powerhouses, outlet facilities, intake facilities, and spillways, under Condition 13 (Annual Review of Ecological Conditions).**

The process for modification of reservoir elevations for the above activities shall be as follows:

- **At least 120 days prior to the proposed interim reservoir level modification, the Licensee shall provide written notice and an opportunity to comment on the proposed interim reservoir level modification to the Settling Parties¹ and State Water Board staff. The Licensee shall include documentation of written notification and any comments received with its request for Deputy Director approval of interim reservoir level modification. The Deputy Director may require modifications as part of the approval. The Licensee shall file the Deputy Director's approval, together with any required modifications, with the Commission.**
- **If approved by the Deputy Director, the Licensee shall provide written notice to the Settling Parties and the general public of the approved interim modified reservoir level. This notice shall be provided within five days of Deputy Director approval. Public notices shall be posted online and on-site near the affected reservoir.**

¹ For reference, as noted on page 10 of the October 4, 2013 UARP certification, "The Settling Parties consist of SMUD [Sacramento Municipal Utility District], PG&E [Pacific Gas and Electric Company], USFS [United States Forest Service], BLM [Bureau of Land Management], United States Fish and Wildlife Service (USFWS), National Park Service, California Department of Fish and Wildlife (CDFW)...., California Department of Parks and Recreation (CDPR), American River Recreation Association and Camp Lotus, California Outdoors, California Sportfishing Protection Alliance, Friends of the River, American Whitewater, Foothill Conservancy, Theresa Simsiman, Hilde Schweitzer, and Rich Platt."

ATTACHMENT A
Amendment to Condition 5.H.: Interim Modifications
Upper American River Hydroelectric Project Water Quality Certification
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(Track Changes)

B. Reservoir elevations may be modified, **as provided below**, upon the occurrence of the following events:

- State or federal electrical emergencies where specific orders are issued or specific actions are mandated by an appropriate authority, requiring the Licensee to produce electricity outside normal planned operations;
- System events that cause SMUD's Operating Reserves to drop below the Western Energy Coordinating Council Minimum Operating Reliability Criteria; or
- Equipment malfunction, public safety emergency, or law enforcement activity.

In the event of such an interim modification during July, August, or September, the Licensee shall notify USFS, State Water Board, CDFW, USFWS and the Commission within three days of determining that reservoir level requirements were not or will not be met. Each notification shall include:

1. A description of the incident, including the reason the reservoir level was not or will not be met;
2. The Licensee's analysis of the implication of the incident on meeting future reservoir levels for that water year; and
3. The Licensee's proposal to manage reservoir levels to minimize recreational impacts and address energy and operational requirements for any months in which reservoir levels will not be achieved. The Licensee's proposal shall address:
 - (a) Prioritizing reservoir levels among Loon Lake, Union Valley and Ice House Reservoirs;
 - (b) Developing measures as they relate to impacts on recreational resources, if necessary; and
 - (c) Developing other measures as appropriate.

The measures in the Licensee's proposal shall be commensurate with the severity and time period during which reservoir levels are not met, and may include actions to be taken by the Licensee or others, such as increased patrols, extension of boat ramps, or development of/contribution to a mitigation fund. Once the UARPLicensee is no longer subject to the event and if the end-of-month reservoir elevations for Loon Lake, Union Valley, and/or Ice House Reservoirs cannot be achieved for that month, the Licensee shall confer with the State Water Board, USFS, CDFW, USFWS and the Commission (Conference) within 10 business days. The purpose of the Conference shall be to review the Licensee's proposal to manage reservoir elevations for the remainder of the recreation season. Within 10 business days of the Conference, the Licensee shall file with the Commission and State Water Board a letter summarizing the Conference and proposal. The Licensee shall obtain Deputy Director approval of the proposal prior to its implementation. The Deputy Director may require modifications as part of the approval. The Licensee shall file the Deputy Director's approval, together with any required proposal modifications, with the Commission.

ATTACHMENT B
Amendment to Condition 5.H.: Interim Modifications
Upper American River Hydroelectric Project Water Quality Certification
Federal Energy Regulatory Commission Project No. 2101
(Clean Version)

Condition 5.H. of the October 4, 2013 Upper American River Hydroelectric Project (UARP) water quality certification, in its entirety, is replaced with the amended language provided below.

5.H.: Interim Modifications

Reservoir elevations may be modified as outlined below:

A. *Reservoir elevations may be modified following Deputy Director approval for the following activities:*

- *Construction and/or maintenance of recreation facilities, such as boat ramps, under Condition 14 (Recreation Implementation Plan); and*
- *Non-emergency maintenance to non-recreation features associated with UARP reservoirs, such as dams, powerhouses, outlet facilities, intake facilities, and spillways, under Condition 13 (Annual Review of Ecological Conditions).*

The process for modification of reservoir elevations for the above activities shall be as follows:

- *At least 120 days prior to the proposed interim reservoir level modification, the Licensee shall provide written notice and an opportunity to comment on the proposed interim reservoir level modification to the Settling Parties¹ and State Water Board staff. The Licensee shall include documentation of written notification and any comments received with its request for Deputy Director approval of interim reservoir level modification. The Deputy Director may require modifications as part of the approval. The Licensee shall file the Deputy Director's approval, together with any required modifications, with the Commission.*
- *If approved by the Deputy Director, the Licensee shall provide written notice to the Settling Parties and the general public of the approved interim modified reservoir level. This notice shall be provided within five days of Deputy Director approval. Public notices shall be posted online and on-site near the affected reservoir.*

B. *Reservoir elevations may be modified, as provided below, upon the occurrence of the following events:*

- *State or federal electrical emergencies where specific orders are issued or specific actions are mandated by an appropriate authority, requiring the Licensee to produce electricity outside normal planned operations;*

¹ For reference, as noted on page 10 of the October 4, 2013 UARP certification, "The Settling Parties consist of SMUD [Sacramento Municipal Utility District], PG&E [Pacific Gas and Electric Company], USFS [United States Forest Service], BLM [Bureau of Land Management], United States Fish and Wildlife Service (USFWS), National Park Service, California Department of Fish and Wildlife (CDFW) ..., California Department of Parks and Recreation (CDPR), American River Recreation Association and Camp Lotus, California Outdoors, California Sportfishing Protection Alliance, Friends of the River, American Whitewater, Foothill Conservancy, Theresa Simsiman, Hilde Schweitzer, and Rich Platt."

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- *System events that cause SMUD's Operating Reserves to drop below the Western Energy Coordinating Council Minimum Operating Reliability Criteria; or*
- *Equipment malfunction, public safety emergency, or law enforcement activity.*

In the event of such an interim modification during July, August, or September, the Licensee shall notify USFS, State Water Board, CDFW, USFWS and the Commission within three days of determining that reservoir level requirements were not or will not be met. Each notification shall include:

- 1. A description of the incident, including the reason the reservoir level was not or will not be met;*
- 2. The Licensee's analysis of the implication of the incident on meeting future reservoir levels for that water year; and*
- 3. The Licensee's proposal to manage reservoir levels to minimize recreational impacts and address energy and operational requirements for any months in which reservoir levels will not be achieved. The Licensee's proposal shall address:*
 - (a) Prioritizing reservoir levels among Loon Lake, Union Valley and Ice House Reservoirs;*
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