

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 2687--California
Pit No. 1 Hydroelectric Project
Pacific Gas & Electric Company
MAR 15 2010

Subject: Requests to modify the Summer Flushing Flow Requirement at the Pit No.1 Hydroelectric Project

TO THE PARTIES ADDRESSED:

The Federal Energy Regulatory Commission (Commission) has received correspondence from fish and wildlife resource agencies (see appendix) regarding a possible conflict between the summer flushing flow requirement at the Pit No. 1 Hydroelectric Project¹ (FERC No. 2687) and the need to suspend these flows to protect the federally endangered Shasta crayfish (*Pacifastacus fortis*). The project is owned and operated by Pacific Gas & Electric Company (PG&E or licensee) and is located near the towns of Fall River Mills and McArthur in Shasta County, CA. I am writing to request your assistance in resolving the concerns raised by the resource agencies.

Under Condition 13 of the California State Water Resources Control Board's (Board) water quality certification for the Pit No. 1 Project, the licensee is required to release flushing flows during the summer, over three weekends, to control nuisance aquatic growth in the Fall River Pond and to provide a whitewater boating opportunity in the bypassed reach of the Pit River. Additionally, under license articles 409, 410, and 412, which implement some of the terms and conditions of the incidental take statement filed by the U.S. Fish and Wildlife Service (FWS), the licensee is required, in part, to implement a monitoring plan, establish a technical review committee, and develop a management plan to protect the Shasta crayfish. Based on the licensee's monitoring reports, FWS has determined that the flushing flow releases are adversely affecting Shasta crayfish and their habitat. PG&E and FWS have requested that the Board amend the water quality certification to suspend the requirement to release flushing flows. FWS has also requested that the Commission temporarily suspend all flushing flows, amend the license to remove this requirement, and immediately reinitiate consultation under section 7 of the Endangered Species Act (ESA) for incidental take of Shasta Crayfish. The Board has indicated that before it can amend the water quality certification, it must

¹ See 102 FERC ¶61,039. Order Issuing New License (Issued March 19, 2003).

comply with the California Environmental Quality Act (CEQA) and prepare an environmental review document.

It would appear from the monitoring data that implementing the summer flushing flow requirement for the Pit No. 1 Project, established under the authority of the Clean Water Act, may be adversely affecting the Shasta crayfish. The Commission does not have the authority to unilaterally modify or suspend the water quality certification requirements. Although the Commission could reinitiate consultation with FWS, it can not amend the license to delete a mandatory condition of the water quality certification without first receiving a corresponding amendment of the certification from the Board, even if FWS required the deletion as a condition of a new incidental take statement. Therefore, in order to reconcile these license requirements, we request your assistance in exploring the possibility of a collaborative agreement on the flushing flow requirement.

The Commission would like to coordinate a meeting between Commission staff, the FWS, the Board, California Department of Fish and Game (CDFG)² and the licensee with the goal of reaching an agreement as to the immediate and long-term implementation of the flushing flow requirement. Please consider the following list as possible topics for discussion:

- The possibility of issuing a temporary suspension of summer flushing flows while a CEQA document is prepared regarding the flushing flow requirement.
- The possibility of issuing a temporary suspension of July and August flushing flows as recommended in the licensee's January 29, 2009 Fish Monitoring Final Report.
- Procedural issues related to a water quality certification amendment.

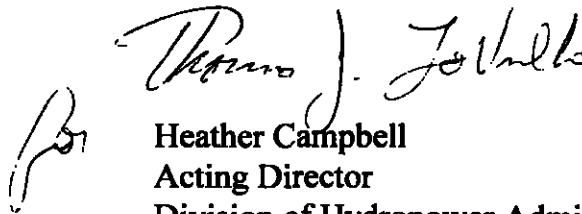
With the next flushing flows required to be released in May or June of 2010, there is some urgency required to resolve this issue in the next two months. Commission staff would like to arrange a telephone conference to discuss a practical resolution of this matter. I am asking John Aedo in our San Francisco Regional Office (SFRO) to coordinate and make the necessary arrangements for a telephone conference between staff from the Commission's Washington, DC office, SFRO, FWS, the Board, CDFG and the licensee. Please contact Mr. Aedo by March 26, 2010 to assist him in scheduling the

² As managers of California's fish, wildlife, and plant resources and the habitats upon which they depend, and for their use and enjoyment by the public, the California Department of Fish and Game is invited to participate in the discussions.

teleconference. If you think that staff from another resource agency should also be included in the discussion, please inform Mr. Aedo. Please consider March 30 or 31, 2010 at 10:30 a.m. Pacific Time as potential scheduling dates. You can reach Mr. Aedo at (415) 369-3335.

Thank you for your cooperation. We look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Campbell". The signature is written in a cursive style and is positioned to the left of the printed name.

Heather Campbell
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Appendix A- Summary of correspondence received from the resource agencies

- On January 29, 2009, the licensee filed its Fish Monitoring Final Report, pursuant to Article 401 and Condition 18 of the Appendix of the project license. The report documents changes in fish community structure and abundance at the project. The report recommends that flushing flows be discontinued if the Pit No. 1 Flushing Flow Effectiveness Monitoring Plan indicates that they are not necessary, or to only release flushing flows when necessary to remove excess vegetation in the Fall River Pond in months other than July or August.
- On May 26, 2009, the U.S. Fish and Wildlife Service (FWS) requested that the California State Water Resources Control Board (Board) suspend flushing flows for the 2009 summer season in response to declines in Shasta crayfish numbers observed during regular monitoring.
- On May 28, 2009, the licensee submitted their Shasta Crayfish Technical Review Committee Annual Report pursuant to Article 410 of the project license. The report documents a decline in Shasta crayfish in the project area, as well as a significant increase in non-native crayfish.
- On June 17, 2009, the Board responded to FWS's request to suspend summer flushing flows at the project. The Board stated that if the licensee determined that the flushing flow requirement was no longer necessary to control aquatic vegetation and mosquito production, it should formally request that the Board alter the requirement. The Board also requested that the licensee present evidence that the flushing flow requirement was no longer needed. Furthermore, the Board stated the May 2009 Shasta Crayfish Technical Review Committee Summary Report was inconclusive as to whether the flushing flows were causing the observed decline in Shasta crayfish numbers.
- On June 24, 2009, the licensee requested that the Board modify their water quality certification to eliminate the summer flushing flow requirement. The licensee also stated in their request that monitoring conducted from 2005-2008 revealed that surface vegetation cover at the Fall River Pond was minimal, and that minimum base flows through Fall River Pond seemed to be adequately suppressing aquatic vegetation.
- On August 28, 2009, the Board responded to the licensee's request to modify their water quality certification. The Board informed the licensee that amendment of

the water quality certification would require them to comply with the California Environmental Quality Act (CEQA) and prepare an Environmental Impact Report.

- On November 18, 2009, the licensee requested that the Federal Energy Regulatory Commission (Commission) designate them as a non-federal representative to conduct informal consultation with FWS and prepare a biological evaluation/assessment to comply with Section 7 of the ESA. This request was made as a result of the expiration of a three-year incidental take statement for Shasta crayfish, and also as a result of observed declines in Shasta crayfish numbers during monitoring.
- By letter dated November 19, 2009, the Commission acknowledged receipt of the licensee's May 28, 2009 annual report on the activities of the Shasta Crayfish Technical Review Committee. The Commission stated that the report satisfied the annual filing requirement established in Article 410 of the project license. The Commission also reminded the licensee that any recommendations that would require changes to the project license, including the elimination of the flushing flow requirement, must be filed for Commission approval.
- By letter dated December 9, 2009, the Commission designated the licensee to act as its non-federal representative for the purpose of informal consultation with FWS to address the effects of flushing flows on the federally-listed Shasta crayfish, pursuant to Section 7 of the Endangered Species Act (ESA).
- On December 17, 2009, FWS sent a letter to the Commission stating that immediate reinitiation of Section 7 consultation was required for the incidental take of the endangered Shasta crayfish. FWS also informed the Commission that the effects of summer flushing flows were not analyzed in FWS's October 24, 2002 biological opinion and that appropriate take authorization had not been issued for this requirement. As such, FWS requested that the Commission retract the flushing flow requirement, and suspend all flushing flows. Additionally, FWS asserted that their three-year incidental take statement for Shasta crayfish had expired.
- On January 5, 2010, the licensee filed a May 2009 report with the Commission entitled, "A Biological Evaluation of Thermal Effects from Summer Flushing/Whitewater Flows on Spring-influenced Aquatic Habitat in the Pit 1 Bypass Reach." The report documents changes in water temperature and the areal extent of coldwater habitat in areas adjacent to coldwater springs at the project.