

**RESPONSE TO COMMENTS ON THE DRAFT WATER QUALITY CERTIFICATION
AND INITIAL STUDY/PROPOSED MITIGATED NEGATIVE DECLARATION FOR
THE SPRING GAP-STANISLAUS HYDROELECTRIC PROJECT**

On August 1, 2007, the State Water Resources Control Board (State Water Board) issued an Initial Study/Proposed Mitigated Negative Declaration and draft water quality certification for the Spring Gap-Stanislaus Hydroelectric Project, Federal Energy Regulatory Commission (FERC) #2130. Comments were received from Gallery and Barton on behalf of Tuolumne Utilities District (TUD), Tuolumne County Board of Supervisors (TCBS), Tuolumne County Farm Bureau (TCFB), Pacific Gas and Electric Company (PG&E), Bureau of Reclamation (BOR), Stanislaus National Forest (STF), Central Sierra Environmental Resources Center (CSERC), and Pinecrest Permittees Association (PPA).

Parties provided comments on the draft water quality certification (WQC), the Initial Study (IS), and on the Proposed Mitigated Negative Declaration (MND) to the State Water Board for review. State Water Board staff provide the following responses to the comments received.

Initial Study

TUD commented that the description of TUD's water supply contract on page 6 of the IS is erroneous in several respects. TUD notes the contract is for all water taken from the South Fork Stanislaus River (SFSR) in addition to water stored in Pinecrest Lake. Comment is noted. The description of the water supply contract does not alter the determination of significance in the IS.

TUD requests the data used to establish the minimum target elevation of 5610 feet at Labor Day. This elevation was based on data collected by STF staff and from discussion by the Stanislaus Planning Action Team (SPLAT) during the relicensing process. There was a desire by SPLAT to maintain access to the boat dock, and limit the number of exposed boulders, prior to Labor Day. As noted in WQC condition #4, State Water Board staff understand that there is uncertainty around the specific elevation required to achieve these goals. As such the WQC allows for a change in the target elevation upon submission of evidence.

TUD states the IS does not analyze the downstream impacts to the environment and TUD customers caused by the elimination of water withdrawals in dry years and emergencies. The California Environmental Quality Act (CEQA) baseline for this project was the environmental condition at the time the IS was prepared. In the past TUD has called for blocks of water resulting in fluctuating flows that impacted aquatic species in the SFSR. The WQC terms stabilize and protect aquatic life in the SFSR, which does not represent an impact under CEQA. In addition, State Water Board staff in collaboration with PG&E used the CHEOPS water operations model to develop WQC condition #4. The model showed that the TUD demand (2001) was met for the 1973 through 1999 period in the model. The model included a minimum pool of 1500 acre feet in Lyons Reservoir to protect water quality. WQC condition #4 does not eliminate water withdrawals during dry years, and allows PG&E to request changes in flows during critically dry years. Based on this information there will not be an impact under CEQA from WQC condition #4.

TUD also comments that the STF 4(e) conditions require the development of drawdown curves yearly in collaboration with PG&E, TUD and agencies. This statement is correct. While the WQC does not require yearly consultation, it does not prevent PG&E, TUD and agencies from developing a yearly drawdown curve. The condition does place restrictions on the how the curve can be developed. State Water Board staff stated to the SPLAT on many occasions that its condition #32 is not acceptable. The following comments were provided to FERC on the Draft Environmental Impact Statement: "Board staff were actively involved with the development of the conditions in the measure, but continue to be concerned about the lack of certainty in the measure. Because this measure requires annual consultation over the development of a drawdown curve, it is impossible to evaluate the true impacts on reservoir elevation (reservoir recreation), stream flows (aquatic resources), power production, and consumptive uses." WQC condition #4 meets or exceeds the current level of protection for lake levels, instream flows, domestic supply, and water for hydropower. This is not an impact under CEQA.

TUD and TCBS state that issuance of the WQC as proposed will result in a new and significant environmental impact, "the impairment of a domestic water supply for 44,000 persons served by the Tuolumne Utilities District." As stated above, information in the record shows the current TUD demand is met under the conditions in the WQC. Condition # 5 allows PG&E to request a change in the flow schedule during critically dry years. TUD should submit evidence to the State Water Board that demonstrates how the water supply will be impaired. Based on the evidence in the record there is no impairment to current water supply demand. This is not an impact under CEQA.

TCFB states any further changes to water supply will adversely affect agriculture and the loss should be mitigated. TCFB believes that under the conditions in the WQC there would be months during which agriculture would have no supply of water. Under the conditions in the WQC, TUD will receive an amount of water equal to, or above, the 2001 demand. Allocation of this water by TUD is not within the regulatory scope of the WQC. This is not an impact under CEQA.

PG&E provided additional information about new water rights issued by the State Water Board for the Philadelphia Canal. Reference to issuance of new water rights will be removed from Proposed Project in the IS.

PG&E provided additional information on the timing of the Stanislaus Afterbay Dam Removal. The comment is noted, and does not change the finding of significance.

PG&E provided a correction that the company has not made a decision concerning future livestock grazing at Kennedy Meadows. The comment is noted, and does not change the finding of significance.

BOR states that a National Environmental Policy Act document will be required, and that PG&E must obtain a "Right of Use" permit from BOR. BOR states that the Camp Nine Road crosses lands administered by the BOR. The comment is noted, and does not change the finding of significance.

BOR also notes the scope of work in the project description has changed from the one included in the IS. State Water Board staff are aware that the project description has changed. However, these changes do not affect the evaluation of the environmental

impacts of the dam removal project. BOR expresses concern about potential contamination of sediments trapped behind the dam. It should be noted that the afterbay dam traps a very small amount of sediment, and that large quantities of sediments pass through and over the dam every year. The conditions in the WQC provide adequate protection for water quality, when compared to background conditions. Information provided does not change the findings of significance.

BOR provided information that a Bald Eagle nest is located about 1 mile from the project. This project is planned to occur in the fall long after young have fledged, and after the start of migration. Due to the short construction period, time of year, and distance from the nest, the project will not have a significant impact on Bald Eagles.

Proposed Mitigated Negative Declaration

BOR states that the Camp Nine Road crosses lands administered by the BOR. The comment is noted, and does not change the finding of significance.

BOR requests a full metals scan of sediments and that results and proposed method of disposal be submitted to them. BOR will require sampling for arsenic, copper, nickel, lead, and chromium. State Water Board staff will include these additional metals in condition #12. The comment is noted, and does not change the finding of significance.

Draft Water Quality Certification

TUD states that WQC condition #4 removes the reference to meeting TUD's consumptive demand. SPLAT condition #32 contains a number of operational objectives that are intended to guide the development of the yearly drawdown curve. These objectives are not regulatory and are not binding on any of the SPLAT participants. These operational objectives were used by State Water Board staff in the development of WQC condition #4. It should be noted that WQC condition #17 states "Nothing in this certification shall be construed as State Water Board approval of the validity of any consumptive water rights, including pre-1914 claims, referenced in the Coordinated Operations Agreement or elsewhere. The State Water Board has separate authority under the Water Code to investigate and take enforcement action, if necessary, to prevent any unauthorized or threatened unauthorized diversions of water."

STF and PG&E state that WQC condition #4 conflicts with STF 4(e) condition #34, has little flexibility, removes the ability of local land and water managers to conduct annual water management planning and goes against the spirit of SPLAT measure #32. CSERC suggests that language be added to allow PG&E to develop a yearly drawdown curve based on feedback from the Department of Fish and Game, STF, and TUD. It is important to remember the SPLAT agreement was a joint recommendation to the FERC, and not a legally binding contract or settlement agreement. As stated above, State Water Board staff were very clear with SPLAT that condition #32 defers difficult decision making and that State Water Board staff will develop a measure with more certainty. This is confirmed by the following comments provided to FERC on the Draft Environmental Impact Statement: "Board staff were actively involved with the development of the conditions in the measure, but continue to be concerned about the lack of certainty in the measure. Because this measure requires annual consultation over the development of a drawdown curve, it is impossible to evaluate the true impacts on reservoir elevation (reservoir recreation), stream flows (aquatic resources), power

production, and consumptive uses." In addition, the State Water Board was not a signatory to the SPLAT agreement. The letter transmitting the SPLAT agreement to FERC included a statement that State Water Board staff participated in the SPLAT in order to provide the parties with guidance concerning the consistency of SPLAT agreements with the Clean Water Act, the Basin Plan, and the requirements of the California Environmental Quality Act, but that State Water Board staff could not prejudice and approve SPLAT agreements or PG&E's request for water quality certification and did not waive the right to act according to State Water Board's independent procedures. WQC condition #4 does not require annual consultation, and removes this flexibility. However, it achieves the operational objectives in SPLAT condition #32. Condition #4 was crafted with an understanding of the underlying water rights claimed by PG&E and the need to issue a certification that can result in compliance with the Clean Water Act.

TUD states that under condition #4, in 2007 77% of the population of Tuolumne County would have been left without water from the end of spill on May 15 until Labor Day. STF also stated that under condition #4, if applied in 2007, TUD would not have been allowed to call for water before Labor Day, thus reducing its ability to serve about 80% of the residents of Tuolumne County. Evidence to support this statement was not submitted. State Water Board staff believe this statement is incorrect for several reasons. TUD has the ability to take stored water from Lyons Reservoir and from flow in the SFSR (per their comments above). In 2007, PG&E operated the project to comply with the conditions in the current FERC license, not as required in condition #4. The level of instream flow has an impact on the amount of water supplied through the summer to Lyons Reservoir. So without modeling, or other evidence, it is inaccurate to compare conditions this year to those that would occur under condition #4. It must also be understood that the State Water Board can only condition the operation of the hydroelectric project in the WQC. TUD does not hold or claim any rights to water in the SFSR and receives its water under a contract from PG&E under pre-1914 claims. WQC condition #17 states that "Nothing in this certification shall be construed as State Water Board approval of the validity of any consumptive water rights, including pre-1914 claims, referenced in the Coordinated Operations Agreement or elsewhere. The State Water Board has separate authority under the Water Code to investigate and take enforcement action if necessary to prevent any unauthorized or threatened unauthorized diversions of water."

PG&E is concerned that WQC condition #5 could result in conflicting conditions from different agencies. SPLAT Measures 30, 31, and 32, and STF 4(e) condition #34 contemplate potential disagreement, and defer dispute resolution to FERC. Under WQC conditions #4 and #5, consultation may still occur. However, PG&E will need to submit a request for approval of changes to the State Water Board. This does not change the potential for disputes during critically dry year consultation. There is no compelling reason to change condition #5.

CSERC suggests that additional language be added to WQC condition #5 such that in both dry and critically dry years, when TUD domestic water demand would be high for an extended period, drawdown measures and lake elevation targets would be reevaluated through consultation. CSERC also suggests that in any emergency situation where Lyons Reservoir is lowered to a point approaching the minimum level established by SPLAT, additional water be released. WQC conditions #4 and 5 do not prevent consultation or the development of a drawdown curve. They do provide allowances for a change in flow during critically dry years. Modeling shows that TUD 2001 demand will

be met in all years modeled, and the Lyons Reservoirs will be maintained at about the 1500 acre foot threshold to protect water quality. Evidence has not been provided to show that conditions #4 and 5 will not allow TUD demand to be met.

PG&E is concerned that WQC condition #5 does not address the elimination of Supplemental Flows for the Sand Bar Dam Reach due to compelling socio-economic considerations. PG&E must give a more specific definition of compelling socio-economic considerations before State Water Board staff can consider changes to the condition.

PG&E states concern over its ability to comply with the requirement to maintain a maximum 5 cubic feet per second (cfs) in the Philadelphia Canal. The WQC condition has been modified to state that the maximum flow is the mean flow over a continuous 24-hour period, and that instantaneous streamflow may, on an infrequent basis, exceed the specified maximum flow by up to 1 cfs. This change will allow PG&E flexibility to meet its needs while avoiding compliance violations.

WQC condition #8 requires PG&E to construct and operate a fish screen at the intake of the Stanislaus Power Tunnel. PG&E questions the need to screen young of the year fish. State Water Board staff has discussed this issue with PG&E staff in the past: the screen must be designed to meet Department of Fish and Game and National Marine Fisheries Service criteria. PG&E also requests that the condition be changed to require that the screen be built within four years of approval of the plans by both the State Water Board and FERC. To avoid conflict between WQC condition #8 and SPLAT measure #33, PG&E can submit the plans for the State Water Board and FERC concurrently and receive concurrent approvals. There is no need to change the condition.

WQC condition #8 requires the development of a Relief Reach Riparian Vegetation Restoration and Streambank Stabilization Plan, hardhead monitoring plan, and mountain yellow legged frog monitoring plan within 6 months of license issuance. PG&E has requested the plan be required within 1 year after the first full year after license issuance. This could result in a plan being submitted almost 3 years after license issuance. PG&E has not presented a convincing explanation why such a long delay is necessary, and the condition has not been changed. PG&E also requests that the condition include a cost cap of \$200,000 for the riparian vegetation plan consistent with the SPLAT condition. The need to restore the Relief Reach cannot be constrained by a cost cap, and this has not been added. PG&E is concerned about inconsistency with time frames in the hardhead plan. State Water Board staff believe that because the timelines in the WQC begin sooner than in the STF 4(e), FERC will follow the earlier time frames.

PG&E questions whether there is an impact to hardhead from the project. Studies conducted during the relicensing indicated that conditions in the Middle Fork Stanislaus River may limit use by hardhead. Unfortunately, there was not adequate time to conduct additional studies during the relicensing process to fully evaluate the impact of the project on hardhead, and these studies were deferred to post-licensing. As stated above, because the CEQA baseline is the current condition, there is no impact to hardhead under CEQA. Hardhead habitat is considered a beneficial use and requires protection under the basin plan. Therefore State Water Board staff believe a hardhead monitoring program is appropriate, and the condition will not be modified.

PG&E commented that the language in WQC condition #10 requires recreation streamflow events, while the SPLAT conditions only required PG&E to make a good faith effort to provide recreation streamflow events. A WQC must be an enforceable document, and it will not be possible to determine if PG&E has made a "good faith effort" in the future. The condition remains as written to maintain the enforceability of the condition. PG&E also requests that the condition include a provision allowing up to three years to make facility modifications. If PG&E submits evidence demonstrating the current facilities are not adequate to provide recreation streamflow events, State Water Board staff will evaluate the information and make a determination on whether additional time is necessary to make facility modifications. PG&E is also concerned that condition #10 does not include language allowing the elimination of recreation streamflow events when long term forecasts of electrical system reserves or short term electrical system conditions cause the value of the water for electricity generation to rise to more than triple what it otherwise would have been. SPLAT developed this provision during the deregulation of the electrical system in California. The energy market has changed significantly since that time, and price differential is not a valid indicator of electrical grid conditions that would trigger a need to eliminate recreation streamflow events. PG&E has not provided compelling evidence of why it cannot comply with the condition as written.

PG&E raised concerns that WQC condition #15 contains operational parameters that may not be within its control, and may adversely affect operational flexibility. Specific examples of how the condition will affect operations were not provided. The operation of the spill channels has possibly significant impacts on water quality. This measure was developed in coordination with STF and PG&E staff, with the goal of ensuring that the impacts of the spill channels are minimized. These spill channels are not consistent with modern design standards, but State Water Board staff understand that modernization of these channels would be very expensive. Therefore, the measure was designed to allow continued use, but requires a reduction in duration and magnitude of water discharged into the channels when possible, in order to minimize impacts. Studies conducted by PG&E showed that the channels, under the flow conditions tested, will have a minimum impact on water quality standards. However, the test conditions may not represent all operational scenarios and potential impacts. Condition #15 only requires PG&E to submit a spill channel management plan within 6 months that includes measures to reduce the duration and magnitude of spills, monitor channel stability, and monitor and report water quality impacts. PG&E has not submitted compelling evidence that it will not be able to comply with the condition, and it will remain as proposed.

PG&E notes that WQC conditions #16, 23, 24, and 32 are inconsistent with conditions in the WQC for the Pit 3, 4 and 5 Hydroelectric Project, and has requested wording changes. Comment is noted on conditions # 23 and # 24. They will be removed from the WQC. Condition #32 will be modified to remove the words "or revoke" and "tributaries".

PG&E states that because they do not operate the Sandbar Dam Project, they cannot comply with condition # 8. State Water Board staff agree, and will remove this condition.

BOR requests they be considered an interested party during consultation on the development of a water temperature trigger as required in WQC condition #3. BOR should request that PG&E and FERC consider BOR as an interested party.

BOR requests copies of results of surveys/studies conducted for hardhead and foothill yellow legged frogs. BOR should make this request to PG&E and FERC.

WQC condition #12 requires PG&E to collect a sediment sample for selected trace metals analysis. BOR states that additional testing will be required before disposal on BOR administered lands. BOR will require sampling for arsenic, copper, nickel, lead, and chromium. State Water Board staff will include these additional metals in condition #12. BOR also states that sediment sample analysis results and the method of disposal should be submitted to them. BOR may place any additional requirements in permits issued under its authority.