

SWRCB - DWR FERC NO 2687
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CMC



Power Generation

245 Market Street
San Francisco, CA 94105

February 7, 2019

Mailing Address:
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P.O. Box 770000
San Francisco, CA 94177

Mr. Erik Ekdahl
Deputy Director, Division of Water Rights
California State Water Resources Control Board
1001 I Street, 14th Floor
Sacramento, CA 95814

**RE: Pit 1 Hydroelectric Project; FERC No. 2687
§ 401 Water Quality Certification, Condition 13: Request for Temporary
Cessation of Flushing Flows in 2019**

Dear Mr. Ekdahl:

Pacific Gas and Electric Company's (PG&E) Pit 1 Hydroelectric Project¹ License (Federal Energy Regulatory Commission [FERC] Project No. 2687) includes a California State Water Resources Control Board (State Water Board) §401 Water Quality Certification (Certification). Condition 13 of the Certification requires PG&E to release flushing flows to control nuisance aquatic vegetation and mosquito production in Fall River Pond.

On May 26, 2009, the U.S. Fish and Wildlife Service (USFWS) sent a letter to FERC and the State Water Board expressing concern regarding a decline in the federally and state-endangered Shasta crayfish (*Pacifastacus fortis*). That letter requested suspension of summer flushing flows at PG&E's Pit 1 Project.

On August 28, 2009, the State Water Board sent a letter to PG&E indicating that amending the License was a discretionary action that required the State Water Board to comply with the California Environmental Quality Act (CEQA).

The State Water Board issued Orders in 2010², 2012³, 2013⁴, 2014⁵, 2015⁶, 2016⁷, 2017⁸, and 2018⁹ that temporarily suspended these flushing flows from 2010 through 2018, while a CEQA

¹ See 102 FERC ¶ 61,309 Order Issuing New License (Issued March 19, 2003).

² SWRCB Order WQ 2010-0009-EXEC. *Order Approving Temporary Suspension of Flushing Flow Requirements* (State Water Board 2010 Order, issued July 6, 2010).

³ SWRCB Order WQ 2012-0008-EXEC. *Order Approving Extension of the Temporary Suspension of Flushing Flow Requirements* (State Water Board 2012 Order, issued June 14, 2012).

⁴ SWRCB Order WQ 2013-0024-EXEC. *Order Approving Extension of the Temporary Suspension of Flushing Flow Requirements* (State Water Board 2013 Order, issued June 20, 2013).

⁵ SWRCB Order WQ 2014-0023-EXEC. *Order Approving Extension of the Temporary Suspension of Flushing Flow Requirements* (State Water Board 2014 Order, issued June 12, 2014).

⁶ SWRCB Order WQ 2015-0076-EXEC. *Order Approving Extension of the Temporary Suspension of Flushing Flow Requirements* (State Water Board 2015 Order, issued June 17, 2015).

⁷ SWRCB Order WQ 2016-0072-EXEC. *Order Approving Extension of the Temporary Suspension of Flushing Flow Requirements* (State Water Board 2016 Order, issued June 28, 2016).

⁸ SWRCB Order WQ 2017-0014 EXEC. *Order Approving Extension of the Temporary Suspension of Flushing Flow Requirements* (State Water Board 2017 Order issued June 28, 2017).

⁹ SWRCB Order WQ 2018-0111-EXEC. *Order Approving Extension of Temporary Suspension of Flushing Flow Requirements* (SWRCB 2018 Order, issued June 26, 2018).

process is implemented to analyze the effects of permanently suspending the flushing flow requirements. FERC, in turn, issued Orders in 2010¹⁰, 2012¹¹ and 2013¹² temporarily amending the Pit 1 license to suspend flushing flows. FERC issued Orders modifying and approving temporary flow variances in 2014¹³ and 2015¹⁴. FERC also issued Orders approving a temporary flow variance in 2016¹⁵, 2017¹⁶, and 2018¹⁷.

In a February 4, 2019 letter to the USFWS, PG&E requested informal Section 7 consultation for a temporary suspension of the flushing flow requirement in 2019. This letter requested concurrence with the determination that the temporary suspension of the requirement is not likely to adversely affect Shasta crayfish. Based on USFWS's request to permanently suspend the flushing flows in 2009, and their annual concurrence since that time that temporarily suspending flows will not likely adversely affect Shasta Crayfish, PG&E anticipates obtaining concurrence from USFWS to temporarily suspend flushing flows in 2019.

In order to ensure timely approval by the State Water Board, PG&E respectfully requests a one-year extension, in 2019, of the suspension of flushing flows required by Certification Condition 13. The proposed suspension is to facilitate completion of the CEQA analysis. In a subsequent letter, PG&E will file the concurrence letter from USFWS once it has been obtained.

If you have any questions regarding this letter, please contact License Coordinator, Mr. Sean Murphy, at (415) 973-5629, or by email at Sean.Murphy3@PGE.com.

Sincerely,



Neil J. Wong,
Supervisor, Hydro Licensing

Enclosure:

- A. Letter dated February 4, 2019 from PG&E to the USFWS, requesting informal Section 7 consultation for a temporary suspension of the flushing flow requirement in 2019

cc: See Attached List

¹⁰ 132 FERC ¶ 62.101. *Order Temporarily Amending License and Incorporating Temporary Amendment to Water Quality Certification* (issued August 10, 2010).

¹¹ 140 FERC ¶ 62.080. *Order Temporarily Amending License and Incorporating Temporary Amendment to Water Quality Certification* (issued July 26, 2012).

¹² 143 FERC ¶ 62.220. *Order Temporarily Amending License and Incorporating Temporary Amendment to Water Quality Certification* (issued June 27, 2013).

¹³ 147 FERC ¶ 62,218. *Order Modifying and Approving Temporary Flow Variance* (Issued June 19, 2014).

¹⁴ 151 FERC ¶ 62,214. *Order Modifying and Approving Temporary Flow Variance* (Issued June 24, 2015).

¹⁵ 156 FERC ¶ 62,049. *Order Approving Temporary Flow Variance* (Issued July, 19, 2016).

¹⁶ 160 FERC ¶ 62,093. *Order Approving Temporary Flow Variance* (Issued July 27, 2017).

¹⁷ 164 FERC ¶ 62,081. *Order Approving Temporary Flow Variance* (Issued August 13, 2018).

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Enclosure A



**Pacific Gas and
Electric Company**

Power Generation

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February 4, 2019

Mr. Ryan Olah
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2800 Cottage Way, Room W-2605
Sacramento, CA 95825

**RE: Pit 1 Hydroelectric Project, FERC No. 2687
Informal Section 7 Consultation for the Temporary Suspension of the
Flushing Flow Requirement in 2019**

Dear Mr. Olah:

Pacific Gas and Electric Company's (PG&E) Pit 1 Hydroelectric Project license¹ (Federal Energy Regulatory Commission [FERC] Project No. 2687) includes a California State Water Resources Control Board (SWRCB) Clean Water Act §401 Water Quality Certification (Certification). Condition No. 13 of the Certification requires PG&E to release flushing flows during the summer months to control nuisance aquatic vegetation and mosquito production in Fall River Pond.

The U.S. Fish and Wildlife (Service) determined, as stated in letters dated May 26, 2009 and December 17, 2009, that flushing flow releases are adversely affecting federally endangered Shasta crayfish (*Pacifastacus fortis*), and requested FERC temporarily cease the summer flushing flow releases.

The State Water Board issued orders in 2010², 2012³, 2013⁴, 2014⁵, 2015⁶, 2016⁷, 2017⁸, and 2018⁹ that temporarily suspended these flushing flows in 2010 through 2018, while a California Environmental Quality Act (CEQA) process is implemented to analyze the

¹ See 102 FERC ¶ 61,309 *Order Issuing New License* (Issued March 19, 2003).

² SWRCB Order WQ 2010-0009-EXEC. *Order Approving Temporary Suspension of Flushing Flow Requirements* (SWRCB 2010 Order, issued July 6, 2010).

³ SWRCB Order WQ 2012-0008-EXEC. *Order Approving Extension of the Temporary Suspension of Flushing Flow Requirements* (SWRCB 2012 Order, issued June 14, 2012).

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effects of permanently suspending the flushing flow requirements. FERC, in turn, issued Orders in 2010¹⁰, 2012¹¹, and 2013¹² temporarily amending the Pit 1 Project license to suspend flushing flows. FERC issued Orders modifying and approving temporary flow variances in 2014¹³ and 2015¹⁴. FERC also issued Orders approving temporary flow variances in 2016¹⁵, 2017¹⁶, and 2018¹⁷.

In a December 9, 2009 letter, FERC informed the Service that FERC has designated PG&E to act as their non-federal representative for the purpose of informal consultation with the Service, pursuant to Section 7 of the Endangered Species Act (ESA) for the Pit No. 1 Hydroelectric Project.

This letter is a request for informal Section 7 consultation for a temporary suspension of the flushing flow requirement in 2019. PG&E requests concurrence with the determination that the temporary suspension of the flushing flow requirement in 2019 is not likely to adversely affect the federally endangered Shasta crayfish. The proposed suspension is to facilitate completion of the Service's Section 7 ESA consultation and the State Water Board's CEQA analysis.

The Service provided a "not likely to adversely affect" concurrence to FERC on May 3, 2010 for temporary suspension of the flushing flows in 2010 and 2011. The Service also provided "not likely to affect" concurrence for the temporary suspension of flushing flows in 2012, 2013, 2014, 2015, 2016, 2017, and 2018 per letters dated July 19, 2012; May 16, 2013; April 18, 2014; March 19, 2015; June 9, 2016; June 13, 2017; and March 26, 2018 respectively.

The best available science to date has shown the flushing flows create detrimental effects to this species' habitat and potentially create a favorable environment for non-native crayfish. Temporary suspension of the flushing flows would likely preserve coldwater habitat used by the Shasta crayfish. Therefore, we conclude that the proposed action, to add another year to the temporary suspension of flushing flows, is not likely to adversely affect Shasta crayfish or its habitat.

PG&E will request from the State Water Board Deputy Director an extension of the cessation of flushing flows for 2019. After the State Water Board issues its Order, PG&E will file a request with FERC to temporarily amend Condition No. 13 of the Appendix to the

¹⁰ 132 FERC ¶ 62,101. *Order Temporarily Amending License and Incorporating Temporary Amendment to Water Quality Certification* (Issued August 10, 2010).

¹¹ 140 FERC ¶ 62,080. *Order Temporarily Amending License and Incorporating Temporary Amendment to Water Quality Certification* (Issued July 26, 2012).

¹² 143 FERC ¶ 62,220. *Order Temporarily Amending License and Incorporating Temporary Amendment to Water Quality Certification* (Issued June 27, 2013).

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Mr. Ryan Olah
February 4, 2019
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License, which will include a record of consultation with the State Water Board and the Service.

If you have any questions regarding this submittal, please contact License Coordinator, Mr. Sean Murphy, at (415) 973-5629, or Sean.Murphy3@pge.com.

Sincerely,


for

Neil J. Wong
Supervisor, Hydro Licensing

Cc: See Attached (Via Email)

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