

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQ 2012-0008-EXEC

In the Matter of the Request to Amend Water Quality Certification for the
**PIT 1 HYDROELECTRIC PROJECT FOR
PACIFIC GAS AND ELECTRIC COMPANY
FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2687**

SOURCE: Pit River
COUNTY: Shasta

**ORDER APPROVING EXTENSION OF THE TEMPORARY SUSPENSION OF
FLUSHING FLOW REQUIREMENTS**

BY THE EXECUTIVE DIRECTOR:

1.0 PROJECT BACKGROUND

The State Water Resources Control Board (State Water Board) issued a water quality certification for the Pit 1 Hydroelectric Project (Project), Federal Energy Regulatory Commission (Commission) Project No. 2687 on December 4, 2001. This water quality certification was incorporated into the license issued by the Commission on March 19, 2003. Condition 13 of the water quality certification requires Pacific Gas and Electric Company (PG&E or Licensee) to release flushing flows to control vegetation growth in the Fall River Pond. The flows are required to be released during one weekend in each of May or June, July, and August to reduce nuisance aquatic growth and control mosquito populations in the Fall River Pond. Condition 14 of the water quality certification requires PG&E to monitor the effectiveness of the flushing flows and allows the Deputy Director for Water Rights to modify or terminate the flushing flow monitoring program after review of the 5-year monitoring report prepared by the Licensee.

The Shasta crayfish was listed as endangered under both the California and Federal Endangered Species Acts in 1988. U.S. Fish and Wildlife Service (FWS) issued a Biological Opinion (BO) for the Project on October 24, 2002, that included an incidental take statement with terms and conditions to minimize incidental take of Shasta crayfish. The BO concluded that approval of a new license for operation of the Project with flushing flows, as proposed in the final Environmental Assessment, would not jeopardize the continued existence of the Shasta crayfish.

In 2003, PG&E formed a technical review committee (TRC) to oversee management activities throughout the range of the Shasta crayfish. The FWS formed the Shasta Crayfish Recovery Team that includes a subset of the TRC members which developed a Recovery Plan for Shasta Crayfish (Recovery Plan). The Recovery Plan identified the introduction and expansion of non-native species of crayfish and fish as well as disturbances related to land use practices as

primary threats to the continued existence of a viable Shasta crayfish population in the Pit River. The Recovery Plan aims to stabilize and protect the existing populations of Shasta crayfish so that the species may recover and be reclassified as threatened and ultimately delisted. PG&E monitored Shasta crayfish populations at multiple locations within the Project and the Hat Creek Hydroelectric Projects. The TRC Summary Report (Report), dated May 2009, includes a summary of surveys conducted on Shasta crayfish population characteristics. Three locations on the mainstem Pit River within the Project area were surveyed. The Report indicates that there has been a general decline in Shasta crayfish distribution and abundance at all sites.

On July 6, 2010, following requests from PG&E and FWS, the State Water Board approved Order WQ 2010-0009-EXEC approving temporary suspension of flushing flow requirements.

2.0 HISTORY OF SUSPENSION OF FLUSHING FLOWS

FWS submitted a letter (received on May 21, 2009) to the State Water Board requesting the suspension of flushing flows for the summer of 2009 due to concerns that the flows were contributing to the decline of the local Shasta crayfish (*Pacifastacus fortis*) population.

On June 17, 2009, the State Water Board responded to FWS's request for suspension of flushing flows, advising FWS that if PG&E determines the flushing flows are no longer necessary for controlling aquatic vegetation and mosquito production in Fall River Pond, PG&E could request termination of the flushing flow conditions in the water quality certification.

PG&E monitored the effectiveness of flushing flows at reducing aquatic vegetation from 2005 to 2008. Data collected during this period indicate that increased base flows may be more effective than flushing flows for reducing unwanted vegetation. On June 24, 2009, PG&E submitted a request to the State Water Board to amend the water quality certification to remove Conditions 13 (flushing flows) and 14 (flushing flow effectiveness monitoring) based on data showing that surface vegetation in the Fall River Pond has been reduced under the 150 cubic feet per second base flow required in the current license conditions. In a letter dated August 28, 2009, State Water Board staff notified PG&E that before an amendment of the water quality certification can be considered, the State Water Board must comply with the California Environmental Quality Act (CEQA).

FWS submitted a letter to the Commission dated December 17, 2009, stating that the BO issued on October 24, 2004, expired, and there is no authorized incidental take for Shasta crayfish for the Project. FWS also stated that flushing flows are likely resulting in take, and are facilitating the decline of the endangered Shasta crayfish in the Pit 1 Bypass Reach.

In a letter dated April 15, 2010, Commission staff submitted a letter to the State Water Board requesting a temporary suspension of the flushing flows for 2010. The Commission's letter recognized that the Commission cannot unilaterally amend a water quality certification condition.

While the flushing flows provide an incidental whitewater recreational opportunity, a precautionary approach to endangered species protection is warranted, and the State Water Board determined it would be reasonable to temporarily suspend flushing flows for 2010 and 2011 while the CEQA process is completed for a permanent suspension of these flows. The State Water Board and PG&E entered into a Memorandum of Understanding (MOU) for the preparation of environmental documents, which was executed on July 7, 2011.

3.0 2012 REQUEST

In a letter dated March 22, 2012, PG&E requested that the State Water Board's order temporarily suspending flushing flows be extended through 2012 because PG&E has not completed the studies needed to properly evaluate the impacts of permanently suspending flushing flows. PG&E proposes that a one-year time extension would be sufficient to complete the studies. FWS staff supported PG&E's request for this extension in an email dated March 27, 2012. On April 25, 2012, State Water Board staff noticed PG&E's request to extend the temporary suspension of flushing flows and the State Water Board's intention to take action no sooner than 21 days thereafter. No comments were received during this period.

Because a potential for a significant environmental impact exists if flushing flows are permanently suspended, the State Water Board cannot amend the Project's water quality certification without subjecting the proposal to a CEQA analysis. If the requirement for flushing flows is suspended for a limited period, with continued monitoring of effects until a full CEQA analysis can be completed, significant impacts can be avoided. The State Water Board has determined the temporary suspension of flushing flows for one additional year will not have a significant adverse environmental effect and is categorically exempt from the requirements to prepare environmental documents under California Code of Regulations section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources). A Notice of Exemption will be filed within five days from issuance of this action.

This temporary amendment to the water quality certification shall be dependent on PG&E's timely completion of the required CEQA documentation (pursuant to the most recently executed MOU) to determine the potential for significant impacts from the permanent elimination of the required flushing flows. PG&E shall also continue to conduct sufficient studies to evaluate the potential for flushing flows to cause a "take" in violation of either the Federal or California Endangered Species Acts.

ORDER

IT IS HEREBY ORDERED THAT:

1. PG&E shall continue the suspension of flushing flows through the 2012 calendar year.
2. PG&E shall continue monitoring the effectiveness of the higher base flows at controlling aquatic vegetation and mosquito production in Fall River Pond consistent with the procedures in the Flushing Flow Effectiveness Monitoring Plan.
3. PG&E shall implement and complete all studies required by the State Water Board for its CEQA analysis.
4. PG&E shall provide the FWS with any information that is in PG&E's possession that is required for the completion of an updated BO for the Project.

Date

6/14/2012


Thomas Howard
Executive Director