



**SMUD**

SACRAMENTO MUNICIPAL UTILITY DISTRICT  
The Power To Do More.<sup>SM</sup>

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Via Email to [jwatts@waterboards.ca.gov](mailto:jwatts@waterboards.ca.gov) and U.S. Mail

Jennifer Watts  
State Water Resources Control Board  
Division of Water Rights  
P. O. Box 2000  
Sacramento, CA 95812-2000

**Re: Comments on Draft 401 Water Quality Certification for SMUD's  
Upper American River Project, FERC Project No. 2101**

Dear Ms. Watts:

The Sacramento Municipal Utility District (SMUD) hereby submits comments regarding the State Water Resources Control Board (SWRCB) Draft 401 Water Quality Certification for the relicensing of SMUD's Upper American River Project (UARP), FERC Project No. 2101.

SMUD and all parties to the Relicensing Settlement Agreement for the Upper American River Project and Chili Bar Hydroelectric Project, thank the SWRCB staff for honoring our agreement as they designed this certification. SMUD especially appreciates the SWRCB's invitation to comment in order to bring clarity to expectations under the certification and to prevent conflicts and unintended consequences. While SMUD will suggest a few technical clarifications or changes, SMUD's major concerns focus on the timing of approvals as well as several general conditions.

Below please find our rationale for requesting changes to the certification. Proposed language for the changes appears in redline form in the attached "SMUD's Proposed Changes to the Draft Water Quality Certification."

### **Technical Changes**

**Condition 8 (Monitoring Conditions), Section C (Amphibian and Reptile Monitoring):**  
Unfortunately, the language in this section tracks language in the Settlement Agreement, which also should be refined. The concept of the paragraph in Condition 8.C is to survey for potential impacts to FYL frogs and other aquatic resources after a spill occurs at either Slab Creek or Camino dams. The post-spill survey will be

performed only if the spill occurs after FYL frog breeding is presumed to have commenced, which is based on water temperatures exceeding a 12°C threshold. While this is a sound concept overall, SMUD would be required to perform post-spill aquatic surveys downstream of *either* dam once water temperatures exceed 12°C downstream of only one dam -- Slab Creek Dam. Thus, if water temperatures exceed 12°C in the Slab Creek Dam Reach and a spill occurs at Camino Dam, SMUD is required to conduct surveys in the Camino Dam Reach at Site 8.C.2.

The thermal regime of the Slab Creek Dam Reach and Camino Dam Reach are independent. Temperatures in each will warm from winter low levels and surpass the 12°C threshold at different times based on minimum releases, reach length, stream aspect, and tributary input. The bottom of the Camino Dam Reach may exceed 12°C earlier in a given year than the bottom of the Slab Creek Dam Reach. Given that SMUD will be required to install instantaneous temperature recording devices at the bottom of both reaches in compliance with other conditions contained in the Draft Water Quality Certification document, more relevant information would be obtained by basing the presumption of frog breeding on real-time data in the separate reaches rather than only using data from one reach. Therefore, SMUD respectfully recommends this condition be modified accordingly.

Conditions 13 and 14: SMUD proposes changes to Condition 13 (Recreation Implementation Plan) and Condition 14 (Transportation System Management Plan). As presently written, both of these conditions require SMUD to consult with both the State Water Board and the Central Valley Regional Water Quality Control Board (Central Valley Water Board) during the planning phase of each future recreation or road improvement project. The purpose of this consultation is to determine the need for regulatory permits that would require actions to reduce or avoid impacts to water quality.

SMUD will be conducting dozens of recreation/road improvement projects, many of which will be of similar nature relative to water quality (e.g., upgrade a campground, install a new culvert). Consultation is a project cost, primarily in labor – it takes time for SMUD staff or its consultants to consult with each required entity. In addition, if differing direction is unknowingly provided during consultation by the State Water Board and the Central Valley Water Board, it will take additional time to resolve the differences. This dual review for the same purpose is redundant, overly burdensome to both the SWRCB and Central Valley Water Board agencies, and will unnecessarily increase the cost of each project. Therefore, SMUD respectfully recommends these two conditions be modified to require consultation on permitting needs prior to construction of a project with the State Water Board only.

### **Conflicts with FERC License Conditions**

Timing of Approvals: Two rationale provisions and 11 conditions include the requirement for SMUD to secure SWRCB approval *prior to* SMUD submitting a document to FERC, e.g., Condition 1.I.<sup>1</sup> By our count, 11 of 35 plans we must submit require approval by a SWRCB official prior to submission to FERC. As a preface to our remarks on this topic, please know SMUD is not disputing the SWRCB's right to approve plans or documents. Rather, *SMUD's concern is ensuring its ability to timely file documents at FERC even if the required SWRCB official's approval of the documents has not yet been received in order to comply with SMUD's FERC license for the UARP.* Without the changes requested, many of which the SWRCB has granted in 401 Water Quality Certifications for other FERC licensees, SMUD could find itself in a conundrum as described below.

FERC universally sets deadlines for submission of post-license plans for FERC approval, even if the 401 condition itself does not include a deadline for submission to FERC. FERC never permits open-ended license requirements. Failure to meet these deadlines constitutes a violation of the license, potentially punishable by civil penalties up to \$11,000 per day. If a 401 condition requires approval by the SWRCB *prior to* the licensee being able to submit a plan to FERC, and, for whatever reason, the SWRCB approval is not granted in time to make the FERC deadline, the licensee is in a no-win situation, violating the license no matter what action it takes. If the licensee goes ahead and files with FERC to meet the FERC deadline without SWRCB approval, it is a violation of the 401 condition, which is also a violation of the license. If the licensee doesn't file at FERC because it is waiting for SWRCB approval, then it violates the license because it has failed to meet a FERC deadline.

While it is possible to obtain extensions of time to submit documents and plans from FERC, FERC may or may not be willing to grant an extension of time for filing of the plan to avoid this problem; thus, there is no guarantee the licensee can avoid a violation. In other cases involving mandatory agency conditions, FERC has not granted extensions, putting licensees in violation. Considering the number of approvals and filings involved (11 out of 35 required plans), this places an unnecessary burden on the licensee to request multiple extensions.

Filing without SWRCB approval doesn't mean SWRCB approval will not be required or essential to going forward; rather, SMUD will need to amend its FERC filing if changes are required as a result of the SWRCB approval process. Thus, by making the changes SMUD requests, the SWRCB's authority and interests are not compromised.

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<sup>1</sup> The problematic language is found at the following locations in the draft: Rationale §54 (p. 17), §75 (p. 22); Conditions 1.I (p. 33), 4.A (p. 42), 4.B (p. 43), 6, (p. 49), 7 (p. 50), 8.J (p. 60), 14 (p. 68), 17 (p.70), 19 (p. 71), and 23 (p. 74); General Condition 38 (p. 77).

The SWRCB has recognized this issue by providing flexibility in its 401 Certifications for other licensees. For example, the recent certification issued for the Department of Water Resources' Oroville Project (Order WQ 2010-0016) (Oroville Project), is replete with requirements for approval by the Deputy Director of various plans, etc., *but the conditions also establish timeframes for those approvals or the submission to the SWRCB is deemed approved.*<sup>2</sup> Further, these approval requirements do not prevent the licensee from complying with its license by prohibiting submission of the documents to FERC before the SWRCB approval is obtained. See also Order WR 2009-0039 for the Tri-Dam Project, which has *no requirements for prior approval by the Deputy Director prior to submission to FERC.*

Thus, granting SMUD's requests will **not** set a dangerous precedent, prevent the SWRCB from requiring modifications to the filed document or plan, or otherwise diminish the importance of the SWRCB's role in ensuring the licensee's conduct and project operations are within the parameters for the project set forth in the 401 Certification. To the contrary, it will preserve the SWRCB's authority and accommodate staff workload fluctuations while at the same time enabling SMUD to maintain compliance with its license. Moreover, these changes will also ensure SMUD is treated the same as other FERC licensees in like circumstances.

Therefore, SMUD respectfully requests modifications to the draft 401 Certification as set forth in the Attachment.

### **General Conditions**

**Retained jurisdiction** (GCs 28, 36, 39, 40, 41, 43, and 44): The Draft 401 includes several reservations of authority for which no references to underlying legal authority are given. If the statutory authority for most of these is section 401(d) of the Clean Water Act, our reading of that law does not support state authorization to in effect retain jurisdiction to make future changes in the certification's conditions.

Section 401 requires that any certification "set forth any *effluent limitations and other limitations, and monitoring requirements* necessary to assure that any applicant . . . will comply with any applicable . . . limitations . . . standard . . . and with any other appropriate requirement of state law *set forth* in such certification, and shall become a condition on any Federal license or permit . . . ."

The effect of the purported retention of jurisdiction would be to allow the state, in the future, to unilaterally change SMUD's FERC license, contrary to Section 31 of the

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<sup>2</sup> For example, see Condition S1, p. 18 of the Oroville certification. Also, Condition G7 states, in pertinent part, ". . . If such a change would also require submission to the [FERC], the change must first be *submitted* to the Deputy Director." [Emphasis added.]

Federal Power Act, which vests FERC with the duty and power to enforce the terms of a FERC license. [16 USC §823b(a).]

Condition 34: We don't believe the second sentence of Condition 34 is authorized by section 401(d) or any other provision of the Clean Water Act.<sup>3</sup> The phrase "any effluent limitations and other limitations" in that section refers back to section 401(a)(1), which relates, among other things, to "an applicable effluent limitation or other limitation under section 301(b) and 302 of the [Clean Water Act] . . ." These are, respectively, "effluent limitations" and "water quality related effluent limitations." Section 401(d)'s later reference to "any other appropriate requirement of State law" has a meaning that reflects the statutory company it keeps, i.e., effluent / water quality related limitations. We believe section 401 cannot be relied on by the SWRCB as legal authority to turn provisions in state law "authorizing remedies, penalties, process or sanctions for violation" into effluent/water quality limitations under the Clean Water Act. For that reason, we urge deletion of the second sentence.

Condition 38: This condition is both overly broad and vague; it states:

The Licensee must submit *any change to the UARP*, including UARP operations that would *adversely* affect water quality, to the Deputy Director for review and approval. If such a change would also require submission to the Commission, the change must first be approved by the Deputy Director."

[Emphasis added.]

The requirement that "*any change to the UARP*" be submitted to the SWRCB is overly broad and vague. For example, if a small sign is to be erected, that action arguably falls within the ambit of "any change," but absent extraordinary circumstances, does not seem worthy of submission for review by the SWRCB.

Further, the requirement to seek approval for any change to UARP operations that would *adversely* affect water quality is also overly broad. This language gives SMUD virtually no discretion to determine when a change is significant or material; as written, SMUD would have to file if there was any adverse change, no matter how miniscule or barely detectable. For example, if a few new vehicles are added to the project fleet or SMUD doubles the frequency of vehicular trips along dirt roads to inspect transmission line towers, both arguably changes that could adversely affect water quality, must SMUD seek approval from the Deputy Director? It would seem more respectful of scarce staff resources to establish a more practical and cost efficient threshold for determining what types of impacts rise to the point of requiring approval.

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<sup>3</sup> Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. 1251-1376.

We wonder whether the SWRCB actually meant to address *facility* changes and offer suggested changes to the condition in the Attachment. For example, Condition G7 of the Oroville Project 401 certification states, in pertinent part:

Licensee must submit any change to the Oroville *facilities*, including project operation, that would have a *significant or material effect* on the finding, conclusions, or conditions of this certification, to the Deputy Director for prior review and written approval. . . .<sup>4</sup>

[Emphasis added.] [Order WQ 2010-0016, p. 49.]

Condition 41: Section 401 authorizes states to impose requirements and limitations – which must be specific and must be necessary to assure that the applicant’s “discharges” comply with applicable state law. We don’t see that “coordination” is a “limitation” or “monitoring requirement.” While “discharge” was read broadly in *PUD No. 1 v. Washington Dept. of Ecology*, 511 U.S. 700 (1994), we don’t believe the case supports a requirement that the SWRCB be able to “coordinate” operation of a FERC-licensed project with other projects.

Condition 45: The condition states: “When exercising its reserved authority as described in the General Conditions above, the State Water Board *may* provide notice and an opportunity for hearing.” [Emphasis added.] Unlike conditions in other certifications, e.g., Condition 33 Tri-Dam Certification (Order WR 2009-0039) and Condition G12 Oroville (Order WQ 2010-0016), which guarantee the licensee due process if the SWRCB exercises its reserved authority, here the SWRCB makes due process permissive. This is both inconsistent with the protections offered other licensees and fundamentally unfair to SMUD. SMUD respectfully requests “may” be changed to “shall” to ensure all licensees are treated in a fair and similar manner.

Ambiguous Terms. Some conditions include terms that are unclear to us. For example, what does “conditioned” (e.g., Condition 33), or “contingent” (e.g. Condition 31) mean? Under section 401, once given, a certification can’t be withdrawn – which is what “conditioned” implies. We offer changes to simply mandate whatever conduct is being required (assuming it is permissible under section 401).

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<sup>4</sup> See also Condition 14 of the draft water quality certification for PG&E’s Pit 3, 4, and 5 project, FERC Project No. 233. This condition also includes the “significant or material” threshold.

In closing, thank you again for considering our comments. If additional information is needed, please contact the undersigned or David Hanson at 732-6703.

Sincerely,



Leslie A. Dunsworth  
Chief Assistant General Counsel

LAD/dm

Cc: Arlen Orchard  
Jim Shetler  
Scott Flake  
Corporate Files

## ATTACHMENT

### SMUD's Proposed Changes to the Draft Water Quality Certification

#### Rationale for Resource Monitoring Program (p. 17)

54. The Deputy Director, based on consultation with or recommendations by the Licensee, USFS, CDFG, and USFWS, has the flexibility to alter the monitoring program methodologies and frequencies of data collection if: (a) there is a more appropriate or preferable methodology or site to use than that described in the individual elements of the monitoring program; or (b) monitoring may be reduced or terminated because the relevant ecological resource objective has been met or no change in resource response is expected. In addition, the Deputy Director may approve alternate years within the scope of the specified monitoring program to ensure that monitoring occurs during a range of water year types. The Licensee shall submit a revised monitoring plan based on its own, the Deputy Director's or another agency's recommendations, and the Deputy Director must approve the revised monitoring plan before the Licensee implements it or submits it to the Commission for approval, if needed, unless it must be filed earlier to meet a Commission deadline.

#### Construction and Operation of Iowa Hill (p. 22)

75. Detailed design and construction plans for Iowa Hill will not be available prior to issuance of either this certification or the new Commission license for the UARP. The Licensee will be required to consult with the State Water Board, USFWS and CDFG to assure that the design of the intake/outlet structure incorporates features that will reduce potential negative operational impacts. Specific concerns to be considered during the consultation process include the potential for fish entrainment or other adverse impacts on fish populations associated with the intake structure, increased sediment mobilization and/or turbidity within and downstream of Slab Creek Reservoir, and the creation of dangerous hydraulic conditions within Slab Creek Reservoir. The Deputy Director will have approval authority over those aspects of the intake/outlet design that relate to sediment mobilization, turbidity, fish entrainment and the creation of dangerous hydraulic conditions. The Licensee will receive such approval before submitting any final design and construction plans to the Commission for approval, if necessary, unless the plans must be submitted earlier to meet a Commission deadline.

#### CONDITION 1. MINIMUM INSTREAM FLOW CONDITIONS

##### 1.1. Adaptive Water Temperature Management in Silver Creek below Junction and Camino Reservoir Dams (p. 33)

Within one year of license issuance, the Licensee shall, in consultation with the State Water Board, CDFG, USFWS, and USFS, develop a plan for the block of water that addresses, at a minimum: notification protocols for temperature exceedances,

emergency temperature operation contingencies, and ecological monitoring needs associated with use of the block of water. The plan shall be approved by the Deputy Director prior to submitting it to the Commission, if Commission approval is needed, unless the plan must be submitted earlier to meet a Commission deadline. The Deputy Director may require modifications as part of the approval.

#### CONDITION 4. RECREATION STREAMFLOWS

##### 4.A. South Fork American River below Slab Creek Reservoir Dam, *Consultation and Monitoring* (p. 42, ¶ 4)

If construction of Iowa Hill has not commenced at the end of Year 10 after license issuance, the Licensee shall, in cooperation with USFS, State Water Board, and BLM, determine if the facility must be modified based on the information collected as a result of the Boating Plan. This determination shall be filed with the Commission, following approval by the Deputy Director, unless it must be filed earlier to meet a Commission deadline.

##### 4.B. South Fork Silver Creek below Ice House Reservoir Dam, *Consultation and Monitoring* (p. 43, ¶ 1)

Prior to the end of the five-year period, the Licensee shall prepare a recreation plan that is approved by the Deputy Director to determine triggers based on actual boating use for establishing when the Licensee shall increase the number of days of recreation streamflows to be provided. Within five years of license issuance and every five years thereafter, the Licensee shall, in cooperation with USFS, prepare a report describing whitewater recreation use and impacts, and whether use has exceeded predetermined triggers such that recreation streamflow days should be adjusted. Boating days shall not exceed the total amount displayed in Table 19 below. Table 19 contains the required recreation flows for Silver Creek below Ice House Reservoir Dam for the remainder of the license term subsequent to the initial five-year period following license issuance. However, the frequency and magnitude of the boating flows may be adjusted within the total volume of water displayed in the tables upon approval of the Deputy Director. This report shall be filed with the Commission following approval by the Deputy Director, unless it must be filed earlier to meet a Commission deadline.

#### CONDITION 6. STREAMFLOW AND RESERVOIR GAGING (p. 49, ¶ 1)

The Licensee shall, within one year after license issuance, develop and file with the Commission for approval a Streamflow and Reservoir Elevation Gaging Plan (Gaging Plan) that meets USGS standards. The Licensee shall provide copies of the Gaging Plan to USFS, State Water Board, CDFG, USFWS, and the Commission. The Gaging Plan shall be approved by the Deputy Director prior to filing with the Commission, unless it must be filed earlier to meet a Commission deadline. The Deputy Director may require modifications as part of the approval. The Licensee shall implement the Gaging

Plan upon approval by the Deputy Director and the Commission. At a minimum, the plan shall address compliance gaging at the following locations:

CONDITION 7. STREAMFLOW AND RESERVOIR LEVEL INFORMATION (p. 50, ¶ 2)

The plan shall be approved by the Deputy Director prior to filing with the Commission, unless it must be filed earlier to meet a Commission deadline. The Deputy Director may require modifications as part of the approval. Following Commission approval of the plan, the minimum streamflow and recreational streamflow schedules from Conditions 1 and 4, as well as the current water year type designation, shall also be published on the streamflow information website.

CONDITION 8. MONITORING CONDITIONS

8.C. Amphibian and Reptile Monitoring, *Foothill Yellow-legged Frog Monitoring Sites* (pp. 54 and 55)

Spill flows at Slab Creek Dam that occur after water temperatures rise above 12°C mean daily temperature for a seven-day running average ~~(or as otherwise defined in Condition 9.A. — Cancellation of Pulse and Recreational Streamflows in SF Silver Creek)~~ at the Water Temperature Monitoring Site 8.I.18 (½ -mile upstream of White Rock Powerhouse) shall be monitored for effects to aquatic species (amphibians, fish, and aquatic reptiles) as soon as possible after the decline of the spill at FYL Frog Monitoring Site 8.C.3 in the SF American River below Rock Creek, and at Site 8.C.2 in the reach below Camino Reservoir Dam

Spill flows at Camino Dam that occur after water temperatures rise above 12°C mean daily temperature for a seven-day running average at the Water Temperature Monitoring Site 8.I.14 (Silver Creek immediately upstream of the SF American River) shall be monitored for effects to aquatic species (amphibians, fish, and aquatic reptiles) as soon as possible after the decline of the spill at FYL Frog Monitoring Site 8.C.2 in the reach below Camino Dam.

8.J Other Water Quality Parameters (p. 60, ¶ 2)

Following consultation, and within six months of license issuance, the Licensee shall submit the Monitoring Plan to the Deputy Director for approval. The Deputy Director may require modifications as part of the approval. After approval by the Deputy Director, the Licensee shall file the Monitoring Plan with the Commission, unless it must be filed earlier to meet a Commission deadline. The approved Monitoring Plan shall be implemented by the Licensee as described, through the life of the license. The Monitoring Plan may be modified pursuant to adaptive management program needs as recommended by USFS, BLM, USFWS, CDFG, State Water Board, and/or Central

Valley Water Board, and the new monitoring plan shall be implemented after approval by the Deputy Director.

CONDITION 13. RECREATION IMPLEMENTATION PLAN (p. 69)

The Recreation Implementation Plan which the Licensee will develop in coordination with USFS within six months of license issuance shall include a construction schedule for the recreation facilities specified in SA Article 1-19, and shall be periodically updated in conjunction with the review of recreation developments required in the SA Article 1-18. The plan shall include a requirement to consult with the State Water Board and ~~Central Valley Water Board~~ regarding water quality permitting associated with the construction or rehabilitation of recreation facilities and to obtain the required permits before initiating construction activities. The permits that may be required include, but are not limited to, individual waste discharge requirements or coverage under the Construction General Permit and/or Water Quality Order 97-10.

CONDITION 14. TRANSPORTATION SYSTEM MANAGEMENT PLAN (p. 68)

Within one year of license issuance, the Licensee shall file with the Commission a Transportation System Management Plan (Transportation Plan) that is approved by USFS for roads on or affecting National Forest Service lands, which shall be updated every five years. The Transportation Plan shall identify the maintenance and reconstruction needs for roads associated with the UARP and shall identify those linear transportation projects for which SMUD is responsible that have the potential to cause a discharge to waters of the state or disturb the streambed. The Licensee shall consult with the State Water Board and ~~Central Valley Water Board~~ to determine whether an application for water quality certification or other permits are necessary, and shall obtain such certification or permit before initiating construction activities.

All road maintenance and construction shall meet USFS and ACOE specifications and best management practices. The Licensee shall construct, operate, and maintain Project facilities, including roads, parking and storage lots, reservoir shorelines, bridges, and culverts to maintain natural fluvial and colluvial sediment transport to the UARP reaches.

The Licensee must submit the most current plan to the Deputy Director within 30 days of USFS approval, and prior to submission to the Commission, unless it must be submitted earlier to meet a Commission deadline. The Deputy Director shall have the authority to make changes to the plan to protect water quality, if reasonably necessary, beyond the requirements that maintenance and construction shall meet USFS and ACOE specifications and best management practices.

CONDITION 17. CONSTRUCTION WASTE DISCHARGE AND BEST MANAGEMENT PRACTICES

*Stormwater Pollution Prevention (p. 70)*

In consultation with USFS and CDFG, the Licensee shall file with the Commission a Stormwater Pollution Prevention Plan that is approved by the Deputy Director, unless earlier filing is necessary to meet a Commission deadline. During construction, operation and maintenance of Iowa Hill, the Licensee shall prevent water pollution by implementing management practices identified in the Stormwater Pollution Prevention Plan and any other requirements identified by USFS, State Water Board, and Central Valley Water Board.

CONDITION 19. GROUNDWATER (p. 71, ¶ 1)

Prior to undertaking any construction activities, the Licensee shall file with the Commission a plan that has been approved by the Deputy Director, unless earlier filing is necessary to meet a Commission deadline, in consultation with USFS and the Central Valley Water Board, for managing groundwater inflows and/or discharge during construction and for groundwater monitoring and management once construction is completed. The plan shall include the following:

CONDITION 23. HAZARDOUS WASTE PLAN (p. 23, ¶ 1)

Within one year of license issuance or prior to undertaking activities on USFS lands, whichever is earliest, the Licensee shall file with the Commission a plan approved by USFS and the Deputy Director, unless earlier filing is necessary to meet a Commission deadline, for hazardous substances storage and spill prevention and cleanup. The Deputy Director may require modifications as part of the approval. In addition, during planning and prior to any new construction or maintenance/repair activities not addressed in an existing plan, the Licensee shall notify the USFS and the State Water Board, and the USFS and the Deputy Director shall determine if an additional plan for hazardous substances storage and spill prevention and cleanup is needed. Any such plan shall be filed with the Commission.

CONDITION 31. (p. 76)

This certification requires ~~is contingent on~~ compliance with all applicable requirements of the Basin Plan.

CONDITION 33. (p. 76)

The authorization to operate the UARP pursuant to this certification ~~is~~ requires ~~conditioned upon~~ payment of all applicable fees owed for review and processing of the application for water quality certification and administering the State's water quality certification program, including but not limited to the timely payment of any annual fees

or similar charges that may be imposed by future statutes or regulations for the State's reasonable costs of a program to monitor and oversee compliance with conditions of the water quality certification.

CONDITION 34. (p. 76)

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions provided under any State or federal law. ~~For the purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.~~

CONDITION 38. (p. 77)

The Licensee must submit any change to the UARP facilities, including UARP operations, that would adversely have a significant or material effect on water quality, to the Deputy Director for review and written approval. If such a change would also require submission to the Commission, the change must first be approved by the Deputy Director, unless it must be submitted earlier to meet a Commission deadline.

CONDITION 45. (p. 78)

When exercising its reserved authority as described in the General Conditions above, the State Water Board ~~may~~shall provide notice and an opportunity for hearing.