

**BEFORE THE STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

**In the Matter of
Water Quality Certification for the
DeSabra – Centerville Hydroelectric Project**

FERC Project No. 803

**CONSERVATION GROUPS’ COMMENTS ON
PACIFIC GAS & ELECTRIC COMPANY’S PETITION FOR RECONSIDERATION OF
THE WATER QUALITY CERTIFICATION FOR THE
DESABLA – CENTERVILLE HYDROELECTRIC PROJECT**

The California Sportfishing Protection Alliance, Friends of Butte Creek, American Whitewater, and Friends of the River (collectively, Conservation Groups) respectfully comment on Pacific Gas & Electric Company’s “Petition for Reconsideration of the Water Quality Certification for the DeSabra Centerville Hydroelectric Project” (May 8, 2015) (Petition). The State Water Resources Control Board (State Board or Board) issued the final Certification on April 9, 2015.

In general, Conservation Groups support the Certification as issued. We previously filed comments in support of the draft Certification on June 13, 2013. We provide our comments on PG&E’s Petition for Reconsideration below.

I. Conservation Groups Request Party Status in Any Hearing Convened by the Board for PG&E’s Petition.

As stated below, we request that the Board amend the Certification consistent with our comments in Sections IV (A), V and VI below and adopt the amended Certification in a regularly scheduled Board meeting without further hearing. However, in the event that the Board convenes a hearing on this matter, we request the Board designate Conservation Groups’ as parties, as permitted under the Board’s regulations.¹

Conservation Groups have been active participants in the relicensing proceeding before the Federal Energy Regulatory Commission (FERC). In 2008, Conservation Groups, in *Comments on Ready for Environmental Analysis*, recommended that FERC analyze an alternative that phased out the use of Centerville Powerhouse in at least summer and fall. FERC declined to evaluate this alternative at the time. However, it was eventually partially incorporated as the test now embedded in Section 1 of the Certification.

Conservation Groups sought to bring parties together in 2009 to work out a plan to evaluate such a test. However, both the agencies (including the State Board) and PG&E have

¹ 23 Cal. Code of Regulations § 648.1.

excluded Conservation Groups from protracted and apparently laborious discussions of this matter and of other matters related to Certification for the past five years. During that time, we have equally been excluded from actions and discussions of the project Operations Group. We should not be excluded from any hearing that may be convened by the Board.

II. The Board should reject PG&E’s arguments based on FERC’s decision in the Yadkin-Pee Dee Project relicensing as meritless.

As an overarching legal basis for many of its claims, PG&E cites to FERC’s April 1, 2015 Order issuing a license for the Yadkin-Pee Dee Project in North Carolina.² It interprets that order to limit the State’s authority to condition water quality certification under Clean Water Act (CWA) section 401.³ The Petition effectively asks the Board to abdicate part of the authority that at least two Supreme Court cases have upheld.

Under CWA section 401(a)(1), the Commission may not issue a new license unless the state water quality agency has either issued or waived water quality certification for the project. Under CWA section 401(d), the certification “shall become a condition on any Federal license or permit subject to the provisions of this section.”⁴ Thus, the “limitations included in the certification become a condition on any federal license.”⁵

Pursuant to the federal authority granted to the Board under the CWA, the Board decides the scope of Certification. That authority is granted neither by FERC nor by PG&E; it is granted by Congress. FERC has the option to not issue the license; PG&E has the option not to accept any license as issued.

In the Yadkin-Pee Dee proceeding, FERC carved out limited exceptions as to when it may exclude certain conditions of water quality certification, notwithstanding CWA section 401(d) and the court precedent interpreting it.⁶ PG&E’s reliance on FERC’s decision in the Yadkin-Pee Dee Proceeding is misplaced for several reasons. First, it is well-established that FERC’s interpretation of the CWA is not entitled to deference.⁷ Second, the facts in the Yadkin-Pee Dee proceeding are much different than those here. There, the settlement – on which the license was based and was signed by the State agencies – stated that the certification conditions

² *Duke Energy Progress, Inc., Project No. 2206-030*, 151 FERC ¶ 62,004 (April 1, 2015) (Yadkin-Pee Dee License Order).

³ 33 U.S.C. § 1341.

⁴ *Id.* (emphasis added). See also *American Rivers, Inc. v. FERC*, 129 F.3d 99, 102 (2d Cir. 1997).

⁵ *PUD No. 1 of Jefferson Cnty. v. Washington Dep’t of Ecology*, 511 U.S. 700, 708 (1994).

⁶ Yadkin-Pee Dee License Order; *Duke Energy Progress, Inc., Project No. 2206-030*, 153 FERC ¶ 61,056 (Oct. 15, 2015) (Yadkin-Pee Dee Rehearing Order).

⁷ See *American Rivers, Inc. v. FERC*, 129 F.3d 99, 107 (2d Cir. 1997).

that FERC eventually excluded were outside of FERC’s jurisdiction.⁸ Third, FERC stated the exceptions to Section 401(d) much more narrowly than PG&E asserts. FERC found that it may decline to include conditions that are outside of its jurisdiction or contrary to law.⁹

We note that the Petition was filed almost simultaneous to a Congressional effort that PG&E launched to restrict that Board’s authority to issue Water Quality Certifications for the relicensing of hydroelectric projects. Part of that proposed legislation would give FERC the discretion to exclude portions of a Certification. *If FERC already has such discretion, why did PG&E feel compelled to launch a legislative effort to secure it?*¹⁰

PG&E should comply with the law as it stands, not as PG&E would like the law to be. The Board should disregard PG&E’s arguments that seek to re-delegate the Board’s authority to determine the scope of Certification to FERC.

III. PG&E’s arguments regarding the Board’s reservation of authority, revocation, climate change and compliance with the Basin Plan were raised in the Petition for Reconsideration of the Certification for the Chili Bar Project in 2013. The Board rejected these arguments then and should reject them on the same grounds now.

In sections VI (I-L) of its Petition, PG&E challenges the scope of the Board’s authority.

Order WQ 2013-0018 (Chili Bar Order) denied many of these arguments in PG&E’s 2012 Petition for Reconsideration of Certification for PG&E’s Chili Bar Project (FERC no. 2155) and required measures similar or identical to those that PG&E once again contests in the DeSabra – Centerville Certification.

⁸ Yadkin-Pee Dee Rehearing Order, ¶ 141.

⁹ *Id.*, ¶ 141, n. 134. FERC cited a previous decision holding that mandatory conditions do not apply to lands outside of project boundaries. *See id.* at n. 134 (*citing Pacific Gas and Electric Company*, 115 FERC ¶ 61,320 (2006)).

¹⁰ SWRCB Chair Felicia Marcus commented on one version of this proposed legislation in a May 26, 2015 letter to Chairman Fred Upton and Ranking Member Frank Pallone Jr. of the House Committee on Energy and Commerce. In these “Comments on the Hydropower Regulatory Modernization Discussion Draft,” Chair Marcus observed:

Under the provisions of the Hydropower Discussion Draft, the State Water Board’s authority as a mandatory conditioning agency under Section 401 of the Clean Water Act would no longer automatically become conditions of a Commission license and the State Water Board would no longer have the ability to ensure the project complies with water quality standards. Rather, the Commission would have the discretion to determine whether the State Water Board’s conditions should be included in a hydropower project’s license. ... The State Water Board opposes these provisions. (Attachment A, p.1).

A. The Board should reject PG&E’s argument regarding reservation of authority.

In Section VI (I) of the Petition, PG&E contests the authority of the Board to reserve its authority to change conditions of the Certification.

Section 4.1 of Order WQ 2013-0018 (Chili Bar Order) responded to PG&E’s arguments regarding reservation of authority. The Chili Bar Order describes how any modification under reserved authority would not be “unilateral;” moreover, the Chili Bar Certification explicitly requires notice and opportunity for hearing in case the Board exercised its reserved authority, as does the DeSabra – Centerville Certification in Condition 52. Section 4.1 of the Chili Bar Order appropriately concludes:

The alternative would be that the Board conditions its water quality certifications in such a way that ensures the construction and operation of a project under a 30- to 50-year FERC license would be protective of water quality for the duration of that license, taking into account potential changes to the baseline assumptions and current conditions. The conditions of such a certification would likely be prohibitively burdensome and be tantamount to a denial of water quality certification in many cases.

The Board should deny PG&E’s Petition on this issue.

B. The Board should reject PG&E’s argument regarding modification or revocation by a court.

In Section VI (I) of the Petition, PG&E contests the statement that the Certification “is subject to modification or revocation upon administrative or judicial review.”

Section 4.2 of Order WQ 2013-0018 responded to PG&E’s arguments regarding modification or revocation upon administrative or judicial review. As the Chili Bar Order demonstrates, the argument by PG&E would, if accepted, overrule the jurisdiction of state courts over the Certification.

The Board should deny PG&E’s Petition on this issue.

C. The Board should reject PG&E’s argument regarding the Board’s reservation of authority in response to climate change.

In Section VI(J) of the Petition, PG&E contests the authority of the Board to revise the Certification based on changing conditions brought on by climate change.

Section 4.3 of Order WQ 2013-0018 responded to PG&E’s conceptual short-circuit regarding climate change, repeated in the present Petition as follows: “There must be some nexus in the WQC condition and a project effect that is contributing to the identified harm. Given that

the Project is not a cause of climate change, that nexus is lacking here.”¹¹ The Chili Bar Order is particularly lucid in rejecting PG&E’s argument:

... in order to verify that the Project will continue to meet water quality objectives and protect the beneficial uses assigned to Project-affected stream reaches *for the duration of the license term*, the Board needs to reserve its authority to modify or add conditions to the certification as environmental conditions beyond the control of PG&E change. Thus, Condition 21 has not been included to require PG&E to mitigate for the impacts of climate change, but to mitigate the impacts of its Project on the environment under a changed-climate scenario.¹²

The Board should deny PG&E’s Petition on this issue.

D. The Board should reject PG&E’s argument that Certification should not require PG&E to comply with the Basin Plan and Section 303 of the Clean Water Act.

In Section VI (K) of the Petition, PG&E contests the authority of the Board to require that operation of the project comply with the Basin Plan and Section 303 of the Clean Water Act.

Section 4.5 of Order WQ 2013-0018 responded to PG&E’s arguments that it would be hard to know which elements of the Basin Plan are applicable to a specific hydroelectric project. As the Chili Bar Order generously stated, “it is not unreasonable for the Board to require the owners and operators of projects subject to certification to determine which conditions of the relevant Basin Plan are applicable to their project.” The same could be said, no doubt, for applicable sections of CWA section 303.

The Board should deny PG&E’s Petition on this issue.

E. The Board should reject PG&E’s argument that the Board’s requirement for approval over changes to the project encroaches on FERC’s authority.

Section VI (L) of the Petition contests the authority of the Board to condition changes to the project in Condition 49: “The Licensee must submit any change to the Project, including changes in Project operation, technology, upgrades, or monitoring, that could have a significant or material effect on the findings, conclusions, or conditions of this WQC, to the State Water Board for prior review and written approval.” PG&E argues: “many changes to a hydroelectric project over the course of a FERC license are matters purely between FERC and the licensee.” This argument is answered in Section 4.1 of the Chili Bar Order, as described in Section III (A) of these comments above.

¹¹ Petition, p. 13

¹² Order WQ 2013-0018 (Chili Bar Order), p. 6

PG&E also objects that Condition 49 would require “mind-reading.” We recommend a simple solution: PG&E’s license coordinator should pick up the phone and call State Board staff if he or she is unclear about the degree of effect a change to the project might have. PG&E can then follow up with a written confirmation or clarification, all on the public record.

The Board should deny PG&E’s Petition on these issues.

IV. Comments in opposition to specific issues raised in PG&E’s Petition for Reconsideration.

A. The State Board should modify its gaging requirements in Condition 3, but should reject PG&E’s overarching argument.

In Section VI (C) of the Petition, PG&E objects to several aspects of Condition 3 of the Certification.

Condition 3 requires that the licensee assume operation of USGS gages 11390000 (Butte Creek near Chico) and 11405300 (West Branch Feather River near Paradise) in the event that USGS “stops operation and maintenance of these gages.” Each year, the USGS must seek funding for its gages nationwide. It is reasonable to envision a situation where many gages, including those in the project area, lose their USGS funding.

We believe that the Certification contains a typographical error and meant the West Branch requirement to apply to gage 11405200, the gage on the West Branch Feather River immediately downstream of Hendricks Diversion Dam, rather than discontinued gage 11405300 some 16 miles downstream. In any event, we recommend this change, since gage 11405200 is essential for the evaluation of operation of the project.

Conservation Groups agree that USGS gage 11390000 on Butte Creek is six miles downstream of Centerville Powerhouse. Nonetheless, it is the essential gage for evaluating the condition of Butte Creek and its aquatic resources in the general area of the project. We read *Jefferson PUD No. 1* to confirm the Board’s legal authority to require that the licensee maintain a gage that is essential to monitor a project’s compliance with water quality standards. With no gage on this portion of Butte Creek, the Board, resource agencies and the public could not keep abreast of the flow conditions affecting Butte Creek’s essential aquatic resources. The fact that USGS currently maintains the gage does not mean that PG&E would not otherwise have a legal obligation to do so if USGS did not.

Finally, PG&E objects to inclusion in the Certification of a requirement to maintain and annually report on two gages, canal diversions into the Miocene Diversion (BW24) and flow downstream of the Miocene Diversion (BW23) on the West Branch Feather River, 14.4 miles downstream of Hendricks Diversion Dam.¹³ We agree that there is no reason for the State Board

¹³ Line 5 of Section VI (C) of the Petition misidentifies one of these gages as BW25 rather than BW23.

to require gaging relating to the FERC-exempt Miocene Project in the Certification for the DeSabra – Centerville Project, and recommend that reporting requirements for gages BW24 and BW23 be deleted from this Certification.

B. The Certification should retain the stated requirements for the DeSabra Forebay Water Temperature Reduction Plan and associated facilities.

In a Preliminary Biological Opinion published in 2006, the National Marine Fisheries Service (NMFS) stated: “thermal loading through the DeSabra Forebay occurs at a higher rate per distance than anywhere else in the action area and modifications to the forebay may represent the best opportunity to reduce thermal loading during summer months.”¹⁴ In the Environmental Assessment for the DeSabra – Centerville relicensing (EA), FERC notes that the resource agencies all filed preliminary recommendations that PG&E be required to reduce thermal loading in DeSabra Forebay by 80%; however, the EA then suggests that the agencies modified their proposal and PG&E modified its proposed project to place the central emphasis on the nature of the facility (a pipe through the Forebay connecting canal inflow with penstock intake) rather than the percent of efficiency. The EA notes, however, that “[d]uring the section 10(j) meeting, the agencies stated that operation of such a facility would likely reduce thermal loading by at least 80 percent.”¹⁵

The need was clearly identified nine years ago. Now, PG&E complains that it requires an additional two years to design a project, and requests that the two-year timeline to develop a plan – as stated in the April 12, 2013 draft Certification – be retained in the final Certification. Implementation of the plan will require additional time, likely two years or more. PG&E has not justified its request for additional years to implement this mitigation measure. The 80% design standard¹⁶ has been clear for at least six years. The agencies and the Conservation Groups are anxious to initiate the design process for this priority mitigation measure. We will make time to consult with PG&E as necessary to get it done.

If the State Board considers extending the design deadline to two years, the clock should start ticking on issuance of a Board Order on the resolution of PG&E’s Petition, with an alternative deadline one year after license issuance if that is later.

¹⁴ Preliminary Biological Opinion for Proposed Issuance of a new license for the Pacific Gas and Electric Company's DeSabra-Centerville Hydroelectric project (FERC No. 803), FERC eLibrary no. 20061130-0052, p. 46.

¹⁵ Final Environmental Assessment for New Major Hydropower License, DeSabra-Centerville Hydroelectric Project FERC Project No. 803-087 California, FERC eLibrary no. 20090724-4002, pp. 3-173 and 3-174.

¹⁶ The standard is for the average condition over an extended period.

C. Condition 12’s requirement that PG&E construct and operate a fish ladder at the Hendricks Diversion is necessary to mitigate the project’s entrainment of fish.

Section VI (E) of the Petition objects to the requirement in Condition 12 of the Certification that PG&E construct and operate a fish ladder at the Hendricks Diversion. PG&E claims that “a fish ladder to enable fish to migrate upstream of Hendricks Diversion Dam serves no purpose whatsoever.”¹⁷

Conservation Groups strongly disagree. On August 10, 2015, Conservation Groups submitted to State Board staff comments on PG&E’s 2011 *Assessment of Fish Migration Barriers on the West Branch Feather River*. We incorporate those comments, which are attached, by reference herein. These comments address Section VI (E) of PG&E’s Petition, as summarized below:

... the 2011 *Assessment of Fish Migration Barriers on the West Branch Feather River* is not relevant to Condition 12 of the Certification, which appropriately requires a fish screen and fish ladder at the Project’s Hendricks Diversion on the West Branch Feather River. The fish screen and fish ladder mitigate the design of the Hendricks Diversion and the well documented, large-scale entrainment of fish into the Project’s Hendricks Canal. The effort to leverage the Assessment to support PG&E’s position in its Petition for Reconsideration against the fish ladder at Hendricks Diversion is misleading and not on point.

PG&E’s proposed fish screen design for the Hendricks Diversion would screen fish out of the Hendricks Canal *after they entered the Canal*, thus returning entrained fish to the West Branch Feather River *downstream* of the Hendricks Diversion Dam. The fish ladder that the Federal Energy Regulatory Commission proposes for inclusion in the new license would allow fish that were entrained into the Hendricks Diversion and subsequently discharged downstream of the diversion to return to the West Branch Feather River *upstream* of the Hendricks Diversion. In the summer and fall, habitat in the West Branch Feather River upstream of the Diversion has greater flow and better water temperature conditions for trout than the West Branch Feather River downstream of the Diversion.¹⁸

Conservation Groups strongly support a fish screen and a fish ladder at Hendricks Diversion Dam, as described in our August 10, 2015 comments.

¹⁷ Petition, p. 9.

¹⁸ Conservation Groups’ comments on PG&E’s 2011 *Assessment of Fish Migration Barriers on the West Branch Feather River*, p. 2.

D. Condition 23 is consistent with PG&E’s commitment to maintain wet meadow habitat as off-site mitigation for the Round Valley Reservoir’s destruction of wet meadow habitat.

Section VI (G) of the Petition objects to Certification Condition 23, the obligation of PG&E to fund wet meadow habitat. As described in the March 27, 2012 letter from the Department of Fish and Game, to FERC, the obligation to fund such habitat was incorporated into the DeSabra – Centerville license on December 16, 1983, and revised in a FERC Order on May 6, 1987.¹⁹ Part 4 of Exhibit S of that license states: “This provision shall continue each subsequent accounting year for the period of time Licensee retains the license for FERC 803.”²⁰

The obligation to fund wet meadow habitat was an off-site mitigation for the loss of meadow habitat when Round Valley Reservoir was added to the project. The Board should reject PG&E’s effort to avoid its obligation to mitigate this ongoing project effect.

V. Points on which Conservation Groups support PG&E’s requested modifications to the Certification.

A. The evaluation of the West Branch Feather River migration corridor would only support a mitigation that is already ordered.

Section VI (A) of the Petition objects to the portion of Certification Condition 1.B which requires evaluation of the migration corridor in the West Branch Feather River between Hendricks Diversion Dam and the mouth of Big Kimsheew Creek. While we disagree with PG&E’s rationale concerning the scope of requirements that a certification can require, we do not see the utility of evaluating the migration corridor. The only feasible mitigation, discussed in our comments on PG&E’s 2011 *Assessment of Fish Migration Barriers on the West Branch Feather River*, is a fish screen and ladder at Hendricks Diversion Dam.²¹ That mitigation is ordered in the Certification. We recommend that the evaluation of the West Branch migration corridor be removed from the Certification.

B. Department of Fish and Wildlife water temperature guidelines are appropriate to apply to fish stocking in DeSabra Forebay.

Section VI (F) of the Petition disputes the criteria by which the California Department of Fish and Wildlife (CDFW) shall determine whether water temperatures in DeSabra Forebay are suitable for the stocking of rainbow trout. The Certification requires that CDFW use U.S. Environmental Protection Agency (EPA) temperature criteria (2003) to make the determination. PG&E recommends that CDFW use its own “specific criteria for stocking hatchery fish in

¹⁹ Letter from Kent Smith, Region 2 Regional Manager, Department of Fish and Game to Kimberley Bose, Secretary, FERC, eLibrary no. 20120327-5050 (Mar. 27, 2012).

²⁰ *Id.*

²¹ As noted above, our comments on PG&E’s 2011 Assessment are attached at the end of these comments.

reservoirs,” and that PG&E and CDFW biologists create a plan to determine whether reservoir conditions are appropriate for stocking. We agree with PG&E that use of the EPA criteria “would reduce fishing recreation opportunities,” and we recommend that the State Board modify the Certification on this point as PG&E requests.

C. Delegation of approval authority to on-the-ground staff over flow changes in Philbrook Creek is appropriate and necessary.

Section VI (H) of the Petition describes an approval process under Condition 1(B) of the Certification for modifying the temperature requirements governing instream flow releases from Philbrook Creek. As written, Condition 1(B) would require “mutual agreement among USFWS, NFMS, and CDFW and approval by the Deputy Director and FERC” in order for modifications to flow releases from Philbrook Creek to proceed. PG&E cites to a 1998 FERC Order that removed FERC from this approval process. PG&E also recommends that the Deputy Director delegate to Water Board staff the ability to participate real time in the management of Philbrook Creek flow releases to address hot weather conditions; PG&E points out that Board staff already participates in this real-time management. Conservation Groups agree that this delegation is appropriate and necessary for the Operations Group to be able to respond rapidly to changing conditions to protect spring-run Chinook salmon in Butte Creek. Conservation Groups recommend that the Board adopt PG&E’s recommendation on this point regarding Condition 1(B).

D. The Certification should clarify the level of ground disturbing activities that requires notification.

Section VI (M) of the Petition requests a modification to Condition 50 of the Certification, so that the level of “ground disturbing activities” that require notification of the State Board be limited to such activities that require a permit. Conservation Groups believe that minor ground disturbing activities associated with routine maintenance should likely be exempted from the requirement in order to allow workmanlike operation and upkeep of the project. In the event that the State Board feels that there are some ground disturbing activities that do not require a permit but which would appropriately require notification, the Certification should be revised to better clarify and differentiate those activities of concern.

VI. PG&E’s requested changes to Certification that the Conservation Groups support with modification.

A. The Certification should clarify the role of Conservation Groups in the Operations Group.

Section VI (H) of the Petition also addresses condition 27 of the Certification insofar as that condition addresses the composition of the Operations Group and the authorities and responsibilities of its members. In particular, PG&E expresses concern that non-governmental organization (NGO) members of the Operations Group, by virtue of being part of a “consensus” decision-making process that has the ability to modify instream flow, would gain an

inappropriate “authority” over the project. PG&E recommends: “the word ‘consensus’ should be changed to ‘consultation,’ and any required approval should be limited to the relevant resource agencies.”

Conservation Groups recognize and agree that the resource agencies have specific legal and regulatory mandates that NGOs do not have, and that PG&E has unique legal and regulatory responsibilities as licensee that are not shared by the NGOs. Nonetheless, several of the Conservation Groups are active and successful participants in adaptive management processes and committees that operate by consensus, including committees established to implement FERC hydropower licenses. Rather than eliminate the word “consensus,” Conservation Groups recommend that language be added to the Certification to define roles and responsibilities within the Operations Group, and specifically those of NGOs. We requested such definition in our comments on the Draft Certification.

At minimum, we request that such definition require that NGO members be given equal notice regarding the Operations Group meetings and activities as is given the resource agencies; that NGOs have the opportunity to participate in all discussions of the Operations Group; and that NGOs be allowed to be present when any decisions are made by the Operations Group. We also request that the Board clarify that, in the absence of consensus, the ultimate approval authority for matters decided by the Operations Group belongs to the licensee and to the agencies with legal and regulatory responsibility for those matters.

B. The Certification should be modified to conform to the Butte Creek adjudication. PG&E and water rights holders on the Upper Centerville Canal should attempt to reach accommodation outside of Certification.

Section VI (N) requests the Certification be modified so that it is consistent with the language of the Butte Creek adjudication.²² PG&E points out that the language of the adjudication requires delivery of 1.175 cfs to water rights holders along the Upper Centerville Canal only when PG&E is operating the canal. In fact, there is no longer any clear project purpose for such operation other than serving these water rights holders. Reluctantly, we agree that PG&E is likely within its legal rights in limiting its delivery obligation to when it is operating the Upper Centerville Canal. However, we strongly recommend that PG&E and the Upper Centerville Canal water rights holders seek a mutually agreeable accommodation to maintain water delivery to water rights holders on the Upper Centerville Canal.

C. PG&E should be allowed one month to file a report about a streamflow modification, but should update the Board within 96 hours of such modification.

Section VI (B) of the Petition disputes the amount of time given the licensee to report on a streamflow modification. As written, Condition 1.E of the Certification requires reporting the

²² See Order of Determination issued by the State of California Department of Public Works, April 14, 1942, p. 27, Attachment D.

modification to the Deputy Director within 24 hours of the event if not beforehand, and requires a report within 96 hours. The Petition requests consistency with FERC's general policy of requiring a report within 30 days of the modification. Conservation Groups agree that 30 days is appropriate for a complete report. However, we also recommend that PG&E be required to update the Deputy Director or delegated staff on the modified flow and associated conditions 96 hours after the initiation of the flow modification, in addition to all notifications the licensee may make to address issues of health and safety.

VII. Conclusion

Five days after PG&E filed the Petition, which in part collaterally attacks broad legal issues with the Board's Section 401 authority, a PG&E senior vice-president complained, in oral testimony before a Congressional subcommittee, of delay in relicensing the DeSabra – Centerville Project.²³ He pointed to this delay as cause for removing responsibility from the State and placing it with FERC.

We agree that completion of this relicensing has taken too long.²⁴ However, *much of the delay stems from PG&E's own indecision over the ultimate disposition of the Centerville Powerhouse*. A milestone in this delay was PG&E's opposition in 2008 to Conservation Groups' proposal to consider elimination of the use of Centerville Powerhouse in (at minimum) summer and fall.²⁵ FERC compounded the delay by deciding not to analyze such elimination as a NEPA alternative in its Environmental Assessment.²⁶

This delay has had consequences. The temperature reduction facilities at DeSabra Forebay, which were called out in a Preliminary Biological Opinion by NMFS in 2006 and everyone agrees are necessary, remain un-designed and unbuilt. This delay must end.

For the foregoing reasons, we request that the State Board amend the Certification consistent with the recommendations stated in Sections IV (A), V and VI above, otherwise deny PG&E's Petition, schedule an agenda item on the Board calendar to address the matter, and adopt the revised Certification as soon as legally allowed.

Thank you for the opportunity to comment on PG&E's Petition for Reconsideration for the Water Quality Certification of the DeSabra – Centerville Project.

²³ See transcript of the May 13, 2015 hearing of the House Subcommittee on Energy and Power, ll. 2644-2672, available at <http://docs.house.gov/meetings/IF/IF03/20150513/103443/HHRG-114-IF03-Transcript-20150513.pdf>.

²⁴ We note that a Biological Opinion for the relicensing has still not been issued by NMFS.

²⁵ See Conservation Groups, "Comments on Ready for Environmental Analysis," FERC eLibrary no. 20080627-5050, June 27, 2008, (cited as a reference in the Certification).

²⁶ FERC argued, "The Conservation Groups' recommended alternative is not supported in its entirety by any resource agency, especially those with mandatory conditioning authority and/or authority under the FPA (Cal Fish & Game, NMFS, and FWS)." Final Environmental Assessment, p. 2-28, fn. 23.

Dated this 9th day of November, 2015.

Respectfully submitted,



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Steve Edmondson, NMFS
Alison Willy, US Fish and Wildlife Service

Attachment:

Conservation Groups' August 10, 2015 comments on PG&E's 2011 Assessment of Fish Migration Barriers on the West Branch Feather River

*Conservation Groups' Comments on Petition for Reconsideration
PG&E's DeSabra – Centerville Project (P-803)*