



# State Water Resources Control Board



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Secretary for  
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Arnold Schwarzenegger  
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**DEC 23 2010**

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

## COMMENTS ON THE DRAFT APPLICATION FOR NEW LICENSE, MIDDLE FORK AMERICAN RIVER PROJECT, FERC #2079

Dear Ms. Bose:

On September 27, 2010, Placer County Water Agency (PCWA) filed a Draft Application for New License (DLA) for the Middle Fork American River Project (FERC #2079) with the Federal Energy Regulatory Commission (Commission). PCWA has filed a DLA instead of a Preliminary License Proposal as allowed in 18 Code of Federal Regulation (CFR) 5.16(c). The current Commission license for the Middle Fork American River Project (Project) expires on March 1, 2013. State Water Resources Control Board (State Water Board) staff has reviewed the DLA to determine conformance with the requirements of 18 CFR section 4.50, and with the requirements for a complete application for Clean Water Act section 401 certification.

### Water Quality Certification

Pursuant to the federal Clean Water Act (CWA), section 401 (33 U.S.C. §1341), any applicant for a federal license or permit to conduct an activity that may result in any discharge to navigable waters must obtain certification from the State in which the discharge originates or will originate, that the discharge will comply with the applicable provisions of the CWA. The State Water Board is the certifying agency in California for water quality certification. (Wat. Code, § 13160.) In issuing a water quality certification, the State Water Board certifies that the project will comply with specified provisions of the CWA, including water quality standards that are developed pursuant to state law and in satisfaction of section 303 of the CWA. (33 U.S.C. § 1313.) The State Water Board may condition certification to ensure compliance with CWA requirements and any other appropriate requirement of state law. (33 U.S.C. § 1341, subd. (d).) Conditions of certification become conditions of any federal license or permit for the project.

Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act, the Central Valley Regional Water Quality Control Board has adopted, and the State Water Board and U.S. Environmental Protection Agency (USEPA) have approved, the *Water Quality Control Plan for the Sacramento and San Joaquin Rivers* (Basin Plan) (Central Valley Regional Water Quality Control Board, 2009). The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses. California water quality standards consist of both beneficial uses and the water quality objectives based on those uses. Beneficial uses designated for the Middle Fork American River, source to Folsom Lake, include municipal and domestic supply, irrigation, stock watering, power generation, contact and non-contact recreation, canoeing and rafting, cold freshwater habitat, cold spawning, and wildlife habitat. Warm freshwater habitat is listed as a potential beneficial use.

*California Environmental Protection Agency*

The water quality objectives set or describe the water quality limits necessary to achieve and protect the beneficial uses. PCWA must demonstrate whether the Project complies with all applicable water quality objectives in the Basin Plan and whether the Project impairs the established beneficial uses of the Middle Fork American River and tributaries. PCWA must evaluate its Project for compliance with all water quality objectives in the Basin Plan, as well as other applicable objectives and criteria such as those included in the California Toxics Rule (CTR), the Department of Health Services' Maximum Contaminant Levels (MCLs), etc. If the Project does not comply with one or more of the water quality objectives or criteria, then PCWA must describe the actions that it will take to bring the Project into compliance with the applicable water quality limits in order to protect and maintain the beneficial uses.

### **California Environmental Quality Act**

The State Water Board must comply with the California Environmental Quality Act (CEQA) before issuing water quality certification. In this case PCWA will be the lead agency for preparation of environmental documents to comply with CEQA. The State Water Board will act as a responsible agency.

### **General Comments**

#### Studies

The bioenergetics, entrainment contingency, reservoir fish habitat study reports were not included in the DLA. State Water Board staff will comment on these plans as they become available.

#### Monitoring Plans

The geomorphic, riparian and visual monitoring plans were not included in the DLA. State Water Board staff will comment on these plans when they are available. State Water Board staff appreciates the effort of PCWA to include the monitoring plans in the DLA. Some of the plans may be included directly or by reference into a water quality certification issued for the Project. It is therefore important to include specific time frames and reporting requirements into the plans. Any plans that involve adaptive management or future consultation must specify the agencies with authority to approve changes.

#### Protection, Mitigation and Enhancement Measures

For clarity and ease of review the recommended Protection, Mitigation and Enhancement (PM&E) measures should be compiled into a single document. The PM&E measures in the DLA are included in the proposed monitoring plans. It is difficult to evaluate all the PM&E measures in the current format. Compilation of the PM&E measures into a single document will make it easier to spot conflicting measures or overlapping measures. In addition, these measures will need to be converted to enforceable conditions that will be included in the water quality certification, 4(e) conditions, and the Commission license. Providing a single document with PM&E measures will help ensure consistency between agencies.

## **Specific Comments**

### Exhibit E, Section 3.0

Page 3-1: The No-Action alternative is defined as the continued operation and maintenance of the Project under the terms and conditions of the current Commission license. Under both the National Environmental Policy Act and CEQA the baseline condition must be described. The baseline condition is typically the condition at the time of preparation of the environmental documents. For an existing hydroelectric project, this condition is the operation and maintenance of the project under the current Commission license conditions. This condition is the same as the No-Action alternative in the DLA. While it is difficult to define the No-Action alternative for an existing and on-going project it is reasonable to assume the Commission would not allow a project to operate in perpetuity without a new license. At some point the Commission would need to take action to either issue a new license, open the project to other applicants, or require the project to be decommissioned. The No-Action alternative should be defined in more realistic terms to include likely actions by the Commission.

### Exhibit E, Section 8.4

Page 8.4-1: This section includes descriptions of the water quality impacts of the continued operation of the Project, from facility modification, and construction of new facilities. Section 8.4.4 states that potential water quality impacts from construction will be avoided by implementing best management practices (BMP's) and avoidance and protection measures (APM's). In addition, Appendix A of this section lists the permits necessary for construction at each facility. Before the State Water Board can issue water quality certification, construction plans and information about construction methods must be available to determine conditions necessary to protect water quality. State Water Board staff encourages PCWA to further develop this information in the final license application and CEQA environmental review. Methods to avoid, reduce or mitigate any impacts will be necessary for the CEQA process. State Water Board staff prefers to develop a water quality certification for the entire action, rather than separate approvals for the relicensing of the Project and subsequent construction projects.

Page 8.4-3: The DLA states the sources of mercury in the Middle Fork American River Watershed are unknown. State Water Board staff agrees with this conclusion. However, the Project may contribute to the methylation of mercury and the high levels of mercury in fish tissue. At the current time the science to evaluate the sources of mercury and cause of methylation are inadequate or very costly. Consistent with other hydroelectric projects, PCWA may have future obligations to periodically monitor fish tissue, post warning notices, or otherwise assist in protecting the public from consumption of contaminated fish or conduct studies on methylation.

### Exhibit E, Section 8.9

The boatable range in the Rubicon River was developed through surveys, not from a controlled boating study (see Exhibit E, Book 9, REC 4). There is uncertainty surrounding the accuracy of the flow ranges. A controlled flow study is needed to determine the minimum acceptable boatable flow in the Rubicon River. State Water Board staff understands that PCWA is committed to completing the flow study. Limitations on the use of the low level outlet valve at Hell Hole Dam (see Instream Flow and Minimum Pool Measure, Attachment A) make it difficult

to release adequate flows for the study. These same valve limitations may require careful and creative solutions to provide whitewater boating flows in the future. This information from the study is essential to inform the development of water quality certification conditions.

#### Exhibit E, Section 9.0

Page 9-6: In June 2009 the National Marine Fisheries Service issued a Biological Opinion (BO) for the operation of the State Water Project and Central Valley Project. The BO includes reasonable and prudent alternatives from which the Bureau of Reclamation and Department of Water Resources may select to sufficiently reduce stressors to anadromous fish. NMFS (2009) states that:

The most influential baseline stressor to steelhead within the American River Division is the presence of Nimbus and Folsom dams, which block steelhead from all of their historic spawning and rearing habitat. This Opinion concludes that both increased water demands and effects of climate change will lead to further deterioration of suitable habitat conditions, including increased temperatures and decreased flows. Therefore, a passage program to expand the range of the American River steelhead population above Folsom Dam is necessary. If feasible, American River steelhead should be provided access to their full historic range.

RPA Action II.5 is for fish passage at Nimbus and Folsom Dams with the objective to provide access for steelhead to historic cold water habitat above Nimbus and Folsom dams. It is reasonably foreseeable that steelhead will be reintroduced into the American River above Folsom Dam. Reintroduction of anadromous fish listed under the Endangered Species Act could require changes in operation of the Project. This should be evaluated in the final license application and environmental documents.

Page 9-10: This section evaluates the impact of the proposed project on climate change and quantifies the generation greenhouse gases. While not specifically required under the Federal Power Act, this analysis will be necessary for the CEQA environmental review. Significant details on the methodology used to calculate the tons of carbon resulting from the reduction in power in the proposed project are not included.

#### Exhibit E, SDA, Flow and Reservoir Monitoring Plan

Section 4: PCWA proposes that instream flow releases may be temporarily modified for short periods in response to directives from the Independent System Operator (ISO). Please explain the legal authority the ISO maintains to control operations of the Project.

PCWA also proposes to release minimum flows within five days of the dates specified in the license issued by the Commission. There are certain circumstances where access limitations may warrant such an allowance. PCWA should explain why flows cannot be released on the date specified. Additionally, PCWA wants to average flow compliance over a 24 hour period, with instantaneous flows no less than 90 percent of the required minimum. In certain conditions it may be appropriate to allow an averaging period for flow compliance. However, this makes compliance and enforceability more difficult. Also, it is not necessary or appropriate to apply a 90 percent allowance to all release points. A 10 percent reduction in flow at a 10 cubic foot per second flow requirement is very different from a 10 percent reduction of a 500 cubic foot per second flow requirement. Typically, the higher flows require less deviation from the required

minimum. State Water Board staff recommends that flow compliance be instantaneous except in certain circumstances where facilities cannot be remotely operated or access is difficult.

#### Exhibit E, SDA, Sediment Management Plan

The Sediment Management Plan (SMP) addresses long-term sediment management and interim sediment management for facilities that will be modified. Both long term and interim sediment management involves the removal of sediment from reservoirs using equipment. This activity is consistent with past operations and PCWA provides background on frequency of past sediment removal projects. The sediment management plan provides information on how the sediment will be removed from the reservoirs but does not include a water quality protection plan. Before the State Water Board can include these activities in any water quality certification that may be issued for the Project, a water quality protection plan for the long term and interim sediment removal projects should be provided. This water quality protection plan will also be required for construction of the modifications at the three small diversions. The SMP includes proposed water turbidity monitoring during sediment removal. This information, in addition to BMP's and APM's, could be combined into a water quality protection plan.

PCWA is proposing to modify the small diversion dams at North and South Long Canyon and Duncan Creeks. The new design will allow sediments to pass over the dam and will allow better flow control. It is likely the design will significantly reduce entrainment of fish into the tunnels (Exhibit E, Book 3, Page 8.5-24). Some level of post construction monitoring should be conducted to monitor the effectiveness of the ability of the facilities to pass sediment. Monitoring of the effectiveness of the new facilities to reduce entrainment should also be conducted.

#### Exhibit E, Instream Flow and Reservoir Minimum Pool Measure

Flow recommendations in the DLA for the small and large river bypass reaches reflect years of discussion and interim agreement between parties to the relicensing process. Discussions between parties about flows in the peaking reach are on-going and the DLA represents PCWA's best attempt to meet the interests of the parties. However, future discussions may alter the flow recommendations contained in the DLA. PCWA provides a table of minimum pool requirements for French Meadows and Hell Hole Reservoirs. Reservoir pool elevations at Labor Day are necessary to protect the recreational uses of the reservoirs. During certain years PCWA sells water to San Diego County or other jurisdictions. The water transfers require PCWA to leave vacant in the reservoirs a combined storage capacity equal to the amount of the transfer. The DLA does not disclose if there is an impact from this reduction of reservoir elevation. Additional information should be provided on any impacts that result from the water transfers.

Attachment A to this section is a feasibility study on Hell Hole Dam low level outlet release capability. Safety concerns about the use of the low level outlet at Hell Hole Dam restrict the amount of water that can be released. This limitation reduces flows that can be used for geomorphic processes and whitewater boating. State Water Board staff supports the approach proposed by PCWA to establish the maximum amount of water that can be safely released through the valve. Once the study is completed (post license issuance) the maximum flow that can be released will be included in the license. Before the study can be conducted

modifications to the existing outlet are required to prevent damage to the powerhouse. PCWA has committed to completing these modifications prior to license issuance.

### Conclusion

Thank you for the opportunity to comment on the DLA. PCWA, Agencies and NGO's have made significant progress on developing mutually agreeable PM&E measures. Additional time is needed to finalize discussions concerning PM&E measures in the peaking reach. There are a number of beneficial uses in the peaking reach, some of which have inherent conflicts that are best resolved through collaboration. State Water Board staff is committed to working toward the collaborative development of PM&E measures. If you have any questions, or would like to discuss these comments, please contact me by phone at (916) 341-5341 or by e-mail at rkanz@waterboards.ca.gov.

Sincerely,



Russ J. Kanz  
Staff Environmental Scientist

### References:

Central Valley Regional Water Quality Control Board. 2009. The Water Quality Control Plan for the California Regional Water Quality Control Board, Central Valley Region. Fourth Edition, Revised September 2009. Central Valley Regional Water Quality Control Board, Central Valley Region.

NMFS. 2009. Biological Opinion and Conference Opinion on the Long-Term Operation of the Central Valley Project and State Water Project. National Marine Fisheries Service Southwest Region. June 4, 2009

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