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**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



December 23, 2020

Hon. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First St, NE  
Washington DC, 20426

SUBJECT: Comments on PG&E December 4<sup>th</sup> FERC E-Filing – Upper North Fork Feather River Hydroelectric Project, FERC Project No. 2105.

Dear Ms. Bose:

This correspondence is in response to a December 4, 2020, e-filing from Pacific Gas and Electric Company (PG&E or Licensee) to the Federal Energy Regulatory Commission (FERC) on the Upper North Fork Feather River Project (UNFFR), FERC No. 2105 (Project). In the e-filing, PG&E chronicles the State Water Resources Control Board's (SWRCB) issuance of a Water Quality Certification (WQC) for the Project in July 2020, and the Commission's issuance of a Declaratory Order waiving the SWRCB's authority to issue a WQC in July 2020. PG&E then summarizes which of the WQC conditions PG&E "believes support water quality and could be appropriately included and/or modified to be consistent with Federal Power Act (FPA) Section 10(a) and the FERC record, as well as those which should not be included in the license." PG&E includes in the e-filing an attached mark-up of the WQC with strikethroughs identifying WQC conditions and portions of conditions that PG&E does not believe should be included by the Commission in the final Project license.

The California Department of Fish and Wildlife (Department) is filing comments in response to PG&E's December 4, 2020, e-filing to support the inclusion of pertinent WQC conditions in the final FERC License that protect fish and wildlife resources.

### **AUTHORITY**

The Department is the appropriate state fish and wildlife agency for resource consultation and Federal Power Act Section 10(j) (16 U.S.C. section 803 (j)) purposes. The fish and wildlife resources of the State of California are held in trust for the people of the State by and through the Department (Fish & G. Code § 711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (Fish & G. Code § 1802). The mission of the Department is to manage California's diverse fish, wildlife, and plant resources, and the habitats on which they depend, for their ecological values and for their use and enjoyment by the public. It is the goal of the Department to preserve, protect, and as needed, to restore habitat necessary to support native fish, wildlife, and plant species within the FERC-designated boundaries of these projects, as well as the areas

Ms. Bose  
Page 2 of 7  
December 23, 2020

adjacent to these projects in which resources are affected by ongoing project operations and maintenance activities and recreational use.

The Department has been actively participating in Project relicensing in coordination with the licensee, PG&E, since 1999. The Department submitted recommendations pursuant to Section 10(j) of the FPA in 2003 and was a participant in the 2004 Project 2105 Relicensing Settlement Agreement (Settlement Agreement).

## **COMMENTS**

The Department supports the inclusion of the following Upper North Fork Feather River Project SWRCB Section 401 Water Quality Certification (WQC) conditions in the Project's final FERC License:

- CONDITION 1. Minimum Instream Flows
- CONDITION 2. Ramping Rates
- CONDITION 3. Pulse Flows
- CONDITION 4. Water Surface (Reservoir) Elevations
- CONDITION 5. Gaging and Facilities Modification
- CONDITION 6. Water Temperature Management Program
- CONDITION 7. Water Quality
- CONDITION 8. Lake Almanor Fishery
- CONDITION 9. Gravel
- CONDITION 10. Lower Butt Creek Habitat
- CONDITION 11. North Fork Feather River Biological Resources
- CONDITION 12. Fish Stocking
- CONDITION 13. Recreation Facilities Management
- CONDITION 14. Whitewater Recreation Flows
- CONDITION 15. Aquatic Invasive Species
- CONDITION 16. Roads
- CONDITION 17. Reintroduction of Anadromous Fish
- CONDITION 18. Annual Consultation Meetings
- CONDITION 19. Extremely Dry Conditions
- CONDITION 20. Grebes Management

The Department supports the inclusion of these conditions for the following reasons:

1. At the time of PG&E's WQC application in 2002 and throughout the many years of active negotiations, the above conditions were clearly within the scope of the SWRCB's conditioning authority and precedent under Section 401 of the Clean Water Act (CWA) (33 U.S.C. § 1251) to protect water quality via effluent limitations and other limitations necessary to ensure compliance with the CWA and with any other appropriate requirements of state law including the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 et seq. (CEQA).
2. The above conditions are important for protecting fish and wildlife and to resolving outstanding natural resource and beneficial use issues left unresolved by the Final Environmental Impact Statement (FEIS) and the 2004 Project 2105 Relicensing

Ms. Bose  
Page 3 of 7  
December 23, 2020

Settlement Agreement. It is incumbent upon the SWRCB and/or the Commission to address these unresolved issues.

**1. Project Water Quality Certification Application Pre-Dated the September 11 EPA Clean Water Act Section 401 Certification Rule Change**

On June 1, 2020, the U.S. Environmental Protection Agency (EPA) finalized the “Clean Water Act Section 401 Certification Rule” (EPA CWA Rule), changing state water quality certification regulations, and the proposed changes went into effect on September 11, 2020. However, rule change guidance specifies that “certification requests that have been submitted or that are currently being processed by states, authorized tribes, or EPA, should continue to be processed in accordance with existing law,”<sup>1</sup> meaning state WQC conditioning is subject to the CWA Section 401 regulations at the time of WQC application. The Project’s WQC application was initially received in October 2002, with subsequent withdrawals and resubmissions all occurring prior to September 11, 2020. Accordingly, the SWRCB developed a draft WQC consistent with then-current CWA 401 regulations and precedent and issued the final WQC on July 15, 2020. Considering the application was received and the WQC was finalized prior to the September 11, 2020, EPA CWA Rule effective date, it is reasonable for the SWRCB to exercise its CWA authority and issue a WQC that adheres to historical CWA practice in which WQC conditions can require a range of actions that address water quality impacts and that protect multiple beneficial uses of a waterway. For this reason, the Department supports inclusion of Conditions 1 through 20 in the final Project FERC license.

**2. SWRCB Water Quality Certification Seeks to Resolve Outstanding Natural Resource and Beneficial Use Issues**

SWRCB’s UNFFR Project WQC Conditions were designed to resolve natural resources and beneficial use issues in the FEIS and Settlement Agreement<sup>2</sup>, to satisfy responsibilities as lead agency under CEQA, and to protect basin beneficial uses. The SWRCB’s WQC conditions address Project impacts on listed North Fork Feather River beneficial uses (including cold freshwater habitat, cold water spawning, and wildlife habitat) through appropriate protection, mitigation, and enhancement measures (PM&Es). Rejection of the SWRCB’s WQC conditions undermines SWRCB’s CWA authority; compromises the SWRCB’s mission to preserve, enhance, and restore the quality of California’s water resources for the protection of all beneficial uses; and risks jeopardizing fish and wildlife public trust resources.

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<sup>1</sup> USEPA. [Clean Water Act Section 401 Certification Final Rule: Frequently Asked Questions](#). Accessed December 12, 2020.

<sup>2</sup> In 2004, during the FERC relicensing of Project P-2105, a settlement was signed by PG&E, the United States Department of Agriculture, the United States Forest Service, the California Department of Fish and Game, American Whitewater, Plumas County, Chico Paddleheads, Shasta Paddlers, Mountain Meadows Conservancy, and California Sportfishing Protection Alliance. The terms of the Settlement Agreement covered agreed-upon PM&E’s but specifically *excluded* potential conditions where parties lacked information to make a final agreement at the time of settlement and were waiting on completion of CEQA analysis.

Ms. Bose  
Page 4 of 7  
December 23, 2020

Should the Commission's waiver of the SWRCB's authority to issue a Project WQC stand, it would be incumbent upon the Commission to include versions of each of the above WQC conditions to protect fish and wildlife beneficial uses. The conditioning responsibility would fall to the Commission, because the SWRCB has filed with FERC copies of California's Comprehensive Plans for water quality control pursuant to Federal Power Act section 10(a)(2), 16 U.S.C.A. § 803(a)(2), and 18 C.F.R. § 219. The filed comprehensive plans include the *Water Quality Control Plan for the San Francisco Bay/Sacramento–San Joaquin Delta Estuary* (Water Quality Control Plan).<sup>3</sup> If, as PG&E requests, FERC is to issue a new license for the Project without inclusion of the SWRCB's Project WQC, the Commission must first separately consider and ensure consistency with the Water Quality Control Plan which specifies North Fork Feather River beneficial uses to include cold freshwater habitat, cold water spawning, and wildlife habitat. *American Rivers, supra*, 129 F.3d 99; *Twin Falls Canal Co.*, 45 FERC ¶ 61,423, 62,305- 06 (1988).

For example, water temperature management issues downstream of the Project were neither resolved in the Settlement Agreement nor sufficiently addressed in the FEIS, yet the Water Quality Control Plan designates cold freshwater habitat and cold water spawning among the many beneficial uses of the North Fork Feather River, and does not designate warm freshwater habitat as a beneficial use. Water temperature is a known issue within Project impacted river reaches, has significant implications for UNFFR fisheries, and has cascading impacts on beneficial users throughout the Feather River system. It was incumbent upon the SWRCB's WQC conditions to address Project water temperature impacts that had not yet been effectively mitigated through the FEIS, Settlement Agreement, or U.S. Forest Service 4(e) conditions. The SWRCB's water quality certification and CEQA analysis address Project impacts to cold freshwater habitat and cold water spawning beneficial uses through appropriate protection, mitigation, and enhancement measures. Should the Project WQC not stand, the Commission is responsible for including water temperature management conditions such as Condition 6 in the final Project license to meet FERC's own comprehensive planning standard which calls for consistency with State-filed management plans that conserve waterways impacted by the Project.

Among other natural resource protection issues considered in the WQC but excluded from the FEIR is species monitoring and management for the Western Grebe (*Aechmophorus occidentalis*) and Clark's Grebe (*Aechmophorus clarkia*) which have been documented by the Plumas County Audubon Society to suffer high nesting failure rates within the Project boundaries. Because this species management issue arose after the UNFFR FEIS was released and after the Settlement Agreement was signed, federal environmental review documents do not propose any measures to address nesting failure. The SWRCB's WQC, however, specifies a Grebes Management Plan in Condition 20 to address this problem and meet CEQA lead agency obligations. Absent the SWRCB Project WQC to satisfy CEQA standards, it is left to the Commission to integrate conditions to protect species impacted by the Project.

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<sup>3</sup> FERC. [List of Comprehensive Plans](#). July 2020. Accessed December 16, 2020.

Ms. Bose  
Page 5 of 7  
December 23, 2020

FERC's FEIS recommendations fail to specify mitigation measures that would ensure Water Quality Control Plan water quality objectives would be met within the terms of the Project license, and only partially address temperature management through the recommended alternative. The Department's June 1, 2020, comment letter on FERC #2105 (Attachment A), Notice of Petition for Declaratory Order describes in more detail the Department's analysis on adequate conditioning of water temperature (Condition 6) and grebe management (Condition 20) issues. Water temperature management and species management are two examples of the twenty WQC conditions that serve to better protect fish and wildlife beneficial uses, reconcile legacy natural resource licensing issues left unresolved by the FEIS and Settlement Agreement, and support the Water Quality Control Plan North Fork Feather River beneficial uses per the SWRCB's authority and per the Commission's comprehensive planning standard. Thus, the Department supports the inclusion of WQC Conditions 1 through 20 in the final FERC Project license, with implementation collaboration from resource agencies.

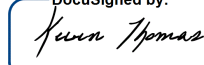
## **CONCLUSION**

The Department supports the inclusion of WQC Conditions 1-20 in the Upper North Fork Feather River Project's final FERC license, because these conditions were developed in response to the Project WQC application that predated the 2020 EPA CWA Rule change, and because they are necessary to complement existing licensing processes to resolve natural resource and beneficial use issues.

The Department requests that the Commission carefully consider the importance of each of these conditions to protecting fish and wildlife and to meeting Water Quality Control Plan North Fork Feather River designated beneficial uses. Disregard of these conditions undermines the SWRCB's authority to condition Project operations to ensure CWA compliance; neglects FERC's comprehensive planning standard; and may have long term, devastating impacts on UNFFR water temperature and species management, among other beneficial uses.

Thank you for accepting and considering the Department's comments on PG&E's December 4<sup>th</sup> FERC E-Filing – Upper North Fork Feather River Hydroelectric Project, FERC Project No. 2105. If you have any questions regarding this letter, please contact Sarah Lose, Senior Environmental Scientist (Specialist) at (916) 747-5226 or by email at [Sarah.Lose@wildlife.ca.gov](mailto:Sarah.Lose@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Kevin Thomas  
Regional Manager

Enclosures:

Ms. Bose  
Page 6 of 7  
December 23, 2020

Attachment A: California Department of Fish and Wildlife June 1, 2020 comments on FERC # 2105, NOTICE OF PETITION FOR DECLARATORY ORDER

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*Pacific Gas & Electric*

*Upper North Fork Feather River Service List, FERC Project No. 2105*

**ATTACHMENT A**

**California Department of Fish and Wildlife June 1, 2020 comments on  
FERC # 2105, NOTICE OF PETITION FOR DECLARATORY ORDER**



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*GAVIN NEWSOM, Governor*  
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June 1, 2020

Hon. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First St, NE  
Washington DC, 20426

SUBJECT: FERC # 2105, NOTICE OF PETITION FOR DECLARATORY ORDER

Dear Ms. Bose:

This correspondence is in response to a May 6, 2020, Notice of Petition for Declaratory Order (Notice) from the Federal Energy Regulatory Commission (FERC or Commission). The notice solicits comments on an April 24, 2020, petition from Pacific Gas and Electric Company (PG&E or Licensee) requesting a declaratory order from the Federal Energy Regulatory Commission stating that the California State Water Resources Control Board (SWRCB) has waived its authority under Section 401 of the Clean Water Act, 33 U.S.C. § 1341, to issue water quality certification for PG&E's pending application for a new license for the Upper North Fork Feather River Project #2105 (UNFFR or Project). The Notice establishes a comment deadline of June 5, 2020.

## **AUTHORITY**

The California Department of Fish and Wildlife (Department) is the appropriate State Fish and Wildlife agency for resource consultation and Federal Power Act Section 10(j)(16 U.S.C. section 803 (j)) purposes. The fish and wildlife resources of the State of California are held in trust for the people of the State by and through the Department (Fish & G. Code § 711.7). The Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species (Fish & G. Code § 1802). The mission of the Department is to manage California's diverse fish, wildlife, and plant resources, and the habitats on which they depend, for their ecological values and for their use and enjoyment by the public. It is the goal of the Department to preserve, protect, and as needed, to restore habitat necessary to support native fish, wildlife, and plant species within the FERC-designated boundaries of these projects, as well as the areas adjacent to these projects in which resources are affected by ongoing project operations and maintenance activities and recreational use.



Ms. Bose  
Page 2 of 8  
June 1, 2020

## COMMENTS

The Department opposes waiver of the UNFFR water quality certification for the following primary reasons:

1. The 2004 Project 2105 Relicensing Settlement Agreement (UNFFR Settlement Agreement) and subsequent federal environmental review left unresolved several natural resource/beneficial use issues that the SWRCB water quality certification resolves, including water temperature and species monitoring and management.
2. The Department has been actively participating in the Project relicensing effort in coordination with the licensee since 1999. Water quality certification waiver would compromise a significant investment of Department time and resources.
3. PG&E voluntarily contributed to the delay in the issuance of the water quality certification by submitting a water quality certification request withdrawal without an agreement of abeyance from the SWRCB.

### 1. Outstanding Beneficial Use Issues Resolved by Water Quality Certification

In 2004, during the FERC relicensing of Project P-2105, a settlement (UNFFR Settlement Agreement) was signed by PG&E, the United States Department of Agriculture, the United States Forest Service, the California Department of Fish and Game (now California Department of Fish and Wildlife), American Whitewater, Plumas County, Chico Paddleheads, Shasta Paddlers, Mountain Meadows Conservancy, and California Sportfishing Protection Alliance.

The terms of the settlement covered agreed-upon protection, mitigation, and enhancement measures (PM&E's) but specifically *excluded* potential conditions where parties could not come to agreement or lacked information to make a final agreement at the time of settlement. Those issues were identified in Table 2 of the Settlement Agreement, "Subjects Not Resolved by this Settlement," and included:

- Shoreline Erosion,
- Water Temperature,
- Whitewater flow effects on water temperature in the Belden Reach,
- Term of New Project License,
- Angler Access Trail Improvement in Seneca Reach, and
- Wetland and Riparian Habitat Offsite Mitigation.

Of these issues, water temperature was a major unresolved issue among settlement parties. Water temperature has significant implications for UNFFR fisheries, and water temperature management at UNFFR has cascading impacts on beneficial users throughout the Feather River system. For this reason, the Department focuses subsequent comments on Project water temperature conditions.

Ms. Bose  
Page 3 of 8  
June 1, 2020

### *Water Temperature*

Water quality certification waiver risks inadequate consideration of cold water beneficial uses of the NFFR and disregards best available information and analysis.

The Basin Plan for the Sacramento River and San Joaquin River Basins designates beneficial uses of the North Fork Feather River (NFFR) including: municipal and domestic supply, power, contact recreation (including canoeing and rafting), non-contact recreation, cold freshwater habitat, cold water spawning, and wildlife habitat. Designated uses of the NFFR do not include warm freshwater habitat.

PG&E owns and operates FERC projects down the length of the UNFFR. Because of FERC license expiration timing, the downstream Rock Creek and Cresta (P-1962) and Poe (P-2107) projects completed FERC relicensing before the UNFFR (P-2105) project, which lies at the head of the system. This sequence of licensing downstream projects first has made development of logical, stepwise PM&Es difficult, particularly PM&Es for water temperature. During the downstream licensing of Rock Creek, Cresta, and Poe, temperature management was understood to be an issue, but the root cause of that issue could not be fully addressed until relicensing was initiated for the project at the head of the system, UNFFR P-2015 (inclusive of Lake Almanor).

In FERC's Rock Creek Cresta Environmental Assessment (EA) (May 30, 2001), the Commission accepts and recommends that the Rock Creek and Cresta Licenses contain reference to, and conditions that support, a 20°C mean daily temperature standard:

*Based on the abundance, life history, and water temperature preference information reported for rainbow trout, Sacramento sucker, hardhead, and Sacramento pikeminnow, we believe that summer water temperatures in the NFFR, which often exceed 20°C, favor Sacramento sucker, hardhead, and Sacramento pikeminnow in the Rock Creek and Cresta reaches. PG&E's proposed 20°C water temperature objective would benefit trout in the Rock Creek and Cresta reaches by maintaining water temperatures that would, on average, be optimal or near optimal and nonstressful, allowing trout to better compete with nongame fishes. Therefore, we recommend that any license issued for the project contain this condition. [Rock Creek Cresta EA Page 44]*

However, the Commission then acknowledges that the Rock Creek Cresta projects do not have enough control of temperature in the NFFR to manage for some beneficial uses, including trout fisheries, and that temperature control needs to be addressed in the (at the time) pending P-2105 relicensing:

*Water temperature in the Rock Creek and Cresta reaches is primarily a function of temperature of the water withdrawn from Lake Almanor, flow from the East*

Ms. Bose  
Page 4 of 8  
June 1, 2020

*Branch NFFR, and minimum flows within the project reaches (PG&E, 2000b).  
[EA Page 45]*

*In reviewing the record of information for the proceeding, including the Settlement and supporting documentation, we recognize that the trout fishery in the project area could be enhanced by improving water temperature, river flows below dams, and spawning substrate. All three of these general attributes are necessary to the health of the trout fishery, and all three are currently limiting the trout fishery in the basin. Therefore, we recommend measures for aquatic resources that collectively address suboptimal water temperatures, reduced flows, and limited spawning habitat in the project area, with the goal of enhancing and protecting the trout fishery.*

*As part of the Settlement, PG&E would conduct a study to model the effectiveness of possible modifications to the upstream Upper North Fork Feather River Projects Prattville retake that would allow selective withdrawal of cold water from that project's Lake Almanor to help maintain the 20°C or less temperature objective for the Rock Creek and Cresta reaches. Also as part of the Settlement, PG&E agrees to construct any Prattville intake modifications that the ERC and FS, on the basis of the modeling study's results, determine to be necessary to maintain the water temperature objective and would commence operating the intake for selective withdrawal of cold water from Lake Almanor. PG&E's proposal to evaluate the effectiveness and feasibility of making modifications to the Prattville intake would be helpful in determining steps PG&E could take if monitoring would indicate that PG&E would not be able to maintain the 20°C objective at all times. We encourage PG&E to conduct this modeling study at the upstream Upper North Fork Feather River Project and, if appropriate, to pursue amendment or that project's license, but we do not recommend that the study or modification of the Prattville retake be made a requirement of any license issued for the Rock Creek-Cresta Project. [EA page 130]*

After the Rock Creek-Cresta licensing order was issued on October 24, 2001, UNFFR P-2015 relicensing settlement discussions continued. SWRCB comments submitted to the Commission for the UNFFR proceeding on Scoping Document I (June 19, 2003), additional study requests (December 20, 2002), and the response to additional information requests (August 14, 2003) emphasized the need to take measures to restore and protect a cold freshwater habitat in the Belden reach and in other reaches of the NFFR impacted by features and operations of the UNFFR project. Through Final Environmental Impact Report (FEIR) modeling and temperature monitoring, the direct effects of the UNFFR project were evident in changes to the thermal regimes of the Belden, Rock Creek, Cresta, and Poe reaches of the NFFR. The modeling and monitoring also demonstrated that daily mean water temperatures greater than 20°C generally occur more than 20 percent of the time from June through September throughout the Belden reach; in near-surface waters of Lake Almanor and Butt Valley

Ms. Bose  
Page 5 of 8  
June 1, 2020

reservoir; and in discharges from the Butt Valley, Caribou No. 1, Caribou No. 2, and Belden powerhouses (FEIS Page 3-55).

In their 2005 Final Environmental Impact Statement (FEIS) on UNFFR, the Commission again acknowledges that operations at the Project do affect temperatures in the NFFR. The FEIS extensively discusses how physical modeling and numerical modeling were used to understand how changes in instream flows, increased instream flows, and a potential thermal curtain or thermal curtain with levee removal and Canyon Dam intake alterations would alter the temperature regime throughout the project-affected reaches (FEIS Pages 3-61 through 3-78). However, the Commission then recommends a suite of measures that would only partially remediate temperatures in the NFFR:

*Providing PG&E's proposed [minimum instream flows] MIFs exclusively and using the low-level gate for all Canyon dam MIF releases would have negligible effects on the thermal regime of Lake Almanor, continue to maintain cool temperatures in the Seneca reach, and generally reduce peak temperatures in the Belden, Rock Creek, Cresta, and Poe reaches. However, temperatures of a little greater than 20.0°C would continue to occur throughout most of these reaches during July and August.*

*Providing low-level Canyon dam releases of 200 cfs in July and 400 cfs in August along with corresponding reduced flows through the Butt Valley and Caribou powerhouses would further reduce the frequency of high temperatures in the NFFR downstream of the Caribou powerhouses. [FEIS page 3-78]*

The Commission goes on to state that development of a monitoring plan that includes temperature measurements throughout the NFFR, including the Rock Creek and Cresta reaches, would “provide a thorough assessment of the thermal conditions in the reservoirs and project-affected reaches” (FEIS page 5-53). The Commission, however, does not make any recommendations for what would happen if the recommended measures failed to achieve adequate temperatures for cold freshwater use protection in these reaches.

Although the UNFFR Settlement Agreement specifically identifies temperature as an unresolved issue, the resultant Commission staff FEIS alternative fails to include any additional protection, mitigation, or enhancement measures through operational changes or infrastructure modifications that would moderate temperatures in the NFFR to meet Basin Plan water quality objectives (UNFFR Settlement Agreement Page 9). The SWRCB is the California Environmental Quality Act lead agency for the Project and circulated a draft EIR in 2015 with preliminary results of a three-phased feasibility analyses of temperature alternatives. The SWRCB solicited comments on these studies and proposed alternatives, and on May 15, 2020, the SWRCB released a Revised Draft Environmental Impact Report (RDEIR) document and draft 401 certification (filed with FERC on May 19, 2020) which address water temperature in the 303(d) listed sections of the NFFR through specific monitoring and adaptive management measures. The

Ms. Bose  
Page 6 of 8  
June 1, 2020

measures proposed in the RDEIR and draft 401 certification which specifically address temperature impairment are:

- *Increased releases of up to 250 cubic feet per second from the Canyon Dam outlet for purposes of temperature control from June 16 to September 15;*
- *Monitoring of the North Fork Feather River and Lake Almanor to evaluate water quality and fisheries effects resulting from implementation of the Proposed Project with increased Canyon dam flows; and*
- *Management framework conditions, whereby the State Water Board can require additional or modified certification conditions for UNFFR Project operations based on monitoring results, if appropriate.*

FERC's FEIS recommendations fail to specify mitigation measures that would ensure Basin Plan water quality objectives would be met within the terms of the Project license. The SWRCB's water quality certification and CEQA analysis address Project impacts to cold freshwater habitat and cold water spawning beneficial uses through appropriate protection, mitigation, and enhancement measures. Waiver of the water quality certification would jeopardize these beneficial uses and disregard best available water temperature information and analysis.

### *Species Management*

Among other natural resource protection issues considered in the water quality certification but excluded from the FEIR is species monitoring and management for the Western Grebe (*Aechmophorus occidentalis*) and Clark's Grebe (*Aechmophorus clarkia*). The Plumas County Audubon Society has observed the Western and Clark's Grebe nesting on Lake Almanor (Plumas Audubon Monitoring Report: 2010-2016<sup>1</sup>), within the UNFFR Project-affected area, since 2009. In 2018 and 2019 Audubon documented a Grebe nesting failure rate of 99 percent. Because this species management issue arose after the UNFFR FEIS was released, federal environmental review documents do not propose any measures to address nesting failure. The SWRCB's draft water quality certification, however, specifies a Grebes Management Plan (Condition 20) to address this problem:

*No later than two years following license issuance, the Licensee shall submit a Grebes Management Plan to the Deputy Director for review and approval. The Grebes Management Plan shall be developed in consultation with the CDFW, USFWS, Plumas Audubon Society, and State Water Board staff. The goal of the Grebes Management Plan shall be to identify any adverse Project impacts on Grebe nesting and propose any reasonable measures to avoid or reduce identified adverse impacts. [Draft 401 Certification Page 17]*

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<sup>1</sup> Plumas Audubon Monitoring Report: 2010-2016. <http://www.plumasaudubon.org/monitoring-results.html>

Ms. Bose  
Page 7 of 8  
June 1, 2020

The Department considers the Grebes Management Plan an important water quality certification condition. Water quality certifications for other FERC projects embody successful and collaborative species management. Waiver of water quality certification for the UNFFR instead marks a notable absence of resource management collaboration and poses a significant threat to the Western and Clarks' Grebe, among other species.

## **2. The Department Actively Participated in Project Relicensing in Coordination with the Licensee**

The April 24, 2020, petition for declaratory order requesting a waiver of water quality certification acknowledges that PG&E initiated project relicensing in 1999. Since that time, resource agencies and other interested stakeholders have committed considerable time and effort to develop implementation plans for the USFS 4(e) and water quality certification conditions. More specifically, the Department and other relicensing participants have been collaborating on the relicensing of this Project for approximately 20 years. This collaboration started in 2001 when Project relicensing stakeholders began to meet to discuss natural resources project issues and continued actively meeting until the UNFFR Settlement Agreement was filed in 2004. The Department has been meeting with PG&E staff and other relicensing participants on average once per month, depending on the phase of licensing. These meetings resulted in general agreement on most, but not all, measures that could be considered for inclusion in the final Section 401 water quality certification. This significant investment in time and coordination by all parties, including PG&E, to reach agreement on water quality license conditions would be lost if the water quality certification is waived.

## **3. New and Different Application of Water Quality Certification Request Withdrawals**

Unlike the situation in the case, *Hoopa Valley Tribe v FERC*, 913 F.3d 1099 (D.C. Cir. 2009), PG&E never entered into an agreement with the SWRCB or another state or federal agency to hold in abeyance Clean Water Act water quality certification. The SWRCB, consistent with FERC precedent and practice, notified PG&E that the one-year deadline under Section 401 was approaching and that, if PG&E desired to avoid having its request for certification denied without prejudice, it should withdraw its request. The record indicates that PG&E withdrew and re-submitted water quality certification requests. Presumably, PG&E requested withdrawal of its request for water quality certification because it viewed a voluntary withdrawal as preferable to SWRCB denial of its request. For this Project, there is no larger agreement between state and federal agencies to hold the process in abeyance, and it is PG&E, by its own actions of voluntary withdrawals, that has contributed to the delay in the issuance of the water quality certification.

Ms. Bose  
Page 8 of 8  
June 1, 2020

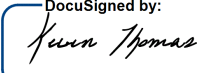
## **CONCLUSION**

The Department opposes water quality certification waiver for the UNFFR Project, because the waiver risks inadequate protection of fish and wildlife, as required by the Federal Power Act. Water quality certification waiver undermines the SWRCB's authority to condition Project operations to ensure Clean Water Act compliance which could have long term, devastating impacts on NFFR water temperature and species management, among other beneficial uses.

Thank you for accepting comments on PG&E's petition for a declaratory order waiving UNFFR water quality certification and for considering these comments.

If you have any questions regarding this letter, please contact Sarah Lose, Senior Environmental Scientist (Specialist) at (916) 747-5226 or by email at [Sarah.Lose@wildlife.ca.gov](mailto:Sarah.Lose@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Kevin Thomas  
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