
State Water Resources Control Board

July 10, 2023

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
Sent via e-File to Project Docket

**Bucks Creek Hydroelectric Project
Federal Energy Regulatory Commission Project No. 619
Plumas County
Bucks Creek, Grizzly Creek, Milk Ranch Creek, and Tributaries to Milk Ranch
Creek**

**STATE WATER RESOURCES CONTROL BOARD PROTEST AND COMMENTS ON
FEDERAL ENERGY REGULATORY COMMISSION'S NOTICE OF APPLICATION
ACCEPTED FOR FILING AND SOLICITING COMMENTS, MOTIONS TO
INTERVENE, AND PROTESTS FOR PACIFIC GAS AND ELECTRIC COMPANY'S
APPLICATION FOR TEMPORARY VARIANCE OF FLOW REQUIREMENTS**

Dear Secretary Bose:

On June 15, 2023, the Federal Energy Regulatory Commission (FERC) issued a *Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests (Notice) for Pacific Gas and Electric Company's (PG&E) Request for a Temporary Variance of Minimum Flow Requirements (Request)* associated with the Bucks Creek Hydroelectric Project (Project). State Water Resources Control Board (State Water Board or Board) staff are submitting protests and comments in response to FERC's Notice accepting PG&E's Request.

Protests and Comments: On September 8, 2022, PG&E requested approval from the State Water Board's Deputy Director for the Division of Water Rights (Deputy Director) to reduce minimum instream flow (MIF) releases into Bucks Creek below Bucks Diversion Dam in the 2023 and 2024 calendar years to facilitate spillway repairs at Bucks Diversion Dam. Specifically, PG&E requested to reduce flows to 8 cubic feet per second (cfs) from March through June (in Normal Water Years¹) or February through July (in Wet Water Years). PG&E's request included lowering flows below the requirements of Condition 1 in the water quality certification (certification) issued for the

¹ PG&E uses the California Department of Water Resources' water year forecast of unimpaired runoff in the Feather River at Oroville as set forth in Bulletin 120, each month from February through May to determine the applicable water year type.

Project². For reference Condition 1 (Table 2 of the certification) requires MIFs below Bucks Diversion Dam³ as follows:

**Table 2. Bucks Creek Minimum Instream Flow Requirements
below Lower Bucks Lake by Water Year Type (in cfs),
as measured at USGS [United States Geologic Survey] Gage No. 11403530
(also referred to as Project ID NF82)**

Water Year Type	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Critically Dry	6	4	4	4	6	7	7	7	6	6	6	6
Dry	6	5	5	5	6	8	8	8	8	6	6	6
Normal	6	6	6	6	8	12	12	12	9	8	8	7
Wet	8	8	8	8	10	15	15	15	11	10	8	8

Condition 1 allows for MIF variances in relation to: Bucks Creek below Bucks Lake Dam (Table 1); Milk Ranch Creek below Three Lakes (Table 4); Milk Ranch Creek at Milk Ranch Conduit Diversion No. 1 (Table 5); and South Fork Grouse Hollow Creek at Milk Ranch Conduit Diversion No. 3 (Table 6). Condition 1 of the Project certification does not allow for MIF variances in Bucks Creek below Bucks Diversion Dam (Table 2, as shown above) and Grizzly Creek below Grizzly Forebay (Table 3).

On October 11, 2022, following PG&E's request for a MIF variance, State Water Board and PG&E staff met to discuss the MIF variance request. State Water Board staff informed PG&E staff that the certification does not allow for a Deputy Director-approved variance to modify the MIFs below Bucks Diversion Dam and that such a modification would require either: (a) action on PG&E's petition for reconsideration⁴ of the certification; or (b) a certification amendment. To ensure timely action of PG&E's request for modified flows, State Water Board staff recommended PG&E submit a request for a Project certification amendment.

The State Water Board inquired several times with PG&E staff via emails on November 7, 2022, December 9, 2022, and January 18, 2023, regarding whether PG&E would be submitting a certification amendment request or wait until the petition for reconsideration process is completed. State Water Board staff received no responses from PG&E staff.

² The State Water Board's Executive Director issued the Project certification on October 22, 2020.

³ Bucks Diversion Dam is also called the Lower Bucks Lake Dam.

⁴ PG&E filed a petition for reconsideration on November 20, 2020.

In a letter dated June 6, 2023, PG&E submitted its Request to FERC, which in part states:

These options [a certification amendment or resolution to the petition to reconsideration] do not provide a timely solution to support the timeline of this dam maintenance and repair project... PG&E notes that the WQC [water quality certification] conditions incorporated into the license do not prohibit PG&E from seeking a variance from FERC for license-required MIFs. PG&E requests a variance under Article 401(d) of the License because PG&E has met the notification requirements laid out in the SWRCB [State Water Resources Control Board] Condition 1 and Forest Service Condition Nos 1 and 31.

State Water Board staff agree that the Board's certification does not prohibit PG&E from seeking variances from FERC for its Project license for conditions imposed by FERC in the Project license. However, the certification does not allow for PG&E's Request to reduce the required MIFs without an amendment to the Project certification.

On June 16, 2022, FERC issued the Project license that incorporates conditions of the certification into the FERC license. FERC license Paragraph D, in part states:

This license is subject to the conditions submitted by the California State Water Resources Control Board (Water Board) under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1), as those conditions are set forth in Appendix A to this order.

As such, the FERC license prohibits PG&E's request to alter, even temporarily, the conditions of the certification unless the Project certification is amended.

The notification requirement referenced by PG&E in its Request does not apply to the MIF variances requested below Bucks Diversion Dam. In full, the notification requirement in Condition 1 of the Project certification states:

The minimum instream flow requirements listed in Tables 1, 4, 5, and 6 may be temporarily modified as required for maintenance or repair of a dam, outlet facility, and minimum flow release facility. The Licensees shall notify FERC, the Forest Service [United States Forest Service], CDFW [California Department of Fish and Wildlife], USFWS [United States Fish and Wildlife Service], and the Deputy Director at least five business days prior to any such modification. The notification shall include: a description of the temporary flow modification; reason for the temporary flow modification; any potential impacts that may result from the temporary flow modification; and anticipated duration of the temporary flow modification. The Deputy Director may require the Licensees to defer the temporary flow modification or implement other actions as part of the temporary flow modification.

MIFs below Bucks Diversion Dam are listed in Table 2 of the Project certification, which is not included in the notification requirement. Bucks Creek below Bucks Diversion Dam (Table 2) and Grizzly Creek below Grizzly Forebay (Table 3) are excluded from

the notification requirement, which results in the need for a certification amendment for the temporary modification to the MIF requirements for Bucks Creek below Bucks Diversion Dam.

Additionally, PG&E has stated that this MIF variance is for spillway rehabilitation at Bucks Diversion Dam. PG&E has not indicated if the activity would require a Section 404 permit from the United States Army Corps of Engineers, and associated certification.

Though it appears FERC views temporary changes to license terms as variances, the certification does not include such provisions. We look forward to working with FERC and PG&E to help facilitate this dam safety project and welcome PG&E's engagement with State Water Board staff moving forward.

If you have questions regarding this letter, please contact Bryan Muro, Project Manager, by email to: Bryan.Muro@waterboards.ca.gov. Written correspondence should be directed to:

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Sincerely,

Parker Thaler

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