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State Water Resources Control Board 2016 JUN 28 P 3: 56

June 24, 2016

FEDERAL ENERGY
REGULATORY COMMISSION

ORIGINAL

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

Dear Secretary Bose:

COMMENTS AND PRELIMINARY CONDITIONS ON THE NOTICE OF READY FOR ENVIRONMENTAL ANALYSIS FOR THE LASSEN LODGE HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 12496; TEHAMA COUNTY

On April 25, 2016, the Federal Energy Regulatory Commission's (FERC) issued a notice of Ready for Environmental Analysis (REA) and accompanying request for comments, protests, recommendations, and preliminary terms and conditions for a new license for the Lassen Lodge Hydroelectric Project (Project), FERC Project No. 12496.

In accordance with the memorandum of understanding executed between FERC and the State Water Resources Control Board (State Water Board) on November 19, 2013, State Water Board staff is providing comments and preliminary terms and conditions in response to FERC's REA for the Project. State Water Board staff's comments and preliminary conditions are enclosed.

If you have questions regarding this letter, please contact me at (916) 323-9389 or by email at kristen.gangl@waterboards.ca.gov. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights
Water Quality Certification Program
Attn: Kristen Gangl
P.O. Box 2000
Sacramento, CA 95812

Sincerely,

Kristen Gangl
Environmental Scientist
Water Quality Certification Program

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

Secretary Bose

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June 24, 2016

Enclosures: Attachment A – Comments on the Notice of Ready for Environmental Analysis for
the Lassen Lodge Hydroelectric Project

Attachment B – Preliminary Conditions for the Lassen Lodge Hydroelectric Project

cc: Mr. Adam Laputz
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ATTACHMENT A:
COMMENTS ON THE NOTICE OF READY FOR ENVIRONMENTAL ANALYSIS
FOR THE LASSEN LODGE HYDROELECTRIC PROJECT

The following comments are provided by State Water Resources Control Board (State Water Board) staff in response to the notice of Ready for Environmental Analysis (REA) issued by the Federal Energy Regulatory Commission (FERC) for the Lassen Lodge Hydroelectric Project (Project), FERC Project No. 12496. The Project is owned by Rugraw LLC.

State Water Board Authority

Rugraw LLC must obtain water quality certification from the State Water Board, pursuant to Section 401(a)(1) of the federal Clean Water Act (33 U.S.C. §1341(a)(1)). Section 401 of the federal Clean Water Act requires any applicant for a federal license or permit, which may result in discharge to navigable waters, to obtain water quality certification from the state in order to ensure the discharge will comply with the state's water quality standards and other appropriate requirements of state or federal law. The State Water Board is the certifying agency under Section 401 for the Project. Accordingly, the State Water Board may set conditions implementing Clean Water Act requirements, including the requirements of Section 303 of the Clean Water Act for water quality standards and implementation plans, or to implement "any other appropriate requirement of State law." (33 U.S.C. § 1341(d).)

On April 4, 2016, Rugraw LLC requested a water quality certification for the Project from the State Water Board. On May 3, 2016, the State Water Board confirmed receipt of Rugraw LLC's request for water quality certification and informed Rugraw LLC that the State Water Board may request additional information to clarify, amplify, correct, or otherwise supplement the contents of the application. Supplemental information may include evidence of compliance with the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins* (Basin Plan). (Cal. Code Regs., tit. 23, § 3836.) In addition, the State Water Board must analyze potential Project-related environmental effects to the South Fork Battle Creek drainage prior to making a determination that construction and operation of the Project will comply with water quality standards.

Designated Beneficial Uses of Battle Creek

The Central Valley Regional Water Quality Control Board adopted, and the State Water Board and the United States Environmental Protection Agency (USEPA) approved, the Basin Plan. The Basin Plan designates the beneficial uses of waters within each watershed basin, and water quality objectives designed to protect those uses pursuant to section 303 of the Clean Water Act (33 United States Code § 1313.). The beneficial uses together with the water quality objectives that are contained in water quality control plans and state and federal anti-degradation requirements constitute California's water quality standards.

The existing beneficial uses currently designated for Battle Creek include irrigation, stock watering, hydropower, contact and non-contact water recreation, canoeing and rafting, cold and warm freshwater habitat, cold water migration, cold and warm water spawning, and wildlife habitat. No potential uses have been designated for Battle Creek. The Basin Plan further clarifies that any segment with both warm and cold beneficial use designations will be considered a cold waterbody for the application of water quality objectives and the beneficial uses of any identified waterbody generally apply to its tributary streams.

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303(d) Listed Impairments

Section 303(d) of the Clean Water Act requires the identification of waterbodies that do not meet, or are not expected to meet, water quality standards (i.e., impaired waterbodies). The current list approved by the USEPA is the 2008-2010 303(d) list (303(d) list). The 303(d) list does not identify any impairments in the vicinity of the Project area or on Battle Creek.

California Environmental Quality Act

Issuance of a water quality certification is a discretionary act and is subject to the California Environmental Quality Act (CEQA). The State Water Board will act as the lead agency in satisfying CEQA requirements for the Project. CEQA requires: an analysis of the environmental impacts of the Project, including cumulative impacts; the identification of mitigation measures that could minimize any significant effects on the environment; and a monitoring-reporting program to ensure compliance with those mitigation measures adopted by the lead agency. The scoping document states that FERC intends to prepare an Environmental Assessment (EA) for NEPA compliance. To the extent possible, State Water Board staff encourages FERC to conduct its NEPA process to satisfy both state and federal requirements and to work with State Water Board staff to determine extent of CEQA analysis necessary to act on a request for water quality certification.

Specific Comments

INITIAL STATEMENT

Page IS-4: "...Provided there is sufficient natural flow, the minimum in-stream by-pass flow of 13 cfs [cubic feet per second] will be maintained in the stream."

Comment: How was the minimum in-stream by-pass flow of 13 cfs determined to adequately support existing in-stream habitat and organisms? Information and data supporting the minimum instream flow of 13 cfs should be provided.

EXHIBIT A

Intake Structure

Page A-2: "The intake structure will have facilities to flush accumulated sediments."

Comment: Please clarify to where the accumulated sediments will be flushed. Additionally, it is unclear what the composition of the sediments is and if there is any concern for contamination. Measures should be implemented to ensure the flushing of sediments does not impact water quality or beneficial uses.

Fish Screen Structure

Page A-3: "Fish screens will be automatically cleaned by a travelling screen cleaner as frequently as necessary..."

Comment: Rugraw LLC should continue to work with California Department of Fish and Wildlife (CDFW) and adhere to current National Oceanic and Atmospheric

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Administration/National Marine Fisheries Service fish passage criteria. Measures, criteria, or guidelines should be implemented to ensure the automatic cleaning does not trap or harm fish species.

Proposed Mode of Construction

Page A-11: "Vegetation and debris will be removed and disposed of on-site..."

Comment: If non-native invasive vegetation is disposed of on-site please implement measures to be taken to ensure weeds and non-native invasive vegetation does not reestablish in on-site disposal area.

EXHIBIT E ENVIRONMENTAL REPORT

ENVIRONMENTAL SETTING, PROJECT IMPACTS, AND PROPOSED MITIGATION

Page E-1: "The Project is located entirely on private land with the exception of 1.5 mile of the transmission line that is within a county road right-of-way (ROW)."

Comment: It is unclear from the Final License Application who owns the private property on which the majority of the Project is proposed. Given that FERC hydropower licenses typically last 30 to 50 years, it is recommended that Rugraw LLC document that access to all portions of the Project has been granted and will remain in effect for the duration of the license.

Page E-14: "Streams in the area and SF [South Fork] Battle Creek commonly have good mineral quality, but at times have experienced high bacteria count..."

Comment: The State Water Board will likely require ongoing water quality monitoring above the Project area to determine baseline water quality conditions as flows enter the Project reach, and water quality monitoring in at least one, if not multiple, locations within and below the Project area to evaluate the potential for Project impacts on water quality. Project operations may need to be adjusted based on water quality monitoring results.

1.4.1 Environmental Setting/Affected Habitat

Page E-49: "The Project area is above the current range of anadromy."

Page E-50: "...anadromous fish then must navigate the upper reaches of SF Battle Creek including Panther Grade, which is considered a putative barrier..."

Page E-51: "Rainbow trout...would need the same 15 centimeters (cm) (about 6 inches) of depth that steelhead need."

Comment: Several statements such as the ones listed above are made without any scientific citation or any indication the statement was based on assessment by a qualified biologist. Citations or other information should be provided to support these and similar statements.

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1.4.2.4 Proposed Mitigation

Page E-58: “The standard rate-of-change would meet the agreed upon criteria of the CDFW of 30 percent of the existing stream flow per hour (10 percent load every 20 minutes) or less.”

Comment: Per CDFW recommendations, ramping rates will likely follow 0.10-foot per hour ramping rate.

1.6.2.1 Construction Impacts

Page E-80: “Habitat fragmentation may occur in areas subject to vegetation clearing for construction of the Project.”

Comment: It is not clear that habitat fragmentation resulting from the Project has been or will be quantified or that mitigation has been proposed to account for the fragmentation of habitat. State Water Board staff recommend the environmental document provide a map and information that: (a) identifies where construction will occur; (b) how much vegetation is likely to be lost, including the type of vegetation, and (c) proposed mitigation, or information supporting why no mitigation is needed.

1.12 Threatened, Endangered, and Sensitive Species and Critical Habitats

Page E-161 item h “If, over the course of 20 years of project operation and a minimum of 5 snorkel surveys – including a minimum of 2 surveys within the prior 5 years – have been conducted and no positive identification of anadromous fish has been found within the project reach, the Applicant shall be relieved of their obligation to continue future snorkel surveys after >400cfs flow events.”

Comment: State Water Board staff does not agree with the presumption implied here that five surveys in 20 years can demonstrate anadromous fish absence within the Project reach, especially due to the fact that the Battle Creek Salmon and Steelhead Restoration Project has not yet been completed. Surveys for anadromous fish in the Project area should continue to occur throughout the full term of the license and any extensions.

Page E-165: “Preconstruction surveys for...”

Comment: Per Section 15370 of the Guidelines for California Environmental Quality Act, surveys are not included in the definition of “mitigation”. Preconstruction surveys can aid avoidance, which is considered mitigation and should be conducted by a qualified professional. In the event a sensitive species or site is observed, measures should be determined and implemented to avoid, minimize, rectify, or reduce the potential for impacts.

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In accordance with the memorandum of understanding (MOU) executed between the Federal Energy Regulatory Commission (FERC) and the State Water Resources Control Board (State Water Board) on November 19, 2013¹, and to the extent that information is available, State Water Board staff is providing the following preliminary terms and conditions in response to the notice of Ready for Environmental Analysis by FERC for the Lassen Lodge Hydroelectric Project (Project), FERC Project No. 12496.

1. The State Water Board reserves the right to condition the Project with minimum instream flows in light of the whole record. The whole record includes, but is not limited to, the: FERC record (i.e., recommendation by resource agencies); the final National Environmental Policy Act (NEPA) document; and the final California Environmental Quality Act (CEQA) document.
2. To prevent potentially adverse effects of rapid changes in regulated streamflow that are inconsistent with the natural rate of change in streamflow, Project operations will likely be subject to ramping rates to be specified at a later date. A ramping rate is defined as the rate of change in stream stage height, up or down, over a given time period.
3. Rugraw LLC shall obtain all of the necessary state and federal permits and any other regulatory approvals prior to construction, potentially including, but not limited to: Construction General Permit²; National Pollutant Discharge Elimination System permits for applicable activities, such as dewatering; and California Department of Fish and Wildlife (CDFW) streambed alteration agreement. Adequate water quality monitoring should be required during construction activities as part of permits to ensure protection of beneficial uses and compliance with water quality standards. No construction shall commence until all necessary federal, state, and local approvals are obtained.
4. Rugraw LLC shall develop and submit a Drought Plan. The Drought Plan shall outline the Project's operations, including flows, during a drought and/or multiple critically dry years. The Drought Plan may be created in consultation with relevant resource agencies. The Drought Plan shall include a mechanism for requesting water quality certification variances during drought.
5. Rugraw LLC shall consult annually with relevant resource agencies for the term of the license and any annual extensions. The date of the annual consultation meeting shall be mutually agreed on by Rugraw LLC and relevant resource agencies. Meeting notes including recommendations made by attendees shall be developed by Rugraw LLC and distributed to meeting participants. At the annual meeting, participants will review current lists of rare, threatened and endangered species and special-status plant and wildlife species to identify species that have the potential to be adversely impacted by the Project. Species-specific study plans shall be developed or updated, in consultation with relevant resource agencies, whenever new potential impacts or newly-listed species are identified. Rugraw LLC shall conduct studies for species identified as vulnerable to impacts from Project construction or operations.

¹ Specifically item 2 under the Post-Application Filing Activities section of the MOU.

² Water Quality Order 2009-0009-DWQ and National Pollutant Discharge Elimination System No. CAS000002, or as amended.

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6. Rugraw LLC shall perform water quality monitoring: 1) when performing any in-water work; 2) in the event that Project activities result or have the potential to result in a discharge to surface waters; or 3) when Project-related activities result in the creation of a visible plume in surface waters. Increases in turbidity attributable to Project-controllable water quality factors shall not exceed the limits defined in the *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin* (Basin Plan).
7. All proposed plans and associated updates would be subject to review and approval by the State Water Board. If plans are developed and approved in advance of license issuance, any related conditions would be modified accordingly.
8. Rugraw LLC shall develop and implement an Aquatic Invasive Species Monitoring Plan in consultation with relevant resource agencies. This plan shall identify potential sources related to or conditions associated with the Project that have the potential to transport or spread aquatic non-native invasive species. Additionally, best management practices (BMPs) shall be included to reduce and/or minimize the transportation or spread of aquatic non-native invasive species. Rugraw LLC shall include monitoring and corrective action steps as part of the Aquatic Invasive Species Management Plan.
9. In the event pesticide use related to the Project has the potential to impact water quality, Rugraw LLC shall develop and implement a Pesticide Use Plan. Rugraw LLC shall create the Pesticide Use Plan in consultation with relevant resource agencies, which shall include a plan for emergency action in case of spill or discharge to surface waters. The Pesticide Use Plan shall include provisions that restrict application of pesticides (as defined by the Basin Plan) in order to protect federal Endangered Species Act (ESA) or California Endangered Species Act (CESA)-listed species, and/or associated habitat in or downstream of an application area. Pesticides shall only be applied by an individual with a current and valid Qualified Applicator License issued by the California Department of Pesticide Regulation or under the direct visual supervision of such an individual. In case of spill, Rugraw LLC shall notify the Deputy Director and other relevant resource agencies as soon as practical and suspend all pesticide-related activities.
10. Rugraw LLC shall develop and implement a Water Quality Monitoring Plan. Rugraw LLC shall create the Water Quality Monitoring Plan in consultation with relevant resource agencies. Rugraw LLC shall install and operate equipment at multiple water quality monitoring locations per conditions of the water quality certification and Water Quality Monitoring Plan. The monitoring locations shall be developed in consultation with Rugraw LLC, State Water Board staff, and relevant resource agencies. Monitoring data shall be made publically available as defined in the Water Quality Monitoring Plan. Potential parameters to be monitored include, but are not limited to: benthic macroinvertebrates, turbidity, flow, water surface level, pH, temperature, alkalinity, minerals, and/ or conductivity.
11. Rugraw LLC shall develop and implement a Fish Population Monitoring Plan. This plan shall include provisions for monitoring all fish species within and downstream of the Project area. If an ESA or CESA-listed species is observed, additional measures to manage that population shall be developed and implemented in consultation with relevant resource agencies³. Rugraw LLC shall create the Fish Population Monitoring Plan in consultation

³ The National Oceanic and Atmospheric Administration National Marine Fisheries Service has identified the potential for listed anadromous species to reach the Project area due to ongoing and planned activities related to the Battle Creek Salmon and Steelhead Restoration Project.

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- with State Water Board staff and other relevant resource agencies. Annual reports that present monitoring data and analyze and evaluate fish populations and recommends actions based on population changes shall be submitted to the relevant resource agencies. If this plan omits anadromous fish considerations and anadromous fish are observed within the Project area at any time, Rugraw LLC shall revise the Fish Population Monitoring Plan to include BMPs that pertain specifically to anadromous species, including provisions to expand anadromous fish monitoring locations geographically and to facilitate anadromous fish passage above and below the Project site.
12. Rugraw LLC shall develop and implement a Fish Habitat Assessment Plan. The Fish Habitat Assessment Plan shall be developed in consultation with State Water Board staff and other relevant resource agencies. The Fish Habitat Assessment Plan shall include monitoring of habitat features (such as water temperature, stream depth, flow velocities, water quality, sediment transport, etc.) associated with resident fish populations and ESA and CESA-listed fish species potentially found within the Project area. If anadromous fish are observed within the Project area at any time and the Fish Habitat Assessment Plan does not include provisions for anadromous fish, Rugraw LLC shall revise and implement the Fish Habitat Assessment Plan to: address habitat features that pertain specifically to anadromous species; develop provisions to expand the locations of monitoring to include anadromous fish habitat; and facilitate anadromous fish passage through the Project site.
 13. Rugraw LLC shall develop and implement an Amphibian Monitoring Plan in consultation with relevant resource agencies. The Amphibian Monitoring Plan shall include monitoring for California red-legged frog, Foothill yellow-legged frogs, and Cascade frogs, specifically: egg masses, tadpoles, and adult amphibians on South Fork Battle Creek. Annual reports that present monitoring data and analyze and evaluate frog populations and recommends actions based on population changes shall be submitted to the relevant resource agencies.
 14. Rugraw LLC shall develop and implement a Vegetation and Invasive Weed Management Plan in consultation with relevant resource agencies. The California Food and Agriculture code defines non-native, invasive weeds. The Vegetation and Invasive Weed Management Plan shall address both aquatic and terrestrial non-native, invasive weeds and species of special concern, within and adjacent to the Project boundary. Project features related to the spread of non-native invasive weeds include, but are not limited to, roads and transmission lines. This Plan must include provisions for special status plant species to be protected and an adaptive management component to reduce existing occurrences and prevent the spread of non-native invasive aquatic weeds.
 15. This condition applies to all plans or changes to plans required by the water quality certification or related to water quality. All plans shall be developed in consultation with relevant local, state, and federal agencies. Rugraw LLC shall provide relevant local, state, and federal agencies with a minimum of 30 days to comment on draft plans and reports. The final plans and final reports shall include documentation of consultation with relevant local, state, and federal agencies. All comments made by relevant local, state, and federal agencies, and a description of how the final plan and/or final report incorporates or addresses the comments made by relevant agencies shall be included in the documentation provided to the State Water Board by Rugraw LLC. Rugraw LLC shall submit the final report or plan to the State Water Board for review and approval. The State Water Board may require modifications as part of the approval. Any subsequent modifications made to plans must be approved by the State Water Board prior to implementation. Upon State

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Water Board approval, Rugraw LLC shall fill the approved final plan or report with FERC. Rugraw LLC shall implement the plans upon approval from agencies.

16. Activities associated with operation and maintenance of the Project that potentially impact water quality shall be subject to review by the State Water Board.
17. The State Water Board shall be notified at least one week prior to the commencement of ground-disturbing activities. Upon request, a construction schedule shall be provided to relevant agency staff. Rugraw LLC must provide State Water Board staff reasonable access to Project sites to document compliance with a water quality certification.
18. Control measures for erosion, excessive sedimentation, and turbidity shall be implemented and in place at the commencement of and throughout any ground-clearing activities, excavation, or any other Project activities that could result in erosion or sediment discharges to surface waters. Erosion control measures shall be used for any stockpile of material to control runoff, and prevent material from contacting or entering surface waters.
19. All imported riprap, rocks, and gravels used for construction within or adjacent to any watercourses shall be pre-washed. Wash water generated on-site shall not contact or enter surface waters. Wash water shall be contained and disposed of in compliance with state and local laws, ordinances, and regulations.
20. Construction material, debris, spoils, soil, silt, sand, bark, slash, sawdust, rubbish, steel, or other inorganic, organic, or earthen material, and any other substances from any Project-related activity shall be prevented from entering surface waters. All construction debris and trash shall be contained and regularly removed from the work area to the staging area during construction activities. Upon completion, all Project-generated debris, building materials, excess material, waste, and trash shall be removed from all the Project sites for disposal at an authorized landfill or other disposal site in compliance with state and local laws, ordinances, and regulations.
21. No unset cement, concrete, grout, damaged concrete, concrete spoils, or wash water used to clean concrete surfaces shall contact or enter surface waters. Any area containing wet concrete shall be completely bermed and isolated. The berm shall be constructed of sandbags or soil and shall be lined with plastic to prevent seepage. No leachate from truck or grout mixer cleaning stations shall percolate into Project area soils. Cleaning of concrete trucks or grout mixers shall be performed in such a manner that wash water and associated debris is captured, contained and disposed of in compliance with state and local laws, ordinances and regulations. Washout areas shall be of sufficient size to completely contain all liquid and waste concrete or grout generated during washout procedures. Hardened concrete or grout shall be disposed at an authorized landfill, in compliance with state and local laws, ordinances and regulations.
22. All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter. Any equipment used in direct contact with surface water shall be steam cleaned prior to use. All equipment using gas, oil, hydraulic fluid, or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (e.g., motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment. Spill and containment equipment (e.g., oil spill

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booms, sorbent pads, etc.) shall be maintained onsite at all locations where such equipment is used or staged.

23. On-site containment for storage of chemicals classified as hazardous shall be away from watercourses and include secondary containment and appropriate management as specified in California Code of Regulations, title 27, section 20320.

The following standard conditions may also apply to this Project in order to protect water quality and beneficial uses over the term of the Project's license and any annual extensions.

24. Unless otherwise specified in the water quality certification or at the request of the State Water Board, data and/or reports must be submitted electronically in a format accepted by the State Water Board to facilitate the incorporation of this information into public reports and the State Water Board's water quality database systems in compliance with California Water Code section 13167.
25. The State Water Board's approval authority includes the authority to withhold approval or to require modification of a proposal or plan prior to approval. The State Water Board may take enforcement action if the Rugraw LLC fails to provide or implement a required plan in a timely manner.
26. The State Water Board reserves the authority to add to or modify the conditions of a water quality certification to incorporate changes in technology, sampling, or methodologies and/or load allocations developed in a total maximum daily load developed by the State Water Board or the Central Valley Regional Water Quality Control Board.
27. The State Water Board may add to or modify the conditions of a water quality certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
28. The State Water Board may add to or modify the conditions of a water quality certification as appropriate to coordinate the operations of this Project and other hydrologically-connected water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water.
29. The State Water Board reserves authority to modify a water quality certification if monitoring results indicate that continued operation of the Project could violate water quality objectives or impair the beneficial uses of South Fork Battle Creek.
30. Future changes in climate projected to occur during the license term may significantly alter the baseline assumptions used to develop the conditions in a water quality certification. The State Water Board reserves authority to modify or add conditions in a water quality certification to require additional monitoring and/or other measures, as needed, to verify that Project operations meet water quality objectives and protect the beneficial uses assigned to the Project-affected stream reaches.

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31. A water quality certification requires compliance with all applicable requirements of the Basin Plan. The Applicant must notify the State Water Board and the Central Valley Regional Water Quality Control Board within 24 hours of any unauthorized discharge to surface waters.
32. Notwithstanding any more specific conditions in a water quality certification, the Project shall be operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act. The Applicant must take all reasonable measures to protect the beneficial uses of South Fork Battle Creek.
33. A water quality certification does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either CESA (Fish & G. Code §§ 2050-2097) or the ESA (16 U.S.C. §§ 1531 - 1544). If a "take" will result from any act authorized under a water quality certification or water rights held by the Rugraw LLC, Rugraw LLC must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. Rugraw LLC is responsible for meeting all requirements of the applicable ESAs for the Project authorized under a water quality certification.
34. In the event of any violation or threatened violation of the conditions of a water quality certification, the violation or threatened violation is subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into a water quality certification.
35. In response to a suspected violation of any condition of a water quality certification, the State Water Board may require the holder of any federal permit or license subject to a water quality certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The State Water Board may add to or modify the conditions of a water quality certification as appropriate to ensure compliance.
36. No construction shall commence until all necessary federal, state, and local approvals have been obtained.
37. A water quality certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code Section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).
38. A water quality certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

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39. Nothing in a water quality certification shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 claims. The State Water Board has separate authority under the Water Code to investigate and take enforcement action if necessary to prevent any unauthorized or threatened unauthorized diversions of water.
40. Water quality certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, chapter 28.

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