

165 FERC ¶ 62,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Sacramento Municipal Utility District

Project No. 2101-156

ORDER AMENDING LICENSE TO INCORPORATE REVISED WATER QUALITY
CERTIFICATION CONDITIONS AND 4(E) CONDITIONS

(Issued December 19, 2018)

1. On May 11, 2018, Sacramento Municipal Utility District, licensee for the Upper American River Hydroelectric Project No. 2101, filed a request to amend the project license to incorporate revised conditions to the Water Quality Certification (WQC) and U.S. Forest Service 4(e) conditions issued by the California State Water Resources Control Board (SWRCB) and U.S. Department of Agriculture - Forest Service (Forest Service), respectively.¹ The amended conditions pertain to the minimum instream flows in the South Fork American River below Slab Creek Dam, and interim modifications to reservoir elevation at all of the projects reservoirs. The project is located on the Rubicon River, Silver Creek, and South Fork American River in El Dorado and Sacramento counties, California and occupies lands within the Eldorado National Forest.

License Requirements

2. Appendix A of the project license contains the conditions of the WQC submitted by the SWRCB under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1). Those conditions are accepted into the license under ordering paragraph (D).

3. Appendix B of the project license contains the conditions set forth by the Forest Service under section 4(e) of the Federal Power Act (4(e) conditions). Those conditions are accepted into the license under ordering paragraph (E).

Minimum Flows

4. Condition 1 of the WQC and condition 27 of the 4(e) conditions require the licensee to provide specified minimum flows at the project's developments. Minimum flow tables are set forth in condition 1 of the WQC and condition 27 of the 4(e) conditions. Minimum flows vary based on the water year type as determined by

¹ Order Issuing New License (148 FERC ¶ 62,070), issued July 23, 2014.

publication of the California Department of Water Resources. Applicable to this filing, the conditions set forth two sets of minimum instream flows to be released from Slab Creek Dam.² One set of streamflow releases for Years 1 through 3 and a second set of streamflow releases for Year 4 though the term of the license. The Year 4+ flows are higher during specified water years during April, May, and June, compared to Years 1 through 3. The intent if the lower flows during years 1 through 3 was to provide the licensee time to make modifications the flow release system a Slab Creek Dam.³

Reservoir Elevations

5. Condition 5 of the WQC and condition 49 of the 4(e) conditions require the licensee to meet specified reservoir elevations at the projects multiple reservoirs. Further, WQC condition 5.H and 4(e) condition 49 specify, in part, the circumstances whereby the reservoir elevations may be temporarily modified. In brief, these circumstances are: state or federal electrical emergencies; system events that cause the licensee's operating reserves to drop below the Western Energy Coordinating Council Minimum Operating Reliability Criteria; or equipment malfunction, public safety emergency, or law enforcement activity.

6. Additionally, Article 401(c) of the project license allows the licensee to temporarily modify operations and license requirements that are set forth in the WQC and section 4(e) conditions after notification to the Commission.

² Tables 13 and 14 of the WQC specify stream flow releases at the Slab Creek development based on month of the year and water year type. Refer to the WQC in Appendix A of the license for the specified releases.

³ Condition 4 of the WQC and Forest Service 4(e) condition 50 require the licensee to provide recreational boating flows of up to 1,500 cfs in the South Fork American River below the Slab Creek Dam. The licensee's existing valve and powerhouse at the Slab Creek dam have a combined maximum hydraulic capacity of approximately 270 cfs. Therefore, to comply with the new minimum flow release requirements and to make efficient use of those releases through generation, the Commission approved the licensee's Plan and amended the project license to accommodate the construction of a new minimum flow powerhouse approximately 0.25 mile downstream from the Slab Creek dam. See 157 FERC ¶ 62,106, issued November 9, 2016.

Licensee's Request

7. The licensee requested amendments to the WQC and 4(e) conditions based on two separate letters from the SWRCB and the Forest Service dated December 1, 2017. Regarding the minimum flow conditions, the licensee states that due to the time taken to work through the permitting and construction processes for completion the South Fork Powerhouse, release of the increased flows by Year 4 is not practical. Therefore, the licensee requested to change WQC condition 1.K and 4(e) condition 27 to extend the higher set of minimum stream flows that are to begin in Year 4 after license issuance, to “as soon as reasonably practical, but no later than Year 6” (which would be in 2020).
8. The licensee also requested amendments to the WQC and 4(e) conditions from the SWRCB and the Forest Service regarding modifications to reservoir levels and the specified circumstances by which they are permissible. The licensee requested to amend WQC condition 5.H and 4(e) condition 49 to add circumstances under which modifications to reservoir levels can be approved by the SWRCB and Forest Service.⁴ The licensee therefore requested to add additional numbered events to the first paragraphs of the conditions whereby interim modifications to reservoir levels could occur and be approved without requiring individual temporary license amendments. Specifically, the licensee would add to the conditions 5.H and condition 49, numbered events, which include, in brief: construction, reconstruction, or maintenance of existing or future recreation facilities; and non-emergency maintenance to non-recreation project features associated with project reservoirs.⁵
9. By letters dated February 12, 2018 (filed February 21, 2018) and April 27, 2018 (filed May 14, 2018), the Forest Service and SWRCB filed with the Commission revised conditions, respectively. The licensee filed on May 11, 2018, its request that the Commission incorporate the revised SWRCB's WQC conditions 1.K and 5.H, and the Forest Service's 4(e) conditions 27 and 49.

⁴ Under the current WQC and 4(e) conditions, the licensee must apply for a temporary amendment to reservoir level changes necessary for non-emergency events such as boat ramp expansions and dam maintenance projects, because they do not fall under the specified circumstances for which WQC condition 5 and 4(e) condition 49, allow.

⁵ See revised WQC and 4(e) conditions that are attached to this order for detailed changes to the conditions.

Agency Consultation

10. The licensee's May 11, 2018 filing states that the amendment to the WQC and 4(e) conditions were presented to the Consultation Group during a license implementation meeting with the group in February 2017 and again in October 2017.⁶ The licensee reports that no opposition to the proposed amendments were expressed at either meeting. The licensee submitted the proposed request to the SWRCB and Forest Service by letter dated December 1, 2017. The Forest Service filed its amended conditions with the Commission on February 21, 2018, and the SWRCB filed its amended conditions with the Commission on May 14, 2018, after a 21 day public notice period. Both filings contained the revised pertinent conditions.

Conclusion

11. The licensee's May 11, 2018 filing contains revised conditions of the WQC that were originally issued by the SWRCB on October 4, 2013 and incorporated into the license by ordering paragraph (D) of the project license. Further, the licensee's filing contains revised conditions of the 4(e) conditions that were issued by the Forest Service on June 11, 2008 and incorporated into the license by ordering paragraph (E) of the project license.

12. No amendment to Article 401(c) of the project license is necessary, as the article will continue to require the licensee to notify the Commission within 10 days, of planned and unplanned deviations from license requirements. Article 401(c), in part references conditions 1.K and 5.H of the WQC, and 4(e) conditions 27 and 49.

13. Revising WQC condition 1.K and 4(e) condition 27, to extend the implementation of the higher spring flows to begin as soon as reasonably practical, but no later than Year 6 after license issuance, would more practically accommodate the time that it has taken to work through the permitting and construction of the facilities at Slab Creek Dam.

14. Revising WQC 5.H and 4(e) condition 49 would allow the licensee to conduct interim modifications to reservoir levels to accommodate recreation facility improvements required under the license, and to conduct project facilities improvements and maintenance. These interim reservoir level modifications could then be approved by the SWRCB and Forest Service without the need to amend or issue a temporary variance

⁶ Section 4.12 of the Relicensing Settlement Agreement requires the licensee to utilize a Consultation Group for the purpose of keeping the Parties informed and getting input from the Parties with regard to subjects of identified interest to the Parties.

of the affected license requirement. This would simplify the administrative process for approving these needed requests, while still ensuring that all the appropriate resource agencies are consulted.

15. These revised conditions would modify tables 13 and 14 of condition 1.K and condition 5.H of the WQC, as provided in Attachment A of this order.

16. The revised conditions would modify condition 27 and 49 of the 4(e) conditions, as provided in Attachment B of this order.

17. Therefore, the Commission should incorporate WQC conditions 1.K and 5.H as revised by the SWRCB and 4(e) conditions 27 and 49 as revised by the Forest Service into the license.

The Director orders:

(A) Sacramento Municipal Utility District's (licensee) May 11, 2018 request to amend the license of the Upper American River Project No. 2101, by incorporating into the project license the revised conditions 1.K and 5.H of the California State Water Resources Control Board's Water Quality Certification, and revised conditions 27 and 49 of the U.S. Forest Service 4(e) conditions, is approved. Those revisions are incorporated into the license as provided in Appendix A and B of this order.

(B) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2018). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Thomas J. LoVullo
Chief, Aquatic Resources Branch
Division of Hydropower Administration
and Compliance

Attachment A

Mr. Darold Perry

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APR 27 2018

Conditional Approval

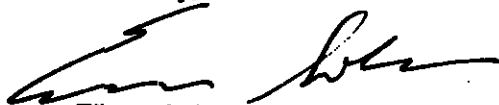
The State Water Board finds the requested amendments, with implementation of the conditions specified below and in Attachments A and B, to be protective of state water quality standards and in compliance with other appropriate requirements of state law. The requested amendment to Condition 1.K., modifying the implementation date for "Year 4" MIF requirements to no later than Year 6 of the UARP license, is hereby approved. The requested amendment to Condition 5.H. is hereby conditionally approved, as shown in Attachments A and B³ of this certification amendment. Additionally, SMUD, the Licensee, shall comply with the conditions outlined below. Failure to comply with the conditions outlined in this amendment constitutes a violation of the certification and may result in enforcement.

1. This certification amendment is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).
2. This certification amendment 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.
3. This certification amendment is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28 and owed by SMUD.

All documents and other information that constitute the public record for this certification amendment will be maintained by the Division of Water Rights and are available for public review at the following address: State Water Board, Division of Water Rights, 1001 I Street, Sacramento, California, 95814.

If you have questions regarding this amendment please contact Savannah Downey, UARP Manager, at (916) 322-1585 or by email at Savannah.Downey@waterboards.ca.gov. Written correspondence should be directed to: State Water Resources Control Board, Division of Water Rights - Water Quality Certification Program, Attn: Savannah Downey, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,



Eileen Sobeck
Executive Director

Enclosures: Attachment A: Amendment to Condition 5.H.: Interim Modifications (Track Changes Version)
Attachment B: Amendment to Condition 5.H.: Interim Modifications (Clean Version)

³ Attachment A includes a track changes markup of the approved amendment to Condition 5.H. Attachment B includes a clean copy of updated Condition 5.H. with the amendments incorporated.

ATTACHMENT A
Amendment to Condition 5.H.: Interim Modifications
 Upper American River Hydroelectric Project Water Quality Certification
 Federal Energy Regulatory Commission Project No. 2101
 (Track Changes)

Text from the October 4, 2013 Upper American River Hydroelectric Project (UARP) water quality certification is referenced in *italicized* text, with new amendments shown as follows: deletions shown in strike-out; and additions shown as ***bolded, italicized, and underlined*** text.

5.H.: Interim Modifications

Reservoir elevations may be modified as outlined below:

A. Reservoir elevations may be modified following Deputy Director approval for the following activities:

- **Construction and/or maintenance of recreation facilities, such as boat ramps, under Condition 14 (Recreation Implementation Plan); and**
- **Non-emergency maintenance to non-recreation features associated with UARP reservoirs, such as dams, powerhouses, outlet facilities, intake facilities, and spillways, under Condition 13 (Annual Review of Ecological Conditions).**

The process for modification of reservoir elevations for the above activities shall be as follows:

- **At least 120 days prior to the proposed interim reservoir level modification, the Licensee shall provide written notice and an opportunity to comment on the proposed interim reservoir level modification to the Settling Parties¹ and State Water Board staff. The Licensee shall include documentation of written notification and any comments received with its request for Deputy Director approval of interim reservoir level modification. The Deputy Director may require modifications as part of the approval. The Licensee shall file the Deputy Director's approval, together with any required modifications, with the Commission.**
- **If approved by the Deputy Director, the Licensee shall provide written notice to the Settling Parties and the general public of the approved interim modified reservoir level. This notice shall be provided within five days of Deputy Director approval. Public notices shall be posted online and on-site near the affected reservoir.**

¹ For reference, as noted on page 10 of the October 4, 2013 UARP certification, "The Settling Parties consist of SMUD (Sacramento Municipal Utility District), PG&E (Pacific Gas and Electric Company), USFS (United States Forest Service), BLM (Bureau of Land Management), United States Fish and Wildlife Service (USFWS), National Park Service, California Department of Fish and Wildlife (CDFW), California Department of Parks and Recreation (CDPR), American River Recreation Association and Camp Lotus, California Outdoors, California Sportfishing Protection Alliance, Friends of the River, American Whitewater, Foothill Conservancy, Theresa Simsiman, Hilde Schweltzer, and Rich Platt."

ATTACHMENT A
Amendment to Condition 5.H.: Interim Modifications
Upper American River Hydroelectric Project Water Quality Certification
Federal Energy Regulatory Commission Project No. 2101
(Track Changes)

B. *Reservoir elevations may be modified, as provided below, upon the occurrence of the following events:*

- *State or federal electrical emergencies where specific orders are issued or specific actions are mandated by an appropriate authority, requiring the Licensee to produce electricity outside normal planned operations;*
- *System events that cause SMUD's Operating Reserves to drop below the Western Energy Coordinating Council Minimum Operating Reliability Criteria; or*
- *Equipment malfunction, public safety emergency, or law enforcement activity.*

In the event of such an interim modification during July, August, or September, the Licensee shall notify USFS, State Water Board, CDFW, USFWS and the Commission within three days of determining that reservoir level requirements were not or will not be met. Each notification shall include:

1. *A description of the incident, including the reason the reservoir level was not or will not be met;*
2. *The Licensee's analysis of the implication of the incident on meeting future reservoir levels for that water year; and*
3. *The Licensee's proposal to manage reservoir levels to minimize recreational impacts and address energy and operational requirements for any months in which reservoir levels will not be achieved. The Licensee's proposal shall address:*
 - (a) *Prioritizing reservoir levels among Loon Lake, Union Valley and Ice House Reservoirs;*
 - (b) *Developing measures as they relate to impacts on recreational resources, if necessary; and*
 - (c) *Developing other measures as appropriate.*

The measures in the Licensee's proposal shall be commensurate with the severity and time period during which reservoir levels are not met, and may include actions to be taken by the Licensee or others, such as increased patrols, extension of boat ramps, or development of/contribution to a mitigation fund. Once the UARPLicensee is no longer subject to the event and if the end-of-month reservoir elevations for Loon Lake, Union Valley, and/or Ice House Reservoirs cannot be achieved for that month, the Licensee shall confer with the State Water Board, USFS, CDFW, USFWS and the Commission (Conference) within 10 business days. The purpose of the Conference shall be to review the Licensee's proposal to manage reservoir elevations for the remainder of the recreation season. Within 10 business days of the Conference, the Licensee shall file with the Commission and State Water Board a letter summarizing the Conference and proposal. The Licensee shall obtain Deputy Director approval of the proposal prior to its implementation. The Deputy Director may require modifications as part of the approval. The Licensee shall file the Deputy Director's approval, together with any required proposal modifications, with the Commission.

Attachment B

Revisions to U.S. Forest Service Section 4(e) Condition Nos. 27 & 49.8 for Sacramento Municipal Utility District Hydroelectric Project, P-2101

Condition No. 27 – Minimum Streamflows

South Fork American River below Slab Creek Reservoir Dam

The licensee shall maintain the minimum streamflow specified in the following schedule based on month and water year type for Years 1 through ~~3~~ 5 of the new license in order to allow facility modifications to be completed at this location. In months with more than one minimum streamflow, the licensee shall maintain each minimum streamflow listed for 1 week prior to reducing to the next minimum streamflow for the month. Minimum streamflow shall be measured at USGS gage 11443500, located approximately 500 feet upstream from Iowa Canyon Creek.

The licensee shall maintain the minimum streamflow specified in the following schedule based on month and water year type, ~~for Years 4~~ as soon as reasonably practicable, but no later than Year 6, and extending through the term of the new license and any extensions. Facilities improvements may include new release valves and/or higher capacity minimum flow turbine upgrade to current facilities.

Condition No. 49 – Reservoir Levels

8. Interim Modifications

These reservoir elevations may be modified upon the occurrence of the following events:

(1) State or Federal electrical emergencies declared by an appropriate authority where specific orders are issued or specific actions are mandated by said authority that require the licensee to produce electricity outside normal planned operations; (2) system events that cause SMUD's Operating Reserves to drop below the Western Energy Coordinating Council Minimum Operating Reliability Criteria; or (3) equipment malfunction, public safety emergency, or law enforcement activity; (4) Construction, reconstruction, or maintenance of/to existing or future recreation facilities, such as boat ramps, to be addressed under Conditions 45 (Specific Recreation Measures) or 46 (Heavy Maintenance), and upon approval of the USFS; or (5) Non-emergency maintenance to non-recreation project features associated with UARP reservoirs, such as dams (main and auxiliary), powerhouses, outlet facilities, intake facilities, and spillways, to be addressed under Condition 40 (annual Operations and Maintenance Plan) and upon approval of the USFS.

In the event of such an interim modification during July, August, or September, the licensee shall promptly notify FS, SWRCB, CDFG, FWS, and the Consultation Group (collectively, Interested Parties) and FERC. Each notification shall include: (1) a description of the incident, including the reason the reservoir level was not or will not be met; (2) the licensee's analysis of the implication of the incident on meeting future reservoir levels for that water year; and (3) the licensee's proposal to manage reservoir levels to minimize recreational impacts and address energy and operational requirements for any months in which reservoir levels will not be achieved. In addition, the licensee's proposal shall address: (a) Prioritizing reservoir levels among the three reservoirs; (b) Developing measures as they relate to impacts on recreational resources, if necessary; and (c) Developing other measures as appropriate. The measures in licensee's proposal will be

commensurate with the degree and time period during which reservoir levels are not met, and may include actions to be taken by licensee or others, such as increased patrols, extension of boat ramps, or development of/contribution to a mitigation fund. Once the Project is no longer subject to the event and if the end-of-month reservoir elevations for Loon Lake, Union Valley, and/or Ice House Reservoirs cannot be achieved for that month, within 10 business days the licensee shall confer with Interested Parties (Conference). The purpose of the Conference shall be to review the licensee's proposal to manage reservoir elevations for the remainder of the recreation season. The licensee will implement the proposal upon approval by FERC, FS, and SWRCB. Within 10 business days following this conference, the licensee shall file with FERC a letter summarizing the Conference.