

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Turlock Irrigation District and
Modesto Irrigation District**

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**Project No. 2299-____
(Don Pedro)**

**Project No. 14581-____
(La Grange)**

**PETITION FOR DECLARATORY ORDER
OF TURLOCK IRRIGATION DISTRICT AND MODESTO IRRIGATION DISTRICT
REQUESTING WAIVER OF WATER QUALITY CERTIFICATION**

Pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”),¹ Turlock Irrigation District (“TID”) and Modesto Irrigation District (“MID,” collectively with TID, the “Districts”) hereby petition the Commission for issuance of a declaratory order finding that the California State Water Resources Control Board (“Board”) has waived its authority under Section 401 of the Clean Water Act² (“CWA”) to issue water quality certification with respect to the Districts’ pending license applications for the Don Pedro Hydroelectric Project No. 2299 (“Don Pedro Project”) and the La Grange Hydroelectric Project No. 14581 (“La Grange Project,” collectively with Don Pedro, the “Projects”).³

As described herein, the Board failed or refused to act within the statutory period of time established by Congress in Section 401 of the CWA by relying on a tolling mechanism to extend unlawfully the statutory period for action on requests for water quality certification.⁴ In

¹ 18 C.F.R. § 385.207(a)(2).

² 33 U.S.C. § 1341.

³ Pursuant to 18 C.F.R. § 381.302, the Districts are filing concurrently herewith a petition for exemption in lieu of filing fee because this petition seeks a Commission ruling relating to the issuance of licenses for the above-captioned Projects and therefore pertains to a matter under Part I of the Federal Power Act.

⁴ *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019), *cert. denied*, 140 S. Ct. 650 (“*Hoopa*”) (holding that use of a tolling mechanism to extend the statutory deadline constitutes a failure or refusal to act under the CWA).

accordance with the D.C. Circuit’s decision in *Hoopa* and Section 401(a), the Districts respectfully request the Commission to find that the Board has waived its authority under Section 401 of the CWA to issue a certification in the above-captioned proceedings because the one-year maximum statutory period allowed under the CWA has long passed and the Board has failed to act on the requests for certification as required by federal law.

I. BACKGROUND

A. The Projects

The Don Pedro Project is an approximately 168 megawatt (“MW”) hydroelectric facility located on the Tuolumne River in Tuolumne County, California. Principal features of the Don Pedro Project include a dam and reservoir, a single intake leading to a power canal that branches to four turbines, a spillway, a powerhouse, and a switchyard. The original license for the Project expired on April 30, 2016,⁵ and since that date, the Don Pedro Project has been operating pursuant to an annual license.⁶

The primary purpose of Don Pedro reservoir is to provide water supply for irrigation of over 200,000 acres of farmland and for municipal and industrial uses. Don Pedro reservoir also provides flood control on the Tuolumne and San Joaquin Rivers through an arrangement with the U.S. Army Corps of Engineers (“Corps”), and facilitates a water banking arrangement for the benefit of the City and County of San Francisco (“CCSF”) and over 2 million people in the San Francisco Bay Area. Flow releases from Don Pedro reservoir are scheduled for flood control, the Districts’ irrigation and municipal and industrial demands, management of flow releases from

⁵ *Turlock Irrigation District*, 31 F.P.C. 510 (1964).

⁶ *Turlock Irrigation District*, Notice of Authorization for Continued Project Operation, Project No. 2299 (issued May 5, 2016) (granting an annual license that renews automatically until issuance of a new license for the project).

CCSF's upstream Hetch Hetchy System, and protection of aquatic resources in the lower Tuolumne River. Hydroelectric generation is incidental to these releases.

The La Grange Project is an unlicensed approximately 4.7 MW hydroelectric project located on the Tuolumne River, approximately two miles downstream from the Don Pedro dam, in Tuolumne and Stanislaus Counties, California. Principal features of the La Grange Project include the La Grange Diversion Dam and reservoir, an intake for an irrigation canal, two penstocks connecting the irrigation canal to two turbine-generators, and a powerhouse. Construction of the La Grange Diversion Dam was completed in 1893 (replacing a prior dam constructed in 1871) to provide water via gravity to irrigation systems owned by the Districts. The hydroelectric generation facilities were installed in 1924 to divert water from the irrigation canal. As at the time of its construction, the purpose of the La Grange Diversion Dam continues to be withdrawal of water from the lower Tuolumne River for delivery to the Districts' irrigation systems. The hydroelectric generation facilities that divert water from the irrigation canal are operated in a run-of-river mode.

B. The Application Process

The Districts utilized the Commission's Integrated Licensing Process ("ILP") to prepare license applications for the Projects and to engage stakeholders and agencies in the development of information and studies. This process was initiated on February 10, 2011, for the Don Pedro Project, with the Districts' filing of a notice of intent ("NOI") and a pre-application document ("PAD"), which provided interested entities and agencies with a compilation of all existing resource information associated with the Don Pedro Project. On April 8, 2011, FERC staff issued its first scoping document for the Don Pedro Project seeking information needs from interested agencies. The Board submitted comments and study requests in response to the Commission's initial scoping document on June 9, 2011. The Board also submitted comments on the Districts'

Proposed Study Plan on October 24, 2011, and comments on the Districts' Revised Study Plan on December 7, 2011. On December 22, 2011, Commission staff issued a Study Plan Determination identifying the suite of studies that must be conducted by the Districts to satisfy FERC's information requirements and the information requirements of mandatory conditioning agencies, including the Board. The Board did not dispute the Study Plan Determination with respect to any studies requested by the Board pertaining directly to the exercise of the Board's authority under Section 401.⁷ The Districts conducted all studies required by Commission staff's Study Plan Determination, including the studies requested by the Board.

On April 28, 2014, the Districts filed a final application for a new major license with the Commission to continue to operate and maintain the Don Pedro Project. The application noted and FERC acknowledged that, at the time the application was submitted, several FERC-approved studies were ongoing, and the results of these studies were likely to inform the development of additional protection, mitigation, and enhancement measures.

On October 11, 2017, the Districts filed with FERC an Amended Final License Application ("AFLA") for the Don Pedro Project, which included additional protection, mitigation, and enhancement measures informed by the completed studies. The measures proposed in the AFLA were the culmination of a multi-year, comprehensive effort by the Districts to identify and assess the effects of ongoing Don Pedro operations on environmental resources, which was conducted in consultation with numerous federal and state resource agencies, tribes, and members of the public, including the Board. As part of this effort, the Districts worked closely with relicensing

⁷ The Board attempted to dispute Commission's staff's rejection of a study filed by the California Department of Fish and Wildlife ("CDFW"), which is not a mandatory conditioning agency. Commission staff rejected the Board's effort to act as a proxy for CDFW because the study dispute procedures set forth in the Commission's regulations, 18 C.F.R. § 5.14(a), are limited to disputes raised by mandatory conditioning agencies, like the Board, regarding studies pertaining directly to the exercise of that agency's authority. *See* FERC Letter Order (issued Mar. 9, 2012).

participants to compile and review existing information and to conduct over 35 Commission-approved resource studies, including holding 20 consultation workshops with relicensing participants, including the Board, covering the full range of environmental resources in the Don Pedro Project area. These studies encompassed all the Board's study requests pertaining directly to the exercise of the Board's authority under Section 401.

The licensing process for the La Grange Project was initiated by the Districts on January 29, 2014, with the filing of an NOI and PAD, which compiled all existing resource information associated with La Grange for agencies and licensing participants. On May 23, 2014, FERC initiated scoping for the La Grange Project by issuing its first scoping document, and FERC held public meetings in June 2014. The Board submitted comments, including study requests, on July 22, 2014. On February 2, 2015, the Commission issued a Study Plan Determination identifying the studies that must be conducted to satisfy FERC's information requirements and the information requirements of the mandatory conditioning agencies. The Districts conducted all studies required by Commission staff's Study Plan Determination.

On October 11, 2017, the Districts filed a final license application ("FLA") for an original license for the La Grange Project. As with the Don Pedro AFLA, the La Grange FLA was the culmination of a multi-year, comprehensive effort by the Districts to identify and assess the effects of hydropower operations on environmental resources, in consultation with licensing participants, including the Board. Studies were cooperatively scoped with licensing participants, and conducted by the Districts, with draft results and findings made available for review, comment, and discussion.

On November 30, 2017, the Commission issued notice that the AFLA for Don Pedro and the FLA for La Grange were ready for environmental analysis ("REA"), and solicited

interventions, comments, recommendations, terms and conditions. On January 29, 2018, the Board filed preliminary certification conditions for each license application. On February 11, 2019, FERC staff issued a joint Draft Environmental Impact Statement (“DEIS”) for the Projects. The Board submitted comments on the DEIS on April 12, 2019. On July 7, 2020, FERC issued a joint Final Environmental Impact Statement (“FEIS”) for the Projects.

C. Board Certification Process

Section 401 of the CWA requires license applicants to submit a request for water quality certification to the State in which a discharge from a proposed hydroelectric facility is located, and authorizes the State to issue a certification to address water quality concerns associated with a project’s proposed discharge.⁸ Section 401 provides that a State must act on a request for certification “within a reasonable period of time (which shall not exceed one year).”⁹ If a State certifying agency fails or refuses to act within the statutory period, then “the certification requirements of this subsection shall be waived with respect to such Federal application.”¹⁰

The Commission’s regulations require license applicants to file a request for water quality certification with a certifying agency within 60 days of issuance of the REA notice.¹¹ On January 26, 2018, the Districts timely submitted to the Board a request for water quality certification pursuant to Section 401 of the CWA for each of the Projects.¹² Each “request” consisted of a cover letter and a compact disk with a copy of the AFLA for the Don Pedro Project and the FLA for the La Grange Project, each of which included dozens of technical reports prepared as a result of the studies requested by the Board (and other agencies and relicensing participants) and required to be

⁸ 33 U.S.C. § 1341(a)(1).

⁹ *Id.* § 1341(a). FERC’s hydroelectric regulations allow the full statutory period of one year for a State to act. 18 C.F.R. § 5.23(b)(2).

¹⁰ 33 U.S.C. § 1341(a)(1).

¹¹ 18 C.F.R. § 5.23.

¹² A copy of each of the Districts’ requests for water quality certification is provided in Attachment A.

conducted by FERC staff. The Board stamped each of the requests as received on January 26, 2018, and the Districts filed a copy of the time-stamped requests with the Commission on January 29, 2018.

On February 15, 2018, the Board issued a letter to the Districts acknowledging receipt of the applications.¹³ The Board's letter stated that the applications filed on January 16, 2018, "serve as a formal request for certification of the Projects," and the applications "initiate a one-year deadline from the date they were received for the [Board] to act on the requests for certification."¹⁴ The Board identified the deadline for certification action as January 26, 2019.¹⁵ Critically, although the Board's letter stated that the "certification is subject to completion of the environmental review process," it provided that the requests for certification received from the Districts "meet the application filing requirements in Cal. Code Regs., tit. 23, section 3856." The Board filed a copy of this acknowledgment letter with the Commission on February 21, 2018.

On January 24, 2019, the Board issued a letter purporting to deny without prejudice the Districts' applications for water quality certification for the Projects.¹⁶ The Board explained as follows in its letter:¹⁷

In taking certification action, the State Water Board must either: (1) issue an appropriately conditioned water quality certification; or (2) deny certification. (Cal. Code Regs., tit. 23, § 3859.) A water quality certification may be issued if it is determined that there is reasonable assurance that an activity will comply with state and federal water quality standards and that the appropriate environmental documents have been adopted to support certification and meet the requirements of the California Environmental Quality Act (CEQA). However, when a proposed project's compliance with water quality standards is not yet determined, but the application

¹³ A copy of each of the Board's acknowledgment letters is provided in Attachment B.

¹⁴ Board's Feb. 15, 2018 letter, at pg. 1.

¹⁵ Note that a one-year period initiated on January 26, 2018, would expire on January 25, 2019.

¹⁶ A copy of each of the Board's letters denying without prejudice certification is provided in Attachment C.

¹⁷ Board's Jan. 24, 2019 letter, at pgs. 1-2.

suffers from a procedural inadequacy, the State Water Board may deny certification without prejudice. (Cal. Code Regs., tit. 23 § 3837, subd. (b)(2)).)

At this time, FERC has not yet completed its National Environmental Policy Act (NEPA) environmental analysis for the Projects. Additionally, the Districts, as lead agencies for the Projects, have not begun the CEQA process. Without completion of the CEQA process, the State Water Board cannot issue a certification.

The Districts are hereby notified that the January 26, 2018 request for certification for the Projects is denied without prejudice, effective the date of this letter. The denial without prejudice carries with it no judgment on the technical merits of the activity. In order to maintain an active certification application, the Districts will need to request certification for the Projects.

A copy of this no-action letter was filed with the Commission on February 6, 2019.

On April 22, 2019, the Districts submitted to the Board a second letter requesting certification for each of the Projects proposed in their October 11, 2017 license applications, copies of which were filed with FERC on April 24, 2019. The Districts' letters requesting certification were substantively unchanged from their initial requests, save for updating the procedural background.

On May 21, 2019, the Board issued letters acknowledging the filing of the Districts' requests for certification. As in the first acknowledgment letter, each of the Board's second acknowledgment letters stated that the Districts' respective second requests for certification "initiates a one-year deadline from the date it was received for the State Water Board to grant or deny the request for certification," and established the deadline for certification action as April 22, 2020.¹⁸ The Board's letters again found that "[t]he application for certification, together with the FERC license application and other documents from the FERC files that are incorporated by

¹⁸ Board's May 21, 2019 letters, at pg. 1.

reference in the certification application, meet the application filing requirements specified in California Code of Regulations, title 23, section 3856.”¹⁹ The letters declared that the Board intends to deny the requests for certification without prejudice if the CEQA process is not complete by the time the federal statutory period expires under Section 401(a) of the CWA.²⁰

Under State law, the State Water Board cannot issue a certification for the Project until . . . the State Water Board’s own CEQA process is complete. If a certification application is complete, but CEQA requires review of a final environmental document before issuing an approval and the necessary document is not available before the federal period for certification will expire, the State Water Board will deny the certification without prejudice (Cal. Code Regs. tit. 23, §§ 3836, subd. (c); 3837, subd. (b)(2).).

In letters dated April 20, 2020, the Board again purported to deny without prejudice the Districts’ requests for water quality certification. These letters repeated the claim that, under State law, the Board “may not issue a certification until the requirements for compliance with CEQA are met.”²¹ Absent CEQA compliance, the Board announced it was denying the certification without prejudice pursuant to 23 CCR §§ 3836(c), 3837(b)(2).²²

In addition, the Board’s letter added:²³

Further, at this time, the proposed activity does not comply with applicable water quality standards and other requirements. Noncompliance with these requirements may be grounds for denial of an application for certification. (Cal. Code Regs., tit. 23, 3837, subd. (b)(1).)

¹⁹ *Id.*

²⁰ *Id.* at pg. 2.

²¹ Board’s April 20, 2020 letters, at pg. 2.

²² *Id.* at pgs. 1-2.

²³ *Id.* at pg. 2.

The Board did not identify with which water requirements listed in Section 401(a) the discharges do not comply and did not make any factual findings as to how the proposed discharges do not comply with the applicable provisions of Section 401(a).²⁴

Finally, the Board's letters "encourage[d] the Districts to submit a new request for certification."²⁵ The letters nowhere identified what new substantive information must be included in such a "revised" request for certification in order for the Board to act on the requests, and did not identify any procedural problem with the requests for certification filed by the Districts.

On July 20, 2020, in response to prompting by Commission staff, the Districts filed their third requests for certification with the Board for each of the pending October 11, 2017 license applications.²⁶ Again, apart from updating the procedural background, the requests were identical to the first and second requests for certification previously submitted by the Districts. On August 18, 2020, the Board again issued letters acknowledging the Districts' requests for certification filed on July 20, 2020, identifying a new one-year deadline based on the filing date, and finding for each project that the "application is complete" pursuant to 23 CCR § 3835 and meets the application filing requirements specified in 23 CCR § 3836.²⁷ Even though the Board has never identified a procedural problem with the requests for certification filed by the Districts or identified any substantive concerns with the Districts' proposed discharges, the Board's August 18, 2020 letters

²⁴ A certification under Section 401(a) must find that any "discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317" of the CWA. These sections concern effluent limitations (§ 1311), water quality-related effluent limitations (§ 1312), water quality standards (§ 1313), national standards of performance (§ 1316), and toxic and pretreatment effluent standard (§ 1317).

²⁵ Board's April 20, 2020 letters at pg. 2.

²⁶ The Districts believe the Board already has waived its Section 401 authority. The third requests for certification were submitted in response to prompting by FERC staff to ensure that the license applications remain in good standing before FERC. *See, e.g., City of Harrisburg, Penn.*, 51 FERC ¶ 61,125 (1990), *order on clarification*, 53 FERC ¶ 61,235.

²⁷ Board's August 18, 2020 letters at pgs. 1-2.

stated that “the proposed activity remains unchanged and does not comply with” water quality requirements.²⁸

II. REQUEST FOR DECLARATORY ORDER

The Board waived its authority under Section 401 of the CWA to issue water quality certification because it failed or refused to act within the statutory period. Rather than issue a decision on the merits, the Board repeatedly relied on a tolling mechanism to avoid action. As discussed below, the Board’s new deny-without-prejudice and resubmit tactic employed here is indistinguishable from the withdraw-and-resubmit scheme rejected by the D.C. Circuit in *Hoopa*. Even setting aside *Hoopa*, the deny-without-prejudice and resubmit scheme is plainly inconsistent with Section 401(a).

A. Legal Standard

The Federal Power Act (“FPA”) vests in FERC the exclusive authority to issue licenses for hydroelectric facilities.²⁹ In Section 401 of the CWA, Congress created a limited exception to FERC’s exclusive authority under the FPA to issue and condition licenses in a manner that is best adapted to a comprehensive plan for the applicable waterway, and prescribed a narrow and defined role for States in the licensing process. Section 401(a) provides in relevant part as follows:³⁰

Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, . . . that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title.

* * *

²⁸ *Id.* at pg. 2.

²⁹ 16 U.S.C. §§ 792-823. *See First Iowa Hydro-Electric Cooperative v. FPC*, 328 U.S. 152 (1946).

³⁰ 33 U.S.C. § 1341(a).

If the State . . . fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State[.]

The federal agency issuing the license or permit, in this case FERC, must determine as a matter of federal law whether the certification requirements of Section 401(a) have been met or waived.³¹

The D.C. Circuit recently interpreted Section 401(a)'s statutory deadline and waiver provisions in *Hoopa* and concluded that the withdraw-and-resubmit scheme employed by the Board is an impermissible tolling arrangement that violates Section 401(a). In the *Hoopa* proceeding, as part of a settlement agreement, the applicant (PacifiCorp) and the Board agreed that the applicant would withdraw and resubmit its request for certification for the same underlying FERC license application each year until certain actions identified in a settlement agreement had occurred.³²

The court rejected the withdraw-and-resubmit scheme, concluding that “the purpose of the waiver provision is to prevent a State from indefinitely delaying a federal licensing proceeding by failing to issue a timely water quality certification,” and noting that “pendency of the requests for state certification in this case has far exceeded the one-year maximum.”³³ Starting with the statutory language, the court acknowledged that while the statute does not define “failure to act” or “refusal to act,” the State’s tolling efforts “constitute such failure and refusal within the plain

³¹ *Alcoa Power Generating Inc. v. FERC*, 643 F.3d 963, 972 (D.C. Cir. 2011) (“*Alcoa Power*”) (concluding that “[b]ecause the validity of the [State action] under Section 401 is a question of federal law, the issue was properly put to the Commission, and is now properly before this court”); *City of Tacoma, Wash. v. FERC*, 460 F.3d 53, 67 (2006) (“*Tacoma*”) (finding that “[i]f the question regarding the state’s section 401 certification is not the application of state water quality standards but compliance with the terms of section 401, then FERC must address it”).

³² *Hoopa*, 913 F.3d at 1101. Note that the Board’s authority to agree to accept a withdrawal arrangement is explicitly authorized by its regulations. 23 CCR § 3836(b), (c).

³³ *Hoopa*, 913 F.3d at 1104.

meaning of these phrases.”³⁴ The court emphasized that the refiled requests for certification were for the same underlying FERC license application: “The record does not indicate that PacifiCorp withdrew its request and submitted a wholly new one in its place PacifiCorp’s withdrawals-and-resubmissions were not just similar requests, they were not new requests at all.”³⁵ The court therefore found FERC had acted arbitrarily and capriciously by finding that the State had not failed to act on a certification request and by treating each resubmission by the license applicant as an independent request that restarted the State’s statutory period of review under the CWA.³⁶

In rejecting the tolling scheme, the *Hoopa* court focused heavily on the purpose of Section 401 and the effect of the scheme. Looking to the legislative history, the court noted that “Congress intended Section 401 to curb a state’s ‘dalliance or unreasonable delay,’” and affirmed that the purpose of the waiver provision is “‘to prevent a State from indefinitely delaying a federal licensing proceeding’” by failing to issue a timely water quality certification under Section 401.³⁷ Based on this, the court determined that the Board’s arrangement to accept a license applicant’s refile of the same request letter annually for the same underlying FERC application “does not exploit a statutory loophole; it serves to circumvent a congressionally granted authority over the licensing, conditioning, and developing of a hydropower project.”³⁸ The court further found that “[b]y shelving water quality certifications, the states usurp FERC’s control over whether and when a federal license will issue” and, if allowed, such schemes “could be used to indefinitely delay federal licensing proceedings and undermine FERC’s jurisdiction to regulate such matters.”³⁹

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 1105 (citing *Alcoa Power*, 643 F.3d at 972).

³⁸ *Id.* at 1104.

³⁹ *Id.*

B. The Board’s Deny-Without-Prejudice and Resubmit Scheme is Impermissible Under *Hoopa*

In *Hoopa*, the D.C. Circuit held that a State fails or refuses to act under Section 401 of the CWA – and thereby waives its authority to issue a water quality certification – when it engages in a coordinated scheme to toll, extend, or restart the statutory period established by Congress.⁴⁰ This is exactly what the Board did here. Although the Board has attributed a new label to the scheme used here, it is in fact the functional equivalent of the arrangement rejected in *Hoopa*.

This is confirmed by four key factors. First, as in *Hoopa*, the Board here deliberately devised and executed an arrangement for the sole purpose of extending the statutory deadline set forth in the CWA. Second, as in *Hoopa*, the Districts have resubmitted annually the same request for certification and have never submitted a “wholly new request,” which means that the original request for certification has been pending for more than one year. Third, as in *Hoopa*, the result of the Board’s deliberate scheme here is an indefinite cycle of inaction by the Board that frustrates the purpose of Congress’ inclusion of the waiver provision in Section 401 of the CWA. And fourth, the Board’s own regulations confirm that its deny-without-prejudice and resubmit process is the functional equivalent of the withdraw-and-resubmit process.⁴¹

1. The Board Engaged in a Coordinated Scheme to Toll the Statutory Deadline

In *Hoopa*, the court found the Board implemented a coordinated scheme to toll unlawfully the CWA statutory deadline by agreeing to the withdrawal of pending requests for certification and then accepting the resubmission of identical requests year after year.⁴² Since *Hoopa*, FERC has held in waiver proceedings that a formal agreement to engage in these activities, as was present

⁴⁰ *Id.* at 1103.

⁴¹ *See, e.g.*, 23 CCR § 3836 (b), (c). *See* discussion *infra* Part II.B.4.

⁴² *Hoopa*, 913 F.3d at 1104.

in *Hoopa*, is not necessary to support a finding a waiver.⁴³ Rather, the Commission has found that the Board’s encouragement of or acquiescence to the resubmission of additional, identical requests for certification for the same underlying license application is sufficient evidence of the Board’s coordination in the tolling scheme to constitute waiver.⁴⁴ Key to the Commission’s determinations in these cases is the fact that the Board had accepted as “complete” the resubmitted requests for certification, even though they were the same as the prior requests for certification.⁴⁵

Here, as in *Hoopa* and the Commission’s prior Section 401 waiver proceedings, the Board intentionally coordinated a scheme for the purpose of extending the statutory deadline. Specifically, the Board encouraged the Districts to resubmit additional requests for certification, accepted identical subsequent requests for certification, and declared that such requests had restarted the CWA statutory deadline.

Near the end of the one-year statutory period for action on the Districts’ first request for certification, the Board issued a procedural letter purporting to deny certification without prejudice, stating that the “Districts will need to request certification for the Projects” again.⁴⁶ The letter did not request any revision to the Districts’ requests for certification and did not raise any

⁴³ *South Feather Water and Power Agency*, 171 FERC ¶ 61,242, at ¶¶ 22-23 (2020) (“*South Feather*”) (finding South Feather’s refiling of its application in response to the Board’s request that it do so was sufficient evidence of coordination between the Board and South Feather and sufficient evidence that the Board sought the resubmittal to circumvent the one-year statutory deadline); *Pacific Gas and Electric Co.*, 170 FERC ¶ 61,232, at ¶ 27 (2020) (“*PG&E*”) (holding that *Hoopa* cannot be distinguished based on the form of agreement and finding that the Board expected PG&E to refile its application and PG&E cooperated); *Southern California Edison Co.*, 170 FERC ¶ 61,135, at ¶ 23 (2020) (“*SCE*”) (finding “not only that the state coordinated with SCE as SCE . . . resubmitted its certification request for the purpose of avoiding the waiver period, but that the state effectively directed SCE to do so”); *Placer County Water Agency*, 167 FERC ¶ 61,056, at ¶ 16 (2019) (“*Placer County*”) (finding that actions by the Board to cooperate in the annual resubmission of the same request for certification “amount to an ongoing agreement”).

⁴⁴ *See, e.g., South Feather*, 171 FERC ¶ 61,242, at ¶ 23; *SCE*, 170 FERC ¶ 61,135, at ¶ 25 (finding that, “even absent” evidence of direct coordination by the Board, the Board’s acceptance of the same resubmission letters annually is evidence that the “Board consented to the scheme of resetting the one-year deadline”).

⁴⁵ *See, e.g., Hoopa*, 913 F.3d at 1105 (finding that “[t]he record indicates that PacifiCorp’s water quality certification request has been complete and ready for review for more than a decade”); *South Feather*, 171 FERC ¶ 61,242, at ¶ 23 (finding waiver “where the record indicates that South Feather’s water quality certification request has been complete and ready for review for a decade”).

⁴⁶ Board’s Jan. 24, 2019 letters, at pg. 1.

substantive concerns with the Districts’ proposed discharges; rather, it specifically stated, consistent with the Board’s regulations, that “[t]he denial without prejudice carries with it no judgment on the technical merits of the activity.”⁴⁷

The cycle then began anew. The Districts resubmitted the same request for certification, save for updates to the procedural history. In response, the Board accepted this identical request for certification as a “complete” application pursuant to the Board’s regulations and declared that the resubmission restarted the CWA statutory deadline. Then, after another year passed, the Board issued a second letter purporting to deny the request for certification without prejudice, wherein the “Board encourage[d] the Districts to submit a new request for certification.”⁴⁸ Again, the Board did not identify any procedural problems with the requests filed by the Districts.

The Districts then submitted for the third time identical requests for certification. In response, the Board found the third requests for certification to be “complete” applications under its regulations and declared that the CWA statutory deadline had been restarted once again.⁴⁹

This repeated cycle demonstrates that the Board has deliberately devised and executed a scheme to extend the statutory deadline to issue certifications for the Districts’ license applications. The Board is now in its third cycle of (1) finding the Districts’ requests for certification to be complete, (2) using a regulatory procedural mechanism to deny the requests “without prejudice,” (3) failing to identify any problems with the requests filed by the Districts, (4) encouraging and inviting the Districts to resubmit the requests for certification, and (5) again finding an identical request for certification to be complete under the Board’s regulations. The Board’s efforts here demonstrate that it is using the deny-without-prejudice and resubmit mechanism in the exact same

⁴⁷ *Id.*

⁴⁸ Board’s Apr. 20, 2020 letters, at pg. 2.

⁴⁹ Board’s Aug. 18, 2020 letters, at pg. 1.

manner and for the same purpose as it used the withdraw-and-resubmit scheme rejected in *Hoopa*. As in *Hoopa* and the other waiver proceedings before the Commission, this practice constitutes an unlawful coordinated scheme to flaunt the statutory deadline established by Congress, and it should be rejected.

2. The Districts Never Submitted a New Request for Certification

A key factor supporting the court’s determination in *Hoopa* that the Board had engaged in an unlawful tolling scheme was the fact that the license applicant had not submitted a “new” request for certification and instead had resubmitted the same one-page letter requesting certification year after year.⁵⁰ The court found that because the same requests for certification had been pending for more than one year in violation of the terms of the CWA, the Board was deliberately circumventing FERC’s authority over the licensing of hydropower projects.⁵¹ The court also found that FERC had acted arbitrarily and capriciously by treating each identical resubmission as an independent request that restarted the statutory period of review.⁵² In addition, in waiver proceedings before the Commission, the Commission has emphasized the fact that resubmissions of the same request for certification by license applicants are not “new” requests under *Hoopa* because the Board had not requested any new substantive information from the license applicant and the resubmissions did not include any new information.⁵³

In this case, after receiving the denial-without-prejudice letters, the Districts resubmitted requests for certification that were the same as the original request filed on January 26, 2018, except for the updated procedural history. The Board never requested any additional substantive

⁵⁰ *Hoopa*, 913 F.3d at 1104.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See, e.g., *Pacific Gas & Electric Co.*, 172 FERC ¶ 61,065, at ¶ 27 (2020) (affirming waiver determination because there is no evidence the Board ever requested additional information regarding the requests for certification in lieu of acknowledgment letters identifying the application as “complete”).

information from the Districts, and the resubmissions did not include any additional information. The Board simply declared these resubmissions to be sufficient to restart the CWA statutory deadline. Thus, the Board was fully aware that the resubmitted requests were not “new” requests when it accepted them for the purpose of purporting to restart the federal statutory deadline. Consistent with *Hoopa*, the Commission must find here that the Districts’ resubmission of requests for certification on April 22, 2019, and July 20, 2020, are not independent requests for certification that restart the statutory period of review.

The court in *Hoopa* and the Commission in its waiver orders have acknowledged that there may be circumstances where a resubmission constitutes a “new” request for certification that legitimately restarts the statutory deadline. For example, in *Hoopa*, the court declined to resolve the legitimacy of an arrangement whereby a “wholly new” request for certification is filed in place of the original. The court also did not address how different a request must be in order “to constitute a ‘new request’ such that it restarts the one-year clock.”⁵⁴ Similarly, individual Commissioners have questioned whether the documentation submitted to satisfy substantive additional information requests from the certifying agency could trigger a new statutory period.⁵⁵ Though these issues remain unresolved, they have no bearing here because, except for the updated procedural history, the Districts’ resubmissions were exactly the same as their first requests.

3. The Board’s Deny-Without-Prejudice and Resubmit Mechanism Implicates the Same Congressional Policy Concerns Raised by the Court in *Hoopa*

Any procedural tolling mechanism employed for the purpose of extending a federal statutory deadline runs afoul of the Congressional policy concerns raised by the court in *Hoopa*. The court found that an arrangement to accept a license applicant’s refiling of the same request for

⁵⁴ *Hoopa*, 913 F.3d at 1104.

⁵⁵ See, e.g., *Pacific Gas & Electric Co.*, 172 FERC ¶ 61,064 (2020) (Glick, Comm’r, concurrence).

certification annually “serves to circumvent a congressionally granted authority over the licensing, conditioning, and developing of a hydropower project.”⁵⁶ By engaging in such a coordinated scheme, “the states usurp FERC’s control over whether and when a federal license will issue.”⁵⁷ If allowed, such schemes “could be used to indefinitely delay federal licensing proceedings and undermine FERC’s jurisdiction to regulate such matters.”⁵⁸

Such concerns are present here because the Board’s delay has undermined and stalled the licensing processes. In this case, the Districts’ identical requests for certification have been pending before the Board since January 26, 2018.⁵⁹ Since this date, the Board has not identified any procedural problems with the requests for certification filed by the Districts, nor has it identified any additional substantive information necessary for the Board to make a determination on the merits. At this point, *every other agency*, including mandatory conditioning agencies, have submitted conditions and recommendations to FERC, and FERC has evaluated the conditions and recommendations in its DEIS and FEIS, which consider the potential impacts of the proposed Projects, including with respect to water quality associated with the proposed discharges.⁶⁰

The Board’s delay also has harmed the Commission’s and the Districts’ ability to responsibly manage the infrastructure under their control. The Districts’ AFLA for the Don Pedro Project proposes to replace three original turbine-generator units, which have reached the end of their useful life. By usurping FERC’s control over the licensing process and forcing FERC to delay acting on the license application, the Board is increasing the risk that the generators will

⁵⁶ *Hoopa*, 913 F.3d at 1104.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Note that the Board has been participating in the Don Pedro proceeding since 2011 and has been participating in the La Grange proceeding since 2014.

⁶⁰ The Board’s delay also has paralyzed other agencies involved in the licensing process. On April 1, 2019, and August 5, 2020, the U.S. Department of Commerce, National Marine Fisheries Service submitted letters to FERC indicating it would not initiate formal consultation under the Endangered Species Act until after the Board issues a final certification. See Accession Nos. 20190401-5332 and 20200805-5023.

need to be taken offline more frequently to resolve anticipated end-of-life issues. Further, pushing infrastructure to operate beyond its engineering useful life will require the Districts to engage in costly repairs to maintain functionality of the units while the Board indefinitely extends the CWA deadline. The additional cost of such repairs would be unnecessary and avoidable if FERC could act on the Districts' license application in accordance with its schedule under the FPA, unhampered by the Board's efforts to defy the federal statutory deadline.

This is not a hollow concern; recent waiver orders issued by FERC demonstrate the Board has used a combination of tolling mechanisms authorized by its regulations – withdraw and resubmit or deny-without-prejudice and resubmit – to delay acting on requests for certification for over 19 years in the most egregious case.⁶¹ Decade-long delays are standard.⁶² The Board's manipulation of the federal statutory period is severely handicapping FERC's role in ensuring the proper functioning and maintenance of hydroelectric infrastructure by undermining FERC's ability to timely act on license applications. That is precisely the type of harm that Congress sought to avoid by including a waiver provision in Section 401.

4. The Board Considers the Withdraw-and-Resubmit Scheme and the Deny-Without-Prejudice and Resubmit Scheme as Interchangeable Options to Extend the Federal Statutory Period

That the Board views its deny-without-prejudice and resubmit scheme and its withdraw-and-resubmit scheme as identical and interchangeable is confirmed by the Board's own regulations governing its authority to act on requests for water quality certification and by the Board's public statements. In its acknowledgment letters and its denial without prejudice letters, the Board cited

⁶¹ *SCE*, 170 FERC ¶ 61,135 (2020) (19 years).

⁶² *See, e.g., Pacific Gas & Electric Co.*, 172 FERC ¶ 61,064 (2020) (18 years); *SCE*, 170 FERC ¶ 61,135 (2020) (range of 11-17 years for 5 projects); *South Feather*, 171 FERC ¶ 61,242 (2020) (12 years); *PG&E*, 170 FERC ¶ 61,232 (11 years); and *Placer County*, 167 FERC ¶ 61,056 (8 years).

Section 3836(c) of its regulations as the basis for its intention to deny without prejudice the Districts' requests for certification. This section provides as follows (emphasis added):⁶³

If an application is determined to be complete by the certifying agency, but CEQA requires that the certifying agency review a final environmental document before taking a certification action, *an extension of the federal period for certification cannot be obtained*, and the federal period for certification will expire before the certifying agency can receive and properly review the necessary environmental documentation, *the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification*.

Pursuant to this regulation, the Board is required to take one of two actions when “the federal period for certification will expire.”⁶⁴ It must either issue a denial-without-prejudice letter or accept a withdrawal. The Board’s regulation leaves no doubt that the Board itself views an arrangement to deny certification without prejudice and to accept the resubmission of the same request for certification as the functional equivalent of, or an alternative to, an applicant withdrawing and resubmitting a request for certification. Thus, if one of these tolling mechanisms violates the CWA as a coordinated scheme to extend unlawfully the CWA statutory deadline, then both mechanisms identified in the State regulation constitute impermissible tolling schemes that run afoul of *Hoopa*.

In addition to announcing in advance its intention to use this regulation as a means of evading the federal statutory deadline in its acknowledgment letters to the Districts, the Board also has publicly acknowledged this intent with respect to requests for certification for discharges regulated by the U.S. Army Corps of Engineers (“Corps”). The Board’s website answers the question “What are the timelines for processing of a 401 application?” as follows: “If the Corps

⁶³ 23 CCR § 3836(c). A copy of the regulation is provided in Attachment D.

⁶⁴ *Id.*

does not grant a time extension [of the Corps' 60-day period for action on a certification request], the Regional Board has the option of denial without prejudice. *This is not a reflection on the project, but a means to stop the clock until the required information has been provided.*"⁶⁵ This assertion parallels the Board's regulation and the Board's denial letters to the Districts, both of which confirm that the Board's action "carries with it no judgement [*sic*] on the technical merits of the activity."⁶⁶

Furthermore, recent State legislation enacted since issuance of the *Hoopa* decision confirms that both tolling mechanisms referenced in Section 3836 of the Board's regulations are invalid under *Hoopa*. In June 2020, the California legislature enacted an amendment to the Board's governing statute to allow the Board to issue certifications "before completion of the environmental review required under [CEQA] if the state board determines that waiting until completion of that environmental review to issue the certificate or statement poses a substantial risk of waiver of the state board's certification authority under the Federal Water Pollution Control Act or any other federal water quality control law."⁶⁷

If the Board's use of the deny-without-prejudice and resubmit mechanism described in the regulation were unaffected by *Hoopa*, then this legislation would be unnecessary, and denial without prejudice would remain a legitimate action authorized under the Board's regulations.⁶⁸

⁶⁵ See Attachment E, at pg. E-3, accessed from:

https://www.waterboards.ca.gov/coloradoriver/water_issues/programs/401_certification/faqs_401.html (emphasis added).

⁶⁶ See, e.g., 23 CCR § 3831(h) and Board's January 24, 2019 denial letter.

⁶⁷ See Cal. Water Code § 13160; Cal. Stats. 2020, c. 18 (A.B.92), § 9. A copy of the statute and the assembly bill are provided in Attachment F.

⁶⁸ Prior to *Hoopa*, there appear to have been only two cases where the Board issued a denial without prejudice letter in the context of hydroelectric licensing or amendment proceedings. The first involved a denial without prejudice because the request for certification was incomplete, which the Board recognized by refusing to identify the request as complete. See FERC Accession No. 20080418-0261. The second involved a situation where the Board dismissed without prejudice the pending request for certification because the lead agency for purposes of CEQA had dismissed the underlying application pending before it. See FERC Accession No. 20091014-0033.

Thus, the amendment demonstrates the California legislature, and likely the Board, recognize that the deny-without-prejudice and resubmit arrangement does not constitute a valid action as a matter of federal law under Section 401(a) for the reasons explained with respect to the withdraw-and-resubmit mechanism rejected in *Hoopa*.

That the Board took an action consistent with its own regulations does not insulate the action from scrutiny as a tolling scheme that violates the CWA. For example, in *Allegheny Defense Project v. FERC*, the D.C. Circuit recently rejected the Commission's use of a regulatory tolling mechanism authorized by the Commission's regulations,⁶⁹ which the Commission had been using to toll statutory deadlines established by Congress in the FPA and the Natural Gas Act.⁷⁰ The court held that the Commission's use of "tolling orders" to extend the statutory period to act on requests for rehearing violated the federal deadline because the sole purpose of the tolling order was to stall for time and to grant the Commission an unbounded amount of additional time to act.⁷¹ The court also found that valid action on a request "necessarily requires at least some substantive engagement with the application," and the Commission's tolling order did not so engage.⁷² Similarly, here, the sole purpose of the Board's denial-without-prejudice letter is to allow the Board an unbounded amount of time to act, as evidenced by the fact that the denial-without-prejudice letters do not include any substantive findings regarding the Districts' requests for certification. Nor is there any avenue for appeal, as there is no final determination. As the Commission's regulation did not insulate the Commission's tolling practice from scrutiny, similarly, the fact that the Board is acting consistent with its regulations does not shield its action from scrutiny as an unlawful tolling mechanism pursuant to federal law.

⁶⁹ 18 C.F.R. § 302(v).

⁷⁰ *Allegheny Defense Project v. FERC*, 964 F.3d 1 (2020).

⁷¹ *Id.* at 14-15.

⁷² *Id.* at 13.

C. The Board’s Denial-Without-Prejudice Letters Are Not Valid Actions Under Section 401(a)

Even without *Hoopa*, the Commission should declare the Board’s deny-without-prejudice and resubmit scheme invalid under Section 401(a) and find waiver. Section 401(a) requires a State “to act on a request for certification” within the statutory period or else “the certification requirements of this subsection shall be waived.”⁷³ A non-substantive action, even if styled as a “denial,” cannot constitute a valid “act on a request for certification” pursuant to Section 401(a). To determine otherwise would effectively erase the waiver provision from the statute.

1. FERC Is Obligated to Determine the Validity of the Board’s Action Under Federal Law

The federal agency issuing the federal license or permit, in this case FERC, must determine whether the certification requirements of Section 401(a) have been waived and whether an action by a State pursuant to Section 401(a) complies with the requirements of Section 401(a) as a matter of federal law.⁷⁴

In *Tacoma*, the court held that FERC is *required* to confirm that a State’s action pursuant to Section 401(a) satisfies the statute.⁷⁵ In considering whether the State’s certification action satisfied Section 401(a), the court acknowledged that “the decision whether to issue a section 401 certification *generally* turns on questions of state law,” but concluded that this rule “also establishes its outer limits.”⁷⁶ Specifically, “[i]f the question regarding the state’s section 401 certification is not the application of state water quality standards but compliance with the terms

⁷³ 33 U.S.C. § 1341(a)(1).

⁷⁴ *Alcoa Power*, 643 F.3d at 972 (concluding that “[b]ecause the validity of the [State action] under Section 401 is a question of federal law, the issue was properly put to the Commission, and is now properly before this court”); *Tacoma*, 460 F.3d at 67 (finding that “[i]f the question regarding the state’s section 401 certification is not the application of state water quality standards but compliance with the terms of section 401, then FERC must address it”).

⁷⁵ *Tacoma*, 460 F.3d at 68.

⁷⁶ *Id.* at 67 (emphasis added).

of section 401, *then FERC must address it.*”⁷⁷ The court found that “[t]his obligation does not require FERC to inquire into every nuance of the state law proceeding, especially to the extent doing so would place FERC in the position of applying state law standards, but it does require FERC at least to confirm that the state has facially satisfied the express requirements of section 401.”⁷⁸ The *Tacoma* court referred to Section 401(a)’s revocation provision, which it had interpreted in *Keating v. FERC*, as an example where it had found that “FERC has an obligation to confirm that the state has [acted] in a way that satisfies” Section 401(a).⁷⁹ In *Keating*, the court held that FERC is obligated to confirm that an action under Section 401(a) – in this case, revocation of certification – is valid as a matter of federal law.⁸⁰

Similarly, in *Alcoa* the court acknowledged that “a State’s decision on a request for Section 401 certification is *generally* reviewable only in State court, because the breadth of State authority under Section 401 results in most challenges to a certification decision implicating only questions of State law.”⁸¹ The court nevertheless crafted exceptions to the general rule and found that the question presented in *Alcoa* was whether a State’s action on a request for certification “is valid under Section 401 as the State’s ‘act on a request for certification’ within the statutory one-year period.”⁸² The court found the question of the validity of a State’s action under Section 401(a) and the related question of whether waiver has resulted from an invalid action by the State are questions of federal law to be determined by FERC in the first instance.⁸³ These principles were affirmed in *Hoopa*.⁸⁴

⁷⁷ *Id.* (emphasis added).

⁷⁸ *Id.* at 68.

⁷⁹ *Id.*

⁸⁰ *Keating v. FERC*, 927 F.2d 616, 622 (D.C. Cir. 1991).

⁸¹ *Alcoa*, 643 F.3d at 971.

⁸² *Id.*

⁸³ *Id.* at 971-72.

⁸⁴ *Hoopa*, 913 F.3d 1103-05 (holding that a tolling scheme is not a valid action under Section 401(a)(1) and finding waiver for failure to take a valid action within the federal statutory period).

In order to make a determination regarding the validity of the State’s action pursuant to Section 401(a), FERC does not need to evaluate whether the basis for the denial is within the scope of certification or is consistent with State law. Existing precedent is clear that the proper forum for review of the appropriateness of a State’s conditions, the application of water quality standards to conditions, or any other matter under State law is in State court.⁸⁵ But here, the narrow question presented to FERC is whether the denial issued by the Board is valid as a matter of federal law. This is simply another way of asking whether waiver has occurred. If the State’s action is valid as a matter of federal law, then waiver has not occurred. If the State’s action is invalid as a matter of federal law and the federal statutory period has expired, then FERC is required to find that the State has waived its certification authority.⁸⁶

2. Waiver Is Appropriate Because the Board Failed to Issue a Decision on the Merits Within One Year

A denial that does not address the merits of a request for certification cannot be a valid “act on a request for certification” under Section 401(a) as a matter of federal law because it is inconsistent with the plain language of the statute and would render the statutory deadline and waiver provisions superfluous.

a. The Board’s Denials Do Not Address the Merits of the Requests for Certification

The Board’s letters in the record of this proceeding confirm that its denial letters do not address the merits of the Districts’ requests for certification. The Board’s first denial letter specifically states that it is denying certification without prejudice and its action “carries with it no

⁸⁵ See, e.g., *Tacoma*, 460 F.3d at 67 (affirming that, if the question regarding the state’s section 401 certification involves the application of state water quality standards, then any challenge to the application of these standards must be through the State courts); *Roosevelt Campobello Int’l Park Comm’n v. EPA*, 684 F.2d 1041, 1056 (1st Cir. 1982) (holding that the proper forum to review requirements imposed under State law or in a State certification is the State court).

⁸⁶ *Id.* (finding that FERC acts arbitrarily and capriciously when it fails to find waiver after the federal statutory period has expired).

judgment on the technical merits of the activity.”⁸⁷ Similarly, the Board’s second denial letter declares that “[t]he Districts are hereby notified that the April 22, 2019 request for water quality certification is denied without prejudice.”⁸⁸ Thus, the Board’s letters alone establish that the denial letters issued by the Board do not address the merits of the Districts’ requests for certification and rely solely on a non-substantive procedural tactic as a basis for denial.

While the Board’s second letters denying certification without prejudice also stated that the proposed discharge “does not comply with applicable water quality standards and other requirements,” the Board did not actually rely on this assertion to deny substantively the Districts’ requests; rather, the Board appears to have inserted this reference as a means of obfuscating the basis for its denial.⁸⁹ The Board did not identify with which water quality requirements listed in Section 401(a) the discharges do not comply and did not provide any explanation to support its baseless declaration. Without more, such an empty assertion does not provide any information that would allow the Districts to rectify the alleged violation or to submit requests for certification that provide sufficient information for the Board to make a substantive determination regarding the proposed discharges. Therefore, the Commission can readily conclude that the Board included this “finding” solely to avoid the operation of *Hoopa* and the Commission’s recent waiver rulings.

In addition to the letters, the Board’s regulations confirm that the Board’s authority to issue denial without prejudice letters is limited to addressing non-substantive procedural issues. The regulation defining the term “denial without prejudice” provides as follows:⁹⁰

“Denial without prejudice” means an inability to grant certification for procedural rather than substantive reasons. This form of denial carries with it no judgement [*sic*] on the technical merits of the activity or compliance of any discharge with water quality

⁸⁷ Board’s January 24, 2019 letter at pg. 1.

⁸⁸ Board’s April 20, 2020 letters at pg. 2.

⁸⁹ *Id.*

⁹⁰ 23 CCR § 3831(h). A copy is provided in Attachment G.

standards. A certifying agency may reconsider a revised application package which corrects the procedural problems that caused the original denial without prejudice.

Thus, a “denial without prejudice” is not a denial based on the merits of the request for certification; rather, it is “an inability to grant certification for procedural rather than substantive reasons.”⁹¹

Here, in both letters, the Board points to the fact that CEQA has not been completed as the basis for relying on the deny-without-prejudice and resubmit mechanism to toll the deadline. However, CEQA is not a valid basis to toll the federal statutory deadline.⁹² The Commission has found repeatedly that the Board’s reliance on CEQA, which often takes more than one year to complete, does not excuse the Board’s failure to comply with the deadline set forth in Section 401(a).⁹³ Because CEQA is not a valid basis to delay issuance of a certification under federal law, a denial that relies solely on CEQA as a justification for failing to act within the statutory period likewise cannot be a valid action under federal law. The Board is merely attempting to do indirectly that which it cannot do directly.

The Board’s use of the deny-without-prejudice and resubmit process here also does not provide a license applicant with any State-level recourse. To be sure, even if such recourse were available, it would not prevent the Commission from acting; FERC has repeatedly held that license

⁹¹ *Id.*

⁹² *See, e.g., PG&E*, 170 FERC ¶ 61,232, at ¶¶ 31-33 (rejecting the Board’s assertion that it could not issue a water quality certification until the CEQA process was complete and holding that the general principle from *Hoopa* regarding the statutory deadline still applied).

⁹³ *Nevada Irrigation District*, 171 FERC ¶ 61,029, at ¶ 28 (2020) (finding that the “state’s reliance on a regulatory process (i.e., CEQA) over which it has potentially limited control over timing and that often takes more than one year to complete does not excuse compliance with the CWA”); *Yuba County Water Agency*, 171 FERC ¶ 61,139, at ¶ 25 (2020) (affirming that “the state’s reason for delay is immaterial” because “the plain language of Section 401(a) outlines a bright-line rule regarding the beginning of review: the timeline for a state’s action regarding a request for certification shall not exceed one year after receipt of such request”) (internal quotations and alterations omitted). This principle is not affected by the fact that the license applicant may be the lead agency for CEQA purposes and could control the timing for CEQA compliance. *Id.*

applicants are not required to exhaust State law remedies before seeking waiver.⁹⁴ Rather, the absence of State law remedies here makes action by the Commission even more necessary. Under the Board’s regulation, the only recourse in response to a denial-without-prejudice letter is for the Board to “reconsider a revised application package which corrects the procedural problems that caused the original denial without prejudice.”⁹⁵ In this case, however, the Board did not identify any procedural problems with the three requests for certification filed by the Districts (*e.g.*, failure to comply with page or font-size limits). On the contrary, the Board found each request to be “complete” under its regulations.⁹⁶

In addition, the Districts have no means of challenging the Board’s machinations in State court. The denial-without-prejudice letters do not constitute final administrative actions and thus are not reviewable in California courts.⁹⁷ Given the Districts’ lack of State-level recourse, the Board’s denial-without-prejudice letters result in an endless cycle that could continue for decades, absent a determination by FERC that the letters are invalid as a matter of federal law and do not constitute an “act on a request for certification.” Moreover, even if the Board’s regulations (or its letter) provided a legitimate avenue for recourse to challenge the denial-without-prejudice letters, since the requests have been deemed “complete” and there is no substantive determination to review, the Board or the State court would be placed in the position of determining whether the

⁹⁴ See, *e.g.*, *South Feather*, 171 FERC ¶ 61,242, at ¶ 32 (finding that the issue of whether the Board waived certification is a federal question correctly before the Commission in the first instance, and one that must be resolved by reference to federal law, not state procedure); *PG&E*, 170 FERC ¶ 61,232, at ¶ 43. See also *Millennium Pipeline Co. LLC v. Seggos*, 860 F.3d 696, 700-01 (D.C. Cir. 2017); *Keating*, 927 F.2d at 622 (finding the question of whether a State’s action complies with Section 401(a) to be a question of federal law that is for FERC to decide in the first instance).

⁹⁵ 23 CCR § 3831(h).

⁹⁶ See Board’s February 15, 2018, May 21, 2019, and August 18, 2020 acknowledgment letters.

⁹⁷ See, *e.g.*, *SJCBC, LLC v. Horwedel*, 135 Cal. Rptr. 3d 85, 92 (Ct. App. 2011) (finding that a matter is not ripe for judicial review until a public agency makes a final decision); *McHugh v. County of Santa Cruz*, 109 Cal. Rptr. 149, 153 (Ct. App. 1973) (finding the doctrine of administrative exhaustion requires a party to proceed through the administrative process to a final decision on the merits before seeking judicial review); *Bleek v. State Board of Optometry*, 95 Cal. Rptr. 860, 871 (Ct. App. 1971) (holding that “judicial intervention is premature until the administrative agency has rendered a final decision on the merits”).

State procedural action is valid as a matter of federal law and whether the Board has waived certification for failing to act within the federal statutory period. These determinations rest solely with FERC in the first instance, and federal courts on review.

b. Allowing Non-Substantive Denials to Toll the Statutory Deadline Is Facially Inconsistent with the CWA and Would Render Key Provisions of Section 401(a) Superfluous

Section 401(a)(1) includes three operative sentences ordered as follows:

If the State . . . fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application.

No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence.

No license or permit shall be granted if certification has been denied by the State[.]

The first sentence directs that certification *shall* be waived if a State fails or refuses to act on a request for certification within the statutory period. The placement of this sentence as first among the operative sentences in Section 401(a), and the abundance of legislative history on the deadline and waiver provisions confirm its relative importance compared to the second and third provisions. The second sentence clarifies that FERC cannot issue a license until certification has been obtained or waived, and the third sentence clarifies that FERC cannot issue a license if certification has been denied. The *only* reading of the statute that gives effect to all three statutory provisions is to read the third sentence as limited to substantive denials of certification on the merits. To interpret the

third provision as encompassing non-substantive “denials” would inappropriately remove the statutory deadline and waiver provisions from the statute.⁹⁸

The statutory deadline and waiver provision have meaning only if a State cannot toll the deadline. If a State can evade waiver simply by attaching the word “deny” to its non-substantive, procedural efforts to defy the federal deadline, then form trumps substance and the deadline and the waiver provisions become superfluous. The legislative history of Section 401 confirms that Congress specifically included the waiver language to avoid the very delays that the Board is intentionally imposing now. In adopting the time limit, Congress explained that “The Federal agency . . . is put in the position . . . to do away with dalliance or unreasonable delay and to require a ‘yes’ or ‘no’ on certification by States that are considered to be adversely affected.”⁹⁹ It noted that “[t]he failure by the State to act in one way or the other within the prescribed time would constitute a waiver of the certification required as to that State.”¹⁰⁰

Here, the Board’s regulations, letters, and public pronouncements readily admit to the precise type of “dalliance and delay” Congress tried to avoid by including the waiver provision in Section 401(a). For example, the denial letters declare an “inability to grant certification for procedural rather than substantive reasons” that “carries no judgment on . . . compliance of any discharge with water quality standards.” Such an action is neither a “yes” nor a “no,” as required

⁹⁸ See *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (“It is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.”) (quotations and citation omitted).

⁹⁹ 115 Cong. Rec. 9264 (Apr. 16, 1969); see also *Airport Communities Coal. v. Graves*, 280 F. Supp. 2d 1207, 1216 (W.D. Wash. 2003) (“[T]he time limit was inserted in order to avoid a state from interminably blocking a federal permit by stalling the Section 401 certification. Whether a state begins to act but does not complete the issuance of a certification or whether the state entirely fails to act at all, the legislative history of Section 401 makes clear that either of those two situations was unacceptable to Congress because both result in delays in issuing Federal permits.”).

¹⁰⁰ 115 Cong. Rec. 9264.

by the statute. Instead, the Board's denials are akin to a "maybe later," which is precisely the type of inaction Congress aimed to avoid by prioritizing the waiver provision in Section 401(a).¹⁰¹

Further, the Board's public pronouncement that it uses the withdraw-and-resubmit scheme and the deny-without-prejudice and resubmit scheme to "stop the clock" on the federal statutory deadline is the epitome of the "dalliance and delay" Congress rejected by promulgating the waiver provision.¹⁰² As is evident by the Board's tactics during the decades prior to *Hoopa*, the Board has long used tolling mechanisms "to circumvent [FERC's] congressionally granted authority over the licensing, conditioning, and developing of a hydropower project."¹⁰³ Allowing a non-substantive denial to avoid waiver would once again "usurp FERC's control over whether and when a federal license will issue."¹⁰⁴ The only way for FERC to reconcile and give effect to each of the operative provisions in Section 401(a) and to retain its role to determine waiver¹⁰⁵ is to recognize that only a substantive denial is a valid action under Section 401(a) as a matter of federal law.

III. CONCLUSION

The Board failed or refused to act within a reasonable period of time by relying on an unlawful tolling mechanism to extend the statutory period for action on requests for water quality certification established by Congress in Section 401 of the CWA. In accordance with the statute and the D.C. Circuit's decision in *Hoopa*, the Districts respectfully request the Commission to find that the Board has waived its authority under Section 401 of the CWA to issue certification in these license proceedings. The Commission should rule that the maximum statutory period allowed

¹⁰¹ This is especially true where FERC's FEIS did not identify any adverse effects caused by the Districts' proposed discharges.

¹⁰² See *supra* p. 22.

¹⁰³ *Hoopa*, 913 F.3d at 1104.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* (holding that FERC's acts arbitrarily and capriciously by finding that a State has not failed to act and by treating each resubmission with the State as an independent request subject to a new period of review).

under the CWA has long passed in these proceedings and the Board has failed to act on the requests for certification as a matter of federal law.

Respectfully submitted,

/s/ Kimberly Ognisty

Kimberly Ognisty
Zachary B. Cohen
Winston & Strawn LLP
1901 L Street N.W.
Washington, DC 20036
(202) 282-5217
kognisty@winston.com

*Attorney for Turlock Irrigation District and
Modesto Irrigation District*

Dated: October 2, 2020

ATTACHMENTS

ATTACHMENT A

Requests for Water Quality Certification

Don Pedro Project

Requests for Water Quality Certification



January 26, 2018

Eileen Sobeck, Executive Director
California State Water Resources Control Board
1001 "I" Street, 14th Floor
Sacramento, CA 95814

HAND-DELIVERED

JAN 26 2018

**Subject: Don Pedro Hydroelectric Project, FERC Project No. 2299
Application for Water Quality Certificate**

Dear Ms. Sobeck:

Pursuant to Section (§) 5.23(b) of the Code of Federal Regulations , by this letter, Turlock Irrigation District and Modesto Irrigation District (collectively, the Districts) file with the State Water Resources Control Board (Board) an application for Water Quality Certification under Section 401 of the Clean Water Act in support of the Districts' application before the Federal Energy Regulatory Commission (FERC) for a new license for the Don Pedro Hydroelectric Project (Project; FERC Project No. 2299). This application for a Water Quality Certification is also being made pursuant to Title 23, Division 3, Chapter 28, Article 4, Sections 3855 and 3856 of the California Code of Regulations.

Physical addresses, mailing addresses, and telephone numbers for Turlock Irrigation District and Modesto Irrigation District are as follows:

Physical Address:

Turlock Irrigation District
333 East Canal Drive
Turlock, CA 95380
(209) 883-8222

Physical Address:

Modesto Irrigation District
1231 11th Street
Modesto, CA 95354
(209) 526-7337

Mailing Address:

Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mailing Address:

Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

The names and mailing addresses of individuals authorized to act as the Districts' agents for this application for a Water Quality Certificate are as follows:

SWCRB
Page 2
January 26, 2018

Turlock Irrigation District:
Steve Boyd
Director of Water Resources and
Regulatory Affairs
(209) 883-8364
seboyd@tid.org

Modesto Irrigation District:
Anna Brathwaite
Staff Attorney, FERC Project
Manager
(209) 526-7384
anna.brathwaite@mid.org

The Project is located in Tuolumne County on the mainstem of the Tuolumne River and consists of the Don Pedro Reservoir, the Don Pedro powerhouse, and associated facilities necessary to operate the Project as described in the amendment to the Final License Application (AFLA).

On April 28, 2014, the Districts filed with FERC an Application for License for a Major Project - Existing Dam for the Don Pedro Hydroelectric Project. On October 11, 2017, the Districts filed with FERC the AFLA for the Don Pedro Hydroelectric Project. This AFLA replaces the Districts' April 2014 filing in its entirety. An electronic copy of the AFLA, and additional information filings made on November 27 and December 13, 2017, are provided with this application for water quality certification. A record of consultation with state and federal agencies and other interested parties is included with the AFLA filing.

The Districts believe the AFLA contains all the information required under Section 3856 of Title 23 of the California Code of Regulations in regards to contents of a complete application for a Water Quality Certificate. Should the Districts file with FERC amendments to the AFLA, the Districts will promptly provide to the Board a copy of each amendment, as required under Section 3834 of the California Code of Regulations.

The Districts intend to be the Lead Agencies for the purpose of complying with the requirements of the California Environmental Quality Act, and will coordinate with the Board and other responsible agencies.

If you have any questions regarding this request for a Clean Water Act Section 401 Water Quality Certificate, please contact the undersigned at the addresses and telephone numbers listed below.

Sincerely,



Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381
(209) 883-8364
seboyd@tid.org



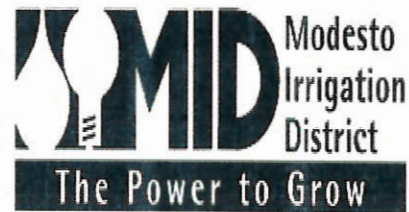
Anna Brathwaite
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352
(209) 526-7384
anna.brathwaite@mid.org

SWCRB

Page 3

January 26, 2018

Enclosure: DVD containing complete set of AFLA documents and additional information filed with FERC through January 26, 2018



April 22, 2019

DELIVERED VIA EMAIL; DATE STAMP REQUESTED

Eileen Sobeck, Executive Director
California State Water Resources Control Board
1001 "I" Street, 14th Floor
Sacramento, CA 95814

**Re: Don Pedro Hydroelectric Project, FERC Project No. 2299
New Request for Water Quality Certification**

Dear Director Sobeck:

On January 26 2018, Turlock Irrigation District and Modesto Irrigation District (collectively, the "Districts") filed their original request for water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, in support of the Districts' application before the Federal Energy Regulatory Commission ("FERC") for a new license for the Don Pedro Hydroelectric Project No. 2299 ("Don Pedro Project") (copy attached). The request for water quality certification was filed in accordance with Title 23, Division 3, Chapter 28, Article 4, Sections 3855 and 3856 of the California Code of Regulations. The State Water Resources Control Board ("SWRCB") acknowledged receipt of the Districts' request for water quality certification on February 15, 2018 (copy attached).

On January 24, 2019, the SWRCB issued a letter notifying the Districts' that their request for water quality certification for the Don Pedro Project was denied without prejudice (copy attached). The letter stated that in order to maintain an active certification application with the SWRCB, the Districts would need to request certification again. In response, the Districts' hereby file their new request for water quality certification for the Don Pedro Project.

If you have any questions regarding this request, please contact the undersigned. Please note that Mr. Davids should be used as the contact for Modesto Irrigation District for all future correspondence.

Respectfully submitted,



Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381
(209) 883-8364
seboyd@tid.org



John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352
(209) 526-7564
john.davids@mid.org

Enclosures
cc: Chase Hildeburn, SWRCB



July 20, 2020

DELIVERED VIA EMAIL; DATE STAMP REQUESTED

Eileen Sobeck, Executive Director
California State Water Resources Control Board
1001 "I" Street, 14th Floor
Sacramento, CA 95814

**Re: Don Pedro Hydroelectric Project, FERC Project No. 2299
Third Request for Water Quality Certification**

Dear Director Sobeck:

On January 26 2018, Turlock Irrigation District and Modesto Irrigation District (collectively, the "Districts") filed with the State Water Resources Control Board ("SWRCB") an original request for water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, in support of the Districts' October 11, 2017 application before the Federal Energy Regulatory Commission ("FERC") for a new license for the Don Pedro Hydroelectric Project No. 2299 ("Don Pedro Project") (*see* Attachment A). The request for certification was filed in accordance with Title 23, Division 3, Chapter 28, Article 4, Sections 3855 and 3856 of the California Code of Regulations. The SWRCB acknowledged receipt of the Districts' request for certification on February 15, 2018 (*see* Attachment A). On January 24, 2019, the SWRCB issued a letter notifying the Districts' that the request for water quality certification for the Don Pedro Project was denied without prejudice (*see* Attachment A).

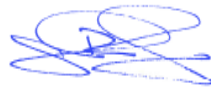
On April 22, 2019, the Districts filed with the SWRCB a second request for water quality certification in support of the Districts' October 11, 2017 application for license (*see* Attachment B). On May 21, 2019, the SWRCB acknowledged receipt of the Districts' second request for certification (*see* Attachment B). In a letter dated April 20, 2020, the SWRCB issued a second letter notifying the Districts' that the request for water quality certification for the Don Pedro Project was denied without prejudice (*see* Attachment B).

In order to ensure the Districts' October 11, 2017 license application remains in good standing before FERC, the Districts are filing a third request for water quality certification for the Don Pedro Project in support of the Districts' October 11, 2017 license application. If you have any questions regarding this request, please contact the undersigned. Please note that Mr. Cooke should be used as the contact for Turlock Irrigation District for all future correspondence.

Respectfully submitted,



Michael I. Cooke
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381
(209) 648-6819
micooke@tid.org

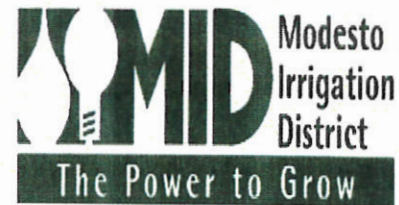


John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352
(209) 526-7564
john.davids@mid.org

Enclosures
cc: Chase Hildeburn, SWRCB

La Grange Project

Requests for Water Quality Certification



January 26, 2018

HAND DELIVERED

Eileen Sobeck, Executive Director
California State Water Resources Control Board
1001 "I" Street, 14th Floor
Sacramento, CA 95814

JAN 26 2018

**Subject: La Grange Hydroelectric Project, FERC Project No. 14581
Application for Water Quality Certificate**

Dear Ms. Sobeck:

Pursuant to Section (§) 5.23(b) of the Code of Federal Regulations, by this letter, Turlock Irrigation District and Modesto Irrigation District (collectively, the Districts) file with the State Water Resources Control Board (Board) an application for Water Quality Certification under Section 401 of the Clean Water Act in support of the Districts' application before the Federal Energy Regulatory Commission (FERC) for an original license for the La Grange Hydroelectric Project (Project; FERC Project No. 14581). This application for a Water Quality Certification is also being made pursuant to Title 23, Division 3, Chapter 28, Article 4, Sections 3855 and 3856 of the California Code of Regulations.

Physical addresses, mailing addresses, and telephone numbers for Turlock Irrigation District and Modesto Irrigation District are as follows:

Physical Address:

Turlock Irrigation District
333 East Canal Drive
Turlock, CA 95380
(209) 883-8222

Physical Address:

Modesto Irrigation District
1231 11th Street
Modesto, CA 95354
(209) 526-7337

Mailing Address:

Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mailing Address:

Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

The names and mailing addresses of individuals authorized to act as the Districts' agents for this application for a Water Quality Certificate are as follows:

20180125 09:40 FERC ID (000110101) 1/27/2018 1:33:40 PM
SWRCB
Page 2
January 26, 2018

Turlock Irrigation District:
Steve Boyd
Director of Water Resources and
Regulatory Affairs
(209) 883-8364
seboyd@tid.org

Modesto Irrigation District:
Anna Brathwaite
Staff Attorney, FERC Project
Manager
(209) 526-7384
anna.brathwaite@mid.org

The Project is located in Stanislaus and Tuolumne counties on the mainstem of the Tuolumne River. Project facilities include the La Grange Diversion Dam, the La Grange headpond, and the La Grange powerhouse, along with associated facilities necessary to operate the Project as described in the license application.

On October 11, 2017, the Districts filed with FERC an Application for License for a Major Water Power Project, 5 Megawatt or Less – Existing Dam for the La Grange Hydroelectric Project. An electronic copy of the Final License Application (FLA), and additional information filings made on November 27 and December 13, 2017, are provided with this application for water quality certification. A record of consultation with state and federal agencies and other interested parties is included with the FLA filing.

The Districts believe this license application contains all the information required under Section 3856 of Title 23 of the California Code of Regulations in regards to contents of a complete application for a Water Quality Certificate. Should the Districts file with FERC amendments to this license application, the Districts will promptly provide to the Board a copy of each amendment, as required under Section 3834 of the California Code of Regulations.

The Districts intend to be the Lead Agencies for the purpose of complying with the requirements of the California Environmental Quality Act, and will coordinate with the Board and other responsible agencies.

If you have any questions regarding this request for a Clean Water Act Section 401 Water Quality Certificate, please contact the undersigned at the addresses and telephone numbers listed below.

Sincerely,



Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381
(209) 883-8364
seboyd@tid.org



Anna Brathwaite
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352
(209) 526-7384
anna.brathwaite@mid.org

SWRCB

Page 3

January 26, 2018

Enclosure: DVD containing complete set of FLA documents and additional information filed with FERC through January 26, 2108



April 22, 2019

DELIVERED VIA EMAIL; DATE STAMP REQUESTED

Eileen Sobeck, Executive Director
California State Water Resources Control Board
1001 "I" Street, 14th Floor
Sacramento, CA 95814

**Re: La Grange Hydroelectric Project, FERC Project No. 14581
New Request for Water Quality Certification**

Dear Director Sobeck:

On January 26 2018, Turlock Irrigation District and Modesto Irrigation District (collectively, the "Districts") filed their original request for water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, in support of the Districts' application before the Federal Energy Regulatory Commission ("FERC") for an original license for the La Grange Hydroelectric Project No. 14581 ("La Grange Project") (copy attached). The request for water quality certification was filed in accordance with Title 23, Division 3, Chapter 28, Article 4, Sections 3855 and 3856 of the California Code of Regulations. The State Water Resources Control Board ("SWRCB") acknowledged receipt of the Districts' request for water quality certification on February 15, 2018 (copy attached).

On January 24, 2019, the SWRCB issued a letter notifying the Districts' that their request for water quality certification for the La Grange Project was denied without prejudice (copy attached). The letter stated that in order to maintain an active certification application with the SWRCB, the Districts would need to request certification again. In response, the Districts' hereby file their new request for water quality certification for the La Grange Project.

If you have any questions regarding this request, please contact the undersigned. Please note that Mr. Davids should be used as the contact for Modesto Irrigation District for all future correspondence.

SWRCB
Page 2
April 22, 2019

Respectfully submitted,



Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381
(209) 883-8364
seboyd@tid.org



John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352
(209) 526-7564
john.davids@mid.org

Enclosures
cc: Chase Hildeburn, SWRCB



July 20, 2020

DELIVERED VIA EMAIL; DATE STAMP REQUESTED

Eileen Sobeck, Executive Director
California State Water Resources Control Board
1001 "I" Street, 14th Floor
Sacramento, CA 95814

**Re: La Grange Hydroelectric Project, FERC Project No. 14581
Third Request for Water Quality Certification**

Dear Director Sobeck:

On January 26 2018, Turlock Irrigation District and Modesto Irrigation District (collectively, the "Districts") filed with the State Water Resources Control Board ("SWRCB") an original request for water quality certification pursuant to Section 401 of the Clean Water Act, 33 U.S.C. § 1341, in support of the Districts' October 11, 2017 application before the Federal Energy Regulatory Commission ("FERC") for an original license for the La Grange Hydroelectric Project No. 14581 ("La Grange Project") (*see* Attachment A). The request for water quality certification was filed in accordance with Title 23, Division 3, Chapter 28, Article 4, Sections 3855 and 3856 of the California Code of Regulations. The SWRCB acknowledged receipt of the Districts' request for water quality certification on February 15, 2018 (*see* Attachment A). On January 24, 2019, the SWRCB issued a letter notifying the Districts' that the request for water quality certification for the La Grange Project was denied without prejudice (*see* Attachment A).

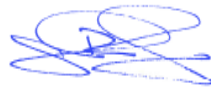
On April 22, 2019, the Districts filed with the SWRCB a second request for water quality certification in support of the Districts' October 11, 2017 application for license (*see* Attachment B). On May 21, 2019, the SWRCB acknowledged receipt of the Districts' second request for certification (*see* Attachment B). In a letter dated April 20, 2020, the SWRCB issued a second letter notifying the Districts' that the request for water quality certification for the La Grange Project was denied without prejudice (*see* Attachment B).

In order to ensure the Districts' October 11, 2017 license application remains in good standing before FERC, the Districts are filing with the SWRCB a third request for certification for the La Grange Project in support of the Districts' October 11, 2017 license application. If you have any questions regarding this request, please contact the undersigned. Please note that Mr. Cooke should be used as the contact for Turlock Irrigation District for all future correspondence.

Respectfully submitted,



Michael I. Cooke
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381
(209) 648-6819
micooke@tid.org



John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352
(209) 526-7564
john.davids@mid.org

Enclosures
cc: Chase Hildeburn, SWRCB

ATTACHMENT B

Board Acknowledgment Letters



ORIGINAL

EDMUND G. BROWN JR.
GOVERNORMATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

FEB 15 2018

Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Anna Brathwaite
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

FILED
SECRETARY OF THE
COMMISSION
2018 FEB 21 P 2:10
FEDERAL ENERGY
REGULATORY COMMISSION

Dear Mr. Boyd & Ms. Brathwaite:

REQUEST FOR WATER QUALITY CERTIFICATION FOR THE RELICENSING AND
LICENSING OF THE DON PEDRO AND LA GRANGE HYDROELECTRIC PROJECTS,
FEDERAL ENERGY REGULATORY COMMISSION PROJECT NOS. 2299 & 14581,
TUOLUMNE COUNTY, CALIFORNIA

Thank you for your letters requesting water quality certification (certification) pursuant to section 401(a)(1) of the Federal Clean Water Act (33 U.S.C. § 1341 et seq.) for relicensing and licensing of the Don Pedro and La Grange Hydroelectric Projects (collectively, Projects), Federal Energy Regulatory Commission (FERC) Project Nos. 2299 & 14581. The letters, received January 26, 2018, serve as a formal request for certification of the Projects. Certification is required prior to issuance of a new FERC license for the Projects. The Districts' letters initiate a one-year deadline from the date they were received for the State Water Resources Control Board (State Water Board) to act on the requests for certification. The certification is subject to completion of the environmental review process described below. The Districts will be subject to annual fees as specified in California Code of Regulations, title 23 (Cal. Code Regs. tit. 23), section 3833(b)(1). The new deadline for certification action is January 26, 2019.

Clean Water Act Section 401 Certification

Section 401 of the Federal Clean Water Act (CWA) requires any applicant for a federal license or permit, which may result in any discharge to navigable waters, to obtain certification from the State that the discharge will comply with the applicable water quality parameters in the CWA. Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act, the Central Valley Regional Water Quality Control Board adopted, and the State Water Board and United States Environmental Protection Agency approved, the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan)*. The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses for the Tuolumne River and its tributaries. If the Projects do not comply with one or more of the water quality objectives or criteria, the Districts must describe the actions that it will take to bring its Projects into compliance with the applicable water quality limits in order to fully protect and maintain the beneficial uses.

The applications for certification, together with the FERC license applications and other documents from the FERC files that are incorporated by reference in the certification applications, meet the application filing requirements specified in Cal. Code Regs., tit. 23, section 3856. The State Water Board may request additional information to clarify, amplify,

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Mr. Boyd & Ms. Brathwaite

- 2 -

FEB 15 2018

correct, or otherwise supplement the contents of the applications. Supplemental information may include evidence of compliance with the water quality control plan. (Cal. Code Regs. tit. 23, § 3836.)

A certification is issued when the State Water Board determines that an application for certification is complete and there is reasonable assurance the operation of the Project will comply with water quality standards and other appropriate requirements. The State Water Board must analyze potential Project-related environmental effects to the Tuolumne River prior to making a determination that continued operation of the Projects will be protective of the designated beneficial uses of the watershed.

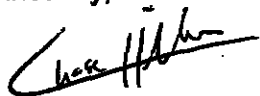
California Environmental Quality Act

Issuance of a certification is a discretionary action that requires the State Water Board to comply with the California Environmental Quality Act (CEQA). In this case, the Districts are the lead agency for the purpose of compliance with the requirements of CEQA.

State Water Board staff appreciates the continued cooperation of the Districts and looks forward to working with you on these Projects. Should you have questions regarding this matter, please contact me at (916) 323-0358 or by email at chase.hildeburn@waterboards.ca.gov. Written correspondence should be addressed as follows:

State Water Resources Control Board
Division of Water Rights
Attn: Chase Hildeburn
P.O. Box 2000
Sacramento, CA 95814

Sincerely,



Chase Hildeburn, WRCE
Water Quality Certification Program
Division of Water Rights

cc: Mr. Tomás Torres, Director
U.S. Environmental Protection Agency
Region 9, Water Division
75 Hawthorne Street
San Francisco, CA 94105

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

Ms. Pamela Creedon, Executive Officer
Central Valley RWQCB
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670



State Water Resources Control Board

May 21, 2019

Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mr. John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

Dear Mr. Boyd & Mr. Davids:

REQUEST FOR WATER QUALITY CERTIFICATION FOR THE RELICENSING OF THE DON PEDRO HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2299, TUOLUMNE COUNTY

Thank you for your letter requesting water quality certification (certification) pursuant to section 401 of the Federal Clean Water Act (CWA) (33 U.S.C. § 1341) for relicensing of the Don Pedro Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) Project No. 2299. Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, Districts) are co-licensees of the Project. The State Water Resources Control Board (State Water Board) received your new request for water quality certification on April 22, 2019. Certification is required prior to issuance of a new FERC license for the Project. The Districts' new request initiates a one-year deadline from the date it was received for the State Water Board to grant or deny the request for certification. Thus, the deadline for certification action is April 22, 2020.

The certification is subject to completion of the environmental review process described below. In addition, the Districts are subject to annual fees as specified in California Code of Regulations, title 23, section 3833.1.

Clean Water Act Section 401 Certification

Section 401 of the CWA requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters, to obtain certification from the State that the discharge will comply with the applicable water quality requirements, including the requirements of section 303 of the Clean Water Act for water quality standards and implementation plans, "or any other appropriate requirement of State law." (Clean Water Act § 401(d), 33 U.S.C. § 1341(d).) Conditions of certification shall become a condition of any federal license or permit subject to certification.

The application for certification, together with the FERC license application and other documents from the FERC files that are incorporated by reference in the certification application, meet the application filing requirements specified in California Code of Regulations, title 23, section 3856. The State Water Board may request additional information to clarify, amplify, correct, or otherwise supplement the contents of the applications.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 J Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

A certification is issued when the State Water Board determines that an application for certification is complete and there is reasonable assurance the operation of the Project will comply with water quality standards and other appropriate requirements of state law. The State Water Board must analyze potential Project-related environmental effects to the Tuolumne River prior to making a determination that continued operation of the Project will be protective of the designated beneficial uses of the watershed.

California Environmental Quality Act

Issuance of a certification is a discretionary action that requires the State Water Board to comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Districts are the lead agencies for the purpose of CEQA compliance and they have not begun the CEQA process for the Project. As a responsible agency, the State Water Board relies on the environmental document prepared by the lead agency but makes its own determination as to whether and with what conditions to grant the certification, taking into consideration the information provided in the lead agency's document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).) Under state law, the State Water Board cannot issue a certification for the Project until the Districts comply with CEQA and the State Water Board's own CEQA process is complete. If a certification application is complete, but CEQA requires review of a final environmental document before issuing an approval and the necessary document is not available before the federal period for certification will expire, the State Water Board will deny the certification without prejudice. (Cal. Code Regs. tit. 23, §§ 3836, subd. (c); 3837, subd. (b)(2).)

Water Quality Control Plans

Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), the Central Valley Regional Water Quality Control Board adopted, and the State Water Board and United States Environmental Protection Agency approved, the *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan)*. The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses for the Tuolumne River and its tributaries.

On December 12, 2018, the State Water Board adopted amendments to the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) for the Lower San Joaquin River and Southern Delta*. On February 25, 2019, the Office of Administrative Law approved these amendments to the Bay-Delta Plan. The Bay-Delta Plan establishes narrative and numeric Lower San Joaquin River flow objectives for the protection of fish and wildlife beneficial uses. Of note, the numeric flow objectives require a percentage of unimpaired flow from February through June from each of the Stanislaus, Tuolumne, and Merced Rivers to protect fish and wildlife beneficial uses.

The *Basin Plan* and *Bay-Delta Plan* are water quality control plans that establish water quality standards and other appropriate requirements of state law that must be considered by the State Water Board in determining whether to grant certification. The State Water Board may request supplemental information that includes evidence of compliance with appropriate requirements of a water quality control plan. (Cal. Code Regs. tit. 23, § 3836, subd. (a).)

State Water Board staff appreciates the continued cooperation of the Districts and looks forward to working together on this Project. Should you have questions regarding this matter, please

contact me at (916) 323-0358 or by email at Chase.Hildeburn@waterboards.ca.gov. Written correspondence should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Chase Hildeburn, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,

ORIGINAL SIGNED BY

Chase Hildeburn, WRCE
Water Quality Certification Unit
Division of Water Rights

Mr. Tomás Torres, Director
U.S. Environmental Protection Agency
Region 9, Water Division
75 Hawthorne Street
San Francisco, CA 94105

Mr. Patrick Pulupa, Executive Officer
Regional Water Quality Control Board
Central Valley Region 5
Sacramento Office
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

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

Kimbely Ognisty, Partner
Winston & Strawn LLP
1700 K Street, N.W.
Washington DC 20006-3817



State Water Resources Control Board

May 21, 2019

Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mr. John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

Dear Mr. Boyd & Mr. Davids:

REQUEST FOR WATER QUALITY CERTIFICATION FOR THE LICENSING OF THE LA GRANGE HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 14581, TUOLUMNE AND STANISLAUS COUNTIES

Thank you for your letter requesting water quality certification (certification) pursuant to section 401 of the Federal Clean Water Act (CWA) (33 U.S.C. § 1341) for licensing of the La Grange Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) Project No. 14581. Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, Districts) are co-licensees of the Project. The State Water Resources Control Board (State Water Board) received your new request for water quality certification on April 22, 2019. Certification is required prior to issuance of a FERC license for the Project. The Districts' new request initiates a one-year deadline from the date it was received for the State Water Board to grant or deny the request for certification. Thus, the new deadline for certification action is April 22, 2020.

The certification is subject to completion of the environmental review process described below. In addition, the Districts are subject to annual fees as specified in California Code of Regulations, title 23, section 3833.1.

Clean Water Act Section 401 Certification

Section 401 of the CWA requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters, to obtain certification from the State that the discharge will comply with the applicable water quality requirements, including the requirements of section 303 of the Clean Water Act for water quality standards and implementation plans, "or any other appropriate requirement of State law." (Clean Water Act § 401(d), 33 U.S.C. § 1341(d).) Conditions of certification shall become a condition of any federal license or permit subject to certification.

The application for certification, together with the FERC license application and other documents from the FERC files that are incorporated by reference in the certification application, meet the application filing requirements specified in California Code of Regulations, title 23, section 3856. The State Water Board may request additional information to clarify, amplify, correct, or otherwise supplement the contents of the applications.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

A certification is issued when the State Water Board determines that an application for certification is complete and there is reasonable assurance the operation of the Project will comply with water quality standards and other appropriate requirements of state law. The State Water Board must analyze potential Project-related environmental effects to the Tuolumne River prior to making a determination that continued operation of the Project will be protective of the designated beneficial uses of the watershed.

California Environmental Quality Act

Issuance of a certification is a discretionary action that requires the State Water Board to comply with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Districts are the lead agencies for the purpose of CEQA compliance and they have not begun the CEQA process for the Project. As a responsible agency, the State Water Board relies on the environmental document prepared by the lead agency, but makes its own determination as to whether and with what conditions to grant the certification, taking into consideration the information provided in the lead agency's document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).) Under state law, the State Water Board cannot issue a certification for the Project until the Districts comply with CEQA and the State Water Board's own CEQA process is complete. If a certification application is complete, but CEQA requires review of a final environmental document before issuing an approval and the necessary document is not available before the federal period for certification will expire, the State Water Board will deny the certification without prejudice. (Cal. Code Regs. tit. 23, §§ 3836, subd. (c); 3837, subd. (b)(2).)

Water Quality Control Plans

Under section 303 of the CWA and under the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.), the Central Valley Regional Water Quality Control Board adopted, and the State Water Board and United States Environmental Protection Agency approved, the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins (Basin Plan). The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses for the Tuolumne River and its tributaries.

On December 12, 2018, the State Water Board adopted amendments to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) for the Lower San Joaquin River and Southern Delta. On February 25, 2019, the Office of Administrative Law approved these amendments to the Bay-Delta Plan. The Bay-Delta Plan establishes narrative and numeric Lower San Joaquin River flow objectives for the protection of fish and wildlife beneficial uses. Of note, the numeric flow objectives require a percentage of unimpaired flow from February through June from each of the Stanislaus, Tuolumne, and Merced Rivers to protect fish and wildlife beneficial uses.

The Basin Plan and Bay-Delta Plan are water quality control plans that establish water quality standards and other appropriate requirements of state law that must be considered by the State Water Board in determining whether to grant certification. The State Water Board may request supplemental information that includes evidence of compliance with appropriate requirements of a water quality control plan. (Cal. Code Regs. tit. 23, § 3836, subd. (a).)

State Water Board staff appreciates the continued cooperation of the Districts and looks forward to working together on this Project. Should you have questions regarding this matter, please

contact me at (916) 323-0358 or by email at Chase.Hildeburn@waterboards.ca.gov. Written correspondence should be addressed as follows: State Water Resources Control Board, Division of Water Rights, Attn: Chase Hildeburn, P.O. Box 2000, Sacramento, CA 95812-2000.

Sincerely,

ORIGINAL SIGNED BY

Chase Hildeburn, WRCE
Water Quality Certification Unit
Division of Water Rights

cc: Mr. Tomás Torres, Director
U.S. Environmental Protection Agency
Region 9, Water Division
75 Hawthorne Street
San Francisco, CA 94105

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

Mr. Patrick Pulupa, Executive Officer
Regional Water Quality Control Board
Central Valley Region 5
Sacramento Office
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

Kimbely Ognisty, Partner
Winston & Strawn LLP
1700 K Street, N.W.
Washington DC 20006-3817



GAVIN NEWSOM
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

August 18, 2020

Michael I. Cooke
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mr. John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

**Don Pedro Hydroelectric Project
Federal Energy Regulatory Commission Project No. 2299
Tuolumne County
Tuolumne River**

**SUBJECT: APPLICATION FOR WATER QUALITY CERTIFICATION FOR THE
RELICENSING OF THE DON PEDRO HYDROELECTRIC PROJECT**

Dear Mr. Cooke & Mr. Davids:

On July 20, 2020, the State Water Resources Control Board (State Water Board), Division of Water Rights received a water quality certification (certification) application from Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, Districts) for the relicensing of the Don Pedro Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) Project No. 2299, pursuant to section 401 of the Federal Clean Water Act (CWA) (33 U.S.C. § 1341). Certification is required prior to issuance of a new FERC license for the Project. This letter serves as notification that the Project's certification application is complete and pending before the State Water Board in accordance with section 3835, title 23, of the California Code of Regulations. The Districts' application initiates a one-year deadline from the date it was received for the State Water Board to grant or deny the request for certification. Thus, the deadline for certification action is July 20, 2021.

The certification is subject to completion of the environmental review process described below. In addition, the Districts are subject to annual fees as specified in California Code of Regulations, title 23, section 3833.1.

Clean Water Act Section 401 Certification

Section 401 of the CWA requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters, to obtain certification from the State that the discharge will comply with the applicable water quality requirements, including the requirements of section 303 of the Clean Water Act for water quality standards and implementation plans, “or any other appropriate requirement of State law.” (Clean Water Act § 401(d), 33 U.S.C. § 1341(d).) Conditions of certification shall become a condition of any federal license or permit subject to certification.

The application for certification, together with the FERC license application and other documents from the FERC files that are incorporated by reference in the certification application, meet the application filing requirements specified in California Code of Regulations, title 23, section 3856. The State Water Board may request additional information to clarify, amplify, correct, or otherwise supplement the contents of the applications.

A certification is issued when the State Water Board determines that an application for certification is complete and there is reasonable assurance the operation of the Project will comply with water quality standards and other appropriate requirements of state law. An application may be denied under certain circumstances, including if the activity will not comply with applicable water quality standards and other requirements (Cal Code Regs., tit. 23, 3837, subd. (b)(1)). As submitted, the proposed activity remains unchanged and does not comply with such requirements. State Water Board staff is available to discuss compliance with water quality standards and other requirements with you if desired.

California Environmental Quality Act

Issuance of a certification is a discretionary action under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Districts are the lead agency for the purpose of CEQA compliance and have not yet begun the CEQA process for the project. As a responsible agency, the State Water Board relies on the environmental document prepared by the lead agency but makes its own determination as to whether and with what conditions to grant the certification, taking into consideration the information provided in the lead agency’s document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).)

Water Quality Control Plans

The State Water Board's certification must ensure compliance with water quality standards and appropriate requirements, including those included in the Central Valley Regional Water Board's Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin (SR/SJR Basin Plan) (Central Valley Regional Board, 2018) and the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) (State Water Board, 2018). Water quality control plans designate the beneficial uses of water that are to be protected (such as

municipal and industrial, agricultural, and fish and wildlife beneficial uses), water quality objectives for the reasonable protection of the beneficial uses and the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Wat. Code, §§ 13241, 13050, subds. (h), (l).) The beneficial uses, together with the water quality objectives contained in the water quality control plans, and applicable federal anti-degradation requirements, constitute California's water quality standards for purposes of the Clean Water Act. The SR/SJR Basin Plan and the Bay-Delta Plan designate the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses for the Tuolumne River and its tributaries.

The State Water Board may request additional information to supplement the application, including evidence of compliance with appropriate requirements of the Basin Plan or Bay-Delta Plan. (Cal. Code Regs., tit. 23, § 3836.).

State Water Board staff appreciates the continued cooperation of TID and MID and looks forward to continuing to work together on this Project. If you have questions regarding this letter, please contact Eric Bradbury, Project Manager, at (916) 327-8682 or by email at Eric.Bradbury@waterboards.ca.gov. Written correspondence or inquiries should be mailed to: State Water Resources Control Board – Division of Water Rights; Attn: Eric Bradbury; P.O. Box 2000; Sacramento, CA 95812-2000.

Sincerely,

Eric Bradbury
Environmental Scientist
Water Quality Certification Program
Division of Water Rights

cc: Mr. Tomás Torres, Director
U.S. Environmental Protection Agency
Region 9, Water Division
75 Hawthorne Street
San Francisco, CA 94105

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

Mr. Patrick Pulupa, Executive Officer
Central Valley RWQCB
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670



State Water Resources Control Board

August 18, 2020

Michael I. Cooke
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mr. John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

**La Grange Hydroelectric Project
Federal Energy Regulatory Commission Project No. 14581
Tuolumne and Stanislaus Counties
Tuolumne River**

**SUBJECT: APPLICATION FOR WATER QUALITY CERTIFICATION FOR THE
RELICENSING OF THE LA GRANGE HYDROELECTRIC PROJECT**

Dear Mr. Cooke and Mr. Davids:

On June 20, 2020, the State Water Resources Control Board (State Water Board), Division of Water Rights received a water quality certification (certification) application from Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, Districts) for the relicensing of the La Grange Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) Project No. 14581, pursuant to section 401 of the Federal Clean Water Act (CWA) (33 U.S.C. § 1341). Certification is required prior to issuance of a new FERC license for the Project. This letter serves as notification that the Project's certification application is complete and pending before the State Water Board in accordance with section 3835, title 23, of the California Code of Regulations. The Districts' application initiates a one-year deadline from the date it was received for the State Water Board to grant or deny the request for certification. Thus, the deadline for certification action is July 20, 2021.

The certification is subject to completion of the environmental review process described below. In addition, the Districts are subject to annual fees as specified in California Code of Regulations, title 23, section 3833.1.

Clean Water Act Section 401 Certification

Section 401 of the CWA requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters, to obtain certification from the State that the discharge will comply with the applicable water quality requirements, including the requirements of section 303 of the Clean Water Act for water quality standards and implementation plans, “or any other appropriate requirement of State law.” (Clean Water Act § 401(d), 33 U.S.C. § 1341(d).) Conditions of certification shall become a condition of any federal license or permit subject to certification.

The application for certification, together with the FERC license application and other documents from the FERC files that are incorporated by reference in the certification application, meet the application filing requirements specified in California Code of Regulations, title 23, section 3856. The State Water Board may request additional information to clarify, amplify, correct, or otherwise supplement the contents of the applications.

A certification is issued when the State Water Board determines that an application for certification is complete and there is reasonable assurance the operation of the Project will comply with water quality standards and other appropriate requirements of state law. An application may be denied under certain circumstances, including if the activity will not comply with applicable water quality standards and other requirements (Cal Code Regs., tit. 23, 3837, subd. (b)(1)). As submitted, the proposed activity remains unchanged and does not comply with such requirements. State Water Board staff is available to discuss compliance with water quality standards and other requirements with you if desired.

California Environmental Quality Act

Issuance of a certification is a discretionary action under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Districts are the lead agency for the purpose of CEQA compliance and have not yet begun the CEQA process for the Project. As a responsible agency, the State Water Board relies on the environmental document prepared by the lead agency but makes its own determination as to whether and with what conditions to grant the certification, taking into consideration the information provided in the lead agency’s document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).)

Water Quality Control Plans

The State Water Board's certification must ensure compliance with water quality standards and appropriate requirements, including those included in the Central Valley Regional Water Board's Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin (SR/SJR Basin Plan) (Central Valley Regional Board, 2018) and the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan) (State Water Board, 2018). Water quality control plans designate the beneficial uses of water that are to be protected (such as

municipal and industrial, agricultural, and fish and wildlife beneficial uses), water quality objectives for the reasonable protection of the beneficial uses and the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Wat. Code, §§ 13241, 13050, subds. (h), (l).) The beneficial uses, together with the water quality objectives contained in the water quality control plans, and applicable federal anti-degradation requirements, constitute California's water quality standards for purposes of the Clean Water Act. The SR/SJR Basin Plan and the Bay-Delta Plan designate the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses for the Tuolumne River, and its tributaries.

The State Water Board may request additional information to supplement the application, including evidence of compliance with appropriate requirements of the SR/SJR Basin Plan or Bay-Delta Plan (Cal. Code Regs., tit. 23, § 3836.).

State Water Board staff appreciates the continued cooperation of TID and MID and looks forward to continuing to work together on this Project. If you have questions regarding this letter, please contact Eric Bradbury, Project Manager, at (916) 327-8682 or by email at Eric.Bradbury@waterboards.ca.gov. Written correspondence or inquiries should be mailed to: State Water Resources Control Board – Division of Water Rights; Attn: Eric Bradbury; P.O. Box 2000; Sacramento, CA 95812-2000.

Sincerely,

Eric Bradbury
Environmental Scientist
Water Quality Certification Program
Division of Water Rights

cc: Mr. Tomás Torres, Director
U.S. Environmental Protection Agency
Region 9, Water Division
75 Hawthorne Street
San Francisco, CA 94105

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

Mr. Patrick Pulupa, Executive Officer
Regional Water Quality Control Board
Central Valley Region 5
Sacramento Office
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6114

ATTACHMENT C

Board Denial-Without-Prejudice Letters



ORIGINAL

FILED
SECRETARY OF THE
COMMISSION



GAVIN NEWSOM
GOVERNOR

JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

2019 FEB -6 A 8 13

JAN 24 2019

FEDERAL ENERGY
REGULATORY COMMISSION

Mr. Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mr. John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

Dear Mr. Boyd and Mr. Davids:

DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION FOR DON PEDRO HYDROELECTRIC PROJECT AND LA GRANGE HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECTS NOS. 2299 AND 14581, TUOLUMNE COUNTY

On January 26, 2018, the State Water Resources Control Board (State Water Board) received a request from Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, Districts) for water quality certification (certification) pursuant to section 401(a)(1) of the Federal Clean Water Act (33 USC § 1341 et seq.) for the relicensing of the Don Pedro Hydroelectric Project and licensing of the La Grange Hydroelectric Project (collectively, Projects), Federal Energy Regulatory Commission (FERC) Projects No. 2299 and 14581. Waterbodies associated with the Projects include the Tuolumne River and its tributaries.

In taking certification action, the State Water Board must either: (1) issue an appropriately conditioned water quality certification; or (2) deny certification. (Cal. Code Regs., tit. 23, § 3859.) A water quality certification may be issued if it is determined that there is reasonable assurance that an activity will comply with state and federal water quality standards and that the appropriate environmental documents have been adopted to support certification and meet the requirements of the California Environmental Quality Act (CEQA). However, when a proposed project's compliance with water quality standards is not yet determined, but the application suffers from a procedural inadequacy, the State Water Board may deny certification without prejudice. (Cal. Code Regs., tit. 23, § 3837, subd. (b)(2).)

At this time, FERC has not yet completed its National Environmental Policy Act (NEPA) environmental analysis for the Projects. Additionally, the Districts, as lead agencies for the Projects, have not begun the CEQA process. Without completion of the CEQA process, the State Water Board cannot issue a certification.

The Districts are hereby notified that the January 26, 2018 request for certification for the Projects is denied without prejudice, effective the date of this letter. The denial without prejudice carries with it no judgment on the technical merits of the activity. In order to maintain an active certification application, the Districts will need to request certification for the Projects.

FELICIA MARCUS, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Mr. Boyd and Mr. Davids

- 2 -

JAN 24 2019

If you have questions regarding this letter, please contact Chase Hildeburn, Projects Manager in the Water Quality Certification Program of the Division of Water Rights, at (916) 323-0358 or at Chase.Hildeburn@waterboards.ca.gov. Written correspondence should be directed to: State Water Resources Control Board; Division of Water Rights – Water Quality Certification Program; Attn: Chase Hildeburn; P.O. Box 2000; Sacramento, CA 95812-2000.

Sincerely,



Eileen Sobeck
Executive Director

cc: Mr. Tomás Torres, Director
U.S. Environmental Protection Agency
Region 9, Water Division
75 Hawthorne Street
San Francisco, CA 94105

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

Ms. Patrick Pulupa, Executive Officer
Central Valley RWQCB
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Interested Parties Mailing List



State Water Resources Control Board

April 20, 2020

Mr. Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mr. John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

**Don Pedro Hydroelectric Project
Federal Energy Regulatory Commission Project No. 2299
Tuolumne County**

SUBJECT: DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION

Dear Mr. Boyd and Mr. Davids:

On April 22, 2019, the Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, Districts) submitted to the State Water Resources Control Board (State Water Board or Board) a new request for water quality certification (certification) pursuant to section 401(a)(1) of the Federal Clean Water Act (33 U.S.C. § 1341 et seq.) for the relicensing of the Don Pedro Hydroelectric Project (Project). Waterbodies associated with the Project include the Tuolumne River and its tributaries.

After review of the application for certification and other relevant information, the State Water Board must either: (1) issue an appropriately conditioned certification; or (2) deny certification. (Cal. Code Regs., tit. 23, § 3859.) The State Water Board may issue certification if the Board determines that an activity will comply with applicable water quality standards and other appropriate requirements. Prior to taking certification action, however, the requirements of the California Environmental Quality Act (CEQA) must be met, including preparation and review of any necessary environmental documents. Absent CEQA compliance, the State Water Board will deny the certification without prejudice. (Cal. Code Regs., tit. 23, §§ 3836, subd. (c); 3837, subd. (b)(2).)

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Mr. Boyd and Mr. Davids

- 2 -

April 20, 2020

The Districts are the lead agencies for the Project for purposes of CEQA compliance, but they have not begun the CEQA process. As a responsible agency, the State Water Board relies on the environmental document prepared by the lead agency, but makes its own determination as to whether and with what conditions to grant the certification, taking into consideration the information provided in the lead agency's document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).) The State Water Board may not issue a certification until the requirements for compliance with CEQA are met. Additionally, the Federal Energy Regulatory Commission has not yet completed its National Environmental Policy Act environmental process for the Project.

The Districts are hereby notified that the April 22, 2019 request for water quality certification for the Project is denied without prejudice, effective the date of this letter. The State Water Board encourages the Districts to submit a new request for certification.

Further, at this time, the proposed activity does not comply with applicable water quality standards and other appropriate requirements. Noncompliance with these requirements may be grounds for denial of an application for certification. (Cal. Code Regs., tit. 23, 3837, subd. (b)(1).) State Water Board staff is available to discuss compliance with water quality standards and other requirements with you.

If you have questions regarding this letter, please contact Chase Hildeburn in the Water Quality Certification Program of the Division of Water Rights, at (916) 323-0358 or at Chase.Hildeburn@waterboards.ca.gov. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Chase Hildeburn
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

for

Eileen Sobeck
Executive Director

cc: Mr. Tomás Torres, Director
U.S. Environmental Protection Agency
Region 9, Water Division
75 Hawthorne Street
San Francisco, CA 94105

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

Mr. Boyd and Mr. Davids

- 3 -

April 20, 2020

Mr. Patrick Pulupa, Executive Officer
Central Valley RWQCB
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Interested Parties Mailing List

State Water Resources Control Board

April 20, 2020

Mr. Steve Boyd
Turlock Irrigation District
P.O. Box 949
Turlock, CA 95381

Mr. John B. Davids
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

**La Grange Hydroelectric Project
Federal Energy Regulatory Commission Project No. 14581
Tuolumne County**

SUBJECT: DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION

Dear Mr. Boyd and Mr. Davids:

On April 22, 2019, the Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, Districts) submitted to the State Water Resources Control Board (State Water Board or Board) a new request for water quality certification (certification) pursuant to section 401(a)(1) of the Federal Clean Water Act (33 U.S.C. § 1341 et seq.) for the licensing of the La Grange Hydroelectric Project (Project). Waterbodies associated with the Project include the Tuolumne River and its tributaries.

After review of the application for certification and other relevant information, the State Water Board must either: (1) issue an appropriately conditioned certification; or (2) deny certification. (Cal. Code Regs., tit. 23, § 3859.) The State Water Board may issue certification if the Board determines that an activity will comply with applicable water quality standards and other appropriate requirements. Prior to taking certification action, however, the requirements of the California Environmental Quality Act (CEQA) must be met, including preparation and review of any necessary environmental documents. Absent CEQA compliance, the State Water Board will deny the certification without prejudice. (Cal. Code Regs., tit. 23, §§ 3836, subd. (c); 3837, subd. (b)(2).)

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

The Districts are the lead agencies for the Project for purposes of CEQA compliance, but they have not begun the CEQA process. As a responsible agency, the State Water Board relies on the environmental document prepared by the lead agency, but makes its own determination as to whether and with what conditions to grant the certification, taking into consideration the information provided in the lead agency's document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).) The State Water Board may not issue a certification until the requirements for compliance with CEQA are met. Additionally, the Federal Energy Regulatory Commission has not yet completed its National Environmental Policy Act environmental process for the Project.

The Districts are hereby notified that the April 22, 2019 request for water quality certification for the Project is denied without prejudice, effective the date of this letter. The State Water Board encourages the Districts to submit a new request for certification.

Further, at this time, the proposed activity does not comply with applicable water quality standards and other appropriate requirements. Noncompliance with these requirements may be grounds for denial of an application for certification. (Cal. Code Regs., tit. 23, 3837, subd. (b)(1).) State Water Board staff is available to discuss compliance with water quality standards and other requirements with you.

If you have questions regarding this letter, please contact Chase Hildeburn in the Water Quality Certification Program of the Division of Water Rights, at (916) 323-0358 or at Chase.Hildeburn@waterboards.ca.gov. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Chase Hildeburn
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

for

Eileen Sobeck
Executive Director

cc: Mr. Tomás Torres, Director
U.S. Environmental Protection Agency
Region 9, Water Division
75 Hawthorne Street
San Francisco, CA 94105

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

Mr. Patrick Pulupa, Executive Officer
Central Valley RWQCB
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Interested Parties Mailing List

ATTACHMENT D

23 Cal. Code of Regs. Sec. 3836

Barclays Official California Code of Regulations Currentness

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 28. Certifications

Article 1. General Provisions

23 CCR § 3836

§ 3836. Additional Information.

(a) Once a certifying agency determines that an application is complete, it may request further information from the applicant. Such information must clarify, amplify, correct, or otherwise supplement the contents of a complete application in order for the certifying agency to determine whether a certification should be issued. Supplemental information may include evidence of compliance with appropriate requirements of a water quality control plan.

(b) If an application is determined to be complete by the certifying agency but supplemental information is requested by the certifying agency pursuant to Subsection (a) of this Section, an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the certifying agency can receive and properly review the supplemental information, the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification.

(c) If an application is determined to be complete by the certifying agency, but CEQA requires that the certifying agency review a final environmental document before taking a certification action, an extension of the federal period for certification cannot be obtained, and the federal period for certification will expire before the certifying agency can receive and properly review the necessary environmental documentation, the certifying agency shall deny without prejudice certification for any discharge resulting from the proposed activity unless the applicant in writing withdraws the request for certification.

Note: Authority cited: [Section 1058, Water Code](#). Reference: [26 USC Section 169](#), [40 CFR Section 20](#); [15 USC Section 636](#), [40 CFR Section 21](#); [33 USC Section 1341](#); [40 CFR Section 121.2](#); [Sections 13160 and 13160.1, Water Code](#); [Sections 44533 and 44539, Health and Safety Code](#); [Sections 21100 and 21100.2, \(CEQA\) Public Resources Code](#); and [Section 15111, State CEQA Guidelines](#).

HISTORY

1. Amendment of section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

This database is current through 9/18/20 Register 2020, No. 38

23 CCR § 3836, 23 CA ADC § 3836

ATTACHMENT E

Board FAQ



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401 Frequently Asked Questions

What is 401 Water Quality Standards Certification and how do I know if I need it?

Section 401(a)(1) of the Clean Water Act (CWA) specifies that any applicant for a Federal license or permit to conduct any activity, including but not limited to the construction or operation of facilities that may result in any discharge into navigable waters, shall provide the federal licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable water at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. Succinctly, this means that in California, the Regional Board must certify that the project will comply with water quality standards (defined below).

Permits or Licenses requiring 401 Certification

- Permits issued by the U.S. Army Corps of Engineers (ACOE) under Section 404 of the Clean Water Act (in California, this is the most common type of permit for which certification is necessary)
- National Pollutant Discharge Elimination System (NPDES) permit issued by the Environmental Protection Agency (EPA) under Section 402 of the Clean Water Act
- Permits issued under Sections 9 and 10 of the Rivers and Harbors Act (for activities that may affect navigation)
- Licenses for hydroelectric power plants issued by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act
- Licenses issued by the Nuclear Regulatory Commission

2

Water quality standards include

Beneficial Uses - defined as the uses of water necessary for the survival or well being of man, plants, and wildlife. Beneficial uses are designated in the Basin Plan for water bodies within the Region. Examples include municipal and domestic supply, water contact recreation, wildlife habitat, and warm water aquatic habitat.

Water Quality Objectives - numeric and/or narrative limits or bans on substances, water characteristics, and activities.

Antidegradation Policy - requires that existing high-quality waters be protected and maintained, unless the need to lower water quality is justified.

The Clean Water Act defines navigable waters as “waters of the United States.” Waters of the United States are defined in 33 CFR (Code of Federal Regulations) Section 328.3 (a) as:

1. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation, or destruction of which could affect interstate or foreign commerce . . .
4. All impoundments of waters otherwise defined as waters of the United States under the definition [except subsection (a)(3) waters];
5. Tributaries to waters identified in paragraphs (a)(1)[, (2), and] (4) of this section;
6. The territorial seas; and
7. Wetlands adjacent to waters (other than waters which are themselves wetlands) identified in paragraphs (a)(1)[,(2), (4), (5), and] (6) of this section

Note: Clean Water Act Section 404/401 requirements may not apply to isolated, nonnavigable waters, pursuant to a recent (January 9, 2001) U.S. Supreme Court decision *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (531 US __, 121 S.Ct. 675 (2001), hereinafter “SWANCC”). Please contact the USACOE to determine whether the SWANCC decision affects your proposed project. ([USACOE press release](#)) It is important to note that even if Section 404/401 requirements do not apply, Regional Board requirements under state law for waste discharges to waters of the state must be satisfied. (SWANCC memo)

If you are not sure if you have a waters of the U.S. or waters of the state on your property, consult an expert; do not assume that you do not, as you may be subject to civil and criminal penalties if such waters are dredged or filled without authorization.

How can I get a 401 application?

Applications can be downloaded from the web, faxed to you, or picked up at the Regional Board's office. Applications can be downloaded in Word format from the following:

- Section 401 Water Quality Certification Application Form ([Word Format](#))

To request an application by fax, please email [Kai Dunn](#), 401 Program Manager, or phone (760) 776-8986. Applications may be picked up at the Regional Board's office located at 73-720 Fred Waring Dr., Suite 100, Palm Desert, CA 92260.

Are the 401 applications for all Regional Boards the same?

Each Regional Board has a different 401 application. You are responsible for submitting the correct application to the correct region. If you are unsure of which application to use, or if your project is on the border of two regions, please contact the Regional Board prior to submittal.

Do I need to submit a cover letter and fill out the form?

A cover letter including all the information detailed in the 401 Water Quality Standards Certification Application form can be submitted, or else the 401 Water Quality Standards Certification Application form can be filled in and submitted.

What are the timelines for processing a 401 application?

Once an application has been deemed complete, the Regional Board has between 60 days and 1 year in which to make a decision. According to regulations of the United States Army Corps of Engineers (Corps), the State has 60 days from the date of receipt of a valid request for water quality standards certification (33 CFR Section 325.2 (b) (1) (ii)). The district engineer may specify a longer (up to one year) or shorter time, if he or she determines that a longer or shorter time is reasonable (33 CFR Section 325.2 (b) (1) (ii)). If processing and review of the 401 application will take more than 60 days, the Regional Board will request additional time from the Corps. This request usually occurs when an applicant has not supplied requested information or the project is complex and issues have not been resolved. Please note that even when an application has been deemed complete, the Regional Board can request additional documentation, if necessary, to clarify impacts, mitigation, or other aspects of the application. If the Corps does not grant a time extension, the Regional Board has the option of denial without prejudice. This is not a reflection on the project, but a means to stop the clock until the required information has been provided.

As required by 23 California Code of Regulations (CCR) § 3858(a), the Regional Board is required to have a minimum 21 day public comment period before any action is taken on a 401 application. The period closes when the Regional Board acts on the 401 application. The public comment period does not close after a certain number of days because proposed projects tend to change through the 401 process and the public is allowed to review and comment on the changed project. The public comment period starts as soon as an application has been received.

Who should I contact with questions regarding 401 Water

Quality Standards Certification?

For questions regarding the 401 process, please email [Kai Dunn](#), 401 Program Manager, or phone (760) 776-8986. For questions regarding a specific project, please contact the person handling that project, if known.

When should I submit my 401 application?

Applications are typically submitted concurrently with submittals to the Corps and California Department of Fish and Game (CDFG). The Regional Board encourages you to submit a complete application as soon as possible. Due to the varying degree of complexity among 401 applications, the time necessary to review and process an application can vary greatly. It is to the applicant's advantage to submit a 401 application concurrently with 404 applications and to hold joint meetings with all resource agencies, which will help facilitate communication and coordination between the applicant and the agencies. Also, a 401 certification is required before a 404 permit or authorization can be issued; therefore, it is in the applicant's best interest to submit a complete application as soon as possible.

What is the public notification period and is it the same as the Army Corps of Engineers public notice period?

The California Code of Regulations, Section 3858(a) states "The executive director or the executive officer with whom an application for certification is filed shall provide public notice of an application at least twenty-one (21) days before taking certification action on the application, unless the public notice requirement has been adequately satisfied by the applicant or federal agency. If the applicant or federal agency provides public notice, it shall be in a manner and to an extent fully equivalent to that normally provided by the certifying agency. If an emergency requires that certification be issued in less than 21 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously."

The Regional Board's public notice period is separate and distinct from the Corps' public notice period. Public comments will be accepted on a pending 401 application until an action is taken. An action will not occur within the 21-day comment period unless the project is an emergency.

What are the fees for processing a 401 application?

Per 23 CCR § 2200(e) and 23 CCR § 3833(b)(2), the fees for 401 Water Quality Standards Certification may be found by using the online [Fee Calculator](#).

All fees should be made payable to the Colorado River Basin Regional Water Quality Control Board and submitted to 73-720 Fred Waring Drive, Palm Desert, CA 92260, Attn: 401 Certification.

What are the requirements for an application to be determined complete?

The “[Contents of a Complete 401 Application](#)” outlines everything that we anticipate will be necessary for a complete application. Note that in some cases, the Regional Board may request additional information even when an application has been deemed complete.

What other approvals might be necessary for impacting a waters of the U.S.?

The Army Corps of Engineers (ACOE): Call (213) 452-3425.

The regulatory authority of the Corps of Engineers for projects in waters of the U.S. is based on Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Section 404 of the Clean Water Act requires Corps authorization for work involving placement of fill or discharge of dredged materials into any “waters of the United States.” Section 10 of the Rivers and Harbors Act requires Corps authorization for work or structures in or affecting “navigable waters.” Corps jurisdiction extends up to the ordinary high water line for non-tidal waters and up to the line of high tide (for dredge or fill), or mean high water line (for work or structures) for tidal waters.

Types of Permits

Individual Permits

- Individual permits are issued following a full public interest review of an individual application for a Department of the Army permit. A public notice is distributed to all known interested persons. After evaluating all comments and information received, final decision on the application is made.
- The permit decision is generally based on the outcome of a public interest balancing process where the benefits of the project are balanced against the detriments. A permit will be granted unless the proposal is found to be contrary to the public interest.
- Processing time usually takes 60 to 120 days unless a public hearing is required or an environmental statement must be prepared.
- To apply for an individual permit, an application form must be completed. This application is available from all Corps regulatory offices.

Nationwide Permits

- A nationwide permit is a form of general permit which authorizes a category of activities throughout the nation. These permits are valid only if the conditions applicable to the permits are met. If the conditions cannot be met, a regional or individual permit will be required. Summaries of the nationwide permits are available.

Regional Permits

- Regional permits are issued by the District Engineer for a general category of activities when:
 1. The activities are similar in nature and cause minimal environmental impact (both individually and cumulatively), and
 2. The regional permit reduces duplication of regulatory control by State and Federal agencies.

California Department of Fish and Wildlife

- Please visit the [Habitat Conservation webpage](#) or phone the Region 6 office (Riverside, San Bernardino Counties) at (562) 590-5880 or the Region 5 office (Orange county) at (858) 467-4201 for more information.

The California Department of Fish and Wildlife requires a Streambed Alteration Agreement (SAA) for projects that will divert or obstruct the natural flow of water, change the bed, channel, or bank of any stream, or propose to use any material from a streambed. The SAA is subject to the California Environmental Quality Act (CEQA) and all information necessary for stream projects must be disclosed.

U.S. Fish and Wildlife Service

- Please visit the Carlsbad Fish and Wildlife Service Office's [Website](#) or phone (760) 431-9440 for more information.

The U. S. Fish and Wildlife Service reviews and comments on projects pursuant to the Fish and Wildlife Coordination Act, the Clean Water Act, and the National Environmental Policy Act. The Service's comments focus on the effects of projects on all fish and wildlife resources and the habitats that support those resources. Such projects may be, but are not limited to, flood control, urban and industrial development, habitat restoration activities, etc. The Service also reviews projects for their effects pursuant to the Federal Endangered Species Act (ESA, or Act). The Act, through Section 9, prohibits the take of any species listed as threatened or endangered pursuant to the Act without a specific exemption. The term "take" is broadly defined and if "take" is going to occur, a permit from the Service is required. If there is another Federal Agency involved then exemption from the "take" provisions of the Act can be achieved through a Section 7 process. If there is no Federal involvement, then the applicant develops a Habitat Conservation Plan (HCP) in order to apply for an incidental take permit under Section 10(a)(1)(B) of the ESA.

City and County Government Review. There may also be regulatory requirements associated with city and county ordinances. The applicant is responsible for knowing all the applicable rules and regulations, and for compliance with them. For more information, call your local Planning Department and provide them with the address of the property and Assessor Parcel Number (APN).

California Environmental Quality Act (CEQA) Review. The main purpose of CEQA review is to identify and prevent significant adverse environmental impacts from proposed projects. The agency with first

discretionary approval authority serves as the lead agency for CEQA purposes.

What is the Basin Plan and how can I get a copy?

Each of the nine Regional Boards within California is required to adopt a Water Quality Control Plan, or Basin Plan. Each Basin Plan is designed to preserve and enhance water quality and protect the beneficial uses of all regional waters. Specifically, the Basin Plan: (1) designates beneficial uses for surface and ground waters; (2) sets narrative and numerical objectives that must be attained or maintained to protect the designated beneficial uses and conform to the state's antidegradation policy; (3) describes implementation programs to meet the objectives and protect the beneficial uses of all waters in the region; and (4) describes surveillance and monitoring activities to evaluate the effectiveness of the Basin Plan.

Copies of the Basin Plan (Water Quality Control Plan for the Colorado River Basin Region - 1994) may be obtained by contacting the Regional Board at (760) 346-7491, or may be downloaded below:

- [Water Quality Control Plan for the Colorado River Basin Region](#) (Rev. June 2006)

What is the relationship between 401 and storm water construction regulations and requirements?

There is no regulatory connection between 401 Water Quality Standards Certification and construction storm water permits; in other words, one is not a requirement of the other. Some of the information developed for a Storm Water Pollution Prevention Plan (SWPPP) will be necessary for the 401 certification. For example, Best Management Practices (BMPs) to control urban runoff during construction and over the life of the project will need to be addressed during the 401 certification process as well as in the SWPPP. Submittal of a SWPPP to supply information for a 401 application does not satisfy construction storm water requirements.

What are the possible 401 decisions?

After review of the application, all relevant data, and any recommendations of a Regional Board, other state and federal agencies, and any interested person, the State Board's Executive Director, when acting as the State Board's designee, or the Regional Board Executive Officer issues certification or denies certification for any discharge resulting from a pertinent activity before the federal period for certification expires. Conditions must be added to any certification, if necessary, to ensure that all activities will comply with applicable water quality standards and other appropriate requirements. If certification is denied, the applicant is notified in writing of the denial and the reasons for the denial.

An application for water quality standards certification may be denied when:

- the activity requiring a federal license or permit will result in a discharge that will not comply with

- applicable water quality standards and other appropriate requirements; or
- compliance with water quality standards and other appropriate requirements is not yet definitively determined, but the application suffers from some procedural inadequacy (e.g., failure to provide a complete fee or to meet CEQA requirements). In this case denial shall be without prejudice.

The Corps said I don't need a permit, but do I need 401 certification?

If your project is located within or adjacent to a waterway, or can potentially impact a waterway, the Regional Board and the Department of Fish and Game probably regulate it. The Corps classifies some projects as minimal impact under the Nationwide Permit Program (NWP). If your project fits into one of 40 NWP categories, the project may come under the Corps general permit conditions. Some NWPs do not even require advance notification to the Corps.

Section 401 of the Clean Water Act grants each state the right to ensure that the State's interests are protected on any federally permitted activity occurring in waters of the State. In California, the Regional Water Quality Control Boards are the agency mandated to ensure protection of the State's waters. If a project comes under the Corps' jurisdiction, California also regulates it to ensure and certify compliance with state regulations.

California has not found that most of the 40 activities under the Nationwide Program are of minimal impact and therefore has not provided advance approval of most of the Nationwide Permits. Although the activity may be covered under a general permit from the Corps, you will still need to obtain a 401 certification from the State of California.

What is "SWANCC?"

A Supreme Court ruling *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (531 US __, 121 S.Ct. 675 (2001)) concerning Clean Water Act jurisdiction over isolated, non-navigable, intrastate waters used as habitat by migratory birds. The decision changes slightly the way the Army Corps of Engineers administers the Clean Water Act Section 404 program dealing with work in wetlands and other waters. (USACOE press release) Nothing in the SWANCC decision alters the extent of State (or tribal) jurisdiction over aquatic features under State (or tribal) law.

IT IS IMPORTANT TO NOTE THAT EVEN IF SECTION 404/401 REQUIREMENTS DO NOT APPLY, REGIONAL BOARD REQUIREMENTS UNDER STATE LAW FOR WASTE DISCHARGES TO WATERS OF THE STATE MUST BE SATISFIED.

(Page last updated 1/19/18)

ATTACHMENT F

Cal. Water Code Sec. 13160 and Assembly Bill 92 (2020)



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

[West's Annotated California Codes](#)

[Water Code \(Refs & Annos\)](#)

[Division 7. Water Quality \(Refs & Annos\)](#)

[Chapter 3. State Water Quality Control \(Refs & Annos\)](#)

[Article 4. Other Powers and Duties of the State Board \(Refs & Annos\)](#)

West's Ann.Cal.Water Code § 13160

§ 13160. Board as state water pollution control agency; authorization
to issue certificates or statements required by federal agencies

Effective: June 29, 2020

[Currentness](#)

(a) The state board is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act ([33 U.S.C. Sec. 1251 et seq.](#)) and any other existing or subsequently enacted federal water quality control law.

(b)(1) The state board is authorized to give any certificate or statement required by any federal agency pursuant to the Federal Water Pollution Control Act or any other federal water quality control law that there is reasonable assurance that an activity of any person subject to the jurisdiction of the state board will comply with applicable requirements of that federal law or any other appropriate requirements of state law.

(2) The state board may issue the certificate or statement under paragraph (1) before completion of the environmental review required under [Division 13 \(commencing with Section 21000\) of the Public Resources Code](#) if the state board determines that waiting until completion of that environmental review to issue the certificate or statement poses a substantial risk of waiver of the state board's certification authority under the Federal Water Pollution Control Act or any other federal water quality control law. To the extent authorized by federal law, the state board shall reserve authority to reopen and, after public notice, an opportunity for comment, and, when appropriate, an opportunity for a hearing, revise the certificate or statement as appropriate to incorporate feasible measures to avoid or reduce significant environmental impacts or to make any necessary findings based on the information provided in the environmental document prepared for the project.

(c) The state board is authorized to exercise any powers delegated to the state and carry out any program a state is authorized to administer under the Federal Water Pollution Control Act ([33 U.S.C. Sec. 1251 et seq.](#)) and any amendments to that act.

Credits

(Added by Stats.1969, c. 482, p. 1055, § 18, operative Jan. 1, 1970. Amended by Stats.1971, c. 1288, p. 2524, § 4; Stats.1976, c. 596, p. 1440, § 3; [Stats.2020, c. 18 \(A.B.92\), § 9, eff. June 29, 2020.](#))

[Notes of Decisions \(4\)](#)

West's Ann. Cal. Water Code § 13160, CA WATER § 13160

Current with urgency legislation through Ch. 147 of 2020 Reg.Sess. Some statute sections may be more current, see credits for details.

End of Document

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2020 Cal. Legis. Serv. Ch. 18 (A.B. 92) (WEST)

CALIFORNIA 2020 LEGISLATIVE SERVICE

2020 Portion of 2019-2020 Regular Session

Additions are indicated by **Text**; deletions by

~~***~~.

Vetoed are indicated by ~~Text~~ ;

stricken material by ~~Text~~ .

CHAPTER 18

A.B. No. 92

AN ACT to amend Section 19620.15 of the Business and Professions Code, to add Part 4 (commencing with Section 19700) to Division 9 of the Food and Agricultural Code, to amend Section 8878.109 of the Government Code, to amend Section 25215.5 of the Health and Safety Code, to add Chapter 6 (commencing with Section 4810) to Part 2.5 of Division 4 of the Public Resources Code, and to amend Sections 1525, 1552, 12879.7, and 13160 of the Water Code, relating to public resources, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Filed with Secretary of State June 29, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 92, Committee on Budget. Public resources: omnibus trailer bill.

(1) Existing law requires a tax return filed with the California Department of Tax and Fee Administration (CDTFA) that reports gross receipts for sales and use tax purposes to segregate the gross receipts of the seller and the sales price of the property on a line or a separate form when the place of sale in this state or for use in this state is on or within the real property of a state-designated fair, as defined, or any real property of a state-designated fair that is leased to another party. Existing law requires, on or before November 1 of each year, the CDTFA to report to the Department of Finance the total gross receipts segregated on these tax returns, and that $\frac{3}{4}$ of 1% of the total gross receipts be included in the next annual Governor's Budget for use by the Department of Food and Agriculture for allocation to fairs and that those funds be transferred by the Controller to the Fair and Exposition Fund in the State Treasury, as prescribed.

This bill would, for the 2019–20 fiscal year and all subsequent fiscal years, make the total gross receipts subject to review by the CDTFA for errors. The bill would require the CDTFA to note any identified errors and the approximate impact of those errors on the total gross receipts in its report to the Department of Finance to allow an adjusted total gross receipts amount to be determined for the purpose of calculating the amount to be included in the Governor's Budget for use by the Department of Food and Agriculture for allocation to fairs.

(2) The Prevention of Cruelty to Farm Animals Act, approved by the voters as Proposition 12 at the November 6, 2018, statewide general election, prohibits (A) a farm owner or operator within the state from knowingly causing any covered animal to be confined in a cruel manner and (B) a business owner or operator from knowingly engaging in the sale within the state of certain items that the business owner or operator knows or should know is the product of a covered animal who was confined in a cruel manner. The act defines a covered animal to mean a calf raised for veal, breeding pig, or egg-laying

hen who is kept on a farm. A violation of the act is a misdemeanor. The act requires the Department of Food and Agriculture and the State Department of Public Health to jointly promulgate rules and regulations for the implementation of the act.

This bill would require the Secretary of Food and Agriculture to adopt, by regulation, fees to cover the Department of Food and Agriculture's reasonable regulatory costs of the administration, implementation, and enforcement of laws governing the confinement of animals, as described in Proposition 12, as prescribed. The bill would require the fees to be separately accounted for in the Department of Agriculture Account, Department of Food and Agriculture Fund.

- (3) The California Constitution prohibits the Legislature from creating any debt or liability that, individually or in the aggregate, exceeds \$300,000, unless an exception applies. The Constitution authorizes the Legislature to reduce the amount of the indebtedness authorized by law at any time after the approval of law by the people to an amount not less than the amount contracted at the time of the reduction.

The Earthquake Safety and Public Buildings Rehabilitation Bond Act of 1990 authorizes the issuance of bonds in the amount of \$300,000,000 to finance, among other things, the costs of retrofitting, reconstruction, repair, replacement, or relocation of state buildings or facilities that are seismically unsafe.

The Water Conservation Bond Law of 1988 authorizes the issuance of bonds in the amount of \$60,000,000 to finance capital outlay water conservation projects and programs to help meet the growing demand for clean and abundant water supplies in the state.

This bill would reduce the amount of indebtedness authorized by the Earthquake Safety and Public Buildings Rehabilitation Bond Act of 1990 and the Water Conservation Bond Law of 1988 to \$292,510,000 and \$54,765,000, respectively.

- (4) The Lead–Acid Battery Recycling Act of 2016 prohibits a person from disposing, or attempting to dispose, of a lead-acid battery at a solid waste facility or on or in any land, surface waters, watercourses, or marine waters, but authorizes a person to dispose of a lead-acid battery at certain locations. The act imposes a manufacturer battery fee on a manufacturer of lead-acid batteries for each lead-acid battery it sells at retail to a person in California, or that it sells to a dealer, wholesaler, distributor, or other person for retail sale in California.

The act creates in the State Treasury the Lead–Acid Battery Cleanup Fund and requires that the fees collected pursuant to the act, except for specified administrative expenses, be deposited into the fund. The act provides that moneys in the fund are available upon appropriation by the Legislature to the Department of Toxic Substances Control for specified activities, including, among others, the investigation or site evaluation of any area of the state that is reasonably suspected to have been contaminated by the operation of a lead-acid battery recycling facility.

This bill would explicitly require moneys in the fund to be expended, upon appropriation by the Legislature, on specified activities to protect public health and the environment from hazardous substances and hazardous waste at or from the former Exide Technologies lead-acid battery recycling facility in the City of Vernon. The bill would require that, notwithstanding any other law, any costs incurred by the department using moneys from the fund that are recovered be deposited into the fund. The bill would also make nonsubstantive changes.

(5) Existing law establishes the Department of Forestry and Fire Protection in the Natural Resources Agency to provide fire protection and prevention services, as specified. Existing law requires the Director of Forestry and Fire Protection to work cooperatively with other public agencies of local, state, and federal government to encourage these agencies to undertake forest resource improvement work, as provided. Existing law authorizes the director to enter into contracts or cooperative agreements with these agencies to provide, among other things, technical assistance and necessary supervisorial personnel. Under existing federal law, the United States Secretary of Agriculture, with respect to National Forest System land, and the United States Secretary of the Interior, with respect to Bureau of Land Management land, are authorized to enter into good neighbor agreements with a Governor to carry out specified forest, rangeland, and watershed restoration services, as provided.

This bill would establish in the State Treasury the Good Neighbor Authority Fund to be administered by the Department of Forestry and Fire Protection under the direction of the Secretary of the Natural Resources Agency. The bill would make moneys in the fund available for expenditure, upon appropriation by the Legislature, and as authorized by federal law, and to the extent not in conflict with federal law or federal Good Neighbor Authority agreements, for state departments or agencies to undertake forest health and fuels reduction projects on federal lands executed through these agreements, and to fund costs associated with planning, implementing, and maintaining these projects, as provided. The bill would require the fund to be the depository for revenues derived from the sale of forest products from federal lands, as authorized by federal law, and to the extent not in conflict with federal law or federal Good Neighbor Authority agreements, to support those activities. The bill would authorize state departments or agencies engaged in federal Good Neighbor Authority agreements to accept grants and donations, as provided, to be transferred to the Department of Forestry and Fire Protection and deposited into the fund for use by state departments or agencies engaged in federal Good Neighbor Authority agreements to support those activities at the direction of the Secretary of the Natural Resources Agency.

(6) Under existing law, the State Water Resources Control Board administers a water rights program pursuant to which the state board grants and revokes permits and licenses to appropriate water. Existing law requires a person who holds a permit or license to appropriate water, leases water pursuant to specified provisions of law, or files a specified application, registration, petition, request, or statement relating to water use to pay fees imposed by the state board, calculated in accordance with a fee schedule adopted by the state board. Existing law establishes the Water Rights Fund, which consists of various fees and penalties imposed pursuant to the water rights program, and authorizes the state board to use moneys in the fund, upon appropriation by the Legislature, for the administration of the water rights program.

Existing law authorizes a groundwater sustainability agency or local agency to apply for, and the state board to issue, a conditional temporary permit or conditional temporary change order for the diversion of surface water to underground storage for beneficial use that advances the sustainability goal of a groundwater basin, as specified.

This bill would require the state board, in setting the fee schedule for the above-specified conditional temporary permit or conditional temporary change order, to also include an amount estimated by the state board, in consultation with the Department of Fish and Wildlife, necessary to recover costs incurred by the department under those provisions. The bill would provide that moneys in the Water Rights Fund are available for expenditure, upon appropriation by the Legislature, by the department for purposes of carrying out those provisions, consistent with the amounts estimated by the state board. The bill would also make technical changes.

(7) Under existing law, the State Water Resources Control Board and the California regional water quality control boards prescribe waste discharge requirements in accordance with the Federal Water Pollution Control Act (federal act) and the Porter–Cologne Water Quality Control Act. Under the federal act, any applicant seeking a

federal license for an activity that may result in any discharge into the navigable waters of the United States is required to first seek a state water quality certification, as specified. The Porter–Cologne Water Quality Control Act authorizes the state board to certify or provide a statement to a federal agency, as required pursuant to federal law, that there is reasonable assurance that an activity of any person subject to the jurisdiction of the state board will not reduce water quality below applicable standards. The federal act provides that if a state fails or refuses to act on a request for this certification within a reasonable period of time, which shall not exceed one year after receipt of the request, then the state certification requirements are waived with respect to the federal application.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of an environmental impact report for a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

This bill would authorize the state board to issue a certificate or statement required by any federal agency under federal water quality control laws that an activity subject to the jurisdiction of the state board will comply with applicable requirements of that federal law or any other appropriate requirements of state law. The bill would authorize the state board to issue these certificates or statements before completion of any environmental review required under CEQA if the state board determines that waiting until completion of environmental review poses a substantial risk of waiver of the state's certification authority under federal water quality control laws. The bill would require the state board, to the extent authorized by federal law, to reserve authority to reopen and revise the certificate or statement as appropriate based on the information provided in the environmental document prepared for the project.

(8) Existing law creates the Coachella Valley Mountains Conservancy in the Natural Resources Agency and, among other things, authorizes the conservancy to acquire and hold specified lands in the Coachella Valley and the surrounding mountains for certain open-space, wildlife protection, and recreational uses.

Existing law establishes the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund, available upon appropriation by the Legislature, for purposes of parks and resources improvement, including \$5,000,000 to the Coachella Valley Mountains Conservancy for the acquisition, development, enhancement, and protection of land, and for related administrative costs.

This bill would appropriate \$73,000 from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund to the Coachella Valley Mountains Conservancy.

(9) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 19620.15 of the Business and Professions Code is amended to read:

<< CA BUS & PROF § 19620.15 >>

19620.15. (a) Notwithstanding any other law, a return filed with the California Department of Tax and Fee Administration (CDTFA) to report gross receipts for sales and use tax purposes shall segregate the gross receipts of the seller and the sales price of the property on a line or a separate form as prescribed by the CDTFA when the place of sale in this state or for use in this state is on or within the real property of a state-designated fair or any real property of a state-designated fair that is leased to another party.

(b) For purposes of this section, “state-designated fair” means a state-designated fair as defined in Sections 19418, 19418.1, 19418.2, and 19418.3.

(c) The CDTFA shall add a line to a current return, or develop a separate form for purposes of this section.

(d)(1) The CDTFA shall report the amount of the total gross receipts segregated on the returns filed pursuant to subdivision (a) to the Department of Finance on or before November 1 of each year.

(2) The total gross receipts shall be subject to review by the CDTFA for errors. The review may be a review of a sample of returns. The CDTFA shall note any errors identified in the review and the approximate impact of those errors on the total gross receipts in its report to the Department of Finance to allow an adjusted total gross receipt amount to be determined.

(3) Paragraph (2) shall apply retroactively to the 2019–20 fiscal year and to all subsequent fiscal years for the purpose of calculating the amount included in the annual Governor's Budget for the Department of Food and Agriculture pursuant to subdivision (f).

(e) The CDTFA shall estimate the total gross receipts segregated for the 2019–20 fiscal year by January 31, 2019, based on the third quarter of 2018. An amount equal to three-quarters of 1 percent of this estimated amount shall be included in the Governor's revised budget in May 2019 for allocation to fairs pursuant to Section 19620.2. The CDTFA shall reconcile this first-year estimate with actual return data from the full 2018–19 fiscal year, and then adjust this figure as appropriate as the amount to be reported to the Department of Finance on November 1, 2019.

(f) An amount equal to three-quarters of 1 percent of the total amount of gross receipts, **or adjusted gross receipts**, reported to the Department of Finance specified in subdivision (d) shall be included in the next annual Governor's Budget for the Department of Food and Agriculture for allocation to fairs pursuant to Section 19620.2. Upon the enactment of the annual Budget Act, the amount appropriated by the Legislature to the Department of Food and Agriculture pursuant to this section shall be transferred by the Controller to the Fair and Exposition Fund in the State Treasury, and shall be continuously appropriated and allocated pursuant to Section 19620.2.

(g) The CDTFA shall be paid the actual cost for administering the provisions of this section from the funds appropriated pursuant to subdivision (f) before any allocation is made to fairs in accordance with Section 19620.2.

(h)(1) Any revenues deposited into the Fair and Exposition Fund pursuant to this section shall only be allocated to a state-designated fair if nonmanagement employees at that state-designated fair, or nonmanagement employees at any real property of that state-designated fair that is leased to another party, are provided the following working conditions:

(A) The employee receives a meal period of not less than 30 minutes for a work period of more than five hours per day, unless the work period per day of the employee is less than six hours and the meal period is waived by mutual consent of both the employer and the employee.

(B) The employee receives a second meal period of not less than 30 minutes for a work period of more than 10 hours per day, unless the work period per day of the employee is less than 12 hours, the second meal period is waived by mutual consent of both the employer and the employee, and the first meal period was not waived.

(C) Any work in excess of eight hours in one workday, any work in excess of 40 hours in any one workweek, and the first eight hours worked on the seventh day of work in any one workweek is compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

(D) Any work in excess of 12 hours in one day is compensated at the rate of no less than twice the regular rate of pay for an employee.

(E) Any work in excess of eight hours on any seventh day of a workweek is compensated at the rate of no less than twice the regular rate of pay for an employee.

(2) This subdivision shall not apply to full-time carnival ride operators employed by a traveling carnival.

(3) For purposes of this subdivision, an employee shall not include an employee covered by a valid collective bargaining agreement if that agreement expressly provides for all of the following:

(A) Wages, hours of work, and working conditions of the employees.

(B) Meal periods for the employees, including final and binding arbitration of disputes concerning application of its meal period provisions.

(C) Premium wage rates for all overtime hours worked, and a regular hourly rate of pay of not less than 30 percent more than the state minimum wage.

(i) This section shall become operative on July 1, 2018.

SEC. 2. Part 4 (commencing with Section 19700) is added to Division 9 of the Food and Agricultural Code, to read:

d. 9 pt. 4 pr. § 19700

PART 4. LIVESTOCK CONFINEMENT

d. 9 pt. 4 ch. 1 pr. § 19700

Chapter 1. General Provisions

d. 9 pt. 4 ch. 1 art. 1 pr. § 19700

Article 1. Fees

<< CA FOOD & AG § 19700 >>

19700. (a)(1) The secretary shall adopt, by regulation, fees to cover the department's reasonable regulatory costs of the administration, implementation, and enforcement of laws governing the confinement of animals, as described in Chapter 13.8 (commencing with Section 25990) of Division 20 of the Health and Safety Code.

(2) Costs of administration, implementation, and enforcement may include, but are not limited to, costs incurred for the department's role in registration, certification, inspections, and audits.

(b)(1) The total revenue collected each year through the fees imposed pursuant to this section shall be set at an amount equal to the expenditure levels set forth in the Budget Act of each fiscal year for the activity described in subdivision (a).

(2) The secretary may adjust the fees each fiscal year to conform to the expenditure levels set forth in the Budget Act for this activity, plus any share of statewide general administrative costs assessed to the Department of Agriculture Account, Department of Food and Agriculture Fund for that fiscal year. Fee adjustments for this purpose shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) If the secretary determines that the revenue collected during the preceding year was greater than, or less than, the expenditure levels set forth in the Budget Act, the secretary may further adjust the fees to compensate for the over or under collection of revenue.

(c) The fees established in subdivision (a) shall include amounts sufficient to repay any amount loaned from the Department of Agriculture Account, Department of Food and Agriculture Fund in the 2020–21 and 2021–22 fiscal years to pay for the department's reasonable regulatory costs of the administration, implementation, and enforcement conducted under laws governing the confinement of animals, as described in Chapter 13.8 (commencing with Section 25990) of Division 20 of the Health and Safety Code.

(d) The fees collected by the secretary pursuant to subdivision (a) shall be separately accounted for in the Department of Agriculture Account, Department of Food and Agriculture Fund.

SEC. 3. Section 8878.109 of the Government Code is amended to read:

<< CA GOVT § 8878.109 >>

8878.109. Bonds in the total amount of **two** hundred **ninety-two** million **five hundred ten thousand** dollars **(\$292,510,000)**, exclusive of refunding bonds issued pursuant to Section 8878.118, or so much thereof as is necessary, may be issued and sold to be used for carrying out the purposes expressed in this chapter and to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5. A sum, not to exceed **two** hundred **ninety-two** million **five hundred ten thousand** dollars **(\$292,510,000)** of the bond proceeds shall be deposited in the Earthquake Safety and Public Buildings Rehabilitation Fund of 1990 for the purposes of this chapter. All bonds herein authorized which have been duly sold and delivered as provided herein shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereof.

SEC. 4. Section 25215.5 of the Health and Safety Code is amended to read:

<< CA HLTH & S § 25215.5 >>

25215.5. (a) Lead–acid battery fees collected pursuant to this article shall be managed as follows:

(1) The board shall retain moneys necessary for the payment of refunds and reimbursement of the board for expenses in the collection of the fees.

(2) The remaining moneys shall be deposited into the Lead–Acid Battery Cleanup Fund, which is hereby created in the State Treasury, and is available upon appropriation by the Legislature to the department for the purposes specified in this section.

(b)(1) Moneys in the Lead–Acid Battery Cleanup Fund shall be expended for the following activities:

(A) Investigation or site evaluation of any area of the state that is reasonably suspected to have been contaminated by the operation of a lead-acid battery recycling facility.

(B) Cleanup, remedial action, removal, monitoring, or other response actions to address contamination directly attributable to releases from a facility known to have been a lead-acid battery recycling facility at any area of the state that, pursuant to Section 25215.51, the department determines with reasonable certainty was contaminated by releases from the operation of that lead-acid battery recycling facility.

(C) Administration of the Lead–Acid Battery Cleanup Fund and the department's administration and implementation of this article.

(D) Repayment of a loan described in Section 25215.59 that was made before ~~***~~ **September 26, 2016**, or any other loan made for purposes set forth in subparagraph (A). Moneys shall be expended for purposes of this subparagraph only after the activities specified in subparagraphs (A) to (C), inclusive, have been fully funded in a given fiscal year.

(E) Oversight or performance of closure activities and response and corrective actions to protect public health and the environment from hazardous substances and hazardous waste at or from the former Exide Technologies lead-acid battery recycling facility in the City of Vernon.

(2)(A) Moneys in the Lead–Acid Battery Cleanup Fund shall not be used to implement Article 14 (commencing with Section 25251) with respect to lead-acid batteries or to loan moneys to any other program.

(B) Any government action not required by this article that would have the effect of reducing the availability of fee revenue to the Lead–Acid Battery Cleanup Fund shall be considered a negative economic impact pursuant to subparagraph (M) of paragraph (2) of subdivision (a) of Section 25253.

(3) Notwithstanding any other law, any costs incurred by the department using moneys from the Lead–Acid Battery Cleanup Fund pursuant to paragraph (1) that are recovered shall be deposited into the Lead–Acid Battery Cleanup Fund.

(c) The department shall ~~***~~ report to the Legislature by March 1 of each year on the status of the Lead–Acid Battery Cleanup Fund and on the department's progress implementing this article, including, but not limited to, the sites at which actions were performed using moneys from the fund, the status of cleanup at those sites, including total anticipated costs of cleanup at those sites, the balance of the fund, the amount of fees remitted to the fund, the amount spent by the fund and the purposes for which those amounts were spent, the amounts reimbursed to the board pursuant to paragraph (1) of subdivision (a), and any other information requested by the Legislature. Each annual report shall be released to the public on the same day it is provided to the Legislature.

SEC. 5. Chapter 6 (commencing with Section 4810) is added to Part 2.5 of Division 4 of the Public Resources Code, to read:

d. 4 pt. 2.5 ch. 6 pr. § 4810

Chapter 6. Good Neighbor Authority Fund

<< CA PUB RES § 4810 >>

4810. (a) For purpose of this section, the following terms shall apply:

(1) “Agreement” means the Good Neighbor Authority Agreement entered into between the state and the federal government pursuant to Section 2113a of Title 16 of the United States Code.

(2) “Fund” means the Good Neighbor Authority Fund, established pursuant to subdivision (b).

(b) There is hereby established in the State Treasury the Good Neighbor Authority Fund. The fund shall be administered by the department under the direction of the Secretary of the Natural Resources Agency. The moneys in the fund shall be available for expenditure, upon appropriation by the Legislature, and as authorized by Section 2113a(b)(2) of Title 16 of the United States Code, and to the extent not in conflict with federal law or agreements, for state departments or agencies to undertake forest health and fuels reduction projects on federal lands executed through these agreements, and to fund costs associated with planning, implementing, and maintaining these projects, including administrative and operational costs.

(c) The fund shall be the depository for revenues derived from the sale of forest products, as defined in Section 4638, from federal lands, as authorized by Section 2113a(b)(2) of Title 16 of the United States Code, and to the extent not in conflict with federal law or agreements, to support the activities described in subdivision (b).

(d) State departments or agencies engaged in agreements may accept grants and donations, including, but not limited to, donations of equipment, seedlings, labor, materials, or funds from any source for the purpose of supporting or facilitating activities undertaken pursuant to this section. Funds received pursuant to this subdivision shall be transferred to the department and deposited into the fund for use by state departments or agencies engaged in agreements to support the activities described in subdivision (b) at the direction of the Secretary of the Natural Resources Agency.

SEC. 6. Section 1525 of the Water Code is amended to read:

<< CA WATER § 1525 >>

1525. (a) Each person or entity who holds a permit or license to appropriate water, and each lessor of water leased under Chapter 1.5 (commencing with Section 1020) of Part 1, shall pay an annual fee according to a fee schedule established by the board.

(b) Each person or entity who files any of the following shall pay a fee according to a fee schedule established by the board:

(1) An application for a permit to appropriate water.

(2) A registration of appropriation for a small domestic use, small irrigation use, or livestock stockpond use.

(3) A petition for an extension of time within which to begin construction, to complete construction, or to apply the water to full beneficial use under a permit.

(4) A petition to change the point of diversion, place of use, or purpose of use, under a permit, license, or registration.

(5) A petition to change the conditions of a permit or license, requested by the permittee or licensee, that is not otherwise subject to paragraph (3) or (4).

(6) A petition to change the point of discharge, place of use, or purpose of use, of treated wastewater, requested pursuant to Section 1211.

(7) An application for approval of a water lease agreement.

(8) A request for release from priority pursuant to Section 10504.

(9) An application for an assignment of a state-filed application pursuant to Section 10504.

(10) A statement of water diversion and use pursuant to Part 5.1 (commencing with Section 5100) that reports that water was used for cannabis cultivation.

(c)(1) The board shall set the fee schedule authorized by this section so that the total amount of fees collected pursuant to this section equals that amount necessary to recover costs incurred in connection with the issuance, administration, review, monitoring, and enforcement of permits, licenses, certificates, and registrations to appropriate water, water leases, statements of water diversion and use for cannabis cultivation, and orders approving changes in point of discharge, place of use, or purpose of use of treated wastewater. The board may include, as recoverable costs, but is not limited to including, the costs incurred in reviewing applications, registrations, statements of water diversion and use for cannabis cultivation, petitions and requests, prescribing terms of permits, licenses, registrations, and change orders, enforcing and evaluating compliance with permits, licenses, certificates, registrations, change orders, and water leases, inspection, monitoring, planning, modeling, reviewing documents prepared for the purpose of regulating the diversion and use of water, applying and enforcing the prohibition set forth in Section 1052 against the unauthorized diversion or use of water subject to this division and the water diversion related provisions of **Chapter 6** (commencing with Section **26060**) of ~~***~~ Division **10** of the Business and Professions Code, and the administrative costs incurred in connection with carrying out these actions.

(2) In setting the fee schedule for fees subject to subdivision (b) of Section 1433.2 and subdivision (b) of Section 1443.2, the board shall also include an amount estimated by the board, in consultation with the Department of Fish and Wildlife, necessary to recover costs incurred by the Department of Fish and Wildlife under Article 2 (commencing with Section 1433) of Chapter 6.5 and Article 2 (commencing with Section 1443) of Chapter 6.6.

(d)(1) The board shall adopt the schedule of fees authorized under this section as emergency regulations in accordance with Section 1530.

(2) For filings subject to subdivision (b), the schedule may provide for a single filing fee or for an initial filing fee followed by an annual fee, as appropriate to the type of filing involved, and may include supplemental fees for filings that have already been made but have not yet been acted upon by the board at the time the schedule of fees takes effect.

(3) The board shall set the amount of total revenue collected each year through the fees authorized by this section at an amount equal to the amounts appropriated by the Legislature for expenditure for support of water rights program activities from the Water Rights Fund established under Section 1550, taking into account the reserves in the Water Rights Fund. The board shall review and revise the fees each fiscal year as necessary to conform **to** the amounts appropriated. If the board determines that the revenue collected during the preceding year was greater than, or less than, the amounts appropriated, the board may further adjust the annual fees to compensate for the over or under collection of revenue.

(e) Annual fees imposed pursuant to this section for the 2003–04 fiscal year shall be assessed for the entire 2003–04 fiscal year.

SEC. 7. Section 1552 of the Water Code is amended to read:

<< CA WATER § 1552 >>

1552. Except as provided in subdivision (e) of Section 1058.5, moneys in the Water Rights Fund are available for expenditure, upon appropriation by the Legislature, for the following purposes:

(a) For expenditure by the ~~***~~ **California Department of Tax and Fee Administration** in the administration of this chapter and the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) in connection with any fee or expense subject to this chapter.

(b) For the payment of refunds, pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, of fees or expenses collected pursuant to this chapter.

(c) For expenditure by the board for the purposes of carrying out this division, Division 1 (commencing with Section 100), Part 2 (commencing with Section 10500) and Chapter 11 (commencing with Section 10735) of Part 2.74 of Division 6, Article 7 (commencing with Section 13550) of Chapter 7 of Division 7, and the water diversion related provisions of **Chapter 6** (commencing with Section **26060**) of ~~***~~ Division **10** of the Business and Professions Code.

(d) For expenditures by the board for the purposes of carrying out Sections 13160 and 13160.1 in connection with activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

(e) For expenditures by the board for the purposes of carrying out Sections 13140 and 13170 in connection with plans and policies that address the diversion or use of water.

(f) For expenditures by the Department of Fish and Wildlife for purposes of carrying out Article 2 (commencing with Section 1433) of Chapter 6.5 and Article 2 (commencing with Section 1443) of Chapter 6.6, consistent with the amounts estimated under paragraph (2) of subdivision (c) of Section 1525.

SEC. 8. Section 12879.7 of the Water Code is amended to read:

<< CA WATER § 12879.7 >>

12879.7. Bonds in the total amount of **fifty-four** million **seven hundred sixty-five thousand** dollars (**\$54,765,000**), exclusive of refunding bonds issued pursuant to Section 12879.15, or so much thereof as is necessary, may be issued and sold to provide a fund to be used for carrying out the purposes expressed in this chapter and to be used to reimburse the General Obligation Bond Expense Revolving Fund pursuant to Section 16724.5 of the Government Code. All bonds herein authorized, which have been duly sold and delivered as herein provided, shall constitute valid and legally binding general obligations of the State of California, and the full faith and credit of the State of California is hereby pledged for the punctual payment of both principal and interest thereof.

SEC. 9. Section 13160 of the Water Code is amended to read:

<< CA WATER § 13160 >>

13160. (a) **The state board is designated as the state water pollution control agency for all purposes stated in the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) and any other existing or subsequently enacted federal water quality control law.**

(b)(1) The state board is ~~*~~ authorized to give any certificate or statement required by any federal agency pursuant to the Federal Water Pollution Control Act or any other federal ~~***~~ water quality control law that there is reasonable assurance that an activity of any person subject to the jurisdiction of the state board will ~~***~~ comply with applicable requirements of that federal law or any other appropriate requirements of state law.**

(2) The state board may issue the certificate or statement under paragraph (1) before completion of the environmental review required under Division 13 (commencing with Section 21000) of the Public Resources Code if the state board determines that waiting until completion of that environmental review to issue the certificate or statement poses a substantial risk of waiver of the state board's certification authority under the Federal Water Pollution Control Act or any other federal water quality control law. To the extent authorized by federal law, the state board shall reserve authority to reopen and, after public notice, an opportunity for comment, and, when appropriate, an opportunity for a

hearing, revise the certificate or statement as appropriate to incorporate feasible measures to avoid or reduce significant environmental impacts or to make any necessary findings based on the information provided in the environmental document prepared for the project.

(c) The state board is authorized to exercise any powers delegated to the state and carry out any program a state is authorized to administer under the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.) and any amendments to that act.

SEC. 10. Seventy-three thousand dollars (\$73,000) is hereby appropriated from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund created pursuant to Section 5096.310 of the Public Resources Code to the Coachella Valley Mountains Conservancy.

SEC. 11. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

End of Document

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ATTACHMENT G

23 Cal. Code of Regs. Sec. 3831

Barclays Official California Code of Regulations Currentness

Title 23. Waters

Division 3. State Water Resources Control Board and Regional Water Quality Control Boards

Chapter 28. Certifications

Article 1. General Provisions

23 CCR § 3831

§ 3831. Definitions.

The following words (in alphabetical order), as used in this Chapter, shall have the meaning hereafter ascribed to them unless the context of their use clearly requires a different meaning:

(a) “Activity,” when used in reference to water quality certification, means any action, undertaking, or project - including, but not limited to, construction, operation, maintenance, repair, modification, and restoration - which may result in any discharge to waters of the United States in California.

(b) “Application” means a written request for certification, including accompanying materials.

(c) “Applicant” normally means any individual, entity, district, organization, group, or agency submitting an application, subject to the following caveats:

(1) When a professional agent or firm submits an application on behalf of a client, the client is the applicant.

(2) The person or group financially responsible for an activity seeking a federal license or permit which may result in a discharge to waters of the United States is normally the applicant for water quality certification, but

(3) the federal agency is the applicant when the federal agency requests water quality certification for any discharge which may result from activities to be allowed by that agency under a general license or permit.

(d) “CEQA” means the California Environmental Quality Act ([Public Resources Code Section 21000 et seq.](#)).

(e) To take a “certification action” means to issue an order, signed by the proper approving official, granting or denying certification within the time period allowed for certification by the federal agency's rules.

(f) “Complete application” means:

(1) for purposes of tax certification, an application made on forms provided by EPA and that includes the appropriate fee required pursuant to Section 3833 of this Chapter;

(2) for purposes of water quality certification, an application that includes all information and items and the fee deposit required pursuant to Sections 3833 and 3856 of this Chapter;

(3) for purposes of pollution control certification, an application that includes all information, items, and fees required pursuant to Sections 3833 and 3863 of this Chapter; and

(4) notwithstanding the specific definitions in Subsections (f)(1) through (f)(3) of this Section, any application for certification for a development project for which the application is deemed complete pursuant to the Permit Streamlining Act ([Government Code Section 65920 et seq.](#)).

(g) “CFR” means the Code of Federal Regulations.

(h) “Denial without prejudice” means an inability to grant certification for procedural rather than substantive reasons. This form of denial carries with it no judgement on the technical merits of the activity or compliance of any discharge with water quality standards. A certifying agency may reconsider a revised application package which corrects the procedural problems that caused the original denial without prejudice.

(i) “EPA” means the United States Environmental Protection Agency.

(j) “Executive director” means the chief administrative officer of the state board or the executive director's designee.

(k) “Executive officer” means the chief administrative officer of a regional board.

(l) “Federal agency” means, for purposes of water quality certification:

(1) the federal agency responsible for issuing a license or permit for an activity resulting in a possible discharge for which an application for certification is submitted, or

(2) a federal agency applying for water quality certification (see definition of “applicant”).

(m) “FERC” means the Federal Energy Regulatory Commission.

(n) “Pollution control certification” means a certification that a project will further comply with federal, state or local pollution control standards and requirements and is eligible for financing under the California Pollution Control Financing Authority Act (Health and Safety Code, Division 27, commencing with Section 44502).

(o) “Regional board” means a California Regional Water Quality Control Board.

(p) “Standard certification” means a water quality certification subject only to the conditions specified in Section 3860 of this Chapter.

(q) “State board” means the State Water Resources Control Board.

(r) “Tax Certification” means a certification that a treatment facility qualifies as a certified pollution control facility within the meaning of [Section 169 of the Internal Revenue Code of 1954](#).

(s) “USC” means United States Code.

(t) “Water Code” means the California Water Code.

(u) “Water quality certification” means a certification that any discharge or discharges to waters of the United States, resulting from an activity that requires a federal license or permit, will comply with water quality standards and other appropriate requirements.

(v) “Water quality standards and other appropriate requirements” means the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act ([33 USC Sections 1311, 1312, 1313, 1316, 1317](#)), and any other appropriate requirements of state law.

(w) “Waters of the United States” means surface water and water bodies as defined by EPA regulations (e.g., [40 CFR Section 122.2](#)). All waters of the United States in California are also “waters of the state” (defined by the Porter-Cologne Water Quality Control Act as “any surface water or ground water, including saline waters, within the boundaries of the state.” [[Water Code Section 13050\(e\)](#)]). Not all waters of the state (e.g., ground water) are waters of the United States.

Note: Authority cited: [Section 1058, Water Code](#). Reference: [26 USC Section 169](#), [40 CFR Section 20](#); [15 USC Section 636](#), [40 CFR Section 21](#); [33 USC Section 1341](#); [40 CFR Section 131.3](#); [40 CFR Section 122.2](#); [Sections 7, 1003.5, 1059, 13050, 13160, 13160.1 and 13350, Water Code](#); [Sections 44533 and 44539, Health and Safety Code](#); [Section 21000 et seq. \(CEQA\), Public Resources Code](#); and [Section 15000 et seq., State CEQA Guidelines](#).

HISTORY

1. Amendment of section heading, section and Note filed 5-25-2000; operative 6-24-2000 (Register 2000, No. 21).

This database is current through 9/18/20 Register 2020, No. 38

23 CCR § 3831, 23 CA ADC § 3831