
State Water Resources Control Board

NOTICE OF OPPORTUNITY FOR PUBLIC COMMENTS AND BOARD CONSIDERATION OF PROPOSED ORDER RECONSIDERING WATER QUALITY CERTIFICATIONS

MERCED RIVER AND MERCED FALLS HYDROELECTRIC PROJECTS

YUBA-BEAR HYDROELECTRIC PROJECT

DON PEDRO AND LA GRANGE HYDROELECTRIC PROJECTS

NOTICE IS HEREBY GIVEN THAT the State Water Resources Control Board (State Water Board) will accept written comments on a [proposed order](#) setting aside the water quality certifications (certifications) for hydropower project licenses for : (1) Merced Irrigation District's Merced River Hydroelectric Project and Merced Falls Hydroelectric Project (Federal Energy Regulatory Commission [FERC] Project Nos. 2179 and 2467), issued on July 31, 2020; (2) Nevada Irrigation District's Yuba-Bear Hydroelectric Project (FERC Project No. 2266), issued on August 14, 2020; and (3) Turlock Irrigation District's and Modesto Irrigation District's Don Pedro Hydroelectric Project and La Grange Hydroelectric Project (FERC Project Nos. 2299 and 14581), issued on January 15, 2021. The proposed order would set aside these three certifications and dismiss the pending petitions for reconsideration of these certifications.

Written comments must be submitted no later than **12:00 noon on Tuesday, April 9, 2024**. Public written comments must be submitted per the procedures in the "Submission of Written Comments" section of this notice.

NOTICE IS ADDITIONALLY HEREBY GIVEN THAT the State Water Board will consider adoption of the proposed order on **Tuesday, May 7, 2024** at the State Water Board meeting. The anticipated date, time, and location of the State Water Board meeting are provided below:

BOARD MEETING
Tuesday, May 7, 2024 – 9:00 a.m.
Coastal Hearing Room, Second Floor
Joe Serna Jr. – CalEPA Building
1001 I Street, Sacramento
and via Video and Teleconference

This meeting will occur with both a physical meeting location and an option for the public to participate from a remote location. For those who only wish to watch the meeting, the webcast remains available at either <https://www.youtube.com/user/BoardWebSupport/> or <https://video.calepa.ca.gov/> (closed captioning available) and should be used **UNLESS** you intend to comment.

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

For members of the public who wish to comment on an agenda item or are presenting to the State Water Board, refer to the [online information](#) about participating telephonically or via the remote meeting solution (https://www.waterboards.ca.gov/board_info/remote_meeting).

Additional meeting information will be available 10 days prior to the meeting at the State Water Board's [calendar website](#) (https://www.waterboards.ca.gov/board_info/calendar/).

BACKGROUND

On September 27, 2023, the United States Environmental Protection Agency (USEPA) promulgated the Clean Water Act Section 401 Water Quality Certification Improvement Rule (2023 Rule). In the preamble accompanying the 2023 Rule, USEPA provided, for the first time, an interpretation of section 401 of the federal Clean Water Act (Section 401) that precludes certifying authorities such as the State Water Board from issuing a certification in the absence of a currently pending request for certification. In light of USEPA's new interpretation, the proposed order sets aside the three certifications listed above that were issued by the State Water Board's Executive Director without a pending request for certification, where the State Water Board had previously received a request for certification that had either been denied or withdrawn, and the project proponent(s) was still actively pursuing a federal hydropower license. Although the State Water Board believes its issuance of these certifications was proper and its interpretation of Section 401 remains reasonable, the State Water Board defers to USEPA's new interpretation. If these certifications are set aside by the proposed order, there would no longer be any action of the State Water Board to be reconsidered. Therefore, to avoid the unnecessary expenditure of resources, the proposed order also dismisses the petitions for reconsideration of these certifications.

SUBMISSION OF WRITTEN COMMENTS

The proposed order is available on the State Water Board's [Documents for Public Comments webpage](#) (https://www.waterboards.ca.gov/public_notices/comments/).

Interested persons are encouraged to submit comments and other material on the proposed order electronically. Comments can be submitted by email to:

commentletters@waterboards.ca.gov with a copy to:

WR401program@waterboards.ca.gov (if less than 15 megabytes in total size), or by fax to (916) 341-5620 with the subject: "**Comment Letter – May, 7, 2024 Board Meeting, Order Reconsidering Multiple Water Quality Certifications.**" In order to be fully considered, comments must be received by **12:00 noon on Tuesday, April 9, 2024.**

Written comments may also be delivered via mail:

Courtney Tyler, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000 (mail)
1001 I Street, 24th Floor, Sacramento, CA 95814 (hand delivery)

Couriers delivering written comments must check in with lobby security personnel, who can contact Courtney Tyler at (916) 341-5611.

AVAILABILITY OF COMMENTS

Comments received in response to this notice will be uploaded to a File Transfer Protocol (FTP) site within 10 days of the comment deadline. Please use the following information to access the comments on the FTP site:

FTP Webpage Address: <https://ftp.waterboards.ca.gov/>

User Name: ROC-FTP

Password: lwHG9OhP05mzJl5p

If you have difficulty accessing the comments on the FTP site, please email the person indicated in the “Contact Information” section below to arrange for an alternative method of access.

EX PARTE DISCLOSURE REQUIREMENTS

Reconsideration of the certifications is subject to the prohibition on ex parte communications, as described in a [Memo from the State Water Board’s Office of the Chief Counsel](http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf) (http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf). In general, communications about certain pending matters, such as reconsideration of the certifications, in the absence of other parties and without notice and opportunity for all parties to participate in the communication are prohibited.

Any communications regarding reconsideration of the certifications (except for non-controversial procedural matters) must occur at a publicly noticed meeting or workshop, or be submitted to the Clerk to the Board in writing.

PROCEDURAL MATTERS

At the May 7, 2024 State Water Board meeting, the State Water Board will consider adoption of the proposed order. Participants will be given the opportunity to speak to the State Water Board directly and to summarize and supplement their written materials with oral information during the State Water Board meeting. There will be no sworn testimony or cross examination of participants. However, the State Water Board and its staff may ask clarifying questions. To ensure a productive and efficient State Water Board meeting, the State Water Board may limit the time for oral comments. [Recommendations regarding presentations](http://www.waterboards.ca.gov/board_info/meetings/board_presentations.shtml) to the State Water Board are available online (http://www.waterboards.ca.gov/board_info/meetings/board_presentations.shtml).

FUTURE NOTICES

It is anticipated that consideration of the proposed order will occur during the State Water Board meeting at the date and time noted above. Any change to the information noticed above will be provided via the State Water Board’s email distribution list. Any person desiring to receive future notices of any changes must be subscribed to the State Water Board’s “Board Meetings” email list.

The [email subscription form](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html) is available online (http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html). To subscribe, select the “General Interests” category, then check the box for “Board Meetings.”

Additionally, any person desiring to receive future notices concerning certifications managed by the State Water Board's Division of Water Rights may subscribe to this list by selecting the "Water Rights" category, then checking the box for "Water Rights Water Quality Certification."

CONTACT INFORMATION

Please direct questions regarding this notice to Adam Cohen by email to: Adam.Cohen@waterboards.ca.gov or by phone call to: (916) 322-9258.

Date

March 11, 2024



Courtney Tyler
Clerk to the Board

cc: Patrick Pulupa, Executive Officer
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**Filed via FERC e-Library to Project
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cc: Service Lists for FERC Project Nos. 2179, 2467, 2266, 2299, and 14581