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## State Water Resources Control Board

### **EXTENSION OF PUBLIC COMMENT PERIOD FOR DRAFT WATER QUALITY CERTIFICATION**

### **TURLOCK IRRIGATION DISTRICT'S AND MODESTO IRRIGATION DISTRICT'S DON PEDRO AND LA GRANGE HYDROELECTRIC PROJECTS FEDERAL ENERGY REGULATORY COMMISSION PROJECT NOS. 2299 & 14581**

To: Interested Persons Mailing List

Pursuant to section 401 of the federal Clean Water Act, the State Water Resources Control Board (State Water Board) has released a draft water quality certification for the Don Pedro Hydroelectric Project and La Grange Hydroelectric Project (Projects) on the Tuolumne River in Tuolumne and Stanislaus Counties, California. On November 30, 2020, the State Water Board released a draft water quality certification for public comment. As discussed herein, the opportunity for public comment has been extended to **5:00 p.m. on January 4, 2021**.

#### Project Background

The Turlock Irrigation District and Modesto Irrigation District (Districts) have applied to the Federal Energy Regulatory Commission (FERC) for licenses for the Projects. On April 28, 2014, the Districts filed an application for a new license with FERC to continue to operate and maintain the Don Pedro Hydroelectric Project, FERC Project No. 2299, which was originally licensed in 1964. The Districts filed an amended license application for the Don Pedro Hydroelectric Project with FERC on October 11, 2017. On October 11, 2017, the Districts filed with FERC an application for an original license for the La Grange Hydroelectric Project, FERC Project No. 14581. FERC provided notice of the accepted applications on November 30, 2017. On January 29, 2018, the State Water Board submitted water quality certification preliminary terms and conditions to FERC. FERC issued a Draft Environmental Impact Statement (EIS) under the National Environmental Policy Act for the Projects on February 11, 2019, and filed a Final EIS on July 7, 2020.

#### Water Quality Certification

In California, the State Water Board is responsible for protecting the State's water quality, including through issuance of water quality certification. The State's water quality certification must ensure compliance with water quality standards and other appropriate requirements of state law, such as standards in water quality control plans.

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

A water quality certification is required before FERC can issue a license for a project. If the State denies water quality certification, FERC cannot issue the license. If the State issues water quality certification with conditions, those conditions become conditions of the federal license.

On July 20, 2020, the Districts filed the applications for water quality certification that are the subject of the draft certification. The Districts previously filed applications for certification on January 26, 2018, and April 22, 2019.<sup>1</sup> The State Water Board denied the applications without prejudice on January 24, 2019, and April 20, 2020, respectively, because there was inadequate information for the State Water Board to determine whether the Projects would comply with state water quality requirements. As lead agencies under the California Environmental Quality Act (CEQA), the Districts have not initiated the CEQA process. Under recent amendments to state law, the State Water Board may issue the water quality certification before the Districts have complied with CEQA, but will reserve authority to reopen the water quality certification as appropriate after completion of environmental review.

On October 2, 2020, the Districts petitioned FERC for an order finding that the State Water Board waived its water quality certification authority when it timely denied the applications. The Districts' compliance with CEQA and preparation of environmental analyses, however, is (and has been) fully within the Districts' control. The State Water Board's denials of the water quality certification applications were the appropriate action where a final decision would be premature. Section 401 addresses the issue in this proceeding, expressly and unambiguously: "No license or certification shall be granted if certification has been denied by the State." (33 U.S.C. § 1341(a)(1).) On November 19, 2020, the Districts withdrew their applications for certification. Their license applications and waiver request are still pending before FERC, however, and accordingly, the State Water Board is issuing the draft water quality certification for public comment.

#### Opportunity for Public Comment

This draft water quality certification does not constitute a final action by the State Water Board. The State Water Board is releasing this draft water quality certification to provide the public with an opportunity to review and comment on draft conditions developed to protect water quality and beneficial uses.

To ensure that the State's authority to protect water quality in the Tuolumne River watershed is preserved, the State Water Board intends to issue a final certification before FERC acts on the Districts' waiver request. Initially, the comment period for the draft certification ended on December 11, 2020. **Since FERC's December 17, 2020 meeting agenda does not provide for consideration of the Districts' waiver**

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<sup>1</sup> The applications have been publicly noticed previously. (Cal. Code Regs., tit. 23, § 3858.) The November 30, 2020 document providing an opportunity for public comment serves as additional notice, as well as notice to the extent that notice has not already been made satisfactorily in accordance with section 3858 by the Districts or FERC.

**request, the comment period has been extended to January 4, 2021. Comments on the draft certification must be received by 5:00 pm on January 4, 2021, and can be submitted electronically or by mail as follows:**

**Email:** [WR401Program@waterboards.ca.gov](mailto:WR401Program@waterboards.ca.gov)

or

**Mail:**

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

***KEEP INFORMED OF PROJECT MILESTONES***

To receive emails related to the Projects, interested persons should enroll in the “Water Rights Water Quality Certification” e-mail notification service. Instructions on how to sign up for the [State Water Board’s Email Subscription List](#) are outlined below:

1. Visit:

[http://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml)

2. Provide your name and email in the required fields.

3. In the categories below the email and name fields, select “Water Rights,” then “Water Rights Water Quality Certification.”

4. Click the "Subscribe" button.

5. An email will be sent to you. You must respond to the email message to confirm your membership on the selected list(s).

By enrolling in this email list, you will receive notices for Division of Water Rights’ Water Quality Certification Program pertaining to the Projects’ certification process. If you do not have internet access or do not wish to participate in the email subscription list, you may contact Mr. Chase Hildeburn by phone at (916) 323-0358 to request to receive notices by mail. You can enroll or un-enroll from the email subscription service at any time.

The draft certification and additional information regarding the State Water Board’s process, including frequently asked questions about the Projects, are available on the Projects’ webpages, which are located online at the [Don Pedro Hydroelectric Project webpage](#)<sup>2</sup> and [La Grange Hydroelectric Project webpage](#)<sup>3</sup>.

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<sup>2</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/donpedro\\_ferc2299.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/donpedro_ferc2299.html)

<sup>3</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/lagrange\\_ferc14581.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/lagrange_ferc14581.html)

During the current Coronavirus-19 emergency, most State Water Board staff are working from home. Accordingly, if you have questions concerning this notice, the best means of contact is by email. If you have questions regarding this notice, please contact State Water Board staff by email at: [WR401Program@waterboards.ca.gov](mailto:WR401Program@waterboards.ca.gov), or Mr. Chase Hildeburn by phone at (916) 323-0358.

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Ann Marie Ore  
Water Quality Certification Program Manager  
Division of Water Rights

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December 10, 2020  
Date

ebc: Erin Ragazzi, Water Rights  
Erin Mahaney, OCC  
Erin Foresman, Water Rights  
Oscar Biondi, Water Rights  
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