



Water Boards

Frequently Asked Questions **Merced River and Merced Falls Hydroelectric Projects Relicensing**

Overview

In California, all water is the property of the people, but individuals and entities can hold valuable rights to use that water. When hydroelectric projects located in California undergo relicensing by the Federal Energy Regulatory Commission (FERC), the State Water Resources Control Board (State Water Board) is the agency tasked with ensuring that the use of the state's waters for hydroelectric power does not impair the quality of the state's waters. The State Water Board achieves this protection by issuing a water quality certification (certification), which is a set of mandatory conditions that must be included in the FERC license.

Merced Irrigation District (MID) is required to obtain a certification from the State Water Board for its Merced River Hydroelectric Project and the Merced Falls Hydroelectric Project (collectively "Merced Projects") before it can obtain a new license(s) from FERC for continued operation. The FERC relicensing for the Merced Projects triggered the State Water Board's duty to develop certification conditions that protect the Merced River and tributaries.

Why is MID applying for relicensing of the Merced Projects?

50 years have passed since FERC issued licenses for the Merced Projects and those licenses have since expired. FERC Project No. 2179 ([the Merced River Hydroelectric Project](#)) was initially issued on April 8, 1964 and expired on February 28, 2014. FERC Project No. 2467 ([the Merced Falls Hydroelectric Project](#)) was initially issued on July 28, 1969 and expired on February 28, 2014. MID is seeking a new FERC license that will allow it to operate the Merced Projects for the next 40 to 50 years.

Why does MID need a water quality certification for the Merced Projects?

Operation of the Merced Projects benefits the public through energy generation, but also creates substantial impacts on the volume, rate, and quality of flows in the Merced River, including with respect to temperature and other factors. The Clean Water Act recognizes that States should have a right to protect the quality of their waters and provides that opportunity



through the certification process. Section 401 of the Clean Water Act requires that every applicant for a federal license or permit that may result in a discharge into a State's navigable waters must provide the licensing or permitting federal agency with a certification that the project will be in compliance with specified provisions of the Clean Water Act, including State water quality standards promulgated pursuant to section 303 of the Clean Water Act.

The State Water Board is the agency entrusted to develop and issue the certification. The certification can prescribe effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and state law. Section 401 requires that certification conditions become conditions of any federal license or permit for the project. The State Water Board's certification conditions are designed to allow the continued use of the Merced River for beneficial energy generation while also adequately protecting water quality and associated beneficial uses, including for fish and wildlife.

Why did State Water Board staff release a draft water quality certification?

The Merced River is a tributary to the lower San Joaquin River, which forms part of the watershed of the [Sacramento-San Joaquin Delta](#) (Delta), the largest estuary on the West Coast. Given the high level of public interest in the Delta, the Merced River, and the Merced Projects, State Water Board staff determined that releasing draft water quality certification conditions in June 2020 and requesting broad public feedback would be beneficial.

The California Environmental Quality Act (CEQA) requires MID to analyze the potentially significant adverse environmental impacts of the Merced Projects' relicensing, likely in an Environmental Impact Report (EIR), and to provide that document for public review. MID is responsible for preparing an environmental review document as required by CEQA, but it has not started that process.

Even though it did not prepare a CEQA document, in May 2019 MID asked FERC to find that the State Water Board had waived its authority to issue water quality certification under Section 401 of the Clean Water Act. Release of the draft water quality certification now allows the public an opportunity for review and consideration of potential water quality protection measures and to provide early, focused feedback pending MID's development of its CEQA document.

Does the draft certification address protection of the downstream Bay-Delta?

Yes. The draft certification requires compliance with applicable water quality control plans, which are often referred to as basin plans. Basin plans are adopted pursuant to the [Clean Water Act](#) and California's own [Porter-Cologne Water Quality Control Act](#). Basin plans establish water quality objectives, which are the criteria that must be met to protect the

beneficial uses of the waters covered in the basin plan. Basin plans also include a program of implementation, monitoring, and other measures to ensure the water quality objectives are met. Basin plans can be adopted by Regional Water Quality Control Boards or the State Water Board but where there is overlap, the State Water Board's basin plan controls.

The Merced River is included in both the State Water Board's *Water Quality Control Plan for the San Francisco/ Sacramento-San Joaquin Delta Estuary (Bay-Delta Plan)* and the Central Valley Regional Water Quality Board's *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin (SR/SJR Basin Plan)*. The State Water Board adopts the Bay-Delta Plan due to its ecological significance and the Bay-Delta's importance as the cross-roads for much of the state's water supply. The Bay-Delta Plan establishes water quality objectives to protect beneficial uses of water in the Bay-Delta Estuary and tributary watersheds, including drinking water supply, irrigation supply, and fish and wildlife. On December 12, 2018, the State Water Board adopted amendments to the Bay-Delta Plan for the lower San Joaquin River (LSJR) that require increased instream flows in the Stanislaus, Tuolumne, and Merced Rivers in order to protect fish and wildlife beneficial uses and revise southern Delta salinity objectives to protect agricultural beneficial uses. The draft certification integrates the requirements of the Bay-Delta Plan and SR/SJR Basin Plan that apply to the Merced River.

Does the draft certification allow for a Voluntary Agreement on the Merced River?

Yes. Stakeholders, including water users and environmental interests, have discussed potential voluntary agreements that could protect fish and wildlife beneficial uses in the Bay-Delta watershed through a combination of increased instream flows and non-flow measures (e.g., habitat restoration). The State Water Board's 2018 update to the Bay-Delta Plan recognized that robust voluntary agreements could serve as an alternate means of meeting Bay-Delta Plan requirements at potentially lower water cost for water users. The draft certification is expressly written to ensure that MID has the flexibility to pursue and implement a future voluntary agreement on the Merced River if it chooses to do so.

What can change between a draft and final certification?

This draft certification does not constitute a final action by the State Water Board. The State Water Board recognizes that CEQA and other ongoing processes within MID's control may lead to changes in MID's FERC relicensing proposals. In addition, comments from the applicant, agencies, and the public on the draft certification will be reviewed and considered in preparing the final certification.

What happens next?

State Water Board staff released the draft water quality certification in June 2020, followed by a 30-day comment period. State Water Board staff will consider comments on the draft water quality certification and will incorporate them as appropriate in the final document, which will be provided to State Water Board's Executive Director for consideration.

How can I learn more, and stay informed about the Merced Hydroelectric Projects?

For more information on the Merced Projects, please visit the State Water Board's webpages from the [Merced River Hydroelectric Project](#)¹ and [Merced Falls Hydroelectric Project](#)². If you would like to receive future announcements about Merced Projects related matters, you can subscribe to the State Water Board's "Water Rights Water Quality Certification" email list under "Water Rights" online at:

http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml

Alternatively, you may contact Mr. Oscar Biondi to be placed on the State Water Board's hard copy mailing list. Mr. Biondi may be contacted by email at: Oscar.Biondi@waterboards.ca.gov or by phone at: (916) 323-9397.

How can I comment on the draft water quality certification?

Comments on the draft water quality certification are due **no later than 5:00 pm on Friday, July 17, 2020**. Comments may be submitted by:

Email:

WR401Program@waterboards.ca.gov

or

Mail:

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

(This fact sheet was last updated on June 17, 2020.)

¹ https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/mercedriver_ferc2179.html

² https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/mercedfalls_ferc2467.html