

---

## State Water Resources Control Board

June 30, 2022

Mr. Ben Ransom  
Senior Environmental Scientist  
Placer County Water Agency  
144 Ferguson Road  
Auburn, CA 95603  
Sent via E-mail: [bransom@pcwa.net](mailto:bransom@pcwa.net)

**Duncan Creek Diversion Improvement Project  
Placer County  
Duncan Creek**

### **AMENDMENT TO DUNCAN CREEK DIVERSION IMPROVEMENT PROJECT WATER QUALITY CERTIFICATION, CONDITION 3**

Dear Mr. Ransom:

On April 4, 2022, the State Water Resources Control Board (State Water Board), Division of Water Rights received a water quality certification (certification) amendment application from Placer County Water Agency (PCWA) for the Duncan Creek Diversion Improvement Project (Project). The purpose of the Project is to make improvements to the Duncan Creek Diversion Dam and associated infrastructure to improve diversion reliability, increase downstream flow capacity, increase natural sediment transport, and improve downstream fish passage. PCWA is requesting an amendment to the minimum instream flow requirements during the Project construction period because the existing Federal Energy Regulatory Commission (FERC) flow requirements outlined in the Middle Fork American River Hydroelectric Project (MFAR Project) license exceed the capacity of the existing Duncan Creek Diversion Dam outlet works.

The State Water Board provided public notice of the amendment request on April 21, 2022, by posting notice of the Project on the Division of Water Rights Water Quality Certification Program Public Notices webpage and noticing the "Water Rights Water Quality Certification" email subscription list. No comments were received.

#### **BACKGROUND**

The State Water Board issued the Project certification on December 21, 2021. Condition 3 of the certification requires PCWA to maintain minimum instream flows in Duncan Creek, below Duncan Creek Diversion Dam, throughout Project implementation, including the duration of all construction and dewatering activities as established in the MFAR Project FERC license. Condition 3 further requires PCWA to

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

measure flows in 15-minute increments at United States Geological Survey (USGS) Gage No. 11427700 and USGS Gage No. 11427750 and report any deviation from the required flows to the Deputy Director of the Division of Water Rights (Deputy Director) within 24 hours of the deviation, unless otherwise approved by the Deputy Director.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Issuance of a certification amendment is a discretionary action that requires the State Water Board to comply with the California Environmental Quality Act (CEQA). (Cal. Pub. Resources Code § 21000 et. seq.) PCWA is the lead agency for the purpose of CEQA compliance. As a responsible agency, the State Water Board relies on the environmental document, which contains a disclosure of adverse impacts to water quality, prepared by the lead agency, but makes its own determination as to whether and with what conditions to grant the certification amendment, taking into consideration the information provided in the lead agency's document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).) Following certification issuance, the State Water Board issued a Notice of Determination (NOD), on December 22, 2022, to satisfy the requirements of CEQA.

The State Water Board will file a NOD with the Office of Planning and Research within five days of issuance of this certification amendment. (Cal. Code Regs., title 14, § 15094.)

### **CONDITIONAL APPROVAL**

The State Water Board finds the proposed amendment to be protective of state water quality standards and other appropriate requirements of state law.

The State Water Board hereby amends certification Section 4.3, Rationale for Condition 3: Minimum Instream Flows, as follows (new text in **bold and underline**):

*Minimum instream flows are a key element to protecting the state's water quality. Minimum instream flows directly protect water quality to support beneficial uses, provide for improved ecosystem function that protects water quality and beneficial uses, and provide habitat for fish and wildlife. Ensuring instream flows do not greatly differ from natural instream flows ensures protection of biodiversity, recreation, and water quality. Condition 3 requires the Applicant to bypass minimum instream flows throughout the Project's implementation, including construction, dewatering, and rewatering activities. This is consistent with the Applicant's proposal and its current FERC license for the MFAR Project. Bypassing the minimum instream flows established for Duncan Creek in the MFAR Project FERC license **up to the maximum capacity of the existing outlet works** will avoid unreasonable impacts (e.g., stranding, habitat loss) to the cold freshwater habitat, cold spawning habitat, and wildlife habitat beneficial uses.*

**The MFAR Hydroelectric Project discharges flow into Duncan Creek downstream of Duncan Creek Diversion Dam. MFAR Project discharges are the predominant flow releases in Duncan Creek downstream of Duncan Creek Diversion Dam and have the potential to impact water quality and associated beneficial uses of the Middle Fork American River as identified in the SR/SJR**

**Basin Plan. Existing and potential beneficial uses that may be impacted without sufficient flow releases from Duncan Creek Diversion Dam include, but are not limited to: agricultural supply; hydropower generation; warm freshwater habitat; cold freshwater habitat; cold freshwater spawning; and wildlife habitat. Fish and Game Code section 5937 requires any owner of a dam to allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist downstream.**

The State Water Board hereby amends the first paragraph of Condition 3 of the Project certification as follows (new text in **bold and underline**):

*Throughout Project implementation, including the duration of all construction and dewatering activities, the Applicant shall maintain the minimum instream flows (MIFs) presented in Table 1 in Duncan Creek below Duncan Creek Diversion Dam **to the maximum capacity of the outlet works as specified in this condition.** The Applicant shall measure flows in 15-minute increments at United States Geological Survey (USGS) Gage No. 11427700 and USGS Gage No. 11427750. Flows shall be measured at the specified gage locations unless otherwise approved by the Deputy Director. **At the specified gage locations where minimum streamflow requirements in Table 1 are higher than the capacity of existing infrastructure, the Applicant shall implement the flow requirements in Table 1 up to the maximum capacity of the existing outlet works until modification of the Project infrastructure is completed.** Table 1 lists the minimum instream flows for Duncan Creek as established in the Middle Fork American River Hydroelectric Project (MFAR Project) Federal Energy Regulatory Commission (FERC) license.*

PCWA is required to comply with the existing Project certification, except as modified by this amendment, which includes the following conditions (consistent with Conditions 16, 17, and 18 of the existing Project certification):

- This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).
- This certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- This certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28 and owed by the applicant.

All documents and other information that constitute the public record for this amendment will be maintained by the Division of Water Rights and are available for public review at the following address:

State Water Resources Control Board  
Division of Water Rights  
1001 I Street, Sacramento, CA 95814

Documents are available at this location by appointment only. Please email [dwr@waterboards.ca.gov](mailto:dwr@waterboards.ca.gov) to discuss options for reviewing documents.

If you have questions regarding this document please contact Derek Wadsworth, Project Manager, by email at [Derek.Wadsworth@waterboards.ca.gov](mailto:Derek.Wadsworth@waterboards.ca.gov). Written correspondence should be directed to:

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

Sincerely,



Eileen Sobeck  
Executive Director

cc: FERC Project No. 2079 Interested Parties List

ec: Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
**Via eFiling**

Matthew Roberts  
U.S. Army Corps of Engineers  
**Email: [Matthew.J.Roberts@usace.army.mil](mailto:Matthew.J.Roberts@usace.army.mil)**

Mr. Patrick Pulupa, Executive Officer  
Central Valley Regional Water Quality Control Board  
**Email: [Patrick.Pulupa@waterboards.ca.gov](mailto:Patrick.Pulupa@waterboards.ca.gov)**

United States Environmental Protection Agency  
Region 9 Water Division  
**Email: [R9cwa401@epa.gov](mailto:R9cwa401@epa.gov)**

Ms. Sara Reece, Janelle-Nolan & Associates  
**Email: [Sara@JNA-Consulting.com](mailto:Sara@JNA-Consulting.com)**

ebc: Derek Wadsworth, Water Rights  
Rajaa Hassan, Water Rights  
Garrett Lenahan, OCC  
Erin Ragazzi, Water Rights  
Erik Ekdahl, Water Rights