

State Water Resources Control Board

October 7, 2026

Mr. Chris Faubion, Land, Recreation, & Ecological Specialist
Hydro Generation Management
Sacramento Municipal Utility District
Sent via email: Chris.Faubion@smug.org

**Regional General Permit for SMUD's Upper American River Project and Chili Bar Project
El Dorado and Sacramento Counties
Rubicon River, Silver Creek, and South Fork American River**

DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION

Dear Mr. Faubion:

On October 8, 2025, the Sacramento Municipal Utility District (SMUD) submitted to the State Water Resources Control Board (State Water Board) Executive Director a request for water quality certification (certification) pursuant to section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) for the Regional General Permit for SMUD's Upper American River Project and Chili Bar Project (Project). As discussed in this letter, SMUD's request for certification for the Project is denied without prejudice.

Project Background

SMUD owns and operates the Upper American River Project (UARP)¹ and Chili Bar Hydroelectric Project (Chili Bar)² (jointly SMUD Hydro Projects). The new Federal Energy Regulatory Commission (FERC) licenses for the two SMUD Hydro Projects, which include the conditions in the two certifications issued by the State Water Board in 2013, allow for continued operation of the SMUD Hydro Projects with new environmental protection measures and construction and maintenance of UARP recreation facilities.

In 2014, SMUD identified construction, maintenance, and repair activities for UARP that would require a permit from the United States Army Corps of Engineers (USACE). On

¹ UARP is also referred to as Federal Energy Regulatory Commission Project No. 2101. The Executive Director of the State Water Board issued a certification for UARP on October 4, 2013.

² Chili Bar is also referred to as Federal Energy Regulatory Commission Project No. 2155. The Executive Director of the State Water Board issued a certification for Chili Bar on November 8, 2012, which was amended by the State Water Board on May 7, 2013, with the adoption of Order WQ 2013-0018.

September 23, 2015, USACE issued SMUD Regional General Permit (RGP) 9, *Minor Discharges Associated with the Sacramento Municipal Utility District's Upper American River Project* (SPK-2013-01098). On April 23, 2016, the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) issued a programmatic certification for SMUD's RGP 9 (WDID#5A09CR00136). USACE renewed SMUD's RGP 9 on July 7, 2020, and the Central Valley Regional Water Board reissued the programmatic certification for SMUD's RGP 9 on February 19, 2021.

SMUD's RGP 9 expired in 2025. Following SMUD's consultation with State Water Board staff regarding the proposed activities' relationship to the two SMUD Hydro Projects regulated by FERC, SMUD applied to the State Water Board's Executive Director for a certification for the Project on October 8, 2025. On November 10, 2025, the State Water Board posted a notice that SMUD's certification request is pending before the State Water Board. Pursuant to the April 29, 2024, Memorandum of Understanding (MOU)³ between the State Water Board, Regional Water Quality Control Boards, and USACE, the reasonable period of time to act on the certification application is October 8, 2026.

The 2025 RGP 9 and associated certification request for the Project are for minor construction, maintenance, and repair activities associated with UARP and Chili Bar facilities, including: (1) stream crossing construction and upgrades; (2) boat ramp maintenance and upgrades; (3) canal re-lining; (4) forebay dredging and excavation; (5) appurtenant dam structure repair and maintenance; (6) recreation facility upgrades; (7) weir construction and maintenance; and (8) other construction-related activities.

Regulatory Background

Under federal law, certification or waiver is required for any federal license or permit that authorizes any activity which may result in a discharge into waters of the United States. (33 U.S.C. § 1341; 40 CFR § 121.2.) Additionally, under state law, after reviewing a certification application the State Water Board must either issue an appropriately conditioned certification or deny certification. (Cal. Code Regs., tit. 23, § 3859.) The State Water Board may issue certification if the State Water Board determines that an activity will comply with applicable water quality standards and other appropriate requirements of state law. The State Water Board may deny a certification application if the activity will not comply with water quality standards or other appropriate requirements, or if compliance with water quality standards and other appropriate requirements is not determined, but the application suffers from some procedural inadequacy. (Cal. Code Regs., tit. 23, § 3837, subd. (b)(1) & (2).)

Implementation of the Project would have required a permit from USACE pursuant to CWA section 404. (33 U.S.C. § 1344.) On March 10, 2025, SMUD applied for the

³ The MOU establishes a categorical reasonable period of time of one year from receipt for the State Water Board to act on requests for certification for "[p]roposed projects that require a [Department of the Army] permit and are processed by the State Water Board's Division of Water Rights." (MOU section (4)(c)(4)(iv).)

reissuance of RGP 9 with the USACE Sacramento District. On June 18, 2025, USACE issued a public notice of SMUD's application pursuant to section 404 of the CWA.

On September 24, 2026, USACE sent SMUD a letter stating that it decided not to reissue RGP 9 as it determined that all activities authorized by RGP 9 are adequately covered under existing nationwide permits or RGPs.

Water Quality Certification Action

Based on the September 24, 2026, USACE letter to SMUD stating that USACE will not be reissuing RGP 9, the State Water Board finds that SMUD's application suffers from a procedural inadequacy consistent with California Code of Regulations, title 23, section 3837, subdivision (b)(2), as there is no longer a pending federal permit application. Therefore, SMUD is hereby notified that its October 8, 2025, request for certification for the Project is denied without prejudice, effective the date of this letter.

Staff are available to work with SMUD to determine if there are General Orders that may be used to support the USACE's nationwide permits or whether individual certifications may be necessary to support the types of projects that SMUD planned to pursue under RGP 9.

Following transmittal of this letter, State Water Board staff will post this letter on the State Water Board's UARP and Chili Bar webpages and remove the previously posted public notice.

If you have questions regarding this letter, please contact Savannah Downey, UARP and Chili Bar Manager, by email to: Savannah.Downey@waterboards.ca.gov or phone call to: (916) 322-1585. Written correspondence or inquiries should be mailed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Savannah Downey
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Sincerely,



Eric Oppenheimer
Executive Director

cc: Interested Parties List

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