

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**ORDER WR 2007-0031-EXEC**

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In the Matter of  
**EL DORADO IRRIGATION DISTRICT**

Regarding the Revision of Water Quality Certification For  
the El Dorado Hydroelectric Project (FERC 184)

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SOURCE: South Fork of the American River and Tributaries

COUNTY: El Dorado County, and parts of Alpine and Amador Counties

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**ORDER AMENDING WATER QUALITY CERTIFICATION FOR FEDERAL  
PERMIT OR LICENSE**

**BY THE EXECUTIVE DIRECTOR:**

By this order, the Executive Director amends the water quality certification for the El Dorado Hydroelectric Project, Federal Energy Regulatory Commission (FERC) Project Number 184, to make the project specific conditions better reflect the relicensing Settlement Agreement and the U.S. Forest Service 4(e) conditions.

**Factual and Legal Background**

As required by the Federal Power Act, on February 22, 2000, El Dorado Irrigation District (EID) applied to FERC for a new license to continue operating the El Dorado Hydroelectric Project. Section 401 of the Clean Water Act requires every applicant for a federal license or permit to conduct any activity that may result in a discharge into waters of the United States to obtain water quality certification. The State Water Resources Control Board (State Water Board or SWRCB) is the certifying agency in California. (Wat. Code, § 13160.) Accordingly, EID applied to the State Water Board for water quality certification in connection with EID's application for a new FERC license.

The El Dorado Hydroelectric Project (Project 184) is located on the South Fork of the American River (SFAR) and its tributaries in El Dorado, Alpine, and Amador Counties, and occupies

private lands and federally owned lands administered by the El Dorado National Forest and the Lake Tahoe Basin Management Unit. The primary features of the El Dorado Hydroelectric Project are: three storage reservoirs on tributaries to the SFAR, Lake Aloha, Silver Lake, and Caples Lake; a diversion dam on the SFAR; the El Dorado Canal, which runs from the diversion dam to the El Dorado Forebay; and the El Dorado powerhouse. After water is used to generate power, it is discharged back into the SFAR. The SFAR flows into Folsom Reservoir.

The El Dorado Hydroelectric Project is a dual-purpose project: it is operated for purposes of power generation and consumptive uses. EID uses project facilities to deliver water for consumptive purposes under a claimed pre-1914 appropriative right. The State Water Board issued water right permit number 21112 (Application 5645B) to EID and El Dorado County Water Agency (EDCWA). The permit authorizes EID and EDCWA to store water in the three project reservoirs and to redirect water released from storage and directly divert a total of 17,000 acre-feet per annum at Folsom Reservoir for domestic, municipal, and irrigation purposes. (SWRCB Order WR 2001-22, p. 2.)

EID filed an application for a new license with FERC on February 22, 2000, for the continued operation and maintenance of the existing 21-megawatt (MW) Project 184. On June 26, 2001, various parties to EID's Project 184 relicensing proceeding agreed to engage in a public, collaborative process with EID with the goal of executing a Settlement Agreement that would resolve outstanding issues for the project relicensing. On April 29, 2003, EID filed with FERC the *El Dorado Project, FERC Project No. 184, El Dorado Relicensing Settlement Agreement* (Settlement) that contains recommended protection, mitigation and enhancement (PM&E) measures as proposed by the Settlement parties<sup>1</sup>. The purpose of the Settlement was to develop PM&E measures to recommend as final U. S. Forest Service section 4(e) conditions and other mandatory license conditions to be included in a new license for the project.

FERC issued a final Environmental Impact Statement (FEIS) for Project 184 in August of 2003. The FEIS evaluated the effects of a range of alternatives, including EID's proposal to operate the project in accordance with the Settlement.

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<sup>1</sup> The parties to the Settlement included: EID; U.S. Forest Service (FS); U.S. Department of the Interior, National Park Service; California Department of Fish and Game (CDFG); Alpine County; Amador County; El Dorado County Water Agency; El Dorado Citizens for Water; Friends of the River (FOR); Trout Unlimited; Sierra Club; American Whitewater Affiliation (AW); Citizens for Water; AKT Development; and individuals Chris Shutes, Richard Wentzel, Alice Howard, and Paul Creger.

The State Water Board considered the FEIS and prepared a supplement to the FEIS as part of its California Environmental Quality Act (CEQA) responsibility as CEQA lead agency. The Water Quality Control Plan for the Central Valley Region (Basin Plan) prepared by the Central Valley Regional Water Quality Control Board was also considered, as was the administrative record for this proceeding.

On April 4, 2006, in light of the administrative record, , the State Water Board Executive Director certified that Project 184, as proposed by EID, would comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act (33 U.S.C. §§ 1311, 1312, 1313, 1316, & 1317), and with applicable provisions of state law, provided that EID complied with the terms and conditions in the water quality certification during the operation of the El Dorado Hydroelectric Project. The certification included project-specific terms and conditions as part of the certification, as well as monitoring and reporting requirements.

Conditions of the Settlement within the jurisdiction of the State Water Board were also incorporated into the water quality certification. However, some of the Settlement language was unclear, resulting in water quality certification conditions that do not reflect the intent of the language. EID, with the concurrence of U.S. Forest Service (FS) and California Department of Fish and Game (CDFG), has clarified the intent of the Settlement language, subsequent to the State Water Board's April 2006 water quality certification of Project 184.

#### **The State Water Board's Water Quality Certification Decision**

In order to approve an application for water quality certification, the State Water Board must find that the project will comply with specified provisions of the Clean Water Act, including water quality standards that are developed pursuant to state law and in satisfaction of section 303 of the Clean Water Act (33 U.S.C. § 1313). The State Water Board may prescribe effluent limitations and other limitations necessary to ensure compliance with water quality standards and any other appropriate requirement of state law. (33 U.S.C. § 1341(d).) Conditions of certification become conditions of any federal license or permit for the project.

The State Water Board has delegated the authority to take all action connected with applications for certification, including issuance or denial of certification, to the State Water Board Executive Director. (Cal. Code Regs, tit. 23, § 3838, subd. (a).)

On April 4, 2006, the State Water Board Executive Director issued water quality certification in connection with EID's application for a new FERC license for the El Dorado Hydroelectric Project, subject to a number of conditions. EID identified portions of the monitoring conditions of the certification that do not reflect conditions of the Settlement and U.S. Forest Service 4(e) conditions. EID requested that the State Water Board modify the water quality certification to better reflect the Settlement.

### **Discussion**

EID requests that the State Water Board modify the language in various conditions of the water quality certification for Project 184 that do not reflect the language in the Settlement and the FS mandatory conditions. The State Water Board, in preparing the water quality certification, attempted to faithfully incorporate the conditions of the Settlement that were within its jurisdiction.

Without the State Water Board's knowledge, EID had, on its own motion, in consultation with the FS, the Ecological Resource Committee (ERC) and the CDFG, initiated monitoring of the hardhead (a native minnow of special concern) as well as Foothill Yellow-legged Frog and Mountain Yellow-legged Frog populations. The State Water Board's certification conditions require additional monitoring by EID, which was not the intent of the Settlement or the State Water Board. EID has also requested changes in the conditions requiring reporting of geomorphology monitoring studies. The language changes amount to a clarification of when monitoring reports are to be prepared and circulated by EID, which is only in those years when monitoring is undertaken.

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**IT IS HEREBY ORDERED:**

The water quality certification, dated April 4, 2006, for the El Dorado Hydroelectric Project, FERC Project No. 184, is amended by making changes in the "Project Specific Terms and Conditions" as follows, shown in underline (for added text) and ~~strikeout~~ (for deleted text):

- 1) In condition 13a, titled *Ecological Resources Monitoring Programs, Fish Populations*, under subheading *Frequency*, amend the paragraph by adding the following as the last sentence:

The Chief of the Division of Water Rights acknowledges that EID, in consultation with the FS, ERC, and CDFG, has completed two additional years (2004 & 2005) of hardhead monitoring to determine biomass indices within the hardhead reaches as determined in Payne (1998).

- 2) In condition 13c, titled *Ecological Resources Monitoring Programs, Foothill Yellow-legged Frog (FYLF) Surveys*, under subheading *Method*, amend the first two sentences as follows:

~~The surveys shall begin in the first calendar year after license issuance. EID shall conduct three years of protocol surveys for sensitive species using the procedures of Pacific Gas and Electric Company (2002) methodology in a sub-sample of appropriate habitat types to document species presence and distribution.~~

- 3) In condition 13c, titled *Ecological Resources Monitoring Programs, Foothill Yellow-legged Frog (FYLF) Surveys*, under subheading *Method*, amend the last paragraph as follows:

~~Frequency for known site presence monitoring at the sites listed above, if not modified by the Chief of the Division of Water Rights in consultation with the FS, ERC, CDFG, shall be: years 1, 2, 3, 5, 10, 15, 20, 25, 30 of the new license; and years 1, 2, and 3 for flow fluctuation monitoring. The Chief of the Division of Water Rights acknowledges that EID, in consultation with the FS, ERC, and CDFG, completed two additional years (2004 & 2005) of known site presence monitoring. EID has agreed, in consultation with the FS, ERC and CDFG, to complete one additional year of known site presence monitoring prior to year 5, following license issuance.~~

- 4) In condition 13d, titled, *Ecological Resources Monitoring Programs, Mountain Yellow-legged Frog Survey*, under subheading *Method*, delete the first sentence as follows:

~~The surveys shall begin in the first calendar year after license issuance. Protocol surveys for sensitive species...~~

- 5) In condition 13d, titled, *Ecological Resources Monitoring Programs, Mountain Yellow-legged Frog Survey*, under subheading *Frequency*, amend the text to read:

~~For the sites listed above, years 4, 5, 10, 15, 20, 25, 30. For Lake Aloha ponds, year one and after any spill. The Chief of the Division of Water Rights acknowledges that EID, in consultation with the FS, ERC, and CDFG, completed~~

one additional year (2004) of known site presence monitoring. EID has in consultation with the FS, ERC, and CDFG completed the initial trout survey and removal at Lake Aloha ponds in 2004.

- 6) In condition 13g, titled *Ecological Resources Monitoring Programs, Geomorphology (Sensitive Site Investigation & Mitigation Plan Development)*, under subheading *Method*, amend the last paragraph to read:

EID shall provide annual site investigation reports in years when monitoring is required, to the FS, ERC, the Chief of the Division of Water Rights and CDFG and shall include any recommended measures proposed by EID to correct channel stability problems.

- 7) In condition 13h, titled *Ecological Resources Monitoring Programs, Geomorphology (Continuing Evaluation of Representative Channel Areas)*, under the subheading *Frequency*, amend the last paragraph to read:

EID shall provide annual ~~monitoring reports~~ site investigation reports in years when monitoring is required, to the FS, ERC, the Chief of the Division of Water Rights and CDFG, and shall include any recommended changes in the monitoring proposed by EID to correct channel stability problems.

Dated: SEP 19 2007

  
Dorothy Rice  
Executive Director