

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification For
RECONSTRUCTION OF THE EL DORADO DIVERSION DAM
EL DORADO IRRIGATION DISTRICT
EL DORADO HYDROELECTRIC PROJECT

FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 184

SOURCES: South Fork of the American River and Tributaries

COUNTY: El Dorado County

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

1. The **EL DORADO IRRIGATION DISTRICT** (EID) proposes to reconstruct the El Dorado Diversion Dam which was damaged in January 1997. The El Dorado Hydroelectric Project (Project #184) is licensed by the Federal Energy Regulatory Commission (FERC) and includes a diversion dam on the South Fork of the American River (SFAR), 22 miles of canal (the El Dorado Canal), and a powerhouse. EID has applied to the FERC for a license amendment to Project #184 to repair the damaged diversion dam. The reconstruction of the diversion dam, in addition to other repairs to the project, will allow EID to reestablish power generation capacity.
2. In connection with its license amendment application, EID submitted two separate applications for water quality certification to the State Water Resources Control Board (SWRCB). This certification covers only EID's request for certification in connection with the reconstruction of the diversion dam (the project).
3. The El Dorado Diversion Dam is located on the South Fork of the American River (SFAR), near the town of Kyburz, at an elevation of 3,910 feet above mean sea level. The new diversion dam will be of similar size, and in the same footprint, as the dam destroyed in January of 1997 (see memo to file data July 21, 2000 for project details).
4. The Federal Clean Water Act (33 U.S.C. § 1251 et seq.) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 401 of the Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit to obtain water quality certification. The SWRCB is the certifying agency

in California. (Wat. Code, § 13160.) In issuing water quality certification, the SWRCB certifies 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 Act (33 USC § 1313). The SWRCB 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. (*Ibid.*)

5. The SWRCB has delegated the authority to issue or deny water quality certification to the Executive Director. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)
6. The California Regional Water Quality Control Boards have adopted, and the SWRCB has approved, water quality control plans (basin plans) for each watershed basin pursuant to state law and in satisfaction of section 303 of the Clean Water Act (33 U.S.C. § 1313), which requires the states to establish water quality standards. Each basin plan designates the beneficial uses of the waters to be protected within a given region, establishes water quality objectives to protect those uses, and sets forth a program of implementation.

The basin plan for the Central Valley-Sacramento/San Joaquin River Basins identifies the following beneficial uses for the South Fork of the American River and tributaries from its source to Placerville: municipal and domestic supply, hydropower generation, contact and non-contact recreation, canoeing and rafting, cold freshwater habitat, potential warm freshwater habitat, cold water spawning, and wildlife habitat.

Protection of the beneficial uses identified in the basin plan requires maintenance of adequate instream flows as well as effluent limitations and other limitations on discharges of pollutants from point and nonpoint sources to the South Fork American River and its tributaries.

7. On February 10, 1997, the SWRCB issued a statewide water quality certification covering several classes of activities covered under U.S. Army Corps of Engineers (Corps) 404 Nationwide Permits (NWP). At the same time, the SWRCB denied certification without prejudice to several classes of NWPs that were found individually or cumulatively to have a significant effect on the environment due to the range of activities contemplated. Activities authorized under those NWPs for which water quality certification was denied therefore require water quality certification on a project by project basis.

EID has applied for Section 404 NWP numbers 3, 4, and 33 (Maintenance; Fish and Wildlife Harvesting; and Temporary Construction, Access, and Dewatering, respectively). NWP numbers 3, and 33 are classes of activities for which water quality certification is required on an individual project basis. Although the SWRCB issued water quality certification for NWP number 4, the certification does not cover activities other than those authorized under the NWP. In addition, by its terms the certification does not apply to those activities for which more than one federal permit or license is required. Accordingly,

the water quality certification does not apply in this instance because the repair work that EID proposes to perform requires a FERC license amendment.

8. As lead agency under the California Environmental Quality Act (CEQA), EID prepared an environmental impact report for this project which was certified on July 12, 1999 (State Clearinghouse Number 989082005). The SWRCB has reviewed the proposed project and the conditions that have been incorporated into the project in order to protect the environment pursuant to CEQA.

IN LIGHT OF THE FOREGOING, THE SWRCB CERTIFIES THAT THE RECONSTRUCTION OF THE DIVERSION DAM ON THE SOUTH FORK AMERICAN RIVER THAT IS PART OF THE EL DORADO HYDROELECTRIC PROJECT AS PROPOSED BY EID will 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 complies with the following terms and conditions during the prosecution of the work certified herein.

1. No construction may commence until a copy of the Water Quality Monitoring Plan has been submitted to and approved by the Chief of the Environmental Section (SWRCB, Division of Water Rights). A final water quality monitoring report shall be prepared within 90 days from the date of completion of construction and submitted to the SWRCB and RWQCB.
2. Prior to the start of construction, EID shall survey the project footprint and the areas upstream and downstream of the project for the presence of the Button's Sierra Sideband (snail), Western Pond Turtle, and Foothill Yellow-Leg Frog and report the findings to the SWRCB, Department of Fish and Game (DFG), and the U.S. Forest Service (USFS).
3. Prior to commencing construction, and again within two weeks after the end of construction, EID shall conduct a survey of benthic macroinvertebrates in one reach above and one reach below the diversion dam. Prior to conducting the survey, EID shall consult with the SWRCB. The survey shall be conducted in accordance with the California Stream Bioassessment Protocol (point source). The macroinvertebrates shall be identified using the California Stream Bioassessment Protocol taxonomic list and reported using the standard metrics. A final report shall be filed with the SWRCB within 90 days of the completion of the project.
4. This certification does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California or the federal Endangered Species Act. If a "take" will result from any act authorized under this certification, EID shall obtain authorization for the take prior to commencing construction. EID shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this certification.

5. No construction may commence until after EID has submitted a Hazardous Materials Control and Spill Prevention Plan to the SWRCB and RWQCB.
6. A copy of the dewatering plan shall be submitted to the SWRCB and RWQCB.
7. EID shall comply with any permits issued by the RWQCB for this project. EID shall conform to the Application for Amendment, Storm Water Pollution Prevention Plans (amendments and addenda) dated October 1999 and January 2000. EID shall conform to the terms of the National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges associated with construction activity (general permit). In addition, EID shall act consistent with the 100% Submittal (January 28, 2000), and any other plans or documents submitted (see memo to file dated July 21, 2000).
8. The EID shall take all reasonable measures to protect the beneficial uses of water of the South Fork of the American River and tributaries. During construction of the diversion dam, EID proposes to use certain erosion and sedimentation control measures (see memo to file dated July 21, 2000). These erosion control measures are incorporated into this certification (and shall be included in any water quality Storm Water Pollution Prevention Plans, Hazardous Materials Control and Spill Prevention Plan or water quality protection plan required for the project).
9. Except to the extent permitted under a Corps Section 404 permit and the associated water quality certification, soil, silt or other organic or earthen materials shall not be placed where such materials could pass into surface waters or surface water drainage courses. The use of aggregate base material and riprap shall be clean rock that is free from visible organic or earthen material.
10. In order to protect the beneficial uses designated in the Basin Plan, the authorized project shall not add the following substances to surface waters:
 - a. Taste or odor-producing substances to impart undesirable tastes to domestic and municipal water supplies or odors to fish flesh or other edible products of aquatic origin or to cause nuisance or adversely affect beneficial uses;
 - b. Perceptible floating material including, but not limited to, solids, liquids, foams or scums which could result in degradation of water quality;
 - c. Suspended or settleable material in concentrations that cause a nuisance or adversely affect beneficial uses;
 - d. Oil, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water;

- e. Toxic pollutants present in the water column, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal, or aquatic life; or that bioaccumulate in aquatic resources at levels which are harmful to human health; and,
 - f. Coliform organisms attributable to human wastes.
11. Fresh concrete or grout that has not set shall not be allowed to contact or enter surface water.
 12. Any rock placed in the river for construction of the diversion dam shall be round washed rock. Angular, crushed rock shall not be used in the river.
 13. Whenever possible, the El Dorado Canal shall be used for waters that may be turbid as a result of construction activities. Pumps used for dewatering the river during construction of the dam shall discharge in the El Dorado Canal. The dewatering pumps shall be screened to prevent the entrainment of fish. Prior to dewatering, fish shall be relocated (by electroshocking), from the section of the river that will be dewatered, to a downstream location.
 14. All equipment using gas, oil, hydraulic fluid or other petroleum products shall be steam cleaned prior to its use in the river channel. All equipment shall be inspected for leaks prior to use in the river and shall be monitored for leakage. Equipment refueling shall only take place in a designated, contained area.
 15. Oil containment boom(s) shall be installed prior to performing work within the river channel, and shall be maintained until work in the river is completed. Spill and containment equipment (oil spill booms, sorbent pads, etc.) shall be maintained on-site.
 16. The two sediment bypass pipes in the intake structure and screen shall be operated continuously. Any alteration from this schedule must be approved by the Chief of the Environmental Section (SWRCB, Division of Water Rights) and the RWQCB.
 17. The EID shall develop a permanent portage route, with appropriate signage, around the diversion dam.
 18. The EID shall notify the SWRCB and the RWQCB immediately of any spill of petroleum products, cement, hazardous material, or other organic or earthen materials into the South Fork American River or tributaries and the actions being taken to remediate the problem.
 19. Inspections of the site must be made prior to anticipated storm events and after actual storm events. Additionally, during extended storm events, inspections must be made once every 24 hours.
 20. The EID shall allow SWRCB and RWQCB staff access to this site for inspection at any time, without notice, prior to and during construction.

21. This project will result in increased diversions from the South Fork American River compared to the current level of diversions, which has the potential to adversely affect beneficial uses. This certification does not include instream flow requirements, however, because the SWRCB anticipates that FERC will issue a new license for Project 184 within the next several years. The current license expires February 23, 2002, and the relicensing process is currently ongoing. EID has submitted a separate application for water quality certification in connection with its application for a new license, and is conducting studies as part of the relicensing process. The results of the studies are needed in order to develop instream flow requirements that will ensure protection of beneficial uses. Provided that the relicensing process is completed in a timely manner, the SWRCB will ensure protection of beneficial uses within a reasonable period of time. The SWRCB reserves jurisdiction to require additional information and studies and to impose instream flow requirements as a condition of this certification, if the FERC relicensing process is not complete and a new license issued by 2005.
22. The minimum flows in the existing FERC license for Project 184 shall be maintained at all times during construction.
23. EID shall comply with the Stream Alteration Agreement Number II-296-99 issued by DFG.
24. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
25. In response to a suspected violation of any condition of this certification, the SWRCB may require EID to furnish, under penalty of perjury, any technical or monitoring reports that the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
26. Prior to implementing any change to the project that would have a significant or material effect on the findings, conclusions, or conditions of this certification, EID must obtain the written approval of the Chief of the Environmental Section (SWRCB, Division of Water Rights).

This water quality certification applies only to this project, which encompasses the reconstruction of the diversion dam. This water quality certification is not intended and shall not be construed to apply to any other activities proposed in EID's application for a license amendment, or to the issuance of any other federal permit or license, including the issuance of a new FERC license for Project No. 184.

This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, sections 3867-3869.



Ed Anton
Acting Executive Director

Date: JUL 25 2000