



# Water Boards

## **Frequently Asked Questions**

### **Don Pedro Hydroelectric Project and La Grange Hydroelectric Project Relicensing**

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, including for fish and wildlife. 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. Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively referred to as Districts) jointly own and operate the Don Pedro Hydroelectric Project and La Grange Hydroelectric Project (collectively referred to as the Projects). The Districts are required to obtain a certification from the State Water Board for the Projects before they can obtain a license(s) from FERC for the operation of the hydroelectric facilities for a 40-50 year period. The water quality certification process provides a powerful tool for California to protect its public waters during the 40- or 50-year FERC license term.

#### **Why are the Districts applying for relicensing of the Don Pedro Hydroelectric Project and La Grange Hydroelectric Project?**

It has been over 50 years since FERC issued a license for the Don Pedro Hydroelectric Project (FERC Project No. 2299) and that license has since expired.<sup>1</sup> The La Grange Hydroelectric Project (FERC Project No. 14581) has never been licensed by FERC. In 2012, FERC determined that the La Grange Project was required to be licensed because it is located on a navigable river and includes federal lands. The Districts are seeking a new FERC license(s) for the Projects that will allow them to operate the Projects for the next 40 to 50 years.

#### **Why do the Districts need a water quality certification for the Don Pedro Hydroelectric Project and La Grange Hydroelectric Project?**

Operation of the Projects benefits the public through energy generation, municipal and irrigation water supply, and recreational opportunities. The Projects also significantly impact

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<sup>1</sup> The original FERC license for the Don Pedro Project was issued on March 10, 1964 and expired on April 30, 2016.



the volume, rate, and quality of water flowing in the Tuolumne River downstream of the Projects, affecting temperature, dissolved oxygen, and other water quality parameters and beneficial uses of water. 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 and other appropriate requirements of state law.

The State Water Board is the State agency responsible for protecting the California's water quality and is authorized to certify that an activity will meet applicable water quality requirements. The certification can prescribe conditions necessary to ensure protection of water quality. Section 401 of the Clean Water Act requires that certification conditions become conditions of the federal license or permit for the project. If the State denies certification, the federal agency cannot issue the permit or license. The State Water Board's certification conditions are designed to allow the continued use of the Tuolumne River for energy generation while also adequately protecting water quality and associated beneficial uses, including for fish and wildlife.

Most FERC-licensed hydroelectric projects pursuing certification were constructed prior to the adoption of the Clean Water Act (1972), have never received water quality certifications, and do not meet the State's water quality standards. It is necessary for the State to act to address water quality issues now; otherwise any water quality problems may not be addressed until 40 or 50 years later, when a new certification is required as part of the next FERC licensing process.

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

The Tuolumne 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 Tuolumne River, and the Projects, State Water Board staff determined that releasing draft water quality certification conditions in November 2020 and requesting public comment would provide transparency about the certification process and help inform the State Water Board's consideration of the certification. The public comment period ended on January 4, 2021.

### **Does the certification address protection of the downstream Bay-Delta?**

Yes. The certification requires compliance with applicable water quality control plans. Water quality control plans are adopted pursuant to the Clean Water Act and California's own Porter-Cologne Water Quality Control Act. The plans identify beneficial uses of water (e.g., municipal, irrigation, fish and wildlife, recreation, and others) and establish water quality objectives, which are the criteria that must be met to protect the beneficial uses of water.

Water quality control plans also include a program of implementation, monitoring, and other measures to ensure the water quality objectives are met. Water quality control plans can be adopted by Regional Water Quality Control Boards or the State Water Board but where there is potential conflict, the State Water Board's water quality control plan controls.

The Tuolumne 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 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 certification integrates the requirements of the Bay-Delta Plan and SR/SJR Basin Plan that apply to the Tuolumne River.

### **Does the certification allow for a Voluntary Agreement on the Tuolumne River?**

Yes. The Districts and stakeholders, including water users and environmental interest groups, 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 certification is expressly written to ensure that the Districts have the flexibility to pursue and implement a future voluntary agreement on the Tuolumne River if they choose to do so.

### **What does the California Environmental Quality Act (CEQA) require?**

The Districts are the lead agencies for the purposes of CEQA compliance, but have not initiated the CEQA process. CEQA requires public agencies to consider the significant environmental impacts of a project involving a discretionary approval and to avoid or mitigate those impacts where feasible. Based on the potential impacts of operating and maintaining the Projects throughout the duration of the FERC license(s), it is anticipated that the environmental review document required pursuant to CEQA will be an environmental impact report (EIR). In general, an environmental review document (e.g., EIR) will analyze potentially significant adverse environmental impacts associated with the proposed project and measures that may be implemented to avoid, minimize, and mitigate for those impacts during construction, maintenance, and operations. Additionally, CEQA requires that a lead agency make "findings" with respect to each significant effect that it analyzes.

The State Water Board has denied the Districts' applications for certification in the past because the Districts had not begun the CEQA process and the State Water Board could not determine whether the activity would meet the State's water quality requirements. The Districts recently requested that FERC find that the State Water Board has waived its water quality certification authority for the Projects. State law allows the State Water Board to issue a water quality certification before CEQA documentation is complete if there is a substantial risk of waiver of its certification authority. It may reopen the certification and revise it upon completion of environmental documentation prepared under CEQA, in order to ensure that issues raised by that process are fully addressed. Accordingly, the State Water Board has issued the certification before the Districts have complied with CEQA, but will reserve authority to reopen the certification as appropriate after completion of environmental review.

### **How can I learn more, and stay informed about the Don Pedro and La Grange Hydroelectric Projects?**

For more information on the Projects, please visit the State Water Board's webpages for the [Don Pedro Hydroelectric Project webpage](#)<sup>2</sup> and [La Grange Hydroelectric Project webpage](#)<sup>3</sup>. If you would like to receive future announcements about 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](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml)

Alternatively, you may contact Mr. Chase Hildeburn to be placed on the State Water Board's hard copy mailing list. Mr. Hildeburn may be contacted by email at:

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<sup>2</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/donpedro\\_ferc2299.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/donpedro_ferc2299.html)

<sup>3</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/lagrange\\_ferc14581.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/lagrange_ferc14581.html)