

**STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD**

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**In the Matter of Water Quality Certification for**

**NEVADA IRRIGATION DISTRICT  
JACKSON LAKE DAM TOE SLOPE PROTECTION AND FISH FLOW WEIR  
REPLACEMENT PROJECT**

**SOURCE: Jackson Creek**

**COUNTY: Nevada**

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

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**Acronyms and Abbreviations**

<i>Antidegradation Policy</i>	<i>Statement of Policy with Respect to Maintaining High Quality Waters in California</i>
<i>Applicant</i>	<i>Nevada Irrigation District</i>
<i>Bay-Delta Plan</i>	<i>Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary</i>
<i>Central Valley Regional Water Board</i>	<i>Central Valley Regional Water Quality Control Board</i>
<i>CEQA</i>	<i>California Environmental Quality Act</i>
<i>cfs</i>	<i>cubic feet per second</i>
<i>certification</i>	<i>water quality certification</i>
<i>Deputy Director</i>	<i>Deputy Director of the Division of Water Rights</i>
<i>Dredge or Fill Procedures</i>	<i>State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State</i>
<i>Executive Officer</i>	<i>Executive Officer of Central Valley Regional Water Quality Control Board</i>
<i>FERC</i>	<i>Federal Energy Regulatory Commission</i>
<i>Forest Service</i>	<i>United States Department of Agriculture-Forest Service</i>
<i>NID</i>	<i>Nevada Irrigation District</i>
<i>NPDES</i>	<i>National Pollutant Discharge Elimination System</i>
<i>NTU</i>	<i>Nephelometric Turbidity Unit</i>
<i>Project</i>	<i>Jackson Lake Dam Toe Slope Protection and Fish Flow Weir Replacement Project</i>
<i>Regional Water Boards</i>	<i>Regional Water Quality Control Boards</i>
<i>SR/SJR Basin Plan</i>	<i>Water Quality Control Plan for the California Regional Water Quality Control Board Central Valley Region the Sacramento River Basin and San Joaquin River Basin</i>
<i>SNYLF</i>	<i>Sierra Nevada yellow-legged frog</i>
<i>State Water Board</i>	<i>State Water Resources Control Board</i>
<i>USACE</i>	<i>United States Army Corps of Engineers</i>
<i>USEPA</i>	<i>United States Environmental Protection Agency</i>
<i>Water Boards</i>	<i>State Water Resources Control Board and Regional Water Quality Control Boards, collectively</i>

## 1.0 Project Description

Nevada Irrigation District (NID or Applicant) owns and operates Jackson Lake Dam, which is part of the Yuba-Bear Hydroelectric Project (Federal Energy Regulatory Commission (FERC) Project No. 2266). Jackson Lake Dam is an earthen dam that is 772-feet-long and 28-feet-high and impounds approximately 1,330 acre-feet of water in Jackson Lake. Jackson Lake Dam is located on Jackson Creek, approximately 22 miles northwest of the city of Truckee (Figure 1: Jackson Lake Dam Toe Slope Protection and Fish Flow Weir Replacement Project Area Map).

Since the 1960s, water seepage has been observed at Jackson Lake Dam's low-level outlet pipe. This seepage has resulted in the erosion of material near the dam's toe and on the banks of Jackson Creek. To address dam safety concerns and eliminate ongoing sediment discharges associated with seepage, NID is proposing the Jackson Lake Dam Toe Slope Protection and Fish Flow Weir Replacement Project (Project). The Project will remove sediment that has accumulated at the toe of Jackson Lake Dam and install an L-shaped steel plate above the dam's low-level outlet pipe to act as a leakage weir and prevent future seepage. Additionally, the Project includes: removal of an existing fish flow weir and stilling well that are located approximately 100-feet downstream of the Jackson Lake Dam; and installation of a new fish flow weir in the same location.

Per Article 32 of the Yuba-Bear Hydroelectric Project FERC license, NID must maintain a minimum instream flow of 0.75 cubic feet per second (cfs) in Jackson Creek. As part of the Project, NID is proposing to dewater approximately 120 feet of Jackson Creek, from Jackson Lake Dam to 10 feet below the existing fish flow weir, via installation of a temporary bypass pipe that will be connected to the dam's low-level outlet. Following construction, the bypass pipe will be removed and flows in the dewatered portion of Jackson Creek will be restored. Temporary sandbag berms, a sump, and pumps may be required during the initial dewatering to dry out the work area.

Following sediment excavation, steel plate installation, and fish weir construction, NID proposes to install slope protections to stabilize the banks of Jackson Creek downstream of Jackson Lake Dam. Slope protections will cover an area approximately 25-feet-long and 12-feet-wide along each bank of Jackson Creek.

In total, approximately 15 cubic yards of sediment will be excavated as part of the Project. The sediment will be stored for future use onsite at an upland area to the east of the dam (Figure 2: Jackson Lake Dam Toe Slope Protection and Fish Flow Weir Replacement Project Site Overview). Waste material other than local soil will be disposed of off-site at an approved disposal site. Project construction is anticipated to take approximately 30 calendar days and will begin in the summer or fall of 2023 following NID obtaining all necessary permits.

Project implementation will require a permit from the United States Army Corps of Engineers (USACE), pursuant to section 404 of the Clean Water Act. NID anticipates it will obtain coverage for the Project from the USACE under the following Nationwide Permits: 3(a) – Maintenance; and 13 – Bank Stabilization. A section 404 permit from

USACE requires NID to obtain a Clean Water Act section 401 water quality certification (certification) from the State Water Resources Control Board (State Water Board) for the Project.

## 2.0 Water Rights

Table A lists NID’s water right claim associated with the Project.

**Table A. NID’s Claimed Water Rights Related to the Project\***

Application No.	Source	Priority Date	Place of Storage or Diversion	Purpose of Use
S016092	Jackson Creek	11/26/2007	Point of Direct Diversion at Jackson Creek	Domestic Industrial Recreational (Boating, Camping, Fishing) Mining Fire Protection Power

\* Information is from the State Water Board’s electronic Water Rights Information Management System.

## 3.0 Regulatory Authority

### 3.1 Water Quality Certification and Related Authorities

The federal Clean Water Act (33 U.S.C. §§ 1251-1388) was enacted “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” (33 U.S.C. § 1251(a).) The Clean Water Act relies significantly on state participation and support in light of “the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution” and “plan the development and use” of water resources. (33 U.S.C. § 1251(b).) Section 101 of the Clean Water Act (33 U.S.C. § 1251(g)) requires federal agencies to “co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.” (33 U.S.C. § 1251(g).)

Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires any applicant for a federal license or permit that may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will comply with specified provisions of the Clean Water Act, including water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Clean Water Act section 401 directs the agency responsible for certification to prescribe effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with “any other appropriate requirement of State law.” (33 U.S.C. §1341(d).) Section 401 further provides that certification

conditions shall become conditions of any federal license or permit for the project.  
(*Ibid.*)

The State Water Board is the state agency responsible for Clean Water Act section 401 certification in California. (Wat. Code, § 13160.) The State Water Board has delegated authority to act on applications for certification to the Executive Director of the State Water Board. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

Water Code section 13383 authorizes the State Water Board to “establish monitoring, inspection, entry, reporting, and recordkeeping requirements” and obtain “other information as may be reasonably required” for activities subject to certification under section 401 of the Clean Water Act. For activities that involve the diversion of water for beneficial use, the State Water Board delegated this authority to the Deputy Director of the Division of Water Rights (Deputy Director), as provided for in State Water Board Resolution No. 2012-0029 (State Water Board 2012). In the *Redelegation of Authorities* memo issued by the Deputy Director on April 20, 2023, this authority is redelegated to the Assistant Deputy Directors of the Division of Water Rights (State Water Board 2023).

#### Procedure, Application, and Noticing

On March 28, 2023, NID filed a certification application with the State Water Board under section 401 of the Clean Water Act. On April 11, 2023, State Water Board staff provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858, by posting information describing the Project on the State Water Board’s website. No comments were received in response to this notice.

On May 24, 2023, State Water Board staff requested comments from the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) on the certification application. (See Cal. Code Regs., tit. 23, § 3855, subd. (b)(2)(B).) The Central Valley Regional Water Board did not provide comments.

### **3.2 Water Quality Control Plans and Related Authorities**

The State Water Board’s certification for the Project must ensure compliance with applicable water quality standards in the *Water Quality Control Plan (Basin Plan) for the California Regional Water Quality Control Board Central Valley Region the Sacramento River Basin and San Joaquin River Basin* (SR/SJR Basin Plan) (Central Valley Regional Water Board 2019) and the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Bay-Delta Plan).

Water quality control plans designate the beneficial uses of water to be protected (such as municipal and domestic supply, industrial, agriculture, and fish and wildlife habitat), water quality objectives for the reasonable protection of the beneficial uses and the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Wat. Code, §§ 13241, 13050, subds. (h), (j).) The beneficial uses, together with the water quality objectives contained in the water quality control plans and applicable state and federal anti-degradation requirements, constitute California’s water quality standards for purposes of the Clean Water Act. In issuing certification for a

project, the State Water Board must ensure consistency with the designated beneficial uses of waters affected by the project, the water quality objectives developed to protect those uses, and anti-degradation requirements. (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology* (1994) 511 U.S. 700, 714-719.)

The California Regional Water Quality Control Boards (Regional Water Boards) have primary responsibility for the formulation and adoption of water quality control plans for their respective regions, subject to State Water Board and United States Environmental Protection Agency (USEPA) approval, as appropriate. (Wat. Code, §§ 13240 et seq.) As noted above, the State Water Board may also adopt water quality control plans, which will supersede regional water quality control plans for the same waters to the extent of any conflict. (Wat. Code, § 13170.) The State Water Board and Regional Water Boards (collectively Water Boards) adopt the plans pursuant to their authorities under the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13000 et seq.) and the federal Clean Water Act (33 U.S.C. § 1313).

#### SR/SJR Basin Plan

The Central Valley Regional Water Board adopted, and the State Water Board and USEPA approved, the SR/SJR Basin Plan. The SR/SJR Basin Plan designates the beneficial uses of water to be protected along with the water quality objectives necessary to protect those uses. The SR/SJR Basin Plan specifies that the beneficial uses of any specifically identified waterbody generally apply to its tributary streams. The SR/SJR Basin Plan identifies existing beneficial uses for Jackson Creek (Yuba River – Sources to Englebright Reservoir) as: municipal and domestic supply; agricultural supply; hydropower generation; water contact recreation; non-contact water recreation; cold freshwater habitat; cold spawning, reproduction, and/or early development; and wildlife habitat.

#### Bay-Delta Plan

The Bay-Delta Plan establishes water quality objectives to protect beneficial uses of water in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary and tributary watersheds, including drinking water supply, irrigation supply, and fish and wildlife<sup>1</sup>. The State Water Board adopts the Bay-Delta Plan pursuant to its authorities under the Porter-Cologne Water Quality Control Act (Wat. Code, §§ 13000 et seq.) and the federal Clean Water Act (33 U.S.C. § 1313). The beneficial uses in the Bay-Delta Plan are: municipal and domestic supply; industrial service supply; industrial process supply; agricultural supply; groundwater recharge; navigation; water contact recreation; noncontact water recreation; shellfish harvesting; commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; estuarine habitat; wildlife habitat; and rare, threatened, or endangered species.

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<sup>1</sup> Based on the Project's limited scope, duration, and distance from the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, impacts to water quality objectives listed for waterbodies in the Bay-Delta Plan are not anticipated to occur from Project activities.



The Bay-Delta Plan generally is not self-implementing and does not allocate the responsibility of meeting objectives to water diverters in the Sacramento River. Subsequent regulatory actions, such as certifications, rulemakings, or water right adjudicative proceedings are required to implement the water quality objectives.

The State Water Board is developing Bay-Delta Plan amendments focused on the Sacramento River and its tributaries, Delta eastside tributaries, Delta outflows, and interior Delta flows. This effort is referred to as the Sacramento/Delta Update to the Bay-Delta Plan. Protection of the Bay-Delta ecosystem and its native aquatic species requires an integrated approach to effectively connect upstream suitable cold water nursery habitat, floodplains, tidal marshland, and turbid open water habitats in the Delta and Bay and to connect those environments to the ocean. Accordingly, the Sacramento/Delta Update to the Bay-Delta Plan would provide for a flow regime that supports a connected and functioning ecosystem linking and integrating inflow, cold water habitat, Delta outflow, and interior Delta flow measures with complementary physical habitat restoration and other nonflow measures. Changes are proposed to the water quality objectives, including narrative and numeric flow objectives, and the program of implementation for those objectives, as well as changes to monitoring, reporting, and assessment requirements. Water users on Bay-Delta tributaries would bear responsibility for achieving the tributary flow objectives and for contributing to the Delta outflow objectives, including diverters upstream of and in the Delta (State Water Board 2020b).

#### Antidegradation Policy

The State Water Board's **Statement of Policy with Respect to Maintaining High Quality Waters in California** (Antidegradation Policy)<sup>2</sup> (State Water Board 1968) requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably impact present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained. The state Antidegradation Policy incorporates the federal Antidegradation Policy (40 C.F.R. § 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

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<sup>2</sup> State Water Board Resolution No. 68-16 and any amendments thereto. Available at: [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/1968/rs68\\_016.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf). Accessed on May 26, 2023.

### 3.3 State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State

The *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (Dredge or Fill Procedures)<sup>3</sup>(State Water Board 2019 and 2021)<sup>4</sup> provide California’s definition of wetland, wetland delineation procedures, and procedures for submitting applications for activities that could result in discharges of dredged or fill material to waters of the state. The Dredge or Fill Procedures ensure that State Water Board regulatory activities will result in no net loss of wetland quantity, quality, or permanence, compliant with the *California Wetlands Conservation Policy*, Executive Order W-59-93. NID must comply with the Dredge or Fill Procedures when conducting dredge or fill activities that may impact waters of the state, including wetlands.

### 3.4 Clean Water Act Section 303(d) Listing

On January 19, 2022, the State Water Board adopted the *2020-2022 California Integrated Report (Clean Water Act Section 303(d) List/305(b) Report)*<sup>5</sup> (State Water Board 2022a) and it was approved by USEPA on May 11, 2022. The 2020-2022 California Integrated Report (Clean Water Act Section 303(d) List/305(b) Report) does not list Jackson Creek hydrological subarea as an impaired waterbody.

### 4.0 California Environmental Quality Act

NID is the lead agency for the purpose of compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). The State Water Board is a responsible agency under CEQA. (Id., § 15381.).

CEQA applies to discretionary projects that may cause a direct or indirect physical change in the environment. (Pub. Resources Code, §§ 21000 et seq.) When proposing to undertake or approve a discretionary project, state agencies must comply with the procedural and substantive requirements of CEQA. NID determined that the Project is categorically exempt from CEQA under Class 1, existing facilities (Cal. Code Regs, tit. 14, § 15301). The State Water Board considered the Notice of Exemption (NOE) in connection with the issuance of this certification and, based on its independent judgment, agrees that the Project meets the Class 1 exemption. No exceptions to the

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<sup>3</sup> The Dredge or Fill Procedures and any amendments thereto. Available at: [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/wrapp.html](https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html). Accessed on May 26, 2023.

<sup>4</sup> Resolution No. 2021-0012 is available online at: [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/wrapp/rs2021\\_0012.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/rs2021_0012.pdf). Accessed on May 26, 2023.

<sup>5</sup> 2020-2022 Integrated Report. Available at: [https://www.waterboards.ca.gov/water\\_issues/programs/water\\_quality\\_assessment/2020\\_2022\\_integrated\\_report.html](https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html). Accessed on May 26, 2023.

Class 1 exemption apply. The State Water Board will file a NOE with the State Clearinghouse within five working days of issuing this certification.

## **5.0 Rationale for Water Quality Certification Conditions**

This section of the certification explains that the grant of certification, as conditioned, is warranted and why the conditions in Section 7.0 are necessary to ensure that the Project and its discharges will comply with water quality requirements. This section also includes, as necessary, citations to federal, state, or tribal laws that authorize the conditions and sets forth citations to applicable regulatory authority. Section 3.0 also sets forth citations to applicable regulatory authority. The explanation and citations should be evaluated in the context of the certification as a whole, but the certification conditions are set forth only in Section 7.0.

As explained in this section, the conditions in this certification are generally required pursuant to the SR/SJR Basin Plan, as described in Section 3.0, Regulatory Authority.

The Dredge or Fill Procedures, adopted pursuant to Water Code sections 13140 and 13170, authorize approval of dredge or fill projects subject to satisfaction of specified requirements. California Code of Regulations, title 23, sections 3830 et seq., set forth state regulations pertaining to certifications. In particular, section 3856 sets forth information that must be included in certification requests, and section 3860 sets forth standard conditions that shall be included in all certification actions.

Water Code sections 13267 and 13383 authorize the Water Boards to establish monitoring and reporting requirements for persons discharging or proposing to discharge waste to navigable waters. Water Code section 1051 additionally authorizes the State Water Board to investigate waters diverted for beneficial use. Moreover, this certification ensures continued monitoring, reporting, and assessment of water quality for discharges that may impact waters of the state.

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. Section 5937 and requirements to maintain or monitor flow or other water quality characteristics as required to meet section 5937 are appropriate conditions of state law necessary to protect fishery beneficial uses.

In general, the code citations, plans, and policies that support issuance of this certification that are described in Section 3.0 are not duplicated in this section. The conditions in this certification were developed to ensure compliance with water quality standards and water quality requirements established under the Porter-Cologne Water Quality Control Act and the federal Clean Water Act, including requirements in applicable water quality control plans, and other appropriate requirements of state law. The conditions in Section 7.0 of this certification are necessary to protect the beneficial uses of waters of the state identified in water quality control plans, prevent degradation of water quality, and help ensure compliance with state and federal water quality requirements.

When preparing the conditions in this certification, State Water Board staff reviewed and considered the following information:

- NID’s March 28, 2023 application for certification (including Attachments A through E) and clarifying information submitted by NID (e.g., emails) (NID 2023);
- Beneficial uses, water quality objectives, and implementation measures and programs described in the SR/SJR Basin Plan;
- Applicable water quality information, permits, policies, objectives, implementation measures, and programs (e.g., Dredge or Fill Procedures, etc.);
- Project-related controllable factors; and
- Other information in the record.

To the extent USACE considers any certification condition to include requirements outside the substantive scope of USEPA’s Clean Water Act Section 401 Certification Rule, 85 Fed. Reg. 42, 210 (July 13, 2020) (Certification Rule), the Certification Rule—including but not limited to 40 C.F.R. §§ 121.1(f) and (n), 121.3, 121.7(d)(1), and 121.9(b)—is inconsistent with federal law and controlling case law. Under section 401 of the Clean Water Act, when an activity requiring a federal permit or license “may result in any discharge into the navigable waters,” the applicant is required to obtain a certification that states the discharge will comply with applicable water quality standards and that also sets forth any “limitations” and “monitoring requirements” necessary to assure that the “applicant” will comply with water quality standards and “any other appropriate requirement of State law.” (33 U.S.C. § 1341(a) & (d).) Certification is required for such activity as a whole, not merely for its point-source discharges to waters of the United States. (*PUD No. 1*, supra, 511 U.S. at pp. 711- 712.) USEPA has indicated its intent to revise the Certification Rule because, among other faults, it “may prevent state and tribal authorities from adequately protecting their water quality,” “may result in a state or tribe’s certification or conditions being permanently waived as a result of non-substantive and easily fixed procedural concerns,” and “may limit the flexibility of certifications and permits to adapt to changing circumstances.” (86 Fed. Reg. 29,543-29,544 (June 2, 2021).) USEPA has maintained its “substantial concerns” and has asked that the Certification Rule be voluntarily remanded in ongoing litigation. Additionally, on June 9, 2022, USEPA published in the Federal Register a proposed rule to revise procedures for implementing section 401 of the Clean Water Act. The proposed rule would replace and update the Certification Rule (USEPA 2022). As explained in this certification, each certification condition is authorized by applicable state and federal law and is necessary to ensure compliance with such laws. This paragraph is hereby incorporated as part of the explanatory statement for each condition of this certification.

### **5.1 Rationale for Condition 1: Project Activities**

As described in Section 5.0, this certification is granted based on the application and supporting information submitted in accordance with the State Water Board’s regulations and subject to requirements of the Porter-Cologne Water Quality Control Act. Condition 1 requires NID to implement the Project as described in its March 28, 2023, certification application (NID 2023) and as modified by the conditions of this certification. Condition 1 will help ensure that the Project is implemented in a

manner that protects water quality objectives and avoids unreasonable impacts to beneficial uses. Any changes to the Project description that are inconsistent with the Project application and supplemental information (e.g., emails) NID provided to the State Water Board prior to certification issuance could impact the findings, conclusions, and conditions of the certification and may necessitate the filing of an amendment or new application as well as trigger additional environmental review.

Additionally, Condition 1 requires NID to maintain minimum instream flows, as required by the Yuba-Bear Hydroelectric Project's FERC license, as reduced minimum instream flows releases have the potential to impact water quality and associated beneficial uses of Jackson Creek, as identified in the SR/SJR Basin Plan. Beneficial uses that may be impacted by reduced flow releases include, but are not limited to: municipal and domestic supply; agricultural supply; hydropower generation; water contact recreation; non-contact water recreation; cold freshwater habitat; cold spawning, reproduction, and/or early development; and wildlife habitat. Minimum instream flow discharges directly impact water quality and associated beneficial uses. 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. Maintaining minimum instream flows ensures protection of water quality and aquatic resources throughout Project implementation.

## **5.2 Rationale for Condition 2: Water Quality Monitoring**

The Project includes dewatering and other in-water and water-adjacent construction work that may result in discharges that have direct impacts to water quality in Jackson Creek. Water quality parameters that may be impacted by such activities include turbidity and pH. Project activities that may impact water quality include, but are not limited to: (1) erosion control and bank stabilization activities; (2) dewatering the work area; and (3) removal and replacement of the existing fish flow weir. Monitoring requirements of Condition 2 are consistent with the Water Boards' authority to investigate waters of the state, including for quality, and to require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383. The monitoring requirements of Condition 2 are necessary to ensure water quality is not impacted.

Existing beneficial uses in Jackson Creek (Yuba River – Sources to Englebright Reservoir) that may be impacted by the Project's impacts on water quality include: water contact recreation; non-contact water recreation; cold freshwater habitat; cold spawning, reproduction, and/or early development; and wildlife habitat.

## **5.3 Rationale for Condition 3: Erosion and Sediment Control Measures**

Condition 3 requires implementation of erosion and sediment control measures. Erosion and sedimentation can contribute to degradation of the waters of the United States and waters of the state; therefore, it is necessary to implement actions to eliminate or limit such discharges to protect water quality and associated beneficial uses. Project activities, including stockpiling, fill and excavation work, gravel slope protection placement, and other ground disturbing activities, have the potential to cause erosion of riparian habitat and increased sedimentation in Jackson Creek. Increases in

erosion and sedimentation can exceed water quality objectives (e.g., turbidity) and impact beneficial uses. Condition 3 will help ensure water quality standards are met during Project construction.

Beneficial uses of Jackson Creek (Yuba River – Sources to Englebright Reservoir) that may be impacted by increased erosion and sedimentation include, but are not limited to: water contact recreation; non-contact water recreation; cold freshwater habitat; cold spawning, reproduction, and/or early development; and wildlife habitat.

#### **5.4 Rationale for Condition 4: Hazardous Materials Management**

Hazardous materials management is essential to ensure hazardous materials are properly stored, transported, and managed in the Project area to avoid the discharge of hazardous materials to surface waters. Such discharges could result in impacts to beneficial uses, including impacts to aquatic resources and their habitats. Condition 4 requires NID to implement measures to address hazardous materials management for the protection of water quality and beneficial uses.

The Project involves construction that may use heavy equipment that will require refueling and servicing. Site management requires implementation of best management practices to prevent, minimize, and/or clean up construction spills, including from construction equipment. For instance, fuels and lubricants associated with the use of mechanized equipment have the potential to result in toxic discharges to surface water in violation of water quality standards, including the toxicity and floating material water quality objectives. Secondary containment around hazardous materials storage sites helps ensure that any leaks or spills of hazardous materials do not result in a discharge to waters. Condition 4 is required pursuant to Water Code section 13264, which prohibits any discharge that is not specifically authorized in this certification.

The SR/SJR Basin Plan includes narrative water quality objectives for oil, grease, and other hazardous materials: *“Waters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses”* (Central Valley Regional Water Board 2019).

Existing beneficial uses in Jackson Creek (Yuba River – Sources to Englebright Reservoir) that may be impacted by hazardous materials include: water contact recreation; non-contact water recreation; cold freshwater habitat; cold spawning, reproduction, and/or early development; and wildlife habitat.

#### **5.5 Rationale for Condition 5: Completion Report**

Condition 5 requires NID to notify Central Valley Regional Water Board and State Water Board staff prior to implementing Project activities and to submit a Completion Report following construction completion to document Project compliance with the certification requirements. The Completion Report will inform the Deputy Director of compliance with water quality objectives and protection of beneficial uses during Project

implementation. This condition will allow for implementation of measures to limit or prevent any violations and/or impacts to water quality and beneficial uses.

### **5.6 Rationale for Condition 6: Diversion and Dewatering**

The Project includes passive dewatering (no pumps or cofferdam) of Jackson Creek as part of implementation. Passive dewatering involves re-routing flow from the low-level outlet of Jackson Dam to downstream of the work area and allowing the work area to passively drain. However, pumps or cofferdam/other artificial barrier installation may be needed if seepage from Jackson Lake Dam intrudes into the work area. If pumps and/or cofferdam/other artificial barrier are needed, Condition 6 requires NID to implement diversion and dewatering measures to ensure the protection of Jackson Creek water quality and associated beneficial uses during Project activities.

Beneficial uses in Jackson Creek (Yuba River – Sources to Englebright Reservoir) that may be impacted by active dewatering include, but are not limited to: water contact recreation; non-contact water recreation; cold freshwater habitat; cold spawning, reproduction, and/or early development; and wildlife habitat.

### **5.7 Rationale for Condition 7: Aquatic Biological Resource Protections**

Condition 7 requires NID to implement aquatic wildlife measures (e.g., worker environmental awareness training, pre-construction surveys for federal and state endangered Sierra Nevada yellow-legged frog (*Rana sierrae* [SNYLF]), and fish rescue) as described in Section Eight of its certification application. Preconstruction surveys for special status species will also be conducted. Condition 7 also requires NID to compensate for permanent impacts to riparian and stream channel habitat in compliance with the Dredge or Fill Procedures described in Section 3.3.

Project dewatering, changes in discharges for portions of Jackson Creek, and construction activities have the potential to adversely impact habitat and interfere with native aquatic species that depend on aquatic food or live in riparian or wetland habitats. The Project includes ground disturbing activities with the potential to impact special status wildlife, including the SNYLF.

During Project construction there is a potential for impacts to aquatic species. Implementation of aquatic resource protection measures will avoid unreasonable impacts to water quality and the beneficial uses related to fish and habitat and support a dam owner's requirement under Fish and Game Code 5937 to maintain fish in good condition below a dam.

### **5.8 Rationale for Conditions 8 through 27**

This certification imposes additional conditions regarding Project approvals, monitoring, enforcement, and potential future revisions. This section explains why a condition is necessary to assure that the authorized discharge will comply with water quality requirements, and cites to federal, state, or tribal law that authorizes the condition. (40 C.F.R. § 121.7(d)(1).) The statements in this section correspond with the conditions set forth in Conditions 8 through 27. In addition, the code citations, plans, and policies

that support issuance of this certification are described in Sections 3.0 and are not duplicated in this section but are incorporated herein. Conditions 8 through 27 are necessary to protect the beneficial uses of waters of the state identified in water quality control plans, prevent degradation of water quality, and help ensure compliance with state and federal water quality requirements.

Condition 8 is necessary to comply with Water Code section 13167 and Conditions 9 through 12 contain important clarifications concerning the scope and legal effect of this certification, and other legal requirements that may apply to the Project.

Monitoring, reporting, and assessment actions, and the information developed through such actions, must be readable, shared, and coordinated with other appropriate entities, and accessible to ensure that a discharge activity complies with water quality requirements. Water Code section 13167 requires the Water Boards to ensure that monitoring data and assessment information are available in a single location and that the information is presented in a manner easily understandable by the public. To fulfill this legislative mandate, Condition 8 requires electronic data submittal in a compatible format with existing system specifications. Compliance with this condition enhances the accessibility of data and transparency of regulatory actions. This allows regulatory agencies and the public to better assess compliance and understand water quality trends or data anomalies by compiling data and making it readily available.

Pursuant to the California Endangered Species Act (Fish & G. Code, §§ 2050 et seq.) and federal Endangered Species Act (16 U.S.C. §§ 1531 et seq.), Condition 9 of the certification does not authorize any act which results in the taking of a threatened, endangered, or candidate species. An applicant for certification is required to identify other licenses, permits, and agreements in the application. In the event an applicant for certification needs authorization from the state or federal authorities, California Code of Regulations, title 23, section 3856, subdivision (e), requires that the applicant provide copies of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.” To help ensure the integrity of the certification process and its focus on ensuring that Project activities meet water quality standards and other appropriate requirements of state law, Condition 9 serves to notify applicants that there may be additional applicable federal, state, or local laws or ordinances with which they must comply, including the state and federal Endangered Species Acts.

Water Code section 13160, subdivision (b)(1) allows the State Water Board to issue a certification when there is “reasonable assurance that an activity of any person subject to the jurisdiction of the state board will comply with applicable requirements” of state and federal law. To help ensure the integrity of the certification process and its focus on the protection of water quality and compliance with other applicable state requirements, Condition 10 serves to notify applicants that there may be additional applicable federal, state, or local laws or ordinances with which they must comply. Because agency organization and authorities change over time, Condition 11 provides direction for



continuity of oversight in the event an agency's authority or responsibility is transferred to or subsumed by another agency.

The State Water Board is responsible for the water right, water quality, and drinking water functions of the California state government. (Wat. Code, § 174.) Certain certifications involve an appropriation of water subject to part 2 of division 2 of the Water Code or the diversion of water for certain beneficial uses. (See, e.g., Cal. Code Regs., tit. 23, § 3855, subd. (b)(1)(A).) Condition 12 explains the State Water Board's issuance of this certification is not adjudicating or approving the validity of water rights that may be related to the Project. It also recognizes the State Water Board's authority, independent of its water quality authority, to prevent unauthorized or threatened unauthorized diversions of water. This helps to ensure that an applicant for a federal license or permit that involves a discharge to navigable waters understands that, except as specified in the certification, the certification does not constitute, or excuse the applicant from obtaining any other State Water Board approvals required for the activity.

Conditions 13 through 15 are necessary to assure that any discharge authorized under the certification will comply with water quality requirements. These conditions are included to comply with California Code of Regulations, title 23, section 3860, which sets forth conditions that must be included in all certifications. Condition 13 is a standard condition that "shall be included as conditions of all certification actions" pursuant to California Code of Regulations, title 23, section 3860, subdivision (a). This condition places the permittee on notice that the certification action may be modified or revoked following administrative or judicial review. Condition 14 is a standard condition that "shall be included as conditions of all water quality certification actions" pursuant to California Code of Regulations, title 23, section 3860(b). This condition clarifies the scope of the certification's application and ensures that any applicant for a federal license or permit, which may result in a discharge into navigable waters, is subject to the appropriate State certification. Condition 15 is a standard condition that "shall be included as conditions of all water quality certification actions" pursuant to California Code of Regulations, title 23, section 3860(c). This fee requirement condition is also required pursuant to California Code of Regulations, title 23, section 3833(b), which requires payment of fees by project proponents applying for certification. Fees are essential to support the Water Boards certification program, which includes the development of certifications and related inspections to ensure the protection of water quality and beneficial uses that may be impacted by a project.

Conditions 16 through 26 are necessary to ensure that the Project operates to meet water quality standards and other appropriate requirements of state law, or that adjustments are made to ensure continued compliance with water quality standards in light of new information, changes to the Project, or changes to the standards themselves.

This certification requires monitoring, reporting, and analysis as important elements to ensure that the Project activities will comply with state and federal water quality requirements and other appropriate requirements of state law. Conditions 16, 17, and 18 provide for extensions of time to comply with requirements, prevention or remedy of violations, and notification of changed conditions to ensure compliance and

prevent violations of water quality standards. In the event of non-compliance, modified conditions may be necessary to return the Project to compliance and prevent violation of water quality standards. Conditions 19 and 20 require the Applicant to comply with the SR/SJR Basin Plan and to take all reasonable measures to protect water quality and beneficial uses, in accordance with plans adopted pursuant to state and federal water laws. Water Code section 13267 authorizes the State Water Board to require any person or entity who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to furnish, under penalty of perjury, technical or monitoring reports when necessary to investigate the quality of any waters of the state. Condition 21 requires such reports that are necessary to ensure compliance with water quality standards.

Condition 22, related to site access requirements, is authorized pursuant to the Water Boards' authority to investigate the quality of any waters of the state, including specific site access authorized under Water Code section 13267 and 13383. Site access is needed to ensure compliance with the certification and associated protection of water quality and beneficial uses. Condition 23 requires site personnel and agencies to be familiar with the content of the certification and availability of the document at the Project site. This condition is required to assure that site personnel are familiar with the conditions needed to protect water quality and any authorized discharge will comply with the terms and conditions of this certification, which requires compliance with water quality objectives and beneficial uses adopted or approved under sections 13170 or 13245 of the Water Code, and with other appropriate requirements of state law.

Condition 24 reserves the State Water Board's authority to add or modify conditions of this certification to ensure that Project activities meet water quality objectives and protect beneficial uses.

Condition 25 requires that NID use analytical methods approved by California's Environmental Laboratory Accreditation Program, when available, to ensure that such analyses are done in a consistent, approved manner.

Condition 26 provides that the State Water Board will provide notice and an opportunity to be heard in exercising its authority to add or modify certification conditions.

In the event that any provision of this certification is found invalid, Condition 27 ensures that all other provisions will remain effective and water quality will still be protected. (Wat. Code, § 13160.)

## **6.0 Conclusion**

The State Water Board finds that, with the conditions and limitations imposed by this certification, the Project will be protective of state and federal water quality standards and other appropriate requirements of state law.

## 7.0 Water Quality Certification Conditions

**ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER RESOURCES CONTROL BOARD CERTIFIES** that implementation of the Jackson Lake Dam Toe Slope Protection and Fish Flow Weir Replacement Project (Project) will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, under the following terms and conditions.

### **CONDITION 1 Project Activities**

Unless otherwise modified by conditions of this water quality certification (certification) or approved by the Deputy Director of the Division of Water Rights (Deputy Director), Nevada Irrigation District (NID or Applicant) shall implement the Project as described in NID's March 28, 2023 certification application, including the Avoidance and Minimization Measures referenced in Section Eight of the certification application (NID 2023). Additionally, as described in its certification application, the Applicant shall comply with all minimum instream flow requirements below Jackson Lake Dam as listed in the Federal Energy Regulatory Commission (FERC) license for the Yuba-Bear Hydroelectric Project (FERC Project No. 2266) throughout Project implementation.

### **CONDITION 2 Water Quality Monitoring**

Water quality monitoring shall occur during in-water work and water adjacent work (including dewatering and re-watering activities) with the potential to result in a discharge to surface waters. At a minimum, water quality monitoring shall be performed during dewatering of the work area, removal of accumulated material in Jackson Creek, installation of low-level outlet modifications, installation of erosion control measures along Jackson Creek, and removal and replacement of the existing fish weir and concrete splash pad. For water quality monitoring associated with in-water work, the Applicant shall at a minimum, monitor:

- Turbidity; and
- pH.

Unless otherwise approved by the Deputy Director, at a minimum, monitoring shall be conducted at 15-minute intervals using an automated sensor system. Additionally, the Applicant shall continuously monitor for visual construction-related pollutants (e.g., oils, greases, fuels) throughout the entire construction period.

Unless otherwise approved by the Deputy Director, at a minimum, monitoring shall be conducted upstream outside the influence of the Project and no greater than 300 feet downstream of the Project area. The Applicant shall take a global positioning system point and a photograph for each proposed monitoring location and provide them to Central Valley Regional Water Quality Board (Central Valley Regional Water Board) and State Water Resources Control Board (State Water Board) staff at least one week prior to starting in-water work. These locations shall be used for monitoring unless the Deputy Director approves other location or directs the Applicant to use other locations or to work with staff to find alternate locations.

The Applicant shall submit monitoring results as part of the Project Completion Report (Condition 5). Monitoring results shall include: (a) monitoring data; and (b) a description of the equipment, frequency, methods, and quality assurance/quality control process implemented for water quality monitoring.

**Reporting of Exceedances.** The Deputy Director and the Executive Officer of the Central Valley Regional Water Board (Executive Officer) shall be notified promptly, and in no case more than 24 hours following an exceedance of a turbidity or pH water quality objective as listed in the *Water Quality Control Plan for the California Regional Water Quality Control Board Central Valley Region the Sacramento River Basin and San Joaquin River Basin* (SR/SJR Basin Plan), and any amendments thereto (Central Valley Regional Board 2019). The notice shall include the cause of the exceedance, measures taken to correct the exceedance, and measures the Applicant will implement to prevent a future exceedance. The Deputy Director may require additional actions to help prevent similar exceedance in the future. Project activities associated with the exceedance shall immediately cease and may not resume without approval from the Deputy Director. The current water quality objectives for turbidity and pH, as listed in the SR/SJR Basin Plan are summarized below for reference. The Applicant is responsible for complying with the applicable water quality objectives established in the SR/SJR Basin Plan at the time work is performed.

**Turbidity:** Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in turbidity attributed to controllable water quality factors shall not exceed the following limits:

- Where natural turbidity is less than 1 Nephelometric Turbidity Unit (NTU), controllable factors shall not cause downstream turbidity to exceed 2 NTU.
- Where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU.
- Where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent.
- Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.
- Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Turbidity shall be measured using a maximum 24-hour averaging period, unless otherwise approved by the Deputy Director.

**pH:** pH shall not be depressed below 6.5 nor raised above 8.5.

The Applicant may request modifications to the water quality monitoring described in this condition. The Applicant shall submit the request to the Deputy Director for review and consideration of approval at least two weeks prior to starting water-adjacent work or two weeks prior to when the Applicant would like to modify its water quality monitoring. The request shall include the proposed modifications and supporting rationale. The Deputy Director may require modifications as part of any approval. The Applicant shall not implement the modifications until approved by the Deputy Director.

### **CONDITION 3      Erosion and Sediment Control Measures**

Unless otherwise approved by the Deputy Director, the Applicant shall implement the following erosion and sediment control measures, as applicable, prior to the commencement of, during, and after any ground-disturbing activities or any other Project activities that could result in erosion or sediment discharges to surface water:

- Stockpiles, portable equipment, vehicles, and supplies shall be restricted to the designated construction staging areas that shall be located outside of wetlands, surface waters, and riparian habitat. If more than 0.25 inch of rain or snow is forecast during Project activities, all stockpiles shall be covered with plastic and surrounded with sediment control technologies or berms to prevent sediment run-off.
- Spoil sites/onsite long-term disposal locations shall be located in areas that do not drain directly to waterways. If a spoil site drains into a waterbody, catch basins shall be constructed to intercept sediment before it reaches surface waters. Spoil sites shall be graded to reduce the potential for erosion. Any disposal sites for non-hazardous waste materials shall be away from waterways and graded in a manner that prevents erosion and the discharge of sediments to surface waters.
- Imported materials shall be washed prior to use. If materials are washed on-site, washing shall occur and wash water shall be stored away from any waterway and either disposed of off-site in a manner that does not affect water quality or used for dust abatement.
- Storage or parking of equipment shall be prohibited within 100-feet of riparian and wetland habitat.
- After construction activities are complete, any temporary fill or construction debris shall be removed, and disturbed areas restored to their preconstruction conditions. Site restoration shall include use of native plantings.
- The Applicant shall inspect the Project site for signs of excessive erosion or other water quality impairment following Project completion. Inspection shall occur in the year following Project construction and no earlier than April, as to occur after major rain events. The Applicant shall provide notice of the erosion and sediment inspection to State Water Board staff a minimum of two weeks prior to the inspection, and shall provide the opportunity for State Water Board staff to participate in the inspection. No more than two weeks following the inspection, the Applicant shall provide its observations to State Water Board staff in the form of a report. If erosion or other impairments are observed, the Applicant shall provide the report to the Deputy Director and Executive Officer and include: (1) a description of the erosion or impairment with photo documentation; (2) potential causes of the erosion or impairment; and (3) as appropriate, proposed measures for consideration and approval by the Deputy Director to address the erosion or impairment and prevent future erosion or impairment. The Deputy Director may require modifications to the proposed measures as part of any approval. The Applicant shall implement the proposed measures upon receipt of Deputy Director and any other required approvals.

#### **CONDITION 4 Hazardous Materials Management**

Unless otherwise approved by the Deputy Director, the Applicant shall implement applicable hazardous materials<sup>6</sup> control measures as described in United States Department of Agriculture-Forest Service (Forest Service) *Water Quality Management for Forest System Lands in California, Best Management Practices* (Forest Service 2000), *Forest Service National Best Management Practices for Water Quality Management on National Forest System Lands* (Forest Service 2012), and as listed below:

- (a) Caution shall be used when handling and/or storing hazardous materials near waterways. Appropriate materials shall be on site to prevent and manage spills to prevent impacts to surface waters. When not in use, hazardous materials shall be stored in a manner that prevents hazardous materials from spilling on the ground or reaching surface waters. Secondary containment shall be specifically designed for hazardous material storage and sized to contain the most likely volume of hazardous materials that could be spilled. Secondary containment must be positioned to catch any hazardous material spills due to overfilling or any other spills that may occur. Construction equipment refueling and/or maintenance shall be conducted in a manner that prevents fuels or oils from spilling on the ground or reaching waterways. Service and refueling areas shall include secondary containment including drip pans and/or placement of absorbent material. In the event a spill is not captured by the secondary containment, it shall be considered hazardous waste and must be removed and disposed of in accordance with local and state requirements.
- (b) When not in use, equipment shall be stored in upland areas outside the ordinary high-water mark of Jackson Creek in the staging area as described in Section Eight of the Project certification application (NID 2023).
- (c) All construction equipment shall be inspected for leaks before entering the Project area. All equipment shall be well maintained and inspected daily while on site to prevent leaks of fuels, lubricants, or other fluids into waters of the United States or waters of the state. Stationary equipment (e.g., excavators) within 100 feet of waterways shall be parked over secondary containment.
- (d) Containment areas shall include secondary containment. All containment structures shall comply with California Code of Regulations, title 27, section 20320.
- (e) Any water contaminated by hazardous materials shall be stored according to items (a) and (d) in this condition and disposed of properly off-site in a manner that does not impair water quality.
- (f) Wet concrete or cement shall not be placed in stream channel habitat when water is present. Concrete or cement shall be completely cured before coming into contact with waters of the United States or waters of the state. Any surface

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<sup>6</sup> Hazardous materials include, but are not limited to: petroleum products, pesticides, fuels, lubricants, oils, hydraulic fluids, raw cement, concrete or the washing thereof, asphalt, paint, coating material, drilling fluids, or other substances potentially hazardous to water quality and beneficial uses.

water that contacts wet concrete or cement shall be pumped out and disposed of in accordance with applicable laws and regulations.

- (g) Prior to Project construction, all staff and personnel of contractors and subcontractors shall receive training regarding the appropriate work practices necessary to effectively comply with the applicable environmental laws and regulations (Condition 7), including hazardous materials spill prevention and response measures. The training shall include identification and reporting to the appropriate onsite person of any visual observations that may indicate a water quality impairment (e.g., oil sheen, etc.).
- (h) All construction and maintenance waste, including trash and litter, garbage, other solid waste, petroleum products, and other potentially hazardous materials (including equipment lubricants, solvents, and cleaners), shall be removed to an appropriate waste facility permitted or otherwise authorized to treat, store, or dispose of such materials.

The Applicant shall immediately cease any activities that result in the release of a hazardous material and implement measures to limit and clean up the release of hazardous materials. The Applicant shall report the release and actions taken to the Deputy Director, Executive Officer, and any other applicable agencies within 24 hours of the event. The Deputy Director may require implementation of additional actions in response to the information provided following a release of hazardous materials or other information indicating a threat to water quality or beneficial uses.

#### **CONDITION 5      Completion Report**

At least seven days prior to starting Project activities, the Applicant shall notify the Central Valley Regional Water Board and State Water Board staff that Project activities are anticipated to begin and provide a brief description of the anticipated schedule for completion of the Project.

Within 60 days of Project completion, the Applicant shall provide the Deputy Director with a Project Completion Report that comprehensively summarizes:

- Project activities performed;
- Compliance with each condition of this certification and details of any failure to meet the certification requirements; and
- Details of Project-related adverse impacts to beneficial uses, if applicable.

The Deputy Director may require the Applicant to implement corrective actions in response to the information provided in the Project Completion Report. The Applicant shall provide any additional information or clarification requested by the Deputy Director related to the Project Completion Report. Upon request from State Water Board staff, the Applicant shall meet with staff to discuss the Project Completion Report.

#### **CONDITION 6      Diversion and Dewatering**

As described in NID's March 28, 2023 certification application (NID 2023), dewatering of Jackson Creek is planned as a passive activity (e.g., does not involve pumps or

cofferdam installation). In the event that pumps and/or a cofferdam or other artificial barrier are needed to dewater Jackson Creek, or to maintain a dry work area following initial dewatering, the following measures shall be implemented unless alternative measures are approved by the Deputy Director:

- All pumps shall be appropriately screened to prevent entrainment of aquatic species.
- As soon as it is determined that installation of pumps or a cofferdam/other artificial barrier is needed to maintain a dry work area, the Applicant shall notify the Deputy Director. The notification shall indicate what measures will be implemented to actively dewater Jackson Creek, including the location of the pump or cofferdam/other artificial barrier and schedule for installation and removal.
- Any temporary pumps, cofferdam/other artificial barrier being constructed, maintained, or placed in operation, shall not impede flow in Jackson Creek below the Project area. The Applicant shall at all times ensure sufficient water is allowed to pass downstream of the Project area to maintain beneficial uses and water quality protections, including required minimum instream flows (Condition 1). Construction, dewatering, and removal of pumps or temporary cofferdam/other artificial barrier shall not violate water quality standards in the SR/SJR Basin Plan or other certification provisions.
- Any cofferdam/other artificial barrier shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel.
- No more than 14 days following completion of construction, the Applicant shall remove the cofferdam/other artificial barrier.
- This certification does not authorize permanent water diversion of flow from the receiving water or any other permanent dewatering measure.
- The Applicant shall work with the Central Valley Regional Water Board to obtain coverage under a National Pollutant Discharge Elimination System permit if dewatering may result in discharges to surface water.

#### **CONDITION 7 Aquatic Biological Resource Protections**

To reduce potential impacts to aquatic biological resources during Project implementation, and unless otherwise approved by the Deputy Director, the Applicant shall implement the following aquatic biological resource protection measures.

7(A) Sierra Nevada Yellow-Legged Frog: The Applicant shall implement the Sierra Nevada yellow-legged frog (SNYLF; *Rana sierrae*) measures proposed in its March 27, 2023 certification application (NID 2023) as modified and required by this condition:

- Netting: Tightly woven fiber netting or similar material with mesh size that may ensnare SNYLFs shall not be used as part of the Project. Plastic mono-filament netting or similar material shall not be used for erosion control or other purposes within 82 feet of perennial or intermittent waterbodies with suitable habitat for SNYLFs, as individuals may become entangled or trapped in it.



- SNYLF Pre-Construction Surveys: No more than 24 hours prior to the commencement of construction activities, the Applicant shall conduct preconstruction visual surveys of the Project area for the presence of SNYLFs. Preconstruction surveys shall:
  - Be conducted by a qualified biologist.
  - Consist of visual monitoring efforts extending upstream to Jackson Lake Dam and 500 feet downstream of the Project location along Jackson Creek.

If any SNYLFs are observed during preconstruction surveys, the California Department of Fish and Wildlife (CDFW) and State Water Board staff shall be immediately notified and construction shall not commence until an evaluation by CDFW staff is complete and any recommendations as part of the evaluation are implemented. Preconstruction surveys shall again be required whenever a lapse in construction activities of two weeks or greater has occurred.

- Construction Monitoring: A qualified biologist shall regularly inspect construction-related activities at the Project site to ensure that no SNYLFs are present in the work area. The biologist shall be available for monitoring throughout all phases of construction that may result in adverse effects. The qualified biologist shall be authorized to halt construction if SNYLFs are found in the construction area until the SNLYFs volitionally relocate out of the construction site or are relocated to an area of similar habitat outside the effects of Project construction.
- Wetlands: The Project will result in temporary and permanent impacts to stream channel habitat. Temporary impacts include approximately 0.025 acres of stream channel along Jackson Creek with approximately 0.002 acres of permanent impacts to stream channel habitat. The Applicant shall notify the Deputy Director of any update to the estimated temporary and permanent impacts if they vary from what is noted in this provision. Additionally, permanent impacts shall be compensated for at a minimum of a 1:1 ratio and must be consistent with the [State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State](#) (Dredge or Fill Procedures)<sup>7</sup> (State Water Board 2019 and 2021), the California Wetlands Conservation Policy (Governor's Executive Order W-59-93 (August 23, 1993)), and any amendments thereto. The Applicant shall provide the Deputy Director with documentation of compliance with this mitigation provision as part of the Completion Report (Condition 5).

7(B) Fish Rescue: Prior to dewatering the work area within Jackson Creek, the Applicant shall install netting across Jackson Creek channel downstream of the fish weir to prevent fish from migrating into the work area during dewatering. The Applicant shall check the netting at the beginning and end of each workday to ensure that it is functioning properly and is free of debris. The Applicant shall remove the netting from Jackson Creek upon Project completion.

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<sup>7</sup> The Dredge or Fill Procedures and any amendments thereto. Available at: [https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/wrapp.html](https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html). Accessed on May 26, 2023.

Additionally, if any fish species become stranded during the initial dewatering of Jackson Creek, the Applicant shall relocate the fish to a suitable location downstream of the Project area. If fish relocation is required, the Applicant shall submit a Fish Relocation Report to the State Water Board and CDFW within 30 days of Project completion. The Fish Relocation Report shall include at a minimum:

- Date of capture and relocation;
- Method of capture;
- Fish species, life stage, fork length, and weight;
- Location of relocation as depicted on a map that includes the Project area; and
- Total number of fish captured and relocated.

7(C) Environmental Awareness Training: Environmental awareness training shall be provided to all personnel prior to commencing work. The training shall, at a minimum, include:

- A review of special-status species (including pictures) with the potential to occur in the Project area.
- A review of special-status habitat including primary constituent elements (e.g., type of water body and elevation) of each habitat.
- A review of any avoidance and protection measures that will be implemented to minimize the potential for effects to these species and habitats.
- A review of applicable elements of the Project certification to ensure personnel implement measures to protect water quality and beneficial uses.

The Applicant shall direct its staff and all contractors to: (a) avoid disturbance of sensitive species and areas; and (b) to stop work and contact the qualified biologist upon discovery of a special-status species in the Project area.

## **CONDITIONS 8 – 27**

**CONDITION 8.** Unless otherwise specified in this certification or at the request of the Deputy Director, data and/or reports shall be submitted electronically in a format accepted by the State Water Board to facilitate the incorporation of this information into public reports and the State Water Board's water quality database systems in compliance with California Water Code section 13167.

**CONDITION 9.** This certification does not authorize any act which results in the take of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050 – 2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531 – 1544). If a “take” will result from any act authorized under this certification or water rights held by the Applicant, the Applicant must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Applicant is responsible for meeting all requirements of the applicable Endangered Species Acts for the Project authorized under this certification.

**CONDITION 10.** This certification shall not be construed as replacement or substitution for any necessary federal, state, and local approvals. The Applicant is responsible for compliance with all applicable federal, state, or local laws or ordinances and shall obtain authorization from applicable regulatory agencies prior to the commencement of Project activities.

**CONDITION 11.** Any requirement in this certification that refers to an agency whose authorities and responsibilities are transferred to or subsumed by another local, state, or federal agency, will apply equally to the successor agency.

**CONDITION 12.** Nothing in this certification shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 or riparian claims. The State Water Board has separate authority under the Water Code to investigate and take enforcement action, if necessary, to prevent any unauthorized or threatened unauthorized diversions of water.

**CONDITION 13.** This certification is subject to modification or revocation upon administrative or judicial review, including but not limited to review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).

**CONDITION 14.** 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 application for certification was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application for certification specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

**CONDITION 15.** This certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28.

**CONDITION 16.** Notwithstanding any more specific provision of this certification, any plan or report developed as a condition of this certification requires review and approval by the Deputy Director. The State Water Board's approval authority, including authority delegated to the Deputy Director or others, includes the authority to withhold approval or to require modification of a plan, proposal, or report prior to approval. The State Water Board may take enforcement action if the Applicant fails to provide or implement a required item in a timely manner. If a time extension is needed to submit an item for Deputy Director approval, the Applicant shall submit a written request for the extension, with justification, to the Deputy Director no later than 15 days prior to the deadline. The Applicant shall not implement any plan, proposal, or report until after the applicable State Water Board approval and any other necessary regulatory approvals.

**CONDITION 17.** In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation is subject to any remedies, penalties, process, or sanctions as provided for under applicable state or federal law. For the 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 ensure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to any violation of the conditions of this certification, the State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

**CONDITION 18.** The Applicant shall submit any change to the Project, including, operations, facilities, technology changes or upgrades, or methodology, which could have a significant or material effect on the findings, conclusions, or conditions of this certification, to the State Water Board for prior review and written approval. The State Water Board shall determine significance and may require consultation with other state and/or federal agencies. If the State Water Board is not notified of a change to the Project, it will be considered a violation of this certification.

**CONDITION 19.** This certification is contingent on compliance with all applicable requirements of the SR/SJR Basin Plan.

**CONDITION 20.** Unless otherwise specified by conditions in this certification, Project activities shall be conducted in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act. The Applicant shall take all reasonable measures to protect the beneficial uses of waters of the state, including Jackson Creek.

**CONDITION 21.** In response to a suspected violation of any condition of this certification, the State Water Board or Central Valley Regional Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board 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. (Wat. Code, §§ 1051, 13165, 13267, & 13383.)

**CONDITION 22.** Upon request, a construction schedule shall be provided to State Water Board and Central Valley Regional Water Board staff. The Applicant shall provide State Water Board and Central Valley Regional Water Board staff access to Project sites to document compliance with this certification.

**CONDITION 23.** A copy of this certification shall be provided to any contractor and all subcontractors conducting Project-related work, and copies shall remain in their possession at the Project site. The Applicant shall be responsible for work conducted by its contractor, subcontractors, or other persons conducting Project-related work.

**CONDITION 24.** The State Water Board reserves the authority to add to or modify the conditions of this certification: (1) to incorporate changes in technology, sampling, or methodologies; (2) if monitoring results indicate that Project activities could violate water quality objectives or impair beneficial uses; (3) to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act; and

(4) to require additional monitoring and/or other measures, as needed, to ensure that Project activities meet water quality objectives and protect beneficial uses.

**CONDITION 25.** The Applicant shall use analytical methods approved by California's Environmental Laboratory Accreditation Program, where such methods are available. Samples that require laboratory analysis shall be analyzed by Environmental Lab Accreditation Program-certified laboratories.

**CONDITION 26.** The State Water Board shall provide notice and an opportunity to be heard in exercising its authority to add to or modify the conditions of this certification.

**CONDITION 27.** The provisions of this certification are severable. If any provision of this certification is found invalid, affects the validity of the certification, or would result in a determination that the State Water Board has waived its section 401 certification authority for the Project, the State Water Board reserves authority to consider whether an alternative term would address the water quality issue without being found invalid or resulting in a waiver determination. If any provision of this certification is found invalid, affects the validity of the certification, or would result in a determination that the State Water Board has waived its section 401 certification authority for the Project, the remainder of this certification shall not be affected.



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Eileen Sobeck  
Executive Director

June 19, 2023  
Date

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**ATTACHMENT A:  
PROJECT OVERVIEW FIGURES**

**WATER QUALITY CERTIFICATION  
FOR  
JACKSON LAKE DAM TOE SLOPE PROTECTION AND FISH FLOW WEIR  
REPLACEMENT PROJECT**

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Jackson Lake Dam Toe Slope Protection and  
Fish Flow Weir Replacement Project  
Water Quality Certification

June 2023



Figure 1. Jackson Lake Dam Toe Slope Protection and Fish Flow Weir Replacement Project Area Map

Jackson Lake Dam Toe Slope Protection and  
Fish Flow Weir Replacement Project  
Water Quality Certification

June 2023

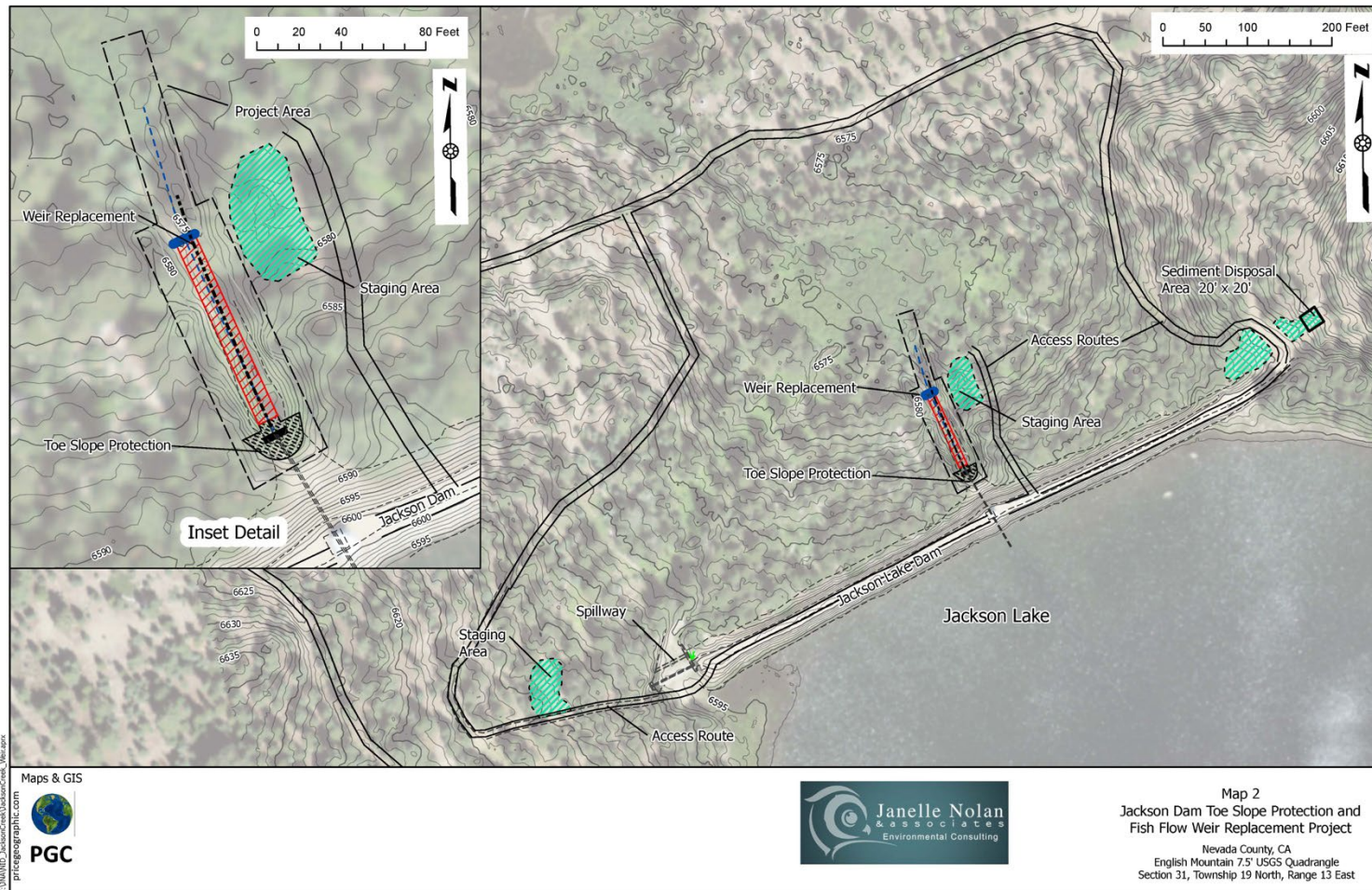


Figure 2. Jackson Lake Dam Toe Slope Protection and Fish Flow Weir Replacement Project Site Overview