
State Water Resources Control Board

April 14, 2025

Debbie-Anne Reese, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426
Via e-filing

**Merced River Hydroelectric Project and Merced Falls Hydroelectric Project
Federal Energy Regulatory Commission Project Nos. 2179 and 2467
Merced and Mariposa County
Merced River and Tributaries**

**COMMENTS ON MERCED IRRIGATION DISTRICT'S WITHDRAWAL OF WATER
QUALITY CERTIFICATION APPLICATIONS FOR THE MERCED RIVER
HYDROELECTRIC PROJECT AND MERCED FALLS HYDROELECTRIC PROJECT**

Dear Secretary Reese:

On March 18, 2025, Merced Irrigation District (Merced ID) submitted a letter (enclosed) to the State Water Resources Control Board (State Water Board or Board) withdrawing its applications for water quality certification (certification) for the Merced River Hydroelectric Project (Merced River Project, Federal Energy Regulatory Commission (FERC) Project No. 2179) and Merced Falls Hydroelectric Project (Merced Falls Project, FERC Project No. 2467) (collectively Merced Projects).

As a brief background, Merced ID applied to the State Water Board for certification for the relicensing of the Merced Projects on April 15, 2024, pursuant to section 401 of the Federal Clean Water Act (CWA) (33 U.S.C. § 1341), following the United States Court of Appeals for the Ninth Circuit's decision in *California State Water Resources Control Board v. FERC*.¹ On May 15, 2024, State Water Board staff submitted a letter to Merced ID and FERC confirming that the applications were complete and pending before the Board with an expected action date of no later than April 15, 2025. On January 27, 2025, the State Water Board released a draft certification for public review and comments for the Merced Projects. A copy of the draft certification is available on

¹ 43 F.4th 920 (9th Cir. 2022), cert denied 2023 WL 3440583 (Westlaw 2023).

the State Water Board's [Merced River Hydroelectric Project webpage](#)² and [Merced Falls Hydroelectric Project webpage](#).³

Pacific, Gas & Electric Company (PG&E)⁴ and Merced ID filed with FERC the final licensing applications for the Merced Falls Project and Merced River Project on February 8, 2012, and February 26, 2012, respectively. Merced ID has been operating the Merced Projects under FERC ordered annual licenses since 2014. FERC issued the *Final Environmental Impact Statement for hydropower licenses Merced River Hydroelectric Project—FERC Project No. 2179-043* and *Merced Falls Hydroelectric Project—FERC Project No. 2467-020* on December 4, 2015, in compliance with National Environmental Policy Act requirements.

According to the United States Environmental Protection Agency's final 2023 Clean Water Act Section 401 Water Quality Certification Rule (Fed. Reg. 66558-66666 (September 27, 2023) [amending 40 C.F.R. Parts 121, 122, 124]) that went into effect on November 27, 2023 (2023 Rule), "if the request for certification or Federal license or permit application was withdrawn, then the certifying authority is no longer responsible for acting on the request for certification because the pre-requisite 'request' is absent." Because Merced ID withdrew its applications for certification, there is no pending application for the Merced Projects before the Board for certification action.

Under federal law, certification or waiver is required for any federal license or permit that authorizes any activity which may result in any discharge into waters of the United States. (33 U.S.C. § 1341; 40 CFR § 121.2.). Continued operation of the Merced Projects may requires new FERC license(s) and may result in a discharge to waters of the United States such that Merced ID will need to submit a new request certification from the State Water Board for the Merced Projects if it intends to obtain a new license(s) from FERC for the projects.

In its withdrawal letter, Merced ID indicates its intention to reapply for certification for the Merced Projects on or before April 30, 2025, citing the need for additional information and supplemental analysis to clarify its application for certification, including completion of its environmental review pursuant the California Environmental Quality Act. State Water Board staff respectfully request that FERC directs Merced ID to apply for

² Merced River Hydroelectric Project website address:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/mercedriver_ferc2179.html

³ Merced Falls Hydroelectric Project website address:
https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/mercedfalls_ferc2467.html

⁴ On July 6, 2015, FERC approved the transfer of the Merced Falls Project license and associated Merced Falls Project lands to Merced ID with PG&E formally transferring ownership of the Merced Falls Project to Merced ID on March 2, 2017.

certification for the Merced Projects on or before Merced ID's proposed date of April 30, 2025, to avoid any further delay in the relicensing process.

If you have questions regarding this letter please contact Bryan Muro, Merced Projects Manager, by email at Bryan.Muro@waterboards.ca.gov or by phone at: (916) 327-8702. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Bryan Muro
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

A handwritten signature in black ink that reads "Bryan Muro". The signature is written in a cursive, flowing style.

Bryan Muro – Water Resources Control Engineer
Water Quality Certification Program
Division of Water Rights