State Water Resource Control Board

June 28, 2024

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

Jeff L. Taylor Pine Flat Power Plant
Federal Energy Regulatory Commission Project No. 2741
Fresno County
Kings River

JEFF L. TAYLOR PINE FLAT POWER PLANT RELICENSING PAD COMMENT LETTER

Dear Acting Secretary Reese:

On February 1, 2024, the Kings River Conservation District (KRCD) filed a notice of intent (NOI) to prepare a license application and a pre-application document (PAD) for the Jeff L. Taylor-Pine Flat Power Plant relicensing project. KRCD owns and operates the Jeff L. Taylor Pine Flat Power Plant, FERC Project Number (NO) 2741 (Project), also referred to as Federal Energy Regulatory Commission (FERC) Project No. 2741. The Project is located on the Kings River below Pine Flat dam approximately 25 miles east of Fresno. On May 1, 2024, State Water Board staff attended a virtual public meeting hosted by KRCD to discuss the Project relicensing and information contained in the PAD. The public meeting began a 60-day comment period in which interested parties could submit comments on the Project's PAD and request additional studies.

State Water Board staff hereby submits the enclosed comments and study request pertaining to the Project. The comments and study request are provided in two attachments: *Attachment A: Study Plan Request for Jeff L. Taylor Power Plant Relicensing* and *Attachment B: Comments on Pre-Application Document for Jeff L. Taylor Pine Flat Power Plant Relicensing.*

If you have questions regarding this letter please contact Glenn Hoffmann, Project Manager, by email at Glenn.Hoffmann@waterboards.ca.gov. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program

Attn: Glenn Hoffmann
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

Glenn Hoffmann, Engineering Geologist
Division of Water Rights

Attachments:

A – Comments on the Pre-Application Document Jeff L. Taylor Pine Flat Power Plant Relicensing

B – Study Plan Request for Jeff L. Taylor Pine Flat Power Plant Relicensing

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ATTACHMENT A
COMMENTS ON THE PRE-APPLICATION DOCUMENT FOR
JEFF L. TAYLOR PINE FLAT POWER PLANT RELICENSING

Background and Regulatory Authority

Section 401 of the Clean Water Act (CWA) requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters, to obtain certification from the State that the activity will comply with the applicable water quality requirements, including the requirements of section 303 of the Clean Water Act for water quality standards and implementation plans. CWA section 401 directs that certifications shall prescribe effluent limitations and other conditions necessary to ensure compliance with the CWA and with any other appropriate requirements of state law. Conditions of certification shall become a condition of any federal license or permit subject to certification. The Jeff L. Taylor Pine Flat Power Plant (Project) will result in an activity that may result in discharge to navigable waters and must obtain certification from the State Water Resources Control Board (State Water Board) as part of relicensing for continued operations.

A certification issued by the State Water Board for the Project must ensure compliance with the water quality standards in the Tulare Lake Basin Plan (Central Valley Regional Water Board 2018). Water quality control plans designate the beneficial uses of water that are to be protected, 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. (Cal. 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 anti-degradation requirements, constitute California's water quality standards for purposes of the CWA. In issuing water quality 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 Project facilities are located on the Kings River immediately downstream of the United States Army Corps of Engineers (USACE) Pine Flat Dam. DWR has entered into a contract with KRCD to purchase the power produced by the powerhouse to offset the power needs of the State Water Project. The Tulare Lake Basin Plan identifies the Kings River below Pine Flat Dam as having the following beneficial uses: municipal and domestic supply; agricultural supply; hydropower generation; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; wildlife habitat; spawning; reproduction; and/or early development; ground water recharge; and freshwater replenishment.

The 2020-2022 Integrated Report there are several constituents that appear on the 303d listing of impaired water bodies in the vicinity of the project area. Pine Flat reservoir has been listed for Alkalinity in the form of CaCO3 (calcium carbonate or

limestone). A 61.67 mile stretch of the Kings River from immediately below the Pine Flat dam to Island Weir has been 303d listed for Copper, Lead and Paraquat. The information provided in the PAD does not provide any data regarding the amount of any of these constituents in the water above or below their facilities. While the State Water Board has not set Total Maximum Daily Load (TMDL) for these constituents yet, it would be beneficial to understand the current levels of these constituents as they pass through the project area.

Information collected through the implementation of study plans in the Federal Energy Regulatory Commission (FERC) relicensing process will be used by FERC to develop license conditions and fulfill its obligations under the National Environmental Policy Act (NEPA), and by other agencies that must take permitting actions during relicensing proceedings. Study plan information will assist the State Water Board in developing water quality certification conditions to ensure compliance with the CWA and appropriate requirements of state law.

As an agency with authority to impose mandatory conditions in FERC's relicensing process, the State Water Board will act in an advisory role to inform KRCD of information necessary to fulfill the requirements of the water quality certification process. The State Water Board exercises independent authority in issuing water quality certifications; therefore, its role in any pre-decisional activities is advisory, rather than necessarily reflective of the State Water Board's ultimate determinations.

On February 1, 2024, KRCD filed a request with FERC to use the Traditional Licensing Process (TLP) for the power plant relicensing project. On March 22, 2024, FERC granted KRCD their request to use the TLP. In this advisory role, State Water Board staff will participate in the relicensing process and submit study plan requests and comments in accordance with the TLP. If the study plans implemented do not cover the requests of State Water Board staff, or are otherwise insufficient to provide information needed in connection with the issuance of the water quality certification, or its determined that additional information is necessary to inform the certification process, the State Water Board may choose to request such information under the Porter-Cologne Water Quality Control Act, Water Code section 13383, or other applicable authority.

To avoid unnecessary delays in the Project's relicensing process, State Water Board staff strongly encourages KRCD to work collaboratively with State Water Board staff and other relicensing participants to resolve differences. When possible, working collaboratively with all relicensing participants often allows for expedited resolution of issues.

The following comments are provided by State Water Board staff on KRCD's Pre-Application Document (PAD) for relicensing the Project.

General Comments:

1. On December 19, 2022, the State Water Board issued Water Quality Certification Amendment for Jeff L. Taylor – Pine Flat Hydroelectric Project for the construction of the Unit 4 turbine to increase the maximum electric capacity to 171.3 MW. Condition K of the FERC order (Order Amending License to Install a Low Flow Turbine, Incorporating Revised Water Quality Certification, Approving Revised Exhibits K, L, and M, Revising Annual Charges, and Revising Project Description, issued May 3, 2023) approving the installation of the low flow Unit 4 turbine requires KRCD to inform the State Water Board 60 days prior to the beginning of construction on the Jeff L. Taylor-Pine Flat Hydroelectric Project License Amendment and adhere to all of the conditions laid out in the 2022 Water Quality Certification. State Water Board staff looks forward to continuing to work with KRCD on the Unit 4 Turbine Project.

2. Compliance with the California Environmental Quality Act (CEQA) is required as part of the water quality certification process. CEQA requires the lead agency to evaluate a project's potential impacts to environmental resources as well as identify mitigation measures and alternatives to reduce project impacts. CEQA also requires public input on identified impacts and mitigation measures. CEQA documentation must analyze and evaluate the Project's impacts to all relevant resources, including aquatic biological resources, special status species, water quality standards, and water quality control plans. Information from studies and data gathering during FERC relicensing informs CEQA document development.

   CEQA defines the lead agency as "the public agency which has the principal responsibility for carrying out or approving a project. (Cal. Code Regs., tit. 14, § 15367). KRCD is a public agency with the primary responsibility for developing and implementing the Project. It is State Water Board staff's understanding that KRCD will act as the CEQA lead agency for the Project. State Water Board staff request KRCD confirm that it is the CEQA lead agency for the Project.

   Additionally, the State Water Board strongly encourages KRCD to proceed with the CEQA process early in relicensing; specifically prior to submitting a water quality certification application. The CEQA process can occur independent of FERC's National Environmental Policy Act (NEPA) process and will inform the State Water Board of potential water quality impacts associated with the Project. Without adequate information on the Project's potential impacts to water quality, the State Water Board may be unable to issue a certification

3. Section 3.3.2 of the PAD presents the most recent water quality information downstream of the Project area. In particular KRCD describes instances since 2016 when DO below the Project dropped below 7.0 mg/L. KRCD goes on to

state that, “KRCD made every effort to immediately increase DO concentrations. Actions most often utilized included adjusting flows through the Bypass System and decreasing turbine flow and power generation”. Please provide responses to the following questions: What specifically does KRCD do to increase DO? How much flow is diverted through the bypass system and where does this flow discharge? Does KRDC need to coordinate with the ACOE? Is flow from this bypass diverted at a different elevation in the reservoir?

ATTACHMENT B

STUDY PLAN REQUEST FOR JEFF L. TAYLOR PINE FLAT POWER PLANT RELICENSING PROJECT

The information developed through the implementation of study plans will not only be used by the Federal Energy Regulatory Commission (Commission or FERC) to develop license conditions and fulfill requirements under the National Environmental Policy Act (NEPA), but also by other agencies that must take permitting actions during the proceeding. This information will assist the State Water Resources Control Board (State Water Board) in developing water quality certification (certification) conditions to ensure compliance with Section 401 of the Clean Water Act (CWA)(33 U.S.C. §§ 1341) and other appropriate requirements of state law.

As a mandatory conditioning agency under the Commission's relicensing process and as a responsible agency under CEQA, the State Water Board will act in an advisory role to inform the Licensee of information that it believes is necessary to fulfill the requirements of CEQA, and federal and state water quality laws, and to develop a complete application for certification.

In this advisory role, State Water Board staff will participate in the Study Plan Development process and submit study plan requests and comments in accordance with the Commission's Traditional Licensing Process (TLP). If the study plans approved by the Commission do not include those requested by State Water Board staff and are determined to be insufficient to provide the information needed to issue the certification, the State Water Board may choose to request such information under the Porter-Cologne Water Quality Control Act (Cal. Wat. Code, § 13000 et seq.), Water Code section 13383, or other applicable authority.

The following study requests were deemed necessary to inform potential future decisions and actions the State Water Board may take regarding this Project.

Each study request (in no particular order) is organized around the six criteria outlined in the CFR (18 CFR 16.8(b)(5)), required by FERC under the TLP:

i. *Identifying its [State Water Board staff] determination of necessary studies to be performed or the information to be provided by the potential applicant; (18 CFR 4.38(b)(5)(i)).*
ii. *Identifying the basis for its [State Water Board staff] determination; (18 CFR 4.38(b)(5)(ii)).*
iii. *Discussing its [State Water Board staff] understanding of the resource issues and its [State Water Board] goals and objectives for these resources; (18 CFR 4.38(b)(5)(iii)).*
iv. *Explaining why each study methodology recommended by it [State Water Board staff] is more appropriate than any other available methodology alternatives, including those identified by the potential pursuant to paragraph (b)(2)(vii) of this section; (18 CFR 4.38(b)(5)(iv)).*

v. *Documenting that the use of each study methodology recommended by it [State Water Board staff] is generally accepted practice; (18 CFR 4.38(b)(5)(v)).*

vi. *Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its [State Water Board staff] resource goals and objectives that are affected by the proposed project (18 CFR 4.38(b)(5)(vi)).*

Study Plan Request

State Water Board staff requests the following study:

1) **Water Quality Monitoring Study**

a. *Identifying its [State Water Board staff] determination of necessary studies to be performed or the information to be provided by the potential applicant; (18 CFR 4.38(b)(5)(i)).*

Characterizing water quality is important for determining compliance with state and federal water quality objectives and examining long-term trends. State Water Board staff has determined that the information provided in the PAD may be insufficient to evaluate Project compliance with water quality objectives. Information provided in the PAD does not offer the temporal and spatial specificity necessary to elucidate Project impacts on water quality. In particular State Water Board staff is interested in any impacts from river access facilities on water quality objectives. For these reasons, the State Water Board staff has determined the need for a water quality assessment.

b. *Identifying the basis for its [State Water Board staff] determination; (18 CFR 4.38(b)(5)(ii)).*

Section 303 of the Clean Water Act requires the states to develop and adopt water quality standards (33 U.S.C. § 1313.). The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses. The beneficial uses, together with the water quality objectives contained in the basin plans and the state and federal anti-degradation requirements, constitute state water quality standards under section 303 of the Clean Water Act.

In addition to the federal mandate, the California Water Code (§ 13241) specifies that each Regional Water Quality Control Board shall establish water quality objectives. Water quality objectives are intended (i) to protect the public health

and welfare and (ii) to maintain or enhance water quality in relation to the designated existing and potential beneficial uses of the water. Establishing baseline water quality conditions will provide a basis for identifying trends toward degradation or enhancement of regional waters.

The State Water Board in acting on a request for 401 water quality certification is required to ensure that water quality objectives are met. Beneficial use designations for Project affected river reaches are established in both the *Water Quality Control Plan for the Tulare Lake Basin* and *Water Quality Control Plan for the Central Valley Region*. These include both numeric and narrative objectives for impairments dependent on waterbody designated beneficial uses.

Additionally, California's water quality standards include the state's Anti-degradation Policy. This policy, formally referred to as the *Statement of Policy with Respect to Maintaining High Quality Waters in California* (State Water Board Resolution No. 68-16), restricts degradation of surface or groundwaters. In particular, this policy protects waterbodies where existing quality is higher than is necessary for the protection of beneficial uses.

The 2018 Water Quality Control Plan for the Tulare Lake Basin (amended December 2020) states in section 4.1.8 that “Attractive, convenient, and adequate toilet facilities, fish cleaning sinks, and disposal containers should be provided to prevent disposal in or near surface waters…Programs and procedures, developed from studies where necessary, must be adopted for processing and disposal of solid wastes and vault toilet pumpings from recreational areas. Educational programs on proper handling and disposal of wastes must be made available to classes and groups who would apply the techniques.”

Based on information provided in the PAD temperature and dissolved oxygen concentration are monitored at Pine Flat Bridge approximately one-half mile downstream of the Jeff L. Taylor Powerhouse from 2016 to 2022. General minerals and metals samples were taken at multiple locations along the river from downstream of Pine Flat Dam to the Highway 180 bridge from 2004 to 2005.

In general, there does not seem to be consistent water quality monitoring above and below Project facilities that would allow State Water Board staff to determine if water quality objectives are being exceeded as result of the project. Water quality is typically monitored for drinking water, recreation, and fish and wildlife purposes. While existing information is useful in determining some water quality conditions at specific locations along the Kings River below Pine Flat Dam, impacts to beneficial uses such as wildlife require a greater depth of information to be collected in more frequent intervals. Additional information is needed concerning the effect that use of the Public Access Fishing area is having on water quality. The lack of bathrooms and fish cleaning facilities could be

negatively impacting water quality. Information gathered during relicensing studies acts as baseline condition information for the 30-to-50-year term of the FREC hydropower license.

c. *Discussing its [State Water Board staff] understanding of the resource issues and its [State Water Board] goals and objectives for these resources; (18 CFR 4.38(b)(5)(iii)).*

Operations and maintenance of the Project has the potential to impact water quality in the Kings River, in particular through the operation of the Public Fishing Access area. Per the Tulare Lake Basin Plan section 3.1.2, for waters designated REC-1 the fecal coliform concentration based on a minimum of not less that five samples for a 30-day period shall not exceed a geometric mean of 200/100 ml, nor shall more than ten percent of the total number of samples taken during any 30-day period exceed 400/100 ml. Without recent and in-depth water quality data below Pine Flat Dam, State Water Board staff is unable to evaluate how Project operations could impact water quality. The PAD also presents instances of dissolved oxygen being depressed below acceptable levels but is unclear whether DO is depressed as a result of upstream water quality or as a result of Project operations.

The magnitude, duration and timing of water released from Pine Flat Dam through Jeff L. Taylor Powerhouse into the Kings River have the potential to impact fish and wildlife resources. Without an understanding of water quality conditions and their impact on specific fish and wildlife resources in the Kings River, relicensing participants are unable to develop appropriate protection and mitigation measures.

The goal of this study is to fill water quality data gaps and evaluate Project impacts to designated beneficial uses of water (per the Tulare and Central Valley Basin Plans[1]). The study will measure and evaluate key indicators of water quality in Project-affected river reaches. Section 401 of the CWA requires any applicant for a federal license or permit, for any activities which may result in a discharge to navigable waters, to obtain certification from the State that the activities will comply with the applicable water quality parameters in the CWA. The information obtained from this study will be useful in assessing ongoing water quality of Project reservoirs and streams.

Objectives of this study include:

i. Characterize existing water quality conditions in the Kings River during operation of Jeff L. Taylor Powerhouse and;

[1] Basin Plans refer to both the *Water Quality Control Plan for the Tulare Lake Basin* and *Water Quality Control Plan for the Central Valley Region.*

ii. Evaluate the potential for Project operations to effect water quality in the Kings River;

d. ***Explaining why each study methodology recommended by it [State Water Board staff] is more appropriate than any other available methodology alternatives, including those identified by the potential pursuant to paragraph (b)(2)(vii) of this section; (18 CFR 4.38(b)(5)(iv)).***

The licensee has not proposed a water quality assessment for relicensing but instead would most likely continue their existing sampling efforts. The timing, duration and location of sampling should be determined in consultation with State Board staff and relicensing participants. Water quality parameters to be sampled at each location should mirror parameters represented in existing data, unless otherwise determined to be necessary in consultation with relicensing participants.

At a minimum, the study should include the following : 1) water quality parameters measured; 2) sampling locations; 3) sample field and laboratory protocols using standard methods adequately sensitive to determine consistency with state and federal water quality standards; 4) quality assurance/quality control (QA/QC) samples; 5) consultation with operations staff and relicensing participants; and 6) reporting. The report should include raw data and a summary of findings relative to Basin Plan Objectives and beneficial use protection needs.

Selection of Water Quality Parameters

The water quality parameters measured will include temperature, dissolved oxygen, specific conductance, pH, turbidity, total organic carbon, dissolved carbon, total dissolved solids, total suspended solids, total alkalinity, hardness, copper, lead, paraquat, calcium, magnesium, potassium, sodium, chloride, nitrate-nitrite, total coliform, fecal coliform, total petroleum hydrocarbons, and grease.

Site Selection

Site selection should be done in consultation with relicensing participants but generally include locations where previous sampling has occurred, upstream and downstream of Project facilities.

This study takes a synoptic view of water quality focusing on areas that would most likely be affected by continued Project operation, maintenance, and recreation during a period when effects are expected to be most pronounced in the reaches downstream of the Project area.

e. ***Documenting that the use of each study methodology recommended by it [State Water Board staff] is generally accepted practice; (18 CFR 4.38(b)(5)(v)).***

Water quality assessments are performed in nearly every hydropower Project relicensing effort in California with well-established methodologies.

f. ***Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its [State Water Board staff] resource goals and objectives that are affected by the proposed project (18 CFR 4.38(b)(5)(vi)).***

The State Water Board is charged with ensuring the protection of designated beneficial uses of water when evaluating the Project. The beneficial uses of the Kings River downstream of Pine Flat Dam include: municipal and domestic supply (MUN), agricultural supply (ARG), power generation (POW), ground water recharge (GWR), water contact recreation (REC-1), noncontact water recreation (REC-2), warm freshwater habitat (WARM), cold freshwater habitat (COLD), wildlife habitat (WILD), spawning reproduction and/or early development (SPWN), and freshwater replenishment (FRSH). Characterizing Project water quality is necessary for evaluating the Project impacts and for the development of protection and mitigation measures.