



State Water Resources Control Board

April 21, 2021

Gwen Knittweis, Chief
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COMMENTS ON THE DEPARTMENT OF WATER RESOURCES'S SOUTH STATE WATER PROJECT HYDROPOWER RELICENSING PROJECT INITIAL STUDY / DRAFT MITIGATED NEGATIVE DECLARATION; FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2426

Dear Gwen Knittweis:

In March 2021, the Department of Water Resources (DWR) and the Los Angeles Department of Water and Power (LADWP) issued an Initial Study (IS) / Draft Mitigated Negative Declaration (DMND) for the South State Water Project (Project) also known as Federal Energy Regulatory Commission (FERC) Project No. 2426. DWR owns the Project and co-operates the Project with LADWP. DWR is lead agency for the purpose of complying with the California Environmental Quality Act (CEQA). The State Water Resources Control Board (State Water Board) appreciates the opportunity to comment on the IS and DMND. State Water Board staff provides comments on the IS / DMND in Attachment A.

During the current Coronavirus-2019 emergency, most State Water Board staff are working from home. If you have questions regarding this letter, please contact Andrea Sellers, Project Manager, in the Water Quality Certification Program of the Division of Water Rights, by email at andrea.sellers@waterboards.ca.gov. Written correspondence should be directed to:

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E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Sincerely,

Andrea Sellers

Andrea Sellers, Environmental Scientist
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Enclosure: Attachment A – Comments on the South SWP Hydropower Relicensing
FERC Project No. 2426 Initial Study / Draft Mitigated Negative Declaration

cc:

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**ATTACHMENT A:
COMMENTS ON THE SOUTH SWP HYDROPOWER RELICENSING FERC
PROJECT NO. 2426 INITIAL STUDY / DRAFT MITIGATED NEGATIVE
DECLARATION**

State Water Resources Control Board (State Water Board) staff provides the following comments on the South State Water Project Hydropower Relicensing Federal Energy Regulatory Commission (FERC) Project No. 2426 (Hydropower Project) Initial Study (IS) / Draft Mitigated Negative Declaration (DMND). The Hydropower Project is owned by the Department of Water Resources (DWR) and co-operated with the Los Angeles Department of Water and Power (LADWP).

1. State Water Board Section 401 Authority

Prior to obtaining a new license from FERC, DWR and LADWP must obtain water quality certifications (certification) from the State Water Board, pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. §1341). Section 401 of the federal Clean Water Act requires any applicant for a federal license or permit which may result in discharge to navigable waters to obtain certification from the state in order to ensure the discharge will comply with the state's water quality standards and other appropriate requirements of state or federal law. The State Water Board is the certifying agency under Section 401 for the Hydropower Project. Accordingly, the State Water Board may set conditions implementing Clean Water Act requirements, including the requirements of Section 303 of the Clean Water Act for water quality standards and implementation plans, or to implement "any other appropriate requirement of State law." (33 U.S.C. § 1341(d)). In California, issuance of a certification is a discretionary act and is therefore subject to the California Environmental Quality Act (CEQA). DWR is the lead agency for the purposes of CEQA compliance and is responsible for developing an environmental document for the Hydropower Project's future operation. The recent enactment of Water Code, section 13160 allows the State Water Board to issue certification prior to the completion of the CEQA process where waiting until completion of the CEQA process would present a significant risk of waiver of the Board's water quality certification authority.

2. Water Quality Control Plans and Water Quality Standards

The California Regional Water Quality Control Boards have primary responsibility for the formulation and adoption of water quality control plans for their respective regions, subject to State Water Board and the United States Environmental Protection Agency (USEPA) approval, as appropriate. (Wat. Code, §13240 et seq.) 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.) For a specified area, the water quality control plans designate the beneficial uses of water to be protected, water quality objectives established for the reasonable protection of those beneficial uses or the prevention of nuisance, and a program of implementation to achieve the water quality

objectives. (Wat. Code, §§ 13241, 13050 subd. (h), and 13050 subd. (j).) The beneficial uses together with the water quality objectives that are contained in the water quality control plans, and state and federal anti-degradation requirements constitute California's water quality standards. Water Code section 13247 requires state agencies, in carrying out activities that may affect water quality, to comply with water quality control plans unless otherwise directed by statute.

3. Water Quality Control Plan for the Los Angeles Regional Water Quality Control Board and the Lahontan Region Water Quality Control Board

The Los Angeles Regional Water Quality Control Board and the Lahontan Region Water Quality Control Board adopted, and the State Water Board and USEPA approved, the Los Angeles Region Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties and the Water Quality Control Plan for the Lahontan Region Basin Plan (Basin Plans). According to the Basin Plans, the designated existing beneficial uses currently designated for the Hydropower Project's area are:

- Quail Lake includes wildlife habitat;
- Pyramid Lake includes municipal and domestic supply, industrial service supply, agricultural supply, ground water recharge, hydropower generation, warm freshwater habitat, cold freshwater habitat, rare, threatened, or endangered species, and wildlife habitat;
- Pyramid Reach includes industrial service supply, agricultural supply, ground water recharge, freshwater replenishment, warm freshwater habitat, cold freshwater habitat, spawning, reproduction and development, wildlife habitat, rare, threatened, or endangered species, migration of aquatic organisms, and wetland habitat;
- Elderberry Forebay includes municipal and domestic supply, industrial service supply, agricultural supply, ground water recharge, freshwater replenishment, hydropower generation, warm freshwater habitat, wildlife habitat, threatened, or endangered species, spawning, reproduction, and early development; and
- Castaic Creek includes wildlife habitat, and threatened or endangered species.

4. Section 303(d) Listed Impairments

Section 303(d) of the Clean Water Act requires states to identify its "impaired waterbodies" – those that do not meet, or are not expected to meet, water quality standards. The Final 2014/2016 California Integrated Report 303(d) classifies Pyramid Lake as impaired for mercury in fish tissue.

5. IS/DMND Comments

Section 2.3.4.2. Water Resources – Current Flow Commitments and Water Quality Monitoring and Protection

- (1) Page 2-26, paragraph 2: *The Licensees release up to 3,150 AF of SWP water from Pyramid Lake into Pyramid reach below Pyramid Dam each year between November 1 and the end of February for deliveries to the UWCD.*

This paragraph implies that water releases are continuing each year and, as we understand it, this is a change to the current operation of the Hydropower Project. The State Water Board issued a temporary amendment to the current water quality certification to allow a temporary one-year variance to accommodate water releases at Pyramid Lake on January 15, 2020, but this one-year variance should not be considered part of the CEQA baseline, as it was not subject to CEQA review as a long-term operation. As the water deliveries constitute a change to the Hydropower Project and since additional flow releases have the potential to cause rapid changes in water quality (e.g. temperature) which can be lethal to species in the reach¹, the potential short- and long-term impacts to water quality should be evaluated, disclosed and mitigated to the extent possible in the CEQA document. The Environmental Protection Agency (EPA) defines potential water quality impacts from changes in flows as pollutant concentration, changes to water temperature, changes to aquatic habitat, and recreational uses². Potential effects from additional water releases (timing and quantity) will need to be analyzed and disclosed to provide the State Water Board with the information to evaluate the changes of water quality resulting from Hydropower Project implementation and operation. This will allow the State Water Board to appropriately condition any certification for the Hydropower Project. DWR and LADWP should evaluate potential impacts before proceeding with annual water releases to United Water District.

Section 2.4.1.4. – Proposed Addition of Existing Access Roads to FERC License

- (2) Page 2-45, first paragraph: *The Licensees do not propose to construct any new roads under the proposed Project. Rather, the Licensees propose to include, as an administrative action, a new Primary Project Road or Trail designation for existing access roads.*

Although the Licensees do not propose to construct any new roads, DWR and LADWP should include best management practices (BMPs) that will be used for maintenance of roads, or any ground disturbing activities that may occur on existing trails and roads. The Clean Water Act prohibits discharging of

¹ Source: EPA, Environmental Protection Agency, cfpub.epa.gov/watertrain/moduleFrame.cfm?parent_object_id=393&object_id=396 #396. Date Accessed: April 13, 2021

² Source: EPA, Environmental Protection Agency, <https://www.epa.gov/npdes/npdes-permit-basics>. Date Accessed: April 13, 2021

pollutants, such as soil erosion or hazardous materials associated with construction activities, into a water of the United States. Roads are a major source of erosion and sedimentation on most managed forest and ranch lands which may cause pollutants entering water ways³. The State Water Board will require erosion and sediment controls for the completion of the water quality certification which are detailed in the February 1, 2021 Preliminary Terms and Conditions letter.

Section 2.4.5.3 – Aquatic Resource Protections – Implement Flow Releases into Pyramid Reach (AR1)

- (3) Page 2-54, second paragraph: *This measure continues the provision of minimum flows from Pyramid Lake into Pyramid reach. Specifically, the water releases will continue to simulate the natural hydrograph in timing and magnitude to the extent operationally feasible and consistent with safety requirements.*

DWR and LADWP need to fully evaluate native species and their habitat in the Pyramid Reach. Dissolved oxygen, temperature, nutrients, standard parameters, and other habitat requirements in this reach need to be sufficient for native aquatic species. To create and issue the certification for the Hydropower Project, the State Water Board requires DWR and LADWP to provide the State Water Board with an evaluation that discloses the ongoing effects of the proposed flow regime on water quality, as well as native species and their habitat in Pyramid Reach. As part of this evaluation and disclosure DWR and LADWP must produce mitigation plans or measures that will be used to minimize or eliminate found impacts.

DWP and LADWP need to define “natural hydrograph” and support their definition with quantitative metrics that outline pre-project baseline flows more clearly. Defining “natural hydrograph” can vary depending on the quantitative metrics used, so disclosing specific metrics that DWR or LADWP will use to define “natural hydrograph”, are crucial in understanding if DWR or LADWP’s definition of “natural hydrograph” will sufficiently protect water quality.

Comments on section 3.10.3. DWP and LADWP need to define “natural hydrograph” and support their definition with quantitate metrics that outline pre-project baseline flows more clearly. Defining “natural hydrograph” can vary depending on the quantitative metrics used, so disclosing specific metrics that DWR or LADWP will use to define “natural hydrograph”, are crucial in understanding if DWR or LADWP’s definition of “natural hydrograph” will sufficiently protect water quality.

³ Source: Weaver, William, et al. Handbook for Forest, Ranch and Rural Roads. Apr. 2015, <https://mcrd.org/wp-content/uploads/2017/01/Handbook-for-Forest-Ranch-and-Rural-Roads-Web.pdf>, Date Accessed: April 13, 2021

Section 3.10.3. – Environmental Impact Analysis

- (4) Page 3-182, third paragraph: *The fourth proposed update to existing facilities includes only improvements to recreation facilities. Improvements to recreation facilities under the proposed Project include upgrades only. Proposed parking lot and road maintenance resurfacing, as well as ABA accessibility improvements, do not include significant additions of impervious surfaces given the substantial acreage of vegetated open space and lake surfaces in the proposed Project boundary.*

Proposed parking lot and maintenance resurfacing should include more information regarding the use of specific construction BMPs. Construction resurfacing involves the use of concrete or asphalt which has the potential to enter water ways if not contained with proper BMPs such as perimeter controls, concrete washouts, and erosion controls. Concrete or asphalt washout has the potential to affect water quality by changing the pH which negatively impacts wildlife and is harmful for consumption. Construction schedule, quantity of ground disturbance, and proximity to water ways also need to be included in the Hydropower Project description and CEQA evaluation. Including this information will ensure that the State Water Board has enough descriptive and quantitative information to determine whether water quality will be protected during Hydropower Project activities or to develop appropriate conditions for any certification. Details on erosion and sediment control plans can be found in the State Water Board's February 1, 2021 Preliminary Terms and Conditions letter.