

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

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In the Matter of Water Quality Certification for

**CINNAMON RANCH HYDROELECTRIC PROJECT**

**FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 6885**

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Sources: Pellisier Creek, Middle Canyon Creek (aka Middle Creek), and Birch Creek tributaries to Unnamed Streams in the Hammil Valley thence Owens River

Hydrologic Unit: Upper Owens River Hydrologic Area No. 603.20, Chalfant Valley Watershed

County: Mono County

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

BY THE EXECUTIVE DIRECTOR:

Project Description

1. The Cinnamon Ranch Hydroelectric Project (Project) is a run-of-the-river operation that generates 150 kilowatts of hydroelectric power under Federal Energy Regulatory Commission (FERC or the Commission) Project No. 6885. The Project is located within the Hammil Valley, as shown on Attachment A.
2. Richard Moss (Applicant) applied to the Commission for a minor hydroelectric power license on October 3, 1984. The Commission granted a license on December 26, 1985. The FERC license expired on December 31, 2009. Applicant filed to renew the FERC license on January 31, 2008, and did not propose any changes from how the facility has been operated in the past. No new construction activities, vegetation control or sediment removal activities are proposed. The Commission approved an annual license on January 12, 2010 for the Project to operate during 2010.
3. No minimum bypass flows are required by the FERC license below the diversions on Pellisier Creek, Middle Canyon Creek, and Birch Creek. Applicant is also not required to monitor, collect, or report data on stream flows, water temperature or other water quality conditions.

4. Applicant diverts and conveys water from Pellisier Creek and Middle Canyon Creek via 9,155 feet of a concrete lined ditch/flume to an offstream 3.57 acre-feet de-silting pond adjacent to Birch Creek. Birch Creek water is also diverted via a turnout and ditch to the de-silting pond that serves as the forebay to the powerhouse. A steel screen surrounds the 12-inch diameter standpipe that serves as the intake for the 5,940-foot long penstock that drops 550 feet to the powerhouse. Water from the powerhouse tailrace is discharged to a regulatory pond located southeast of the powerhouse where the water is used for irrigation and domestic supply.
5. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Water Right Permit 12878 on August 21, 1961 authorizing the year-round diversion of 2.5 cubic feet per second (cfs) from Birch Creek for power generation. Production of hydroelectric power began in 1965. After completion of the project, the Division issued Water Right License 8104 on December 30, 1971. The water right license contains a condition for compliance with section 5937 of the California Fish and Game Code to allow sufficient water for any fish and plants below the diversion.
6. The Division issued Water Right Permit 19110 on February 8, 1984, for the diversion of water from Pellisier Creek, Middle Canyon Creek, and Birch Creek, for development of power generation from May 1 through August 31. The total rate of water diverted under water right License 8104 and Permit 19110 cannot exceed 8 cfs. Minimum bypass flows are not required by this permit.
7. The Division issued Water Right Permit 19804 on February 19, 1986 for the irrigation of 600 acres from Birch Creek. Permit 19804 authorizes diversion of up to 6 cfs, taken from March 1 to November 30, and requires full compliance with Fish and Game Code section 5937.
8. Statements of Water Diversion and Use (Statements) were filed with the Division in June 1982 to document Applicant's diversion of water for irrigation and domestic supply, stock watering, and hydroelectric power. Applicant claimed 1876 as the year of first water use. The Division assigned Statement Numbers S010855, S010857, and S010856 to identify the claimed year-round diversions of 0.35 cfs from Pellisier Creek, 5 cfs from Middle Canyon Creek, and 2.5 cfs from Birch Creek, respectively.
9. Division received Applicant's application for a water quality certification under the FERC re-licensing process for the Project on January 12, 2009. Applicant provided fee payment and information to complete the application for a water quality certification on June 22, 2009.

## Aquatic Resources

10. There are no endangered or threatened species listed under either the State Endangered Species Act or federal Endangered Species Act within Pellisier Creek, Middle Canyon Creek, and Birch Creek, and no biological assessment of the three creeks was provided by the Applicant.
11. The Department of Fish and Game (DFG) has introduced rainbow and brook trout not native to Birch Creek as a recreational resource. DFG stocks catchable trout only when water temperatures are regularly below 75°F, stream flows are above 10 cfs, where the depth of water and the number of pools are adequate, and there is good water quality. Rainbow and brook trout have been found in the Applicant's Birch Creek de-silting pond/forebay.
12. DFG periodically introduces cutthroat trout to Birch Creek under its fishery management and restoration program.
13. Applicant diverts the majority of Pellisier Creek and Middle Canyon Creek flows to the de-silting pond. These diversions have limited the downstream survivability of fish and other aquatic species residing in the lower reaches of the streams during the drier months.
14. There are insufficient data on the stream flow and water quality of Pellisier Creek, Middle Canyon Creek, and Birch Creek, and bioassessments and fishery surveys have not been conducted. This information is needed to evaluate the health of aquatic resources in Pellisier Creek, Middle Canyon Creek, and Birch Creek and to formulate minimum bypass flows requirements downstream of the Applicant's diversions.

## Regulatory Authority

15. The Federal Clean Water Act (33 U.S.C. §§ 1251-1387) was enacted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." (33 U.S.C. § 1251(a).) Section 101 of the Clean Water Act (33 U.S.C. § 1251) requires federal agencies to "co-operate with the State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources."
16. Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance 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). Section 401 of the Clean Water Act directs the agency responsible for certification to prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean

Water Act and with any other appropriate requirement of state law. Section 401 further provides that certification conditions shall become conditions of any federal license or permit for the project. The State Water Board is the state agency responsible for such certification in California. (Wat. Code, § 13160.) The State Water Board has delegated this function to the Executive Director by regulation. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

17. The California Regional Water Quality Control Boards have adopted, and the State Water Board has approved, water quality control plans (basin plans) for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin and water quality objectives designed to protect those uses. Section 303 of the Clean Water Act requires the states to develop and adopt water quality standards. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans constitute State water quality standards under section 303.
18. The Lahontan Regional Water Quality Control Board (Lahontan Region) has adopted, and the State Water Board and the U.S. Environmental Protection Agency have approved, the Water Quality Control Plan for the Lahontan Region (Basin Plan). The Basin Plan designates the beneficial uses of waters to be protected along with the water quality objectives necessary to protect those uses.
19. The Basin Plan identifies present or potential beneficial uses for the Pellisier Creek, Middle Canyon Creek, and Birch Creek as municipal and domestic supply; agricultural supply; ground water recharge; contact and non-contact water recreation; commercial and sport fishing; cold freshwater habitat; and wildlife habitat.
20. The State Water Board approved a Class 4 Categorical Exemption pursuant to the California Environmental Quality Act (CEQA) for the project on January 31, 1984, prior to approving Water Right Permit 19110.
21. The Division filed its Notice of Determination and final Negative Declaration with the State Clearinghouse for the Applicant's irrigation project under Water Right Permit 19804 on January 3, 1986. The State Clearinghouse Number was 85061010.
22. FERC prepared and circulated its July 16, 2009 Notice of Availability of Environmental Assessment (EA) for the re-licensing process. A Finding of No Significant Impact was issued for the Project, as FERC determined the Project would not constitute a major federal action significantly affecting the quality of the human environment.
23. The State Water Board has reviewed the project description provided by Applicant and the FERC license application. Further, the State Water Board has considered

the Lahontan Region Basin Plan, the existing water quality conditions and project-related controllable factors.

24. Based on that review, State Water Board finds that:

- No significant effect to the quality of the environment was identified in the National Environmental Policy Act review conducted by FERC;
- No significant environment impacts were identified by the State Water Board in the CEQA process for the Applicant's diversion under Water Right Permit 19804;
- No operational changes or alterations to the facilities have been made since the Project was last evaluated; and
- No new activities or changes are proposed for the Project.

25. Based on the above findings, the Project meets the criteria for the Class 1 Categorical Exemption under CEQA for the ongoing operation, repair, and maintenance of an existing facility. (Pub. Resources Code, § 21083; Cal. Code Regs., tit. 14, § 15301.) The State Water Board has prepared a notice for the Class 1 Categorical Exemption and will file a Notice of Exemption within five days from the issuance of this certification.

26. The State Water Board will re-evaluate the potential project impacts on the beneficial uses of water in Pellisier Creek, Middle Canyon Creek, and Birch Creek for compliance with CEQA when data for stream flows, water quality, ambient bioassessment and fishery surveys are collected, reported and evaluated.

**ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER BOARD CERTIFIES THE OPERATION OF THE CINNAMON RANCH HYDROELECTRIC PROJECT BY RICHARD MOSS AS DESCRIBED IN THE APPLICATION FOR A NEW LICENSE DATED JANUARY 31, 2008** will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, provided Richard Moss complies with the following terms and conditions:

#### Monitoring and Reporting

1. Applicant shall, in consultation with DFG, the Lahontan Region and the Division, develop a monitoring plan for Pellisier Creek, Middle Canyon Creek, and Birch Creek for a minimum duration of five years. The monitoring plan shall identify the locations of the upstream and downstream monitoring stations, frequency of monitoring, stream flows, and water quality monitoring parameters. The plan shall be submitted for review and approval by the State Water Board Deputy Director for Water Rights (Deputy Director for Water Rights) within 90 days from the date of issuance of the license. Monitoring shall commence 90 days after approval by the Deputy Director for Water Rights.

2. Applicant shall, in consultation with the State Water Board, DFG, and the US Fish and Wildlife Service, develop a plan to conduct ambient bioassessment<sup>1</sup> and a fishery survey for Pellisier Creek, Middle Canyon Creek, and Birch Creek above and below the Project diversions. The Plan shall identify the following:

- sampling sites;
- frequency and duration of the sampling effort;
- methods for the collection of physical habitat data;
- stream benthic macroinvertebrate community composition;
- distribution and abundance of fish in the affected stream reach; and
- methods of data analysis.<sup>2</sup>

The plan shall be submitted for review and approval by the Deputy Director for Water Rights within 90 days from the date of issuance of the license. The plan shall be implemented within one year after license issuance, and annual updates shall be provided to the State Water Board until the sampling and surveys are completed. Applicant shall submit an annual summary of monitoring results to the State Water Board by November 15 of each year.

3. The State Water Board will evaluate the data, in consultation with DFG and the US Fish and Wildlife Service. The data evaluation will be used to develop bypass flow requirements, if any, and if warranted, the certification will be re-opened in accordance with General Condition Nos. 15 and 16, as identified below.
4. Applicant shall monitor the condition of the intake screen to the penstock for accumulated debris and structural damage that may impair the Project operation or create potential impact to the fishery. The State Water Board shall be notified annually by March 1 of any maintenance and repairs, including those performed on the intake screen.

#### General Conditions

5. Notwithstanding any more specific conditions in this certification, the project shall be operated 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. Applicant shall take all reasonable measures to protect the beneficial uses of Pellisier Creek, Middle Canyon Creek, and Birch Creek.

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<sup>1</sup> The State Water Board's Surface Water Ambient Monitoring Program has developed standard operating procedures to conduct ambient bioassessments, which are available at the following website: <http://swamp.mpsl.mlmi.calstate.edu/resources-and-downloads/standard-operating-procedures>

<sup>2</sup> Data analysis may consist of a multimetric index to aid in the interpretation of the bioassessment data. An example for a multimetric index is available at the following website: [http://www.waterboards.ca.gov/laontan/water\\_issues/programs/swamp/docs/east\\_sierra\\_rpt.pdf](http://www.waterboards.ca.gov/laontan/water_issues/programs/swamp/docs/east_sierra_rpt.pdf)

6. This certification is contingent on compliance with all applicable requirements of the Lahontan Region Basin Plan, except as may be modified by the specific conditions of this certification.
7. This certification does not authorize any act which results in the take of a threatened or endangered 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 Applicant, Applicant shall obtain authorization for the take prior to any construction or operation of the project. Applicant shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this certification.
8. This certification is not intended and shall not be construed to apply to issuance of any FERC license or FERC license amendment other than the FERC license specifically identified in the Applicant's application for certification.
9. The authorization to operate the Project pursuant to this certification is conditioned upon payment of all applicable fees for review and processing of the application for water quality certification and administering the State's water quality certification program, including but not limited to the timely payment of any annual fees or similar charges that may be imposed by future statutes or regulations for the State's reasonable costs of a program to monitor and oversee compliance with conditions of water quality certification.
10. Applicant must submit any changes to the Project, including project operation, routine maintenance, and removal of sediment and/or vegetation that would have a significant or material effect on the findings, conclusions, or conditions of this certification, to the Executive Director of the State Water Board for review and written approval. If the State Water Board is not notified of a significant change to the project, it will be considered a violation of this certification.
11. In response to a suspected violation of any condition of this certification, the State 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.
12. 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.

13. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under any 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 assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
14. This certification is subject to modification or revocation upon administrative or judicial review, including 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).
15. The State Water Board may add to or modify the conditions of this certification, as appropriate, 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.
16. The State Water Board reserves authority to modify this certification if monitoring results indicate that the Project would violate water quality objectives or impair the beneficial uses and the public trust of Pellisier Creek, Middle Canyon Creek, and Birch Creek.
17. The State Water Board may add to or modify the conditions of this certification as appropriate to coordinate the operations of this project and other water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water.
18. The State Water Board shall provide notice and an opportunity for hearing in exercising its authority under conditions 15, 16, and 17 above.



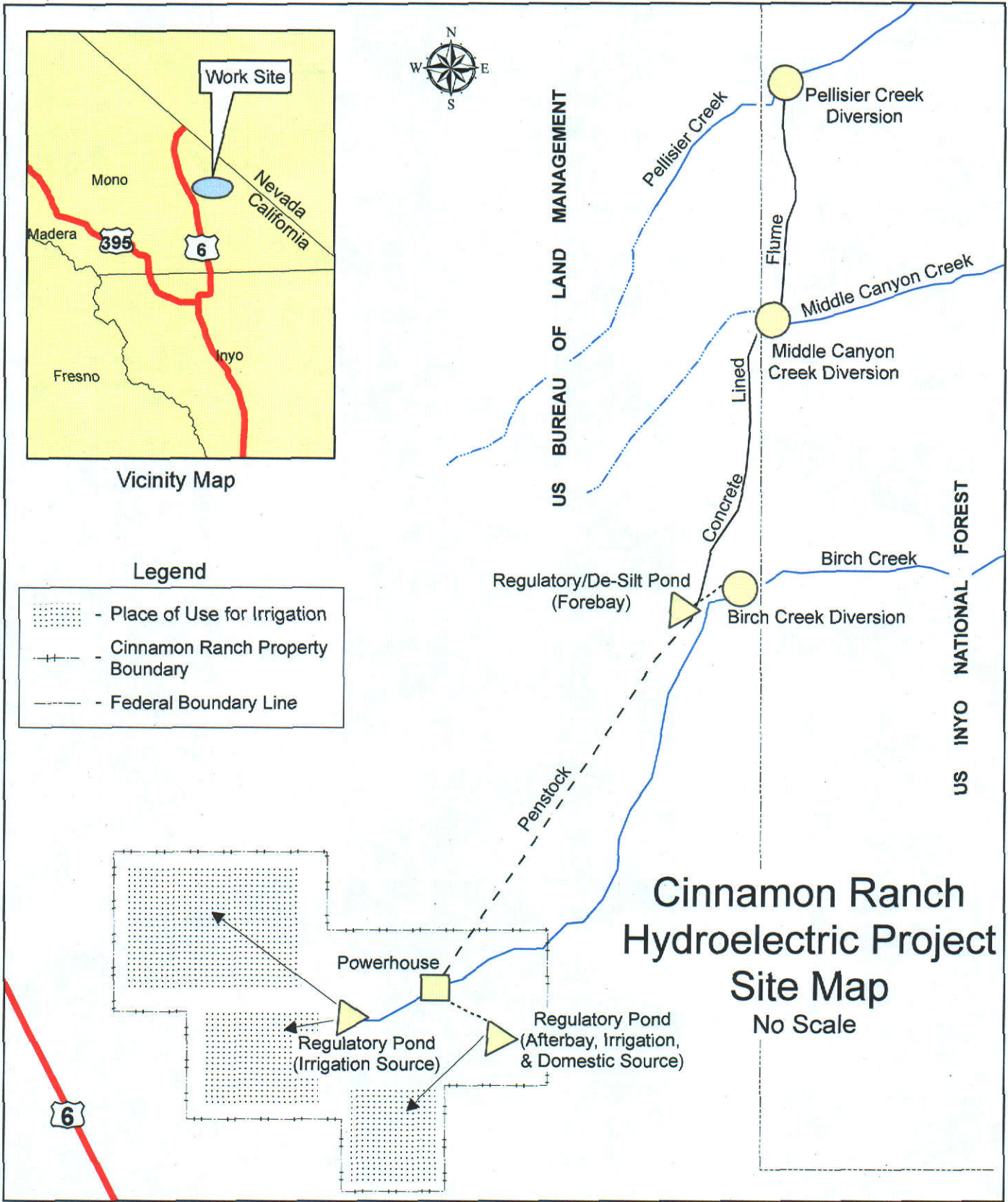
Dorothy Rice  
Executive Director

5.11.10

Date

Attachment





ATTACHMENT A