

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

---

In the Matter of Water Quality Certification for  
**THE SOUTHERN CALIFORNIA EDISON COMPANY**  
**LOWER TULE RIVER HYDROELECTRIC PROJECT**

**FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 372**

SOURCES: Middle Fork of the Tule River

COUNTY: Tulare County

---

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

BY THE EXECUTIVE DIRECTOR:

The **SOUTHERN CALIFORNIA EDISON COMPANY** (SCE) has applied to the Federal Energy Regulatory Commission (FERC) for a new license for the Lower Tule River Hydroelectric Project (Tule River Project). The Tule River Project is located in the Middle Fork Tule River Canyon approximately 2 miles east of the community of Springville (Figure 1). The run-of-the-river facility diverts water from both the South and North forks of the Middle Fork Tule River near the confluence of the two forks, and conveys the water via a 31,802-foot conduit to the powerhouse generating 2,520-kilowatts. The maximum capacity of the conduit is 39 cubic feet per second (cfs). The diversion affects approximately 5.4 miles of the Lower Tule River. In addition to power generation, the Tule River Project delivers water to the community of Springville from the tailrace of the powerhouse.

1. 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(g) of the Clean Water Act (33 U.S.C. § 1251(g)) requires federal agencies to "cooperate with state and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources."
2. Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires every applicant for a federal license or permit to conduct an activity 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 under 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

limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law. Section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project.

3. The State Water Resources Control Board (SWRCB) is the agency in California that is responsible for water quality certification of any potential discharge from an activity that requires a FERC license or amendment. (Wat. Code, § 13160; Cal. Code of Regs., tit. 23, § 3855, subd. (b).) The SWRCB has delegated this function to the Executive Director by regulation. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)
4. The California Regional Water Quality Control Boards (RWQCB) have adopted, and the SWRCB 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.
5. The RWQCB, Central Valley Region, in its Basin Plan for the Tulare Lake Basin adopted by the RWQCB on August 17, 1995, has identified the beneficial uses of the Tule River from its headwaters to above Lake Success as municipal and domestic supply (MUN), agricultural supply (AGR), hydropower generation (POW), water contact recreation (REC 1), non-contact recreation (REC 2), cold freshwater habitat (COLD), warm freshwater habitat (WARM), wildlife habitat (WILD), rare, threatened or endangered species (RARE), spawning, reproduction and development (SPWN) and freshwater replenishment (FRSH).
6. Protection of the instream beneficial uses identified in the Basin Plans requires maintenance of adequate stream flows as well as limitations on the discharge of waste.
7. The SWRCB has reviewed SCE's final FERC License Application; comments on the final FERC License Application of agencies and interested parties; SCE responses to additional information requests from FERC; the U.S. Forest Service (USFS) and the FERC final Environmental Assessment prepared pursuant to the National Environmental Policy Act and the section 4(e) of the Federal Power Act for the Tule River Project; and the USFS Record of Decision (ROD). Further, the SWRCB has considered the Tulare River Basin Plan, the existing water quality conditions and project related controllable factors.
8. In accordance with section 15225 of the California Environmental Quality Act (CEQA) Guidelines (Cal. Code of Regs., tit. 14, § 15225), the SWRCB has considered the Finding of No Significant Impact (FONSI) prepared for the Tule River Project by FERC and the USFS, together with the comments received during the public review process for that document, in place of an environmental impact report or negative declaration. The FONSI reflects the SWRCB's independent judgment and analysis, and based on the whole record, and as mitigated, the SWRCB finds that the project will not have a

significant effect on the environment. The SWRCB hereby adopts the FONSI. The SWRCB will file a Notice of Determination within five working days of the issuance of this order in accordance with the California Code of Regulations, title 14, section 15094. A copy of the FONSI is contained in the SWRCB's files maintained by the Division of Water Rights, 1001 I Street, Sacramento, CA 95814.

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE SWRCB CERTIFIES THAT THE OPERATION OF THE LOWER TULE RIVER HYDROELECTRIC PROJECT BY SOUTHERN CALIFORNIA EDISON COMPANY (LICENSEE) UNDER A NEW LICENSE ISSUED ON LICENSEE'S PENDING APPLICATION WITH FERC will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law if the Licensee complies with the following terms and conditions.

1. This certification is subject to modification or revocation upon administrative or judicial review including review and amendment pursuant to California Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with § 3867.)
2. The SWRCB 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.
3. 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.
4. 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. In response to a suspected violation of any condition of this certification, the SWRCB 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 SWRCB 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. In response to any violation of the conditions of this certification, the SWRCB may add to or modify the conditions of this certification as appropriate to ensure compliance.
5. In order to protect the beneficial use designations identified in the Tulare River Basin Plan, the operation of the project shall not add the following substances to surface waters:

- Taste or odor-producing substances that impart undesirable tastes to domestic and municipal water supplies or odors to fish flesh or other edible products of aquatic origin or that cause nuisance or adversely affect beneficial uses;
  - Perceptible floating material including, but not limited to, solids, liquids, foams or scums that could result in degradation of water quality;
  - Suspended or settleable material in concentrations that cause a nuisance or adversely affect beneficial uses;
  - Oil, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water;
  - Toxic pollutants present in the water column, sediments, or biota in concentrations that adversely affect beneficial uses; that produce detrimental response in human, plant, animal or aquatic life; or that bioaccumulate in aquatic resources at levels that are harmful to human health; and,
  - Coliform organisms attributable to human wastes.
6. 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 Licensee's application for certification.
  7. Any change to the Lower Tule River Hydroelectric Project, including project operation, that would have a significant or material effect on the findings, conclusions, or conditions of this certification must be submitted to the Chief of the Division of Water Rights for prior review and written approval.
  8. The SWRCB may add 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 to protect beneficial uses of water.
  9. During operation of the Lower Tule River Project as authorized by the new license, the Licensee shall maintain either the following continuous, minimum instream flows or the upstream flows entering the project, whichever are less:
    - 10 cfs from June 1 through September 31,
    - 6 cfs from October 1 through November 30, and
    - 5 cfs from December 1 through May 31

The minimum instream flows shall be monitored for compliance at U.S. Geological Survey gauging station #11202710, which is located immediately downstream from the confluence of the North and South Forks of the Middle Fork of the Tule River. The Licensee shall report to the Chief of the Division of Water Rights in writing any

violation of the minimum instream flow requirements within 30 days of the violation. The Licensee shall document the causes of the violation and report any actions taken by the Licensee to correct the problem.

With the written consent of the Chief of the Division of Water Rights, Licensee may make temporary decreases in the minimum flow requirements of this certification during and to the extent required for performance of required maintenance of the dams, their outlet facilities, and minimum stream flow release facilities. The Licensee shall obtain the concurrence of the USFS and the California Department of Fish and Game (DFG) prior to seeking approval from the Chief of the Division of Water Rights for any temporary stream flow modifications. The Licensee shall notify the Chief of the Division of Water Rights at least five working days prior to any such planned reduction in stream flows. The Licensee also may modify the minimum flow requirement temporarily in the event of operating emergencies beyond the control of the Licensee or in the interest of public safety, in which case the Licensee shall notify the Chief of the Division of Water Rights, the USFS and FERC as soon as practicable after making such an emergency flow modification but not later than ten calendar days after each such modification.

10. The Licensee shall develop within one year of issuance of a new project license, in consultation with the DFG, U.S. Fish and Wildlife Service (USFWS), USFS and the SWRCB staff, a Native Aquatic Species Management Plan (NASMP) for the management of native aquatic species and their associated habitats within the project affected reach, and submit the plan to the Chief of the Division of Water Rights for approval. After notice and an opportunity for hearing, the Division Chief may modify the NASMP as appropriate. Within 45 days of approval, the Licensee shall file the NASMP with the FERC and subsequently implement the plan. The NASMP and its objectives shall remain in effect for the life of the new project license. The purpose of the NASMP is to monitor trends within the native aquatic species' associations for possible effects (positive and negative) from project operations, and to assure that the minimum stream flows are beneficial to those native aquatic species identified as key native aquatic species of special concern. The species of special concern include the California roach (*Lavinia symmetricus*), Sacramento sucker (*Catostomus occidentalis*), Sacramento pike-minnow (*Ptychocheilus grandis*), foothill yellow-legged frog (*Rana boylei*) and western pond turtle (*Clemmys marmorata*).

Specific components of NASMP include but are not limited to the following:

1. The Licensee shall identify in the NASMP fish, reptile, and amphibian species present in the project area and describe the status of the native aquatic species within the project reach.
2. The NASMP shall describe potential threats to the habitat, including food sources, of the species of concern and of any other species identified in the NASMP and to the native aquatic species communities within the project area. The plan shall

include actions the Licensee proposes to take against those potential threats if they are identified in the ongoing monitoring programs described below.

3. The NASMP shall include a monitoring program to establish population trends of the native aquatic species. The monitoring program shall be approved by the Chief of the Division of Water Rights prior to submittal to FERC for approval. The monitoring program described in the NASMP shall commence at the beginning of the first practicable sampling season after FERC issues the license and SCE accepts it and every five years thereafter.
4. The monitoring program shall include a water temperature element. The Licensee shall monitor water temperatures throughout the stream reach dewatered as a result of the project. Water temperature data shall be collected from May 15 through September 15 of each year and shall be incorporated into the monitoring report described in condition 5 below. The water temperature data collected and reported shall include but not be limited to the mean daily, daily maximum and daily minimum temperatures. If temperature data indicates that water temperatures may be the most critical factor limiting the populations of species of special concern, the five-year report described in condition 5 shall include actions the Licensee proposes to take to minimize water temperature impacts to the extent that they are no longer the limiting factor affecting the species of special concern.
5. The Licensee shall prepare a monitoring report within six months of the completion of the initial five-year monitoring cycle and within six months of each successive five-year monitoring cycle. The monitoring report is to be provided to the DFG, USFWS, USFS and the Chief of the Division of Water Rights. The monitoring report shall include population and water temperature data and shall identify actions the Licensee may take to protect and/or enhance habitats within the project boundaries when the population trend data indicate declines in the species of special concern. Based on the report, the Division Chief may, after notice and opportunity for hearing, require reasonable changes in project operations designed to enhance or more fully protect habitat conditions or aquatic communities. Licensee shall only be responsible for project-related controllable factors.
6. The NASMP is required as a condition of this certification and is also required under Water Code section 13383, subdivision (b). The SWRCB reserves its jurisdiction to use appropriate administrative procedures to require appropriate releases from the Licensees' diversions or other appropriate actions to maintain the native aquatic species in "good condition" pursuant to California Fish and Game Code section 5937. The definition of species in good condition articulated by Dr. Peter Moyle in the Putah Creek testimony, and referenced in the article, "Fish Health and Diversity: Justifying Flows for a California Stream," by Moyle, et al, in Fisheries, Vol. 23, No. 7, (July 1998), will be used to evaluate the status of aquatic species in the Middle Fork Tule River project reach.

11. Within six months of acceptance of the license issued by FERC, the Licensee, in consultation with the USFS, DFG, and USFWS shall develop a plan for the design, construction and maintenance of a fish bypass, whereby fish trapped in the project intake sandbox are safely returned to the Middle Fork of the Tule River. The plan shall include a monitoring program to assure that the fish bypass is meeting the goal of returning fish safely to the Middle Fork of the Tule River. The Licensee shall construct the fish bypass as soon as practicable after approval by FERC of the design plan. The Licensee shall notify the Chief of the Division of Water Rights when FERC has approved the plan for the fish bypass structure. At that time, the Licensee shall also provide the Chief of the Division of Water Rights with a time schedule for construction of the required fish bypass structure. If construction is delayed, the Licensee shall provide the Division Chief with a revised time schedule. The Licensee shall also notify the Division Chief when the structure is operational.
12. This certification does not authorize any act which results in the taking 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 the Licensee, the Licensee shall obtain authorization for the take prior to any construction or operation of the project. The Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this certification.
13. The Licensee shall develop within one year of issuance of a new project license, in consultation with the Central Valley RWQCB and the SWRCB staff, a water quality monitoring program that specifically addresses the use of algacides within project facilities and their effects on biological resources and other beneficial uses within the North Fork and South Fork of the Middle Fork of the Tule River as well as the Middle Fork of the Tule River below the confluence of the project diversions. The Licensee shall submit the plan to the Executive Officer or designee of the Central Valley RWQCB and Chief of the Division of Water Rights for approval. Within 45 days of approval, the Licensee shall file the plan with the FERC and subsequently implement the plan. The water quality monitoring program shall include at a minimum the use of benthic macroinvertebrate rapid bioassessment protocols to assess potential adverse impacts resulting from the use of algae control chemicals. The monitoring schedule shall include the first five years post-licensing during which algacides or other pesticides are used. The monitoring program shall commence at the beginning of the first practicable sampling season as described in the plan. At the end of each year monitored, the Licensee shall provide the RWQCB and the Chief of the Division of Water Rights with a report describing the results of the monitoring program and any actions the Licensee proposes to take to avoid water quality impacts to the beneficial uses of the North Fork and South Fork of the Middle Fork of the Tule River as well as the Middle Fork of the Tule River. After notice and an opportunity for hearing, the Division Chief may modify the plan as appropriate. If so required by the Central Valley RWQCB, the Licensee shall apply to the Central Valley RWQCB for a

National Pollutant Discharge Elimination System (NPDES) permit for use of algicides within project features-or apply for modification of an existing NPDES permit. If the Licensee applies for an NPDES permit or modification of an existing permit, the Licensee shall timely provide to the Central Valley RWQCB all information required by the Central Valley RWQCB to issue a permit.

14. Licensee shall comply with any applicable requirements of state law consistent with the Clean Water Act requiring fees to cover SWRCB costs in administering the certification Program, including sections 1071 and 3833.1 of title 23, California Code of Regulations. Pursuant to title 23, California Code of Regulations, section 3860(c), this certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.



---

Celeste Cantu  
Executive Director

Date: **MAR - 5 2004**

Attachment



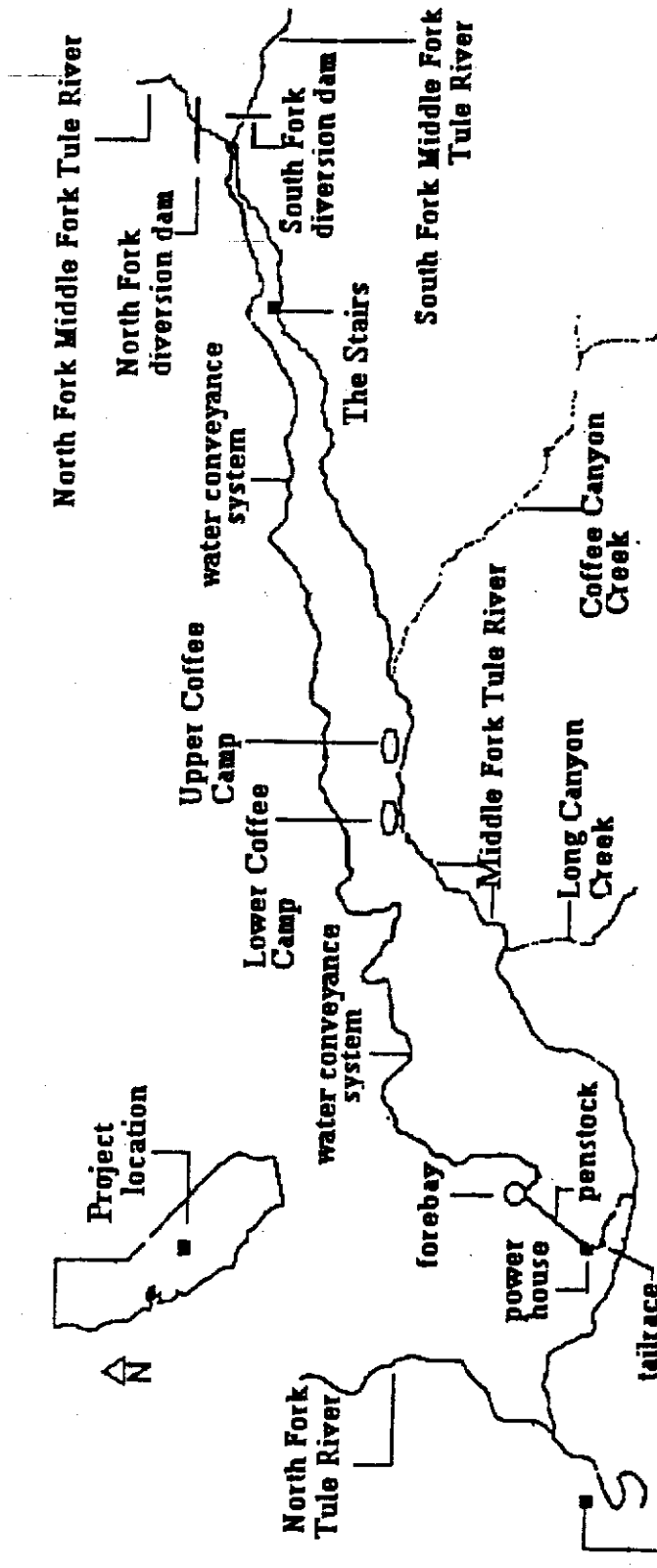


Figure 1. Lower Tule River Project.  
 (Source: SCE 2000a, as modified by Commission staff)