

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

**In the Matter of Water Quality Certification for
SOUTHERN CALIFORNIA EDISON COMPANY'S
SADDLEBAG LAKE FLUME REPLACEMENT PROJECT**

SOURCE: Lee Vining Creek

COUNTY: Mono

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

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Acronyms and Abbreviations

<i>Applicant</i>	<i>Southern California Edison Company</i>
<i>Basin Plan</i>	<i>Water Quality Control Plan for the Lahontan Region</i>
<i>BMPs</i>	<i>best management practices</i>
<i>CEQA</i>	<i>California Environmental Quality Act</i>
<i>certification</i>	<i>water quality certification</i>
<i>cfs</i>	<i>cubic feet per second</i>
<i>Completion Report</i>	<i>Project Completion Report</i>
<i>Construction General Permit</i>	<i>National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities</i>
<i>CY</i>	<i>cubic yards</i>
<i>Deputy Director</i>	<i>Deputy Director of the Division of Water Rights</i>
<i>Diversion and Dewatering Plan</i>	<i>Saddlebag Parshall Flume Replacement Diversion and Dewatering Best Management Practice Plan</i>
<i>Dredge or Fill Procedures</i>	<i>State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State</i>
<i>ESA</i>	<i>Endangered Species Act</i>
<i>FERC</i>	<i>Federal Energy Regulatory Commission</i>
<i>ft</i>	<i>feet</i>
<i>Lahontan Regional</i>	<i>Lahontan Regional Water Quality Control Board Water Board</i>
<i>NPDES</i>	<i>National Pollutant Discharge Elimination System</i>
<i>OHWM</i>	<i>Ordinary high-water mark</i>
<i>Project</i>	<i>Saddlebag Lake Flume Replacement Project</i>
<i>Regional Water Boards</i>	<i>Regional Water Quality Control Boards</i>
<i>SCE</i>	<i>Southern California Edison Company</i>
<i>State Water Board</i>	<i>State Water Resources Control Board</i>
<i>USACE</i>	<i>United States Army Corps of Engineers</i>
<i>USEPA</i>	<i>United States Environmental Protection Agency</i>
<i>USFS</i>	<i>United States Forest Service</i>

1.0 Introduction

Southern California Edison Company (SCE or Applicant) is proposing to implement the Saddlebag Lake Flume Replacement Project (Project). The Project is located on Lee Vining Creek, nine miles west of the town of Lee Vining in Mono County, California (Figures 1 and 2). The Project area is approximately 200 feet (ft) downstream of the spillway outlet of Saddlebag Lake Dam, at approximately 10,100 ft above mean sea level.

The Project purpose is to replace the existing Parshall flume to ensure the continued accuracy of flow release measurements in Lee Vining Creek. The Project includes:

- Deconstruction and removal of the existing gage house and concrete pad;
- Temporary dewatering of the work area and diversion of flows from Saddlebag Lake around the Project area; and
- Removal and replacement of the Parshall flume.

Construction is planned to last two to four weeks in early fall of 2021. Project implementation will require a permit from the United States Army Corps of Engineers (USACE) pursuant to section 404 of the Clean Water Act. SCE will obtain coverage for the Project under USACE's SCE Dam Maintenance Regional General Permit No. SPL-2009-00171-GLH. The need for a section 404 permit from USACE triggers the requirement for a Clean Water Act section 401 water quality certification (certification). On May 19, 2021, SCE submitted a certification application to the State Water Resources Control Board (State Water Board) for the Project.

2.0 Project Description

The Project area is estimated to be 0.05 acres. Work below the ordinary high-water mark (OHWM) is estimated to disturb 0.022 acres (approximately 85 linear feet within Lee Vining Creek). A 0.027 acre staging area will be established in a previously disturbed area along an existing access road near the Project site. Access to the Project area (i.e., gage house and Parshall flume) will be via an existing trail from the staging area. Project construction will include the following equipment: backhoe or small excavator, light-duty truck, cement mixer, portable generator (50 horsepower or less), dewatering pump, and general hand tools. Refer to Figure 2, Aerial View Depiction of Saddlebag Lake Flume Replacement Project, for a representation of the proposed Project area.

The Project consists of three main components: (1) deconstruction and removal of the existing gage house and concrete pad, (2) dewatering of the work area and diversion of release flows from Saddlebag Lake around the Project area; and (3) removal and replacement of the Parshall flume. These three components are described in more detail below.

- (1) *Deconstruction and Removal of Existing Gage House and Concrete Pad.* The existing gage house and concrete pad will be deconstructed and removed to an

off-site location. Project demolition materials will be stored temporarily in the staging area, using appropriate best management practices (BMPs), then transported and disposed of at an off-site facility. All-terrain vehicles or a light-duty truck will be used to transport construction supplies from the staging area to the work area.

(2) *Dewatering of Work Area and Diversion of Flows Around Project Area.* To create and maintain a dry work area, SCE will divert Lee Vining Creek around the Parshall flume work area. SCE will implement the minimum instream flow requirements for Lee Vining Creek throughout Project implementation as outlined in its Federal Energy Regulatory Commission (FERC) license for the Lee Vining Hydroelectric Project. A temporary sandbag diversion measuring approximately 5-ft by 2-ft by 2-ft (0.74 cubic yards [CY]) will be placed in the Lee Vining Creek channel to divert water around the Parshall flume area. To prevent seepage, sandbags will be wrapped with a plastic liner. Lee Vining Creek flows will be diverted through an approximately 80-ft-long, 16-inch-diameter corrugated plastic bypass pipe and conveyed back into the creek downstream of the southern-most boundary of the work area.

(3) *Removal and Replacement of Parshall Flume.* The existing Parshall flume consists of a redwood frame and cradle set on top of 10 concrete sills within the bed and bank of Lee Vining Creek. The flume dimensions are approximately 5-ft by 6-ft by 2.5-ft, with a throat width of approximately 4 ft, providing for maximum stage readings of up to 60 cfs. The flume is anchored with 10 concrete sills each measuring approximately 10 inches by 10 inches by 8 inches. The Project will replace the existing flume with a new Parshall flume, lined with redwood and of the same dimensions, with no expansion in footprint. SCE will evaluate the condition and need for replacement of the existing concrete sills when the existing Parshall flume is removed.

Based on the dimensions of the flume plus a 1-ft buffer, as much as approximately 5 CY of fill may be removed and replaced during removal and replacement of the flume. An additional 0.12 CY of fill would be removed and replaced if the existing concrete sills require replacement (in the same locations). Concrete will be poured from a cement truck sited in an existing disturbed area along the east bank of Lee Vining Creek (i.e., former gage house location).

The existing flume has a bedrock bottom, and the need for additional energy dissipation is not anticipated. Any remaining standing water or water seepage in the work area will be pumped to a temporary sediment basin (approximately 5-ft by 10-ft) located in an upland, previously disturbed area. Construction equipment will be stored overnight storage in the staging area with secondary containment. Upon work completion, SCE and its contractors will promptly remove equipment, temporary structures, and construction materials from the work and staging areas and restore the area to pre-Project conditions, to the greatest extent practicable.

2.1 Water Rights

Table A below lists the water rights claimed by SCE in relation to the Project.

Table A. Water Rights Claimed by SCE in relation to Lee Vining Hydroelectric Project (Federal Energy Regulatory Commission [FERC] No. 1388) Diversions¹.

Statement/ Application Number	Permit Number	Source	Priority Date	Place of Storage or Diversion	Purpose of Use
S007777	N/A	Lee Vining Creek	1921	Saddlebag Lake	Power
A026538	020892	Saddlebag Lake	1980	Saddlebag Lake	Power

1. Information is from the State Water Board's electronic Water Rights Information Management System.

3.0 Regulatory Authority

3.1 Water Quality Certification and Related Authorities

The federal Clean Water Act (33 U.S.C. §§ 1251-1388) was enacted “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” (33 U.S.C. § 1251(a).) The Clean Water Act relies significantly on state participation and support in light of “the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution” and “plan the development and use” of water resources. (33 U.S.C. § 1251(b).) Section 101 of the Clean Water Act (33 U.S.C. § 1251(g)) requires federal agencies to “co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.”

Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires any applicant for a federal license or permit that may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will comply with specified provisions of the Clean Water Act, including water quality standards promulgated pursuant to section 303 of the Clean Water Act (33 U.S.C. § 1313). Clean Water Act section 401 directs the agency responsible for certification to set effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with “any other appropriate requirement of State law.” (33 U.S.C. § 1341(d).) 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 Clean Water Act section 401 certification in California. (Wat. Code, § 13160.) The State Water Board has delegated authority to act on applications for certification to the Executive Director of the State Water Board. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

Water Code section 13383 authorizes the State Water Board to “establish monitoring, inspection, entry, reporting, and recordkeeping requirements” and obtain “other information as may be reasonably required” for activities subject to certification under section 401 of the Clean Water Act. For activities that involve the diversion of water for beneficial use, the State Water Board delegated this authority to the Deputy Director of the Division of Water Rights (Deputy Director), as provided for in State Water Board Resolution No. 2012-0029 (State Water Board 2012). In the Redelegation of Authorities Pursuant to Resolution No. 2012-0029 memo issued by the Deputy Director on November 18, 2020, this authority is redelegated to the Assistant Deputy Directors of the Division of Water Rights (State Water Board 2020).

State Water Board staff provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858, by posting notice of SCE’s application and information describing the Project on the State Water Board’s website on June 11, 2021. Notice was sent to interested persons through the State Water Board’s “Water Rights Water Quality Certification” email subscription list. No comments were received.

On June 9, 2021, State Water Board staff requested comments from the Lahontan Regional Water Quality Control Board (Lahontan Regional Water Board) on the certification. (See Cal. Code Regs., tit. 23, § 3855, subd. (b)(2)(B).) Lahontan Regional Water Board staff responded with comments on June 9, 2021. The comments were considered in developing this certification.

On June 3, 2021, USACE provided notice that the elements required for a certification request outlined in 40 Code of Federal Regulations section 121.5 were submitted on May 26, 2021. USACE set the reasonable period of time to act on the certification request at 60 days, ending July 25, 2021.

3.2 Water Quality Control Plans and Related Authorities

The nine California Regional Water Quality Control Boards (Regional Water Boards) have primary responsibility for the formulation and adoption of water quality control plans for their respective regions, subject to State Water Board and 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, subds. (h), (j).) The water quality control plans are consistent with state and federal antidegradation policies. 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 for purposes of the Clean Water Act.

The Lahontan Regional Water Board adopted, and the State Water Board and the USEPA approved, the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) (Lahontan Regional Water Board 2019). The Basin Plan designates the beneficial uses of water to be protected along with the water quality objectives necessary to protect those uses. The Basin Plan identifies beneficial uses for Lee Vining Creek as municipal and domestic supply, agricultural supply, groundwater recharge, freshwater replenishment, hydropower generation, contact water recreation, canoeing and rafting, other non-contact water recreation, commercial and sport fishing, cold freshwater habitat, cold spawning habitat, and wildlife habitat. The Basin Plan identifies beneficial uses for Saddlebag Lake as municipal and domestic supply, hydropower generation, contact water recreation, canoeing and rafting, other non-contact water recreation, commercial and sport fishing, cold freshwater habitat, cold spawning habitat, and wildlife habitat. The State Water Board's certification for the Project must ensure compliance with the water quality standards in the Basin Plan.

3.3 Construction General Permit

SCE may need to obtain coverage under the State Water Board's *National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities* (**Construction General Permit**)¹ (State Water Board 2009) if Project activities disturb one or more acres of soil, or disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres. Construction activities subject to the Construction General Permit include clearing, grading, and disturbances to the ground such as stockpiling or excavation, but do not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. Coverage is required pursuant to Clean Water Act sections 301 and 402, which prohibit certain discharges of stormwater containing pollutants except in compliance with a NPDES permit. (33 U.S.C. §§ 1311, 1342(p); 40 C.F.R. pts. 122, 123, and 124.)

3.4 State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State

On April 2, 2019, the State Water Board adopted the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (**Dredge or**

¹ Water Quality Order No. 2009-0009-DWQ and NPDES No. CAS000002, as amended by Order No. 2010-0014-DWQ, Order No. 2012-0006-DWQ, and any amendments thereto. Available at: https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html. Last accessed July 22, 2021.

Fill Procedures² (State Water Board 2019). The Dredge or Fill Procedures provide California's definition of wetland, wetland delineation procedures, and procedures for submitting applications for activities that could result in discharges of dredged or fill material to waters of the state. The Dredge or Fill Procedures ensure that State Water Board regulatory activities will result in no net loss of wetland quantity, quality, or permanence, compliant with the *California Wetlands Conservation Policy*, Executive Order W-59-93.

4.0 California Environmental Quality Act

The California Environmental Quality Act (CEQA) applies to discretionary projects that may cause a direct or indirect physical change in the environment. (Pub. Resources Code, § 21000 et seq.) When proposing to undertake or approve a discretionary project, state agencies must comply with the procedural and substantive requirements of CEQA. The State Water Board determined that the Project is categorically exempt from CEQA under Class 1, existing facilities. (Cal. Code Regs, tit. 14, § 15301.) The State Water Board will file a Notice of Exemption with the State Clearinghouse within five days of issuing this certification.

5.0 Rationale for Water Quality Certification Conditions

5.1 Overview

Section 5.0 of this certification provides an explanation of why the conditions in Section 7.0 are necessary to ensure that any discharge authorized under the certification will comply with water quality requirements, and, as necessary, includes a citation to federal, state, or tribal law that authorizes the condition. Section 4.0 also sets forth citations to applicable regulatory authority. The explanation and citations should be evaluated in the context of the certification as a whole, but the certification conditions are set forth only in Section 7.0.

Pursuant to Clean Water Act section 401 and California Code of Regulations, title 23, section 3859, subdivision (a), the State Water Board, when issuing certifications, may set forth conditions to ensure compliance with applicable water quality standards and other appropriate requirements of state law. Under Water Code section 13160, the State Water Board is authorized to issue certifications under the Clean Water Act and has delegated this authority to the Executive Director. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

As explained in Section 3.0, the conditions in the certification are generally required pursuant to the Lahontan Regional Water Board's Basin Plan. Basin plans are adopted and periodically revised pursuant to Water Code section 13240. Water quality control plans include water quality standards, which consist of existing and potential beneficial

² The Dredge or Fill Procedures are available online at:
https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html.
Last accessed July 22, 2021.

uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies. For instance, the Basin Plan includes water quality objectives for chemical constituents, oil and grease, pH, sediment, suspended materials, toxicity, and turbidity, which ensure protection of beneficial uses.

The State Water Board's Antidegradation Policy, "Statement of Policy with Respect to Maintaining High Quality Waters in California," Resolution No. 68-16, requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably affect present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained. The state Antidegradation Policy incorporates the federal Antidegradation Policy (40 C.F.R. § 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

The Dredge or Fill Procedures, adopted pursuant to Water Code sections 13140 and 13170, authorize approval of dredge or fill projects subject to satisfaction of specified requirements.

California Code of Regulations, title 23, sections 3830 et seq. set forth state regulations pertaining to certifications. In particular, section 3856 sets forth information that must be included in certification requests, and section 3860 sets forth standard conditions that shall be included in all certification actions.

Water Code sections 13267 and 13383 authorize the Regional Water Boards and State Water Board (collectively Water Boards) to establish monitoring and reporting requirements for persons discharging or proposing to discharge waste.

Authorization under this certification is granted based on the application submitted. An applicant is required to detail the scope of project impacts in a complete application pursuant to California Code of Regulations, title 23, section 3856, subdivision (h). Pursuant to Water Code section 13264, subdivision (a), a permittee is prohibited from initiating the discharge of new wastes, or making material changes to the character, volume, and timing of waste discharges authorized herein without filing a report required by Water Code section 13260 or its equivalent for certification actions under California Code of Regulations, title 23, section 3856. (See also State Water Board Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have Received State Water Quality Certification.*)

The conditions in this certification were developed to ensure compliance with water quality standards and water quality requirements established under the Porter-Cologne Water Quality Control Act, the federal Clean Water Act, including requirements in the Basin Plan, and other appropriate requirements of state law. The conditions are

necessary to protect the beneficial uses of water identified in the Basin Plan, prevent degradation of water quality, and ensure compliance with state and federal water quality requirements.³ When preparing the conditions in this certification, State Water Board staff reviewed and considered the following information:

- SCE's May 2021 application for certification (SCE 2021);
- SCE's September 2020 Saddlebag Parshall Flume Replacement Diversion and Dewatering Best Management Practice Plan (Diversion and Dewatering Plan) (SCE 2020);
- Beneficial uses, water quality objectives, and implementation measures and programs described in the Basin Plan (Lahontan Regional Water Board 2019);
- SCE Dam Maintenance Regional General Permit No. SPL-2009-00171-GLH (USACE 2020);
- Existing water quality conditions;
- Project-related controllable factors; and
- Other information in the record.

5.2 Rationale for Condition 1: Turbidity Monitoring

The Project involves removal of the gage house and concrete pad, dewatering of the work area by diverting Saddlebag Lake release flows around the work area, and removal and replacement of the Parshall flume.

Diverting flows, dewatering, re-watering, and other in-water or water-adjacent work may increase turbidity above levels protective of beneficial uses. Beneficial uses in Lee Vining Creek that would be most impacted by increased turbidity levels include cold freshwater habitat, cold spawning habitat, and wildlife habitat. Construction activities that are proposed for the Project have the potential to cause erosion, stream sedimentation, or otherwise increase turbidity in the wetted channel. The Basin Plan prescribes numeric turbidity limits based on natural turbidity levels. Section 4 of SCE's Diversion and Dewatering Plan (SCE 2020) includes actions that SCE proposes to implement to measure and meet Basin Plan turbidity standards. The modifications of and additions to Section 4 of SCE's Diversion and Dewatering Plan included in this certification further ensure that the Project will not cause significant turbidity impacts.

Condition 1 requires SCE to comply with applicable water quality objectives and implement monitoring and BMPs to prevent water quality objective violations and impacts to beneficial uses. Additionally, consistent with the recommendations of the Lahontan Regional Water Board, Condition 1 requires turbidity monitoring and compliance with the Basin Plan's turbidity limits for all in-water and water-adjacent work.

³ Designated beneficial uses for surface waters in the Project area are described in Section 3.2 of this certification and in Sections 2 and 3 of the Basin Plan.

5.3 Rationale for Condition 2: Project Activities

As described in Section 5.1, this certification is granted based on the certification application and supporting information submitted in accordance with the State Water Board's regulations and subject to requirements of the Porter-Cologne Water Quality Control Act. Condition 2 requires SCE to implement the Project as described in its certification application and as modified by this certification. Any changes to the Project description after certification issuance could impact the findings, conclusions, and conditions of the certification, as well as trigger additional environmental review. Additionally, Condition 2 requires SCE to comply with the Construction General Permit, described in Section 3.3, which address construction-related Project activities that disturb one or more acres. Implementation of this condition will help ensure that SCE meets water quality objectives and avoid unreasonable impacts to beneficial uses.

5.4 Rationale for Condition 3: Erosion and Sedimentation Control Measures

Project activities have the potential to cause increased erosion and sedimentation in the Project area. Erosion and sedimentation problems can contribute to significant degradation of waters of the state; therefore, it is necessary to implement actions to limit or eliminate such discharges in order to avoid or minimize such degradation. Implementation of control measures and best management practices will help ensure compliance with water quality objectives and protect beneficial uses identified in the Basin Plan. All land in the Project area is managed by the United States Forest Service (USFS). As such, BMPs to control site-specific erosion and sedimentation, including emergency erosion control measures and protocols to control sedimentation during or after severe storm events, should be consistent with BMPs published by the USFS⁴ (USFS 2012). Condition 3 requires SCE to implement erosion and sedimentation control measures consistent with USFS guidance to help prevent impacts to beneficial uses or water quality objective violations.

5.5 Rationale for Condition 4: Diversion and Dewatering Measures

The Project includes in-water work, which will require dewatering part of Lee Vining Creek and water diversion around the dewatered area. Installation and removal of temporary dams or other artificial obstructions could violate water quality objectives and impact downstream biological resources. Brook trout, brown trout, and rainbow trout have historically been stocked in Saddlebag Lake, Tioga Lake, and Ellery Lake by the California Department of Fish and Wildlife (CDFW). These trout species have the potential to occur in the Project area and would be at risk of being stranded or desiccated if SCE does not maintain instream flows to downstream reaches of Lee Vining Creek below the Project area. Beneficial uses in Lee Vining Creek that would be

⁴ National Best Management Practices for Water Quality Management on National Forest System Lands are available online at: https://www.fs.fed.us/naturalresources/watershed/pubs/FS_National_Core_BMPs_April2012.pdf. Last accessed July 22, 2021

most impacted by increased turbidity levels and insufficient instream flows include cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 4 imposes conditions on dewatering activities to help prevent water quality objective violations and impacts to beneficial uses. Additionally, Condition 4 prohibits new permanent water diversion, as SCE's certification application did not propose any permanent diversion or dewatering measures.

5.6 Rationale for Condition 5: Hazardous Material Control Measures

Conditions related to site management require implementation of measures and best practices to prevent, minimize, and/or clean up potential construction spills, including from construction equipment. For instance, fuels and lubricants associated with the use of mechanized equipment have the potential to result in toxic discharges to waters of the state in violation of water quality standards, including the toxicity and floating material water quality objectives. This condition is also required pursuant to Water Code section 13264, which prohibits any discharge that is not specifically authorized in this certification.

The Basin Plan includes narrative water quality objectives for oil, grease, and other hazardous materials. The Basin Plan states, "Waters shall not contain oils, 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, that cause nuisance, or that otherwise adversely affect the water for beneficial uses" (Lahontan Regional Water Board 2019). Beneficial uses in Lee Vining Creek that would be most impacted by hazardous materials include contact water recreation, cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 5 requires implementation of hazardous material management measures to prevent hazardous material spills into waterways, including containment criteria pursuant to California Code of Regulations, title 27, section 20320.

5.7 Rationale for Condition 6: Project Completion Report

Condition 6 requires SCE to submit a Project Completion Report following Project completion to document SCE's compliance with the certification requirements. The Project Completion Report will provide the State Water Board with a summary of Project activities and their compliance with the conditions of the certification, including protection of water quality and beneficial uses.

5.8 Rationale for Conditions 7 through 24

This certification imposes additional conditions regarding Project approvals, monitoring, enforcement, and potential future revisions. Condition 7 is necessary to comply with Water Code section 13167 and Conditions 8 through 11 contain important clarifications concerning the scope and legal effect of this certification, and other legal requirements that may apply to the Project.

Monitoring, reporting, and assessment actions, and the information developed through such actions, must be readable, shared and coordinated with other appropriate entities, and accessible to ensure that a discharge activity complies with water quality

requirements. Water Code section 13167 requires the Water Boards to ensure that monitoring data and assessment information are available in a single location and that the information is presented in a manner easily understandable by the public. To fulfill this legislative mandate, Condition 7 requires electronic data submittal in a compatible format with existing system specifications. Compliance with this condition enhances the accessibility of data and transparency of regulatory actions. This allows regulatory agencies and the public to better assess compliance and understand water quality trends or data anomalies by compiling data and making it readily available.

Pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and federal Endangered Species Act (16 U.S.C. § 1531 et seq.), the certification does not authorize any act which results in the taking of a threatened, endangered, or candidate species. An applicant for certification is required to identify other licenses, permits, and agreements in the application. In the event an applicant for certification needs authorization from the state or federal authorities, California Code of Regulations, title 23, section 3856, subdivision (e), requires that the applicant provide copies of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.” To help ensure the integrity of the certification process and its focus on the activity resulting in discharge, Condition 8 serves to notify applicants that there may be additional applicable federal, state, or local laws or ordinances with which they must comply, including the state and federal Endangered Species Acts.

Water Code section 13160, subdivision (b)(1) allows the State Water Board to issue a certification when there is “reasonable assurance that an activity of any person subject to the jurisdiction of the state board will comply with applicable requirements” of state and federal law. Also, as noted in the rationale for Condition 8 above, to help ensure the integrity of the certification process and its focus on the activity resulting in discharge, Condition 9 serves to notify applicants that there may be additional applicable federal, state, or local laws or ordinances with which they must comply. Additionally, Condition 9 is required pursuant to California Code of Regulations section 3856(e), which requires that copies be provided to the Water Boards of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.” Once a certification is issued, it is necessary to ensure that the conditions of certification are enforced and that the discharge will indeed comply with water quality requirements. (40 C.F.R. § 121.3.) Because agency organization and authorities change over time, Condition 10 provides direction for continuity of oversight in the event an agency’s authority or responsibility is transferred to or subsumed by another agency.

The State Water Board is responsible for the water right, water quality, and drinking water functions of the California state government. (Wat. Code, § 174.) Certain certifications involve an appropriation of water subject to part 2 of division 2 of the Water

Code or the diversion of water for certain beneficial uses. (See, e.g., Cal. Code Regs., tit. 23, § 3855, subd. (b)(1)(A).) Condition 11 explains the State Water Board's authority involving a potential discharge from a proposed activity and clarifies that the State Water Board is not adjudicating or approving the validity of water rights involved with a discharge subject to certification. It also recognizes the State Water Board's authority, independent of its water quality authority, to prevent unauthorized or threatened unauthorized diversions of water. This helps to ensure that an applicant for a federal license or permit that involves a discharge to navigable waters understands that, except as specified in the certification, the certification does not constitute, or excuse the applicant from obtaining any other State Water Board approvals required for the activity.

Conditions 12 through 14 are necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States. California Code of Regulations, title 23, Chapter 28 sets forth regulations pertaining to water quality certifications for point source discharges to waters of the United States. These conditions were included to comply with section 3860, which sets forth conditions that must be included in all water quality certifications.

Condition 12 is a standard condition that "shall be included as conditions of all certification actions" pursuant to California Code of Regulations, title 23, section 3860, subdivision (a). This condition places the permittee on notice that the certification action may be modified or revoked following administrative or judicial review. Condition 13 is a standard condition that "shall be included as conditions of all water quality certification actions" pursuant to California Code of Regulations, title 23, section 3860(b). This condition clarifies the scope of the certification's application and ensures that any applicant for a federal license or permit, which may result in a discharge into navigable waters, is subject to the appropriate State certification. Condition 14 is a standard condition that "shall be included as conditions of all water quality certification actions" (California Code of Regulations section 3860(a)). This fee requirement condition is also required pursuant to California Code of Regulations section 3833(b), which requires payment of fees by project proponents applying for certification. Fees are essential to support the Water Boards certification program, which includes the development of certifications and related inspections to ensure the protection of water quality and beneficial uses that may be impacted by a project's discharge.

Conditions 15 through 24 are necessary to ensure that the Project operates to meet water quality standards and other appropriate requirements of state law, or that adjustments are made to ensure continued compliance with water quality standards in light of new information, changes to the Project, determination of invalidity or waiver, or changes to the standards themselves.

This certification requires monitoring, reporting, and analysis as important elements to ensure that the discharge activity will comply with state and federal water quality requirements and other appropriate requirements of state law. These requirements include, for example, Water Code sections 13267 and 13383, which authorize the Water Boards to establish monitoring and reporting requirements for persons discharging or

proposing to discharge waste. Condition 15 sets reporting requirements that are essential to ensuring that discharge activities will comply with water quality requirements. Conditions 16, 17, and 18 ensure compliance and prevent violations of water quality standards. In the event of non-compliance, modified conditions may be necessary to return the discharger to compliance and prevent violation of water quality standards. Condition 19 requires the applicant take all reasonable measures to protect water quality and beneficial uses, in accordance with plans adopted pursuant to state and federal water laws. Condition 20 provides notice of the State's rights to levee penalties as allowed by State law in order to protect water quality. Water Code section 13267 authorizes the State Water Board to require any person or entity who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to furnish, under penalty of perjury, technical or monitoring reports when necessary to investigate the quality of any waters of the state. Condition 21 requires reports that are necessary to ensure compliance with water quality standards. Condition 22, related to site access requirements, is authorized pursuant to the Water Boards' authority to investigate the quality of any waters of the state under Water Code section 13267. Site access is needed to ensure compliance with the certification and associated protection of water quality and beneficial uses. Condition 23 requires site personnel and agencies to be familiar with the content of the certification and availability of the document at the Project site. This condition is required to assure that site personnel are familiar with the conditions needed to protect water quality and any authorized discharge will comply with the terms and conditions of this certification, which requires compliance with water quality objectives and beneficial uses adopted or approved under sections 13170 or 13245 of the Water Code. In the event that any provision of this certification is found invalid, Condition 24 ensures that all other provisions will remain effective and water quality will still be protected.

6.0 Conclusion

The State Water Board finds that, with the conditions and limitations imposed by this certification, the Project will be protective of state water quality standards and other appropriate requirements of state law.

7.0 Water Quality Certification Conditions

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER RESOURCES CONTROL BOARD CERTIFIES that implementation of the Saddlebag Lake Flume Replacement Project (Project) will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, if Southern California Edison Company (Applicant) complies with the following terms and conditions.

CONDITION 1. Turbidity Monitoring

The Applicant shall monitor turbidity associated with Project activities as outlined in the Saddlebag Parshall Flume Replacement Diversion and Dewatering Best Management Practice Plan (Diversion and Dewatering Plan), submitted on September 17, 2020, with the following modifications:

1. The Applicant shall ensure that the Project does not exceed the turbidity water quality objective in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan), which specifies: *“Waters shall be free of changes in turbidity that cause nuisance or adversely affect the water for beneficial uses. Increases in turbidity shall not exceed natural levels by more than 10 percent.”* (Basin Plan, p. 3 – 6.)
2. If turbidity monitoring indicates concentrations above natural background levels, but below the Basin Plan water quality objective, monitoring shall be conducted every two hours during Project activities until turbidity levels have returned to background levels. Additionally, during the period when concentrations are above natural background levels and below the Basin Plan water quality objective, the Applicant shall implement the procedures outlined in the “First Elevated Reading Event” and “Second Consecutive Elevated Reading Event” portions of the Plan (see Section 4.8 of Attachment D of the Applicant’s water quality certification (certification) application: Diversion and Dewatering Plan), as appropriate.
3. The Deputy Director of the Division of Water Rights (Deputy Director) and the Lahontan Regional Water Quality Control Board Executive Officer shall be notified promptly, and in no case more than 24 hours following a turbidity sample exceedance of the Basin Plan turbidity water quality objective (turbidity exceedance). Regardless of when such notification occurs, activities associated with the Basin Plan turbidity exceedance shall cease immediately upon detection of the turbidity exceedance. Work activities may resume after corrective actions have been implemented, water quality meets the Basin Plan turbidity water quality objective, and the Deputy Director has provided approval to proceed.

CONDITION 2. Project Activities

Authorization under this certification is granted based on the certification application submitted. Unless otherwise modified by conditions of this certification, the Applicant

shall implement the Project as described in its May 19, 2021 certification application (SCE 2021) and any supplemental materials received prior to issuance of certification or otherwise approved by the Deputy Director.

If the construction activity is part of a larger common plan which will disturb one or more acres, the Applicant shall obtain coverage under and comply with the ***General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*** (Construction General Permit) and any amendments thereto.

CONDITION 3. Erosion and Sedimentation Control Measures

During all in-water and water-adjacent work, the Applicant shall implement erosion, sedimentation, and turbidity control best management practices (BMPs) as described in Section 2 of the Erosion and Sediment Control Plan (Appendix K of the certification application) as well as Volume 1 of the United State Forest Service's National Best Management Practices Program: ***National Best Management Practices for Water Quality Management on National Forest System Lands*** (USFS 2012)⁵.

When construction activities are underway, the Applicant shall perform daily inspections of the Project area for signs of excessive erosion or other water quality impacts. The Applicant shall report observations to State Water Board staff no more than one week following each inspection. If erosion or other impacts are observed, the Applicant shall notify the Deputy Director and include: (1) a description of the erosion or impact with photo documentation; (2) potential causes of the erosion or impact; (3) proposed measures to prevent future erosion or impacts; and (4) any proposed measures to address the observed excessive erosion or water quality impacts. The Applicant shall implement the proposed measures upon receipt of Deputy Director approval. The Deputy Director may require modifications to the proposed measures as part of any approval.

CONDITION 4. Diversion and Dewatering Measures

The Applicant shall implement surface water diversion, dewatering, and BMPs* as described in in Section 5 of the Diversion and Dewatering Plan (SCE 2020) (Attachment D of the certification application), in accordance with the following:

1. Dewatering shall only occur in the Project area.
2. For any temporary dam or other artificial obstruction being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain beneficial uses, including compliance with minimum instream flows required per the Federal Energy Regulatory

⁵ Volume 1: National Core BMP Technical Guide (FS-990a). Issued April 2012. Available online at: <https://www.fs.fed.us/naturalresources/watershed/bmp.shtml>. ***National Best Management Practices for Water Quality Management on National Forest System Lands (fs.fed.us)***. Last accessed July 22, 2021.

Commission (FERC) Lee Vining Hydroelectric Project license (FERC Project No. 1388).

3. Any temporary dam or other artificial obstruction shall be constructed with clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel that will cause little or no siltation.
4. This certification does not authorize the permanent diversion of water.

CONDITION 5. Hazardous Material Control Measures

The Applicant shall implement hazardous materials control measures as described in Attachment J and Attachment K of its certification application and include the following measures:

1. The Applicant shall develop and implement, as applicable, onsite Project-specific protocols for hazardous materials spill prevention, containment, and clean up. All containment structures shall comply with California Code of Regulations, title 27, section 20320. The protocols shall detail construction equipment types and location, access and staging, practices to prevent, minimize, and/or clean up potential spills, and construction sequence. The protocols shall include all applicable requirements of this certification. The Applicant shall provide the protocols to the State Water Board Project manager prior to the start of construction.
2. Appropriate materials shall be on site to prevent and manage spills so as to avoid surface water impacts. When not in use, hazardous materials shall be stored at least 30 feet from the ordinary high-water mark (OHWM) and with secondary containment.
3. When not in use, equipment shall be stored in the Applicant's designated staging area.
4. On-site vehicles and equipment shall be regularly inspected for leaks and repaired immediately. If vehicle and equipment maintenance must occur on-site, it shall be done in the designated staging areas and located away from drainage courses, to prevent the run-on of stormwater and the run-off of spills.
5. No unset cement, concrete, grout, damaged concrete, concrete spoils, or wash water used to clean concrete surfaces shall contact or enter surface waters. No leachate from truck or grout mixer cleaning stations shall percolate into Project area soils. Cleaning of concrete trucks or grout mixers shall be performed in designated washout areas of sufficient size to completely contain all liquid and waste concrete or grout generated during washout procedures. All wash water and hardened concrete or grout shall be disposed of at an authorized landfill or other disposal site, in compliance with state and local laws, ordinances, and regulations.
6. Any water contaminated by hazardous materials shall be stored and disposed of properly off-site in a manner that does not impair water quality.

CONDITION 6. Project Completion Report

No later than 30 days following completion of the Project, the Applicant shall submit a Project Completion Report to the Deputy Director. The Project Completion Report shall include:

1. A summary of Project activities performed;
2. Quantification of gravel used during flume replacement activities;
3. Documentation of compliance with each condition of this certification and details of any failure to meet certification requirements; and
4. Details of Project-related adverse impacts to beneficial uses, if applicable.

The Deputy Director may require the Applicant to provide additional information or implement corrective actions in response to the information provided in the Project Completion Report. The Applicant shall provide any additional information or clarification requested by the Deputy Director related to the Project Completion Report. Upon request from State Water Board staff, the Applicant shall meet with staff to discuss the Project Completion Report.

CONDITIONS 7 – 24

CONDITION 7. Unless otherwise specified in this certification or at the request of the Deputy Director, data and/or reports shall be submitted electronically in a format accepted by the State Water Board to facilitate the incorporation of this information into public reports and the State Water Board's water quality database systems in compliance with Water Code section 13167.

CONDITION 8. This certification does not authorize any act which results in the taking of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (ESA) (Fish & G. Code, §§ 2050 – 2097) or the federal ESA (16 U.S.C. §§ 1531 – 1544). If a “take” will result from any act authorized under this certification or water rights held by the Applicant, the Applicant must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Applicant is responsible for meeting all requirements of the applicable ESAs for the Project authorized under this certification.

CONDITION 9. This certification shall not be construed as replacement or substitution for any necessary federal, state, and local approvals. The Applicant is responsible for compliance with all applicable federal, state, or local laws or ordinances and shall obtain authorization from applicable regulatory agencies prior to the commencement of Project activities.

CONDITION 10. Any requirement in this certification that refers to an agency whose authorities and responsibilities are transferred to or subsumed by another state or federal agency, will apply equally to the successor agency.

CONDITION 11. Nothing in this certification shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 or riparian claims. The State Water Board has separate authority under the Water Code to investigate and take enforcement action, if necessary, to prevent any unauthorized or threatened unauthorized diversions of water.

CONDITION 12. This certification is subject to modification or revocation upon administrative or judicial review, including but not limited to 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).

CONDITION 13. This certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent application for certification was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application for certification specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

CONDITION 14. This certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28.

CONDITION 15. Notwithstanding any more specific provision of this certification, any plan or report developed as a condition of this certification requires review and approval by the Deputy Director. The State Water Board's approval authority, including authority delegated to the Deputy Director or others, includes the authority to withhold approval or to require modification of a plan, proposal, or report prior to approval. The State Water Board may take enforcement action if the Applicant fails to provide or implement a required item in a timely manner. If a time extension is needed to submit an item for Deputy Director approval, the Applicant shall submit a written request for the extension, with justification, to the Deputy Director no later than 30 days prior to the deadline. The Applicant shall not implement any plan, proposal, or report until after receiving Deputy Director approval and any other necessary regulatory approvals.

CONDITION 16. The State Water Board reserves the authority to add to or modify the conditions of this certification: (1) to incorporate changes in technology, sampling, or methodologies; (2) if monitoring results indicate that Project activities could violate water quality objectives or impair beneficial uses; (3) 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; and (4) to require additional monitoring and/or other measures, as needed, to ensure that Project activities meet water quality objectives and protect beneficial uses. The State Water Board shall provide notice and an opportunity to be heard in exercising its authority to add to or modify the conditions of this certification.

CONDITION 17. The Applicant shall submit any change to the Project, including operations, facilities, technology changes or upgrades, or methodology, which could have a significant or material effect on the findings, conclusions, or conditions of this

certification, to the State Water Board for prior review and written approval. The State Water Board shall determine significance and may require consultation with state and/or federal agencies. If the State Water Board is not notified of a change to the Project, it will be considered a violation of this certification.

CONDITION 18. This certification is contingent on compliance with all applicable requirements of the Basin Plan.

CONDITION 19. 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. The Applicant shall take all reasonable measures to protect the beneficial uses of Lee Vining Creek.

CONDITION 20. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation is subject to any remedies, penalties, process, or sanctions as provided for under applicable 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 ensure compliance with the water quality standards and other pertinent requirements incorporated into this certification. 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.

CONDITION 21. In response to a suspected violation of any condition of this certification, the State Water Board or Lahontan Regional 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. (Wat. Code, §§ 1051, 13165, 13267, and 13383.)

CONDITION 22. Upon request, a construction schedule shall be provided to State Water Board and Lahontan Regional Water Board staff. The Applicant shall provide State Water Board and Lahontan Regional Water Board staff access to Project sites to document compliance with this certification.

CONDITION 23. A copy of this certification shall be provided to any contractor and all subcontractors conducting Project-related work, and copies shall remain in their possession at the Project site. The Applicant shall be responsible for work conducted by its contractor, subcontractors, or other persons conducting Project-related work.

CONDITION 24. The provisions of this certification are severable. If any provision of this certification is found invalid, affects the validity of the certification, or would result in a determination that the State Water Board has waived its section 401 certification authority for the Project, the State Water Board reserves authority to consider whether

an alternative term would address the water quality issue without being found invalid or resulting in a waiver determination. If any provision of this certification is found invalid, affects the validity of the certification, or would result in a determination that the State Water Board has waived its section 401 certification authority for the Project, the remainder of this certification shall not be affected.



Eileen Sobeck
Executive Director

July 23, 2021

Date

8.0 References

- Lahontan Regional Water Quality Control Board (Lahontan Regional Water Board). 2019. *Water Quality Control Plan for the Lahontan Region* (Basin Plan). Revised October 2019 (with Approved Amendments). Available at: https://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/docs/preface_contents.pdf. Last accessed July 22, 2021.
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- United States Army Corps of Engineers (USACE). 2020. U.S. Army Corps of Engineers. SCE Dam Maintenance Regional General Permit. Permit No. SPL-2009-00171-GLH. Los Angeles District

United States Forest Service (USFS). 2012. National Best Management Practices for Water Quality Management on National Forest System Lands. Volume 1: National Core BMP Technical Guide (FS-990a). Available at: https://www.fs.fed.us/naturalresources/watershed/pubs/FS_National_Core_BMPs_April2012.pdf. Last accessed July 22, 2021.

9.0 Figures

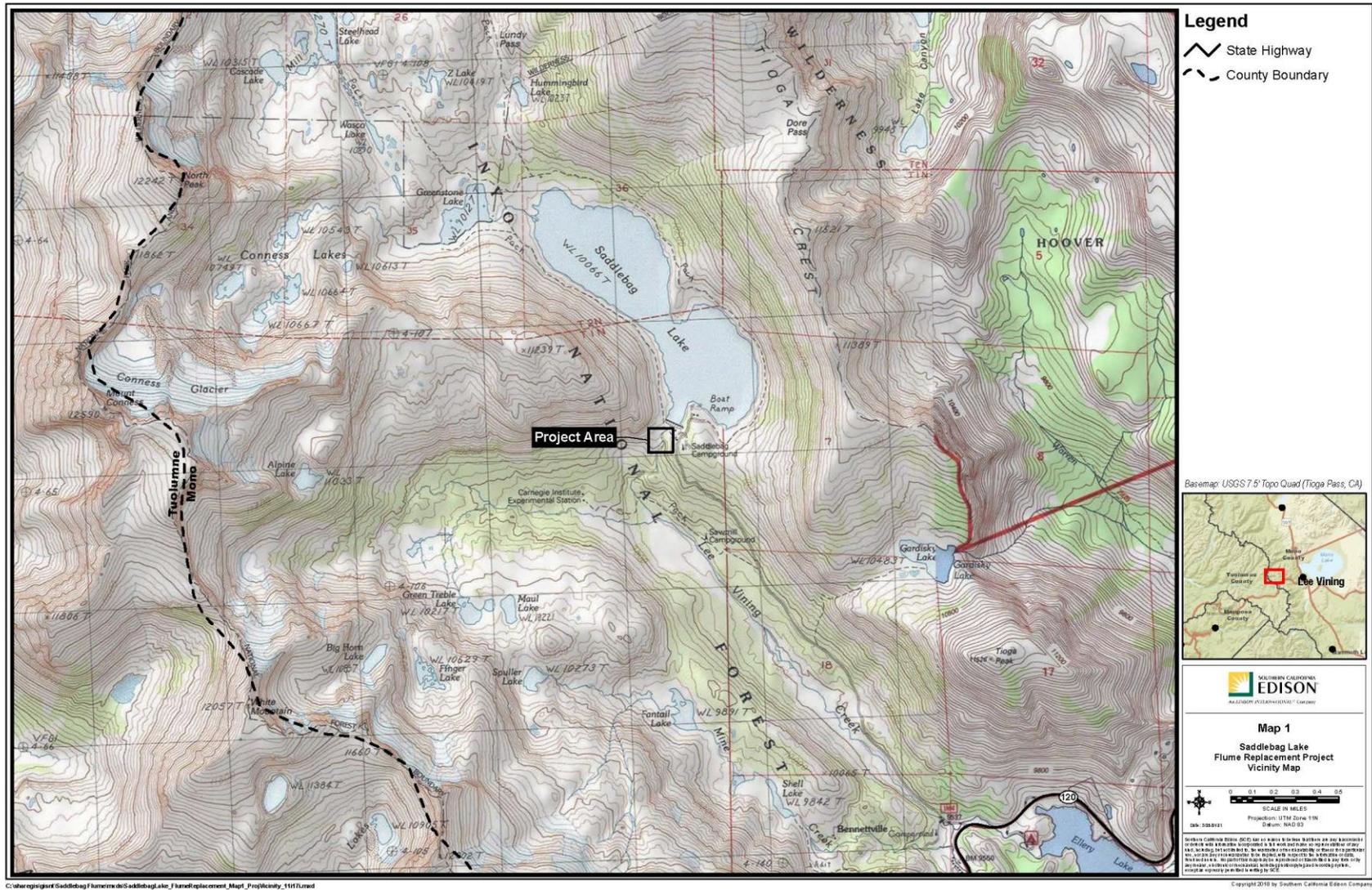


Figure 1. Saddlebag Lake Flume Replacement Project Location on Lee Vining Creek (SCE 2021).

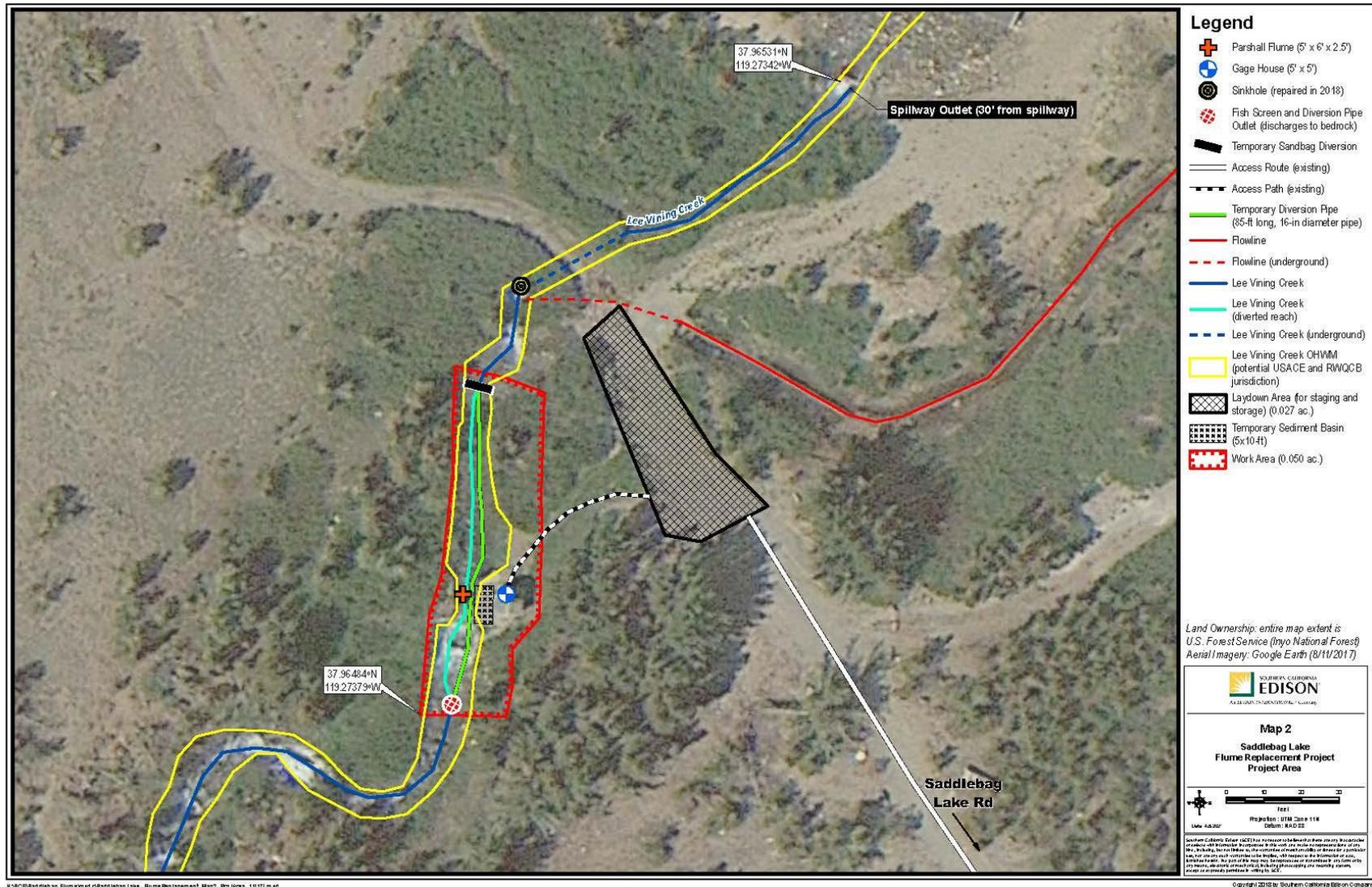


Figure 2. Aerial View Depiction of Saddlebag Lake Flume Replacement Project (SCE 2021).