STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for

CALIFORNIA DEPARTMENT OF WATER RESOURCES
DEVIL CANYON PROJECT
FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 14797

SOURCES: State Water Project, Silverwood Lake at Mojave River

COUNTY: San Bernardino

DRAFT WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

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Acronyms and Abbreviations

2018 Integrated Report	*2018 California Integrated Report (Clean Water Act Section 303(d) List/305(b) Report)*
AIS	*aquatic invasive species*
Antidegradation Policy	*Statement of Policy with Respect to Maintaining High Quality Waters in California*
AR1	*Aquatic Resources 1 – Silverwood Lake Fish Stocking*
Aquatic Weed Control General Permit	*Statewide National Pollutant Discharge Elimination System Permit for Residual Aquatic Pesticide Discharges to Water of the United States from Algae and Aquatic Weed Control Applications*
Basin Plans	*Water Quality Control Plan for the Santa Ana River Basin and the Water Quality Control Plan for the Lahontan Region*
BMPs	*best management practices*
CDFW	*California Department of Fish and Wildlife*
CEQA	*California Environmental Quality Act*
certification	*water quality certification*
Construction General Permit	*National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities*
Decree	*Mojave River* Adjudication *Decree*
Deputy Director	*Deputy Director of the Division of Water Rights*
Dredge or Fill Procedures	*State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State*
DWR	*Department of Water Resources*
ECG	*Ecological Consultation Group*
ELAP	*California's Environmental Laboratory Accreditation Program*
ESA	*Endangered Species Act*
FERC	*Federal Energy Regulatory Commission*
FLA	*final license application*
Forest Service	*United States Forest Service*
IS	*Initial Study*
Lahontan Basin Plan	*Water Quality Control Plan for the Lahontan Region*
Lahontan Regional Board	*Lahontan Regional Water Quality Control Board*
Licensee	*Department of Water Resources*
Mercury Provisions	*Part 2 of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California - Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions*

MWA	*Mojave Water Agency*
ND	*negative declaration*
NPDES	*National Pollutant Discharge Elimination System*
OEHHA	*California Office of Environmental Health Hazard Assessment*
ppb	*parts per billion*
Project	*Devil Canyon Project*
Regional Water Boards	*Regional Water Quality Control Boards*
Santa Ana Basin Plan	*Water Quality Control Plan for the Santa Ana River Basin*
Santa Ana Regional Water Board	*Santa Ana Regional Water Quality Control Board*
State Water Board	*State Water Resources Control Board*
SWAMP	*Surface Water Ambient Monitoring Program*
SWP	*State Water Project*
TMDLs	*total maximum daily loads*
USEPA	*United States Environmental Protection Agency*
Water Boards	*State Water Resources Control Board and Regional Water Quality Control Boards*
WQMPs	Water Quality Monitoring and Protection Plans

1.0 Project Description

The California Department of Water Resources (DWR) owns and operates the Devil Canyon Project (Project), which is also referred to as Federal Energy Regulatory Commission (FERC) Project No. 14797. The existing Project is part of a larger water storage and delivery system, the State Water Project (SWP), which is the largest state-owned and operated water supply project in the United States. The Project is located in San Bernardino County south of the town of Hesperia on the East Branch of the SWP. The Project's existing FERC boundary includes 3,744 acres, of which 220.98 acres are part of the San Bernardino National Forest, managed by the United States Forest Service (Forest Service).

The Project has an installed capacity of 272,796 kilowatts. The main Project facilities and features are:

1. Cedar Springs Dam;
2. Silverwood Lake;
3. San Bernardino Tunnel and Surge Chamber;
4. Devil Canyon Powerplant and Penstocks;
5. Devil Canyon Switchyard;
6. Devil Canyon Afterbay and dam; and
7. Devil Canyon Second Afterbay and dam.

Refer to Attachment A for additional information regarding water diversion, storage, and power generation associated with the Project.

2.0 Water Rights

Table A lists the water rights held by DWR that are related to the Project.

Table A. DWR Water Rights related to Project Diversions*

Application No.	Source Stream	Priority Date	Place of Storage or Diversion	Purpose of Use
A025511	Houston Creek	09/27/1977	Silverwood Lake	Municipal
A025435	Houston Creek	07/19/1977	Silverwood Lake	Municipal
A005630**	Sacramento River Delta Channels, Feather River, and Italian Slough	07/30/1927	Silverwood Lake	Domestic, Irrigation, Industrial, Municipal, Recreational, Fish and Wildlife Preservation and Enhancement, and Incidental Power

Application No.	Source Stream	Priority Date	Place of Storage or Diversion	Purpose of Use
A014445A**	Italian Slough and Sacramento River Delta Channels	08/25/1951	Silverwood Lake	Domestic, Irrigation, Industrial, Municipal, Recreational, Fish and Wildlife Preservation and Enhancement, and Incidental Power
A014443**	Feather River and Sacramento-San Joaquin Delta Channels	08/24/1951	Silverwood Lake	Domestic, Irrigation, Industrial, Municipal, Recreational, Fish and Wildlife Preservation and Enhancement, and Incidental Power

* Information is from the State Water Resources Control Board's electronic Water Rights Information Management System.

** These water rights include Silverwood Lake and additional places of storage or diversion related to other SWP operations. SWP water rights authorize diversion at Lake Oroville and in the Delta. Diverted water is delivered through the aqueduct to Silverwood Lake. The water in Silverwood Lake comes from SWP diversions in the Delta and Lake Oroville that the Project uses for power generation. The natural inflow to Silverwood Lake is passed through to the West Fork Mojave River per water agreements.[1]

3.0 Federal Energy Regulatory Commission Proceedings

On March 22, 1978, FERC issued a license for the South State Water Project (FERC Project No. 2426), which included the Warne, Castaic, and Devil Canyon Power Developments. On August 1, 2016, DWR filed its pre-application document with FERC requesting that FERC separate the existing South State Water Project license into two new licenses: (1) South State Water Project, consisting of the Warne and Castaic Power Developments; and (2) Devil Canyon Project, consisting of the Devil Canyon Power Development.

On November 12, 2019, DWR filed a final license application (FLA) with FERC proposing to relicense the Project (DWR 2019). On June 15, 2021, FERC issued a *Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions* for the Project (FERC 2021). The State Water Resources Control Board

[1] Such agreements include: SWP contracts and the Mojave River Adjudication Decree issued by Riverside County Superior Court. See Attachment A for more information on these agreements.

(State Water Board) submitted preliminary terms and conditions for the Project on August 12, 2021.

4.0 Regulatory Authority

4.1 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 water quality certification (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. (*Ibid.*)

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 2012b). In the *Redelegation of Authorities* 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 2020a).

On August 13, 2021, DWR filed a certification application for the Project with the State Water Board under section 401 of the Clean Water Act. On October 12, 2021, State Water Board staff provided public notice of the application, pursuant to California Code

of Regulations, title 23, section 3858, by posting information describing the Project on the State Water Board's website. No comments were received.

4.2 Water Quality Control Plans and Related Authorities

The 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, 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 beneficial uses, together with the water quality objectives that are contained in the water quality control plans and state and federal antidegradation requirements, constitute California's water quality standards for purposes of the Clean Water Act.

The Santa Ana Regional Water Quality Control Board (Santa Ana Regional Water Board) adopted, and the State Water Board and USEPA approved, the *Water Quality Control Plan for the Santa Ana River Basin* (Santa Ana Basin Plan) (Santa Ana Regional Water Board 2019). The Santa Ana Basin Plan does not identify specific beneficial uses related to the portions of the Project located in the Santa Ana Regional Water Board's boundary.[2]

The Lahontan Regional Water Quality Control Board (Lahontan Regional Water Board) adopted, and the State Water Board and USEPA approved, the *Water Quality Control Plan for the Lahontan Region* (Lahontan Basin Plan) (Lahontan Regional Water Board 2019). The Lahontan Basin Plan identifies beneficial uses for Silverwood Lake as: municipal and domestic supply; agricultural supply; ground water recharge; water contact recreation; non-contact water recreation; commercial and sport fishing; cold freshwater habitat; and wildlife habitat. The Lahontan Basin Plan identifies beneficial uses for the West Fork Mojave River as: municipal and domestic supply; agricultural supply; ground water recharge; water contact recreation; non-contact water recreation; commercial and sport fishing; warm freshwater habitat; cold freshwater habitat; wildlife habitat; and preservation of biological habitats of special significance. The Lahontan Basin Plan identifies beneficial uses for the East Fork of the West Fork Mojave River as: municipal and domestic supply; agricultural supply; water contact recreation; non-

[2] Project features that are located in the Santa Ana Regional Water Board's boundary include a portion of the San Bernardino Tunnel and surge chamber, the Devil Canyon Powerplant and Penstocks, the Devil Canyon Switchyard, the Devil Canyon Afterbay and dam, and the Devil Canyon Second Afterbay and dam.

contact water recreation; commercial and sport fishing; cold freshwater habitat; wildlife habitat; and spawning, reproduction, and development.

Antidegradation Policy

The State Water Board's ***Statement of Policy with Respect to Maintaining High Quality Waters in California*** (Antidegradation Policy)[3] (State Water Board 1968) 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 impact 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. section 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."

In March 2019, the State Water Board submitted to FERC the plans and policies included in the state's comprehensive plan for orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state. This submission included the Santa Ana Basin Plan and the Lahontan Basin Plan (Basin Plans).

4.3 Clean Water Act Section 303(d) Listing

The State Water Board listed Silverwood Lake in the ***2018 California Integrated Report (Clean Water Act Section 303(d) List/305(b) Report)*** (2018 Integrated Report) (State Water Board 2020b) as impaired for mercury and polychlorinated biphenyls. On January 19, 2022, the State Water Board adopted the *2020-2022 California Integrated Report (Clean Water Act Section 303(d) List/305(b))* (State Water Board 2022), which lists Silverwood Lake as impaired for mercury and polychlorinated biphenyls. The 2020-2022 Integrated Report will be submitted to the USEPA for approval. Once approved by USEPA, the 2020-2022 Integrated Report will supersede the 2018 Integrated Report.

Section 303(d) of the Clean Water Act requires total maximum daily loads (TMDLs) to be developed for impaired waterbodies. TMDLs are control programs that define the maximum amount of a pollutant that a waterbody can receive without exceeding water quality standards and establish waste load allocations and load allocations for point and nonpoint sources of pollution, respectively.

[3] State Water Board Resolution No. 68-16 and any amendments thereto. Available at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf. Accessed on April 5, 2022.

4.4 Statewide Mercury Provisions

The State Water Board adopted ***Part 2 of the Water Quality Control Plan for Inland Surface Water, Enclosed Bays, and Estuaries of California – Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions*** (Mercury Provisions) (State Water Board 2017),[4] which provide a consistent regulatory approach throughout the state by setting mercury limits to protect the beneficial uses associated with the consumption of fish by both people and wildlife. The State Water Board also adopted three new beneficial use definitions (tribal traditional culture, tribal subsistence fishing, and subsistence fishing) for use by the State Water Board and Regional Water Boards (collectively Water Boards). The State Water Board also approved one narrative and four numeric mercury objectives to apply to inland surface waters, enclosed bays, and estuaries of the state that have any of the following beneficial use definitions: commercial and sport fishing, tribal traditional culture, tribal subsistence fishing, wildlife habitat, marine habitat, preservation of rare and endangered species, warm freshwater habitat, cold freshwater habitat, estuarine habitat, or inland saline water habitat, with the exception of waterbodies or waterbody segments with site-specific mercury objectives. The Mercury Provisions will be implemented through National Pollutant Discharge Elimination System (NPDES) permits, certifications, waste discharge requirements, and waivers of waste discharge requirements.

4.5 Construction General Permit

For activities not explicitly covered by the conditions of this certification, DWR will 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)[5] (State Water Board 2009) for activities that disturb one or more acres of soil, or that 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 Action sections 301 and 402 that 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.)

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[4] The Mercury Provisions are available online at: https://www.waterboards.ca.gov/water_issues/programs/mercury/. Accessed on April 5, 2022.

[5] 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. Accessed on April 5, 2022.

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

The ***State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State*** (Dredge or Fill Procedures)[6] (State Water Board 2019) 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. DWR must comply with the Dredge or Fill Procedures when conducting dredge or fill activities that may impact waters of the state, including wetlands.

4.7 Aquatic Weed Control General Permit

The *Statewide National Pollutant Discharge Elimination System Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications* (**Aquatic Weed Control General Permit**)[7] (State Water Board 2013) applies to projects that require aquatic weed management activities. The Aquatic Weed Control General Permit sets forth detailed management practices to protect water quality from pesticide and herbicide use associated with aquatic weed control.

4.8 California Environmental Quality Act

DWR is the lead agency for the Project for the purpose of compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.]) and CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). DWR released a draft Initial Study and Negative Declaration (IS/ND) on January 22, 2021, with the comment period concluding on February 18, 2021 (DWR 2021a). The draft IS/ND did not identify any significant impacts. DWR released the final IS/ND on March 11, 2021 (DWR 2021b). This certification has been informed by the environmental information and analysis contained in the final IS/MND and other information in the record. These documents and other materials that constitute the public record are located at the State Water Board, Division of Water Rights, 1001 I Street, Sacramento, California. DWR filed a Notice of Determination for the final IS/ND with the Office of Planning and Research on March 12, 2021. The State Water Board will file a Notice of Determination with the

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[6] The Dredge of Fill Procedures are available online at: https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/rs2021_0012.pdf. Accessed on April 5, 2022.

Water Quality Order No. 2013-0002-DWQ and NPDES No. CAG990005, as amended by Order No. 2014-0078-DWQ, Order No. 2015-0029-DWQ, Order No. 2016-0073-EXEC, and any amendments thereto. Available at: https://www.waterboards.ca.gov/water_issues/programs/npdes/pesticides/weed_control.html. Accessed on May 24, 2022.

Office of Planning and Research within five days of issuing this certification. (Cal. Code Regs., tit. 14, § 15096, subd. (i).)

5.0 Overview Rationale for Water Quality Certification Conditions

This section of the certification provides an explanation of why the certification is appropriate, and why the conditions in Section 7.0 are necessary to ensure that the Project and its discharges will comply with water quality requirements. This section also includes, as necessary, citations to federal, state, or tribal laws that authorize the condition and 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.

As explained in this section, the conditions in this certification are generally required pursuant to the Basin Plans, as described in the "Regulatory Authority" section above. The 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 uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies described in Section 4.2.

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 Water Boards to establish monitoring and reporting requirements for persons discharging or proposing to discharge to navigable waters, or to discharge waste thereto. Water Code section 13165 authorizes the State Water Board to impose reasonable investigation and reporting requirements regarding water quality control factors on state or local agencies (such as DWR). Water Code section 1051 additionally authorizes the State Water Board to investigate waters diverted for beneficial use. Moreover, this certification ensures continued monitoring, reporting, and assessment of water quality for discharges that may impact waters of the state, including waters listed as impaired under Clean Water Act section 303(d).

In general, the code citations, plans, and policies that support issuance of this certification that are described in Section 4.0 are not duplicated in this section. 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 and the federal Clean Water Act, including requirements in applicable water quality control plans, and other appropriate requirements of state law. The conditions in Section 7.0 of this certification are necessary to protect the beneficial uses of waters of the state identified in water quality control plans, prevent degradation

of water quality, and help ensure compliance with state and federal water quality requirements.

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 California 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); State Water Board Resolution No. 2012-0061.)

When preparing the conditions in this certification, State Water Board staff reviewed and considered the following information:

- DWR's application for certification (DWR 2021c);
- DWR's November 12, 2019, FLA and amendments thereto (DWR 2019);
- Recommended and preliminary FERC license terms and conditions submitted by state and federal agencies pursuant to Federal Power Act sections 4(e), 10(a), and 10(j):
    - California Department of Fish and Wildlife (CDFW) September 9, 2021, *Recommended Preliminary Terms and Conditions for Fish and Wildlife Protection, Mitigation, and Enhancement Provided Under Federal Power Act § 10(j) and 18 CFR § 4.34(b)(2) in the Relicensing of Devil Canyon Project, California Department of Water Resources No. 14797-001*. (CDFW 2021);
    - Forest Service August 5, 2021, *Preliminary Terms and Conditions Provided Under Section 4(e) in Connection with the Application for Relicensing of the Devil Canyon Project FERC No. 14797-001,* and any amendments thereto. (Forest Service 2021);
- DWR January 22, 2021, draft IS/ND (DWR 2021a) and March 11, 2021, final IS/ND (DWR 2021b);
- Comments and responses associated with the aforementioned documents;
- Existing beneficial uses, associated water quality objectives, and implementation measures and programs described in the Basin Plans;
- Applicable water quality information, permits, policies, objectives, implementation measures, and programs (e.g., Construction General Permit, Clean Water Act Section 303(d) List / 305(b) Report, Mercury Provisions, Dredge or Fill Procedures, etc.);
- Project-related controllable water quality factors; and
- Other information in the record.

The Project application, CEQA review, and other materials assessed in development of this certification, as well as the history of Project operations, demonstrate that the Project can operate to meet water quality standards and other appropriate requirements of state law if it complies with the conditions of this certification. The certification conditions provide a comprehensive framework to assess and address potential negative impacts to water quality and beneficial uses and provide for continued

compliance over changing conditions throughout the term of the new FERC license for the Project.

To the extent FERC considers any certification condition to include requirements outside the substantive scope of USEPA's *Clean Water Act Section 401 Certification Rule*, 85 Fed. Reg. 42,210 (July 13, 2020) (Certification Rule), the Certification Rule—including but not limited to 40 C.F.R. §§ 121.1(f) and (n), 121.3, 121.7(d)(1), and 121.9(b)—is inconsistent with federal law and controlling case law. Under section 401 of the Clean Water Act, when an activity requiring a federal permit or license "may result in any discharge into the navigable waters," the applicant is required to obtain a certification that states the discharge will comply with applicable water quality standards and that also sets forth any "limitations" and "monitoring requirements" necessary to assure that the "applicant" will comply with water quality standards and "any other appropriate requirement of State law." (33 U.S.C. § 1341(a) & (d).) Certification is required for such activity as a whole, not merely for its point-source discharges to waters of the United States. (*PUD No. 1*, *supra*, 511 U.S. at pp. 711-712.) USEPA has indicated its intent to revise the Certification Rule because, among other faults, it "may prevent state and tribal authorities from adequately protecting their water quality," "may result in a state or tribe's certification or conditions being permanently waived as a result of non-substantive and easily fixed procedural concerns," and "may limit the flexibility of certifications and permits to adapt to changing circumstances." (86 Fed. Reg. 29,543-29,544 (June 2, 2021).) USEPA has maintained its "substantial concerns" and has asked that the Certification Rule be voluntarily remanded in ongoing litigation. As explained in this certification, each certification condition is authorized by applicable state and federal law and is necessary to ensure compliance with such laws. This paragraph is hereby incorporated as part of the explanatory statement for each condition of this certification.

5.1 Rationale for Condition 1: Water Quality Monitoring and Adaptive Management

Project activities, such as operations and maintenance, and reservoir maintenance and management, have the potential to violate water quality objectives and beneficial uses. During Project relicensing, water quality monitoring showed exceedances of manganese in Silverwood Lake. Additionally, Silverwood Lake is listed as impaired for mercury and polychlorinated biphenyls, as noted in Section 4.3 of this certification.

This condition requires DWR to comply with applicable water quality objectives and implement a water quality monitoring plan to prevent water quality objective violations and impacts to beneficial uses, and to identify the need for changes to Project-related activities to avoid any identified impacts.

Water quality monitoring and reporting conditions are required to help ensure beneficial uses are protected and to comply with water quality objectives and other appropriate requirements of state law. These monitoring requirements are consistent with the Water Boards' authority to investigate the waters of the state, including for quality, and to require necessary monitoring and reporting pursuant to Water Code sections 1051, 13165, 13267, and 13383. Implementation of this condition will help avoid or limit

unreasonable impacts to water quality and beneficial uses associated with water quality constituents.

5.2 Rationale for Condition 2: Erosion and Sediment Control

Erosion and sedimentation can contribute to significant degradation of the waters of the state; therefore, it is necessary to implement actions to limit or eliminate such discharges in order to protect water quality and associated beneficial uses. Project activities, including but not limited to the use of Project roads, improvements and rehabilitation of the existing recreation developments, and construction and maintenance activities have the potential to result in increased erosion that discharges sediment and other materials into waters of the state in the Project area and downstream of the Project area. Increases in erosion and sedimentation can violate water quality objectives and impact potential and existing beneficial uses. DWR's proposed environmental measure Geology and Soils 1 (GS1), Erosion and Sediment Control Plan, which was submitted to FERC as part of DWR's FLA on November 12, 2019, includes measures to minimize erosion and sedimentation related to the Project. This condition requires DWR to implement the Erosion and Sediment Control Plan with additional erosion and sedimentation control measures to prevent water quality objective violations and unreasonable impacts to beneficial uses.

Erosion from Project-related construction and maintenance activities has the potential to result in discharges that violate water quality standards. This condition requires DWR to comply with the Construction General Permit, as applicable, or to develop and implement Water Quality Monitoring and Protection Plans to protect water quality and beneficial uses. WQMP Plans will be developed for construction and maintenance activities with the potential to cause erosion, stream sedimentation, release of hazardous materials, or otherwise impair water quality that are not covered by another condition of the certification.

5.3 Rationale for Condition 3: Fish Stocking

DWR proposed environmental measure Aquatic Resources 1 (AR1), Silverwood Lake Fish Stocking, which was submitted to FERC as part of its FLA on November 12, 2019, and includes measures to maintain recreational fishing in Silverwood Lake. Introduction of non-native fish species has the potential to negatively impact water quality and aquatic ecosystem health (USEPA 2021). Condition 3 requires DWR to implement its Silverwood Lake Fish Stocking environmental measure while ensuring protection of water quality and beneficial uses, which include water contact and non-contact recreation.

5.4 Rationale for Condition 4: Silverwood Lake Levels

DWR proposes to maintain Silverwood Lake levels consistent with the 2003 agreement between CDFW and DWR (DWR 2019). The purpose of the lake levels is to protect fish spawning and recreation. Reservoir level monitoring and reporting are required at Silverwood Lake to confirm that the requirements of this certification are sufficient to protect water quality objectives and beneficial uses identified in the Basin Plans and

other appropriate requirements of state law. These monitoring requirements are consistent with the Water Boards' authority to investigate the quality of any waters of the state and require necessary monitoring and reporting pursuant to Water Code sections 13267 and 13383.

Water levels in Silverwood Lake may adversely impact water quality, aquatic species, and recreation. Low reservoir levels can prevent recreation or expose recreators to submerged hazards. Changes in reservoir levels can also result in unreasonable impacts to water quality (e.g., water temperature). Condition 4 requires DWR to implement requirements related to surface water elevations in Silverwood Lake consistent with its proposal to ensure protection of water quality and beneficial uses.

5.5 Rationale for Condition 5: Mercury

Silverwood Lake is listed as impaired for mercury and PCBs under section 303(d) of the Clean Water Act. The California Office of Environmental Health Hazard Assessment (OEHHA) combined data from several studies[8] by the Surface Water Ambient Monitoring Program (SWAMP),[9] to update fish consumption guidelines for Silverwood Lake. The studies analyzed total mercury in fish tissue samples from Silverwood Lake. A total of 45 fish samples were taken, of which the mean mercury concentrations for largemouth bass (920 parts per billion (ppb)), brown bullhead (726 ppb), Sacramento blackfish (873 ppb), striped bass (873 ppb), and tui chub (632 ppb) equaled or exceeded OEHHA's *Advisory Tissue Level* concentrations for any safe fish consumption of 440 ppb for women aged 18-49 and children aged 1-17 (OEHAA 2021).

Mercury levels in Silverwood Lake may be affected by Project operations and activities and have the potential to impact water quality and human health. Water quality and human health impacts may result from increased concentrations or mobilization of methylmercury in the watershed. Reservoirs can increase the rate of mercury methylation, allowing mercury to bioaccumulate in fish tissue and thereby increase the risk to human health. Condition 5 requires DWR to evaluate its Project operations in relation to mercury and to implement, if appropriate, adaptive management measures to address any Project-related mercury impacts.

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[8] Studies include *Contaminants in Fish from California Lakes and Reservoirs, 2007-2008* (State Water Board 2010) and *Long-Term Monitoring of Bass Lakes and Reservoirs in California: 2017 Data Report* (Davis et al., 2019).

[9] SWAMP was created in 2000 in response to Assembly Bill 982 (Statutes 1999, Chapter 495, Ducheny). The SWAMP program fulfills California's legislative mandate for a unifying program that coordinates all water quality monitoring conducted by the Water Boards. In order to protect public water resources, SWAMP monitoring helps assess attainment of all core beneficial uses (e.g., swimming, fishing, etc.) in all waterbody types (e.g., streams, lakes, wetlands, and estuaries).

5.6 Rationale for Condition 6: Hazardous Materials Management

Site management requires implementation of best practices to prevent, minimize, and clean up potential spills associated with ongoing operation, maintenance, and construction during the term of the new FERC license. 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 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 Plans include narrative water quality objectives for oil, grease, and other hazardous materials. Waters must be free of hazardous materials in concentrations that cause nuisance or "detrimental physiological responses in human, plant, animal, or aquatic life." (Lahontan Regional Water Board 2022). Condition 6 requires development and implementation of a hazardous materials management plan to prevent hazardous material spills into waters of the state, including containment criteria pursuant to California Code of Regulations, title 27, section 20320. Implementation of this condition will avoid unreasonable impacts to water quality and beneficial uses.

5.7 Rationale for Condition 7: Aquatic Invasive Species Management

Aquatic invasive species (AIS) have the potential to cause adverse impacts to water quality, beneficial uses, and native species in Project areas. AIS known to occur in the Project area include: red-eared slider, shimofuri goby, inland silverside, Asian clam, channeled apple snail, curly leaf pondweed, Eurasian watermilfoil, coontail, sago pondweed, and cyanobacteria species. AIS with the potential to occur in the Project area include the American bullfrog, African clawed frog, red swamp crayfish, European ear snail, quagga mussel, zebra mussel, New Zealand mudsnail, hydrilla, water hyacinth, and Parrot's feather. In addition to the increase of predation pressure from non-native species, AIS can compete against native species for limited resources. AIS have the potential to be introduced and flourish in the Project area via Project-related flow releases, Project operation and maintenance, Project alterations to habitat, and recreational activities.

Implementation of AIS management measures will minimize and prevent the introduction, establishment, and spread of AIS into and throughout the Project area. Ensuring appropriate signage and/or public information pamphlets are available to the public at recreation sites, including boat ramps, will help minimize the spread of AIS. Condition 7 requires DWR to develop and implement a monitoring and corrective action AIS Plan to minimize and prevent the introduction and establishment of AIS and reduce the spread of existing AIS. Implementation of the AIS Plan will help avoid unreasonable impacts to water quality and beneficial uses.

5.8 Rationale for Condition 8: Recreation Management

DWR-owned Project recreation facilities are operated and maintained by the California Department of Parks and Recreation on behalf of DWR. Recreation facilities associated

with the Project are part of the Silverwood Lake State Recreation Area. Operations and maintenance activities associated with Project-related recreation facilities have the potential to impact water quality and beneficial uses. Construction of new recreation facilities, modification of existing recreation facilities, or other ground-disturbing activities could increase soil erosion and sediment delivery to surface waters. Erosion can adversely impact water quality and associated aquatic habitat by increasing turbidity and limiting habitat suitability for aquatic invertebrates.

Dangers associated with the Project, such as high voltage power lines, can contribute to safety risks for recreators using waters of the state. DWR has identified the need to implement a warning system to alert recreators of any dangers or hazards to eliminate or avoid risk of harm or death. Waring system devices include signage, buoy lines, and alarms to warn the public of dangers and hazards. Implementation of a warning system helps ensure the public is able to recreate on the waters associated with the Project. Thus, a warning system supports California Constitution, Article X, section 2's requirements requiring reasonable use and the use of water for multiple purposes in the state, as determined by the State Water Board pursuant to Water Code, section 100, and is in the public interest, under Water Code, section 105.

Condition 8 requires DWR to develop a recreation plan that includes management and operations of Project recreational facilities, modifications of Project recreation facilities, and a schedule for implementing the modifications. DWR may point to the Erosion and Sediment Control Plan that will be developed and implemented under Condition 2 to the extent such activities are covered by that plan. Implementation of this condition will help avoid unreasonable impacts to water quality and beneficial uses associated with the construction, modification, maintenance, and operation of Project-related recreation facilities.

5.9 Rationale for Condition 9: Annual Ecological Consultation Group Meeting

Monitoring and management plans required by this certification will assist the Forest Service, CDFW, State Water Board, and other interested agency representatives in evaluating and addressing impacts, including to water quality, associated with the implementation of the new FERC Project license conditions on hydrologic, biologic, and geomorphologic resources in the Project area throughout the term of the new FERC license. Annual consultation meetings bring the relicensing participants and interested parties together to discuss monitoring results and resource trends, and develop adaptive management actions, if necessary, to protect water quality and beneficial uses. Condition 9 requires the creation of an Ecological Consultation Group comprised of DWR, agencies, and other interested persons. The Ecological Consultation Group will meet annually to review and discuss efforts completed in the previous year and those planned for the coming year to inform the ongoing protection of water quality and beneficial uses.

5.10 Rationale for Conditions 10-31

This certification imposes additional conditions regarding Project approvals, monitoring, enforcement, and potential future revisions.

Condition 10 is necessary to comply with Water Code section 13167 and Conditions 11 through 14 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 10 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 that demonstrate compliance with water quality standards. 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 for analysis and follow up actions, if appropriate.

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." 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. To help ensure the integrity of the certification process and its focus on the activity resulting in discharge, Conditions 11 and 12 serve to notify the licensee 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.

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 13 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 14 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 15 through 17 are necessary to assure that any discharge authorized under the license 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 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 certifications.

Condition 15 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 licensee on notice that the certification action may be modified or revoked following administrative or judicial review. Condition 16 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, subdivision (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 17 is a standard condition that "shall be included as conditions of all water quality certification actions." (Cal. Code Regs., tit. 23, § 3860, subd. (a)). This fee requirement condition is also required pursuant to California Code of Regulations, title 23, section 3833, subdivision (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, as well as oversight that includes review of plans and reports and related inspections, to ensure the protection of water quality and beneficial uses that may be impacted by a project's discharge.

Conditions 18 through 27 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, 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 18 sets reporting requirements that are

essential to ensuring that discharge activities will comply with water quality requirements. Conditions 19 through 21 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 violations of water quality standards. Condition 21 requires the licensee take all reasonable measures to protect water quality and beneficial uses, in accordance with plans adopted pursuant to state and federal water laws. Condition 22 provides notice that other enforcement as allowed by State law are necessary conditions of this certification 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 23 requires reports that are necessary to ensure compliance with water quality standards.

Condition 24, 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 25 requires site personnel and agencies to be familiar with the content of the certification and availability of the certification 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.

Condition 26 provides for changing conditions related to climate change during the term of the new FERC license in order to protect water quality and beneficial uses. State Water Board Resolution No. 2017-0012 resolves that the state shall update plans, permits, and policies to improve "ecosystem resilience to the impacts of climate change, including but not limited to actions that protect headwaters, facilitate restoration, enhance carbon sequestration, build and enhance healthy soils, and reduce vulnerability to and impacts from fires."

Condition 27 provides clarification that the provisions allowing for addition or modification of the terms of this condition shall include notice and the opportunity to be heard.

Condition 28 provides protection to wetlands, in conformance with State wetland protection requirements. California has had especially profound historical losses of wetlands. Avoidance, restoration, or replacement of impacted wetlands and riparian areas, and other actions in conformance with the Dredge or Fill Procedures (State Water Board 2019) and the California Wetlands Conservation Policy (Governor's Executive Order W-59-93 (Aug. 23, 1993), and any amendments thereto, provide adequate protection for the water decontamination and nutrient recycling functions of wetlands and riparian areas, as well as the habitat functions.

The Clean Water Act prohibits a point source discharge of pollutants into waters of the United States, unless authorized by a NPDES or other appropriate permit. Condition 29 ensures waters of the United States will be protected from discharges by requiring DWR to obtain a NPDES permit for applicable activities that may adversely affect water quality.

Condition 30 requires that the laboratory methods used to assess compliance with the certification meet approved methods and are assessed by certified laboratories, to the extent possible, in order to allow for quality assurance necessary to ensure that water quality monitoring results may be relied upon to determine compliance with water quality requirements.

In the event that any provision of this certification is found invalid, Condition 31 ensures that all other provisions will remain effective and water quality will still be protected. (Wat. Code, § 13160.)

6.0 Conclusion

The State Water Board finds that, with the conditions and limitations imposed by this certification, the Project will be protective of the 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 OPERATION OF THE DEVIL CANYON PROJECT (Project) will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of state law, under the following terms and conditions.

CONDITION 1. Water Quality Monitoring and Adaptive Management

No later than one year following issuance of the Federal Energy Regulatory Commission (FERC) license, the Department of Water Resources (DWR) (Licensee) shall submit a Water Quality Monitoring Plan to the Deputy Director of the Division of Water Rights (Deputy Director) for review and consideration of approval.

At a minimum, the purpose of the Water Quality Monitoring Plan shall be to assess Project-related impacts to water quality and identify adaptive management actions to reduce Project-related impacts, as necessary, to ensure the protection of water quality and beneficial uses. The Water Quality Monitoring Plan shall be developed in consultation with the United States Forest Service (Forest Service), California Department of Fish and Wildlife (CDFW), Lahontan Regional Water Quality Control Board (Lahontan Regional Board), and State Water Resources Control Board (State Water Board) staff. At a minimum, the Water Quality Monitoring Plan shall include:

- Purpose of the plan.
- Proposed monitoring locations, which shall include Silverwood Lake. Monitoring sites shall be selected to provide representative water quality samples and data to assess potential impacts to water quality that may be associated with Project facilities and operations.
- Frequency of proposed water quality monitoring. Monitoring shall occur at intervals throughout the license term to document trends over time and changes in water quality associated with Project-related activities, including operation and maintenance of the Project and its facilities.
- Constituents to be monitored. A list of water quality parameters that will be analyzed and associated sampling protocols. At a minimum, the parameters shall include: manganese, mercury, polychlorinated biphenyls, harmful algal blooms, and bacteriological contamination at recreation sites. Monitoring and adaptive management for polychlorinated biphenyls in fish tissue shall also be considered. Monitoring and adaptive management for mercury is also covered in Condition 5. The Licensee may include the mercury monitoring required per Condition 5 as part of this plan or as part of Condition 5. The Licensee may request Deputy Director approval to discontinue monitoring following collection of sufficient data to support such a request – namely, information indicating that the Project does not influence the parameter in a manner that causes or contributes to (or threatens to cause or contribute to) an exceedance of water quality objectives or that fails to comply with state or federal antidegradation policies. The Licensee shall provide any such request to the Deputy Director for

review and consideration of approval as an update to the Water Quality Monitoring Plan and shall provide sufficient evidence to support the request.

- Quality assurance and control. Description of quality assurance and quality control procedures that will be used for collection and handling of samples and data validation. Procedures should be consistent with the requirements of Condition 30, as applicable.
- Reporting and adaptive management. Format, schedule, and reporting to document, summarize, and analyze water quality monitoring results. The reporting shall include an evaluation of the water quality monitoring results and any recommendations regarding whether additional monitoring is needed in future years, beyond what is required as part of Deputy Director approval of the Water Quality Monitoring Plan, for some or all constituents. The Licensee may propose any updates or adaptive management measures to the Water Quality Monitoring Plan based on the monitoring results or new information related to water quality that may be impacted by Project operations. Monitoring reports shall be submitted to the Forest Service, CDFW, Lahontan Regional Water Board, and State Water Board staff. To the extent feasible, monitoring reports shall be submitted to staff of the agencies a minimum of 60 days prior to the Annual Ecological Consultation Group Meeting (Condition 9). The Deputy Director may require additional monitoring or actions to protect water quality and beneficial uses based on monitoring results.
- Consultation documentation. Documentation of consultation with the Forest Service, CDFW, Lahontan Regional Water Board, and State Water Board staff, including comments and recommendations made in connection with the plan, and a description of how the plan incorporates or addresses the comments and recommendations.

The Deputy Director may modify or approve modifications to the requirements referenced in this condition based on a request from the Licensee with supporting information or new information based on monitoring or other reliable sources that supports such modifications. Any modifications to the Water Quality Monitoring Plan require approval by the Deputy Director prior to implementation. The Licensee shall file with FERC the Deputy Director-approved Water Quality Monitoring Plan and any amendments thereto. The Licensee shall implement the Deputy Director-approved Water Quality Monitoring Plan and any amendments thereto upon receipt of Deputy Director and any other required approvals.

CONDITION 2. Erosion and Sediment Control

No later than six months following FERC license issuance, the Licensee shall submit an updated Erosion and Sediment Control Plan (Erosion Plan)[10] to the Deputy Director for review and consideration of approval. The Deputy Director may require modifications

[10] An Erosion and Sediment Control Plan dated November 2019 was filed by DWR with FERC as part of the Final License Application. Available at: http://devil-canyon-project-relicensing.com/download/Relicensing/Documents/DC_Erosion_Sediment_Control_Plan.pdf. Accessed April 5, 2022.

as part of any approval. The Licensee shall consult with CDFW, Forest Service, Lahontan Regional Water Board, and State Water Board staff in developing the updated Erosion Plan. At a minimum, the Erosion Plan shall be updated to include:

- An inventory and map of all roads and trails associated with the Project and an assessment of Project's roads and trails to determine if any drainage structures or road segments are impacting or have the potential to impact water quality.
- Initial and periodic inventory and monitoring of potential erosion and sediment control treatment sites that could contribute to erosion and/or sediment transport to surface waters. Inventory and monitoring shall include but are not limited to. (a) an assessment of landslide hazard and slope stability for slopes above and below sections of dam abutments that may cause the structure to breach; (b) road and trails with the potential for erosion based on the assessment done under the preceding bullet; and (c) periodic assessment of the San Bernardino Tunnel for leaks or other failures that could result in erosion.
- Criteria for prioritizing and ranking erosion sites for treatment, and an associated schedule for each treatment site.
- Identification of best management practices (BMPs) that will be implemented to control erosion and sedimentation, which at a minimum shall include Table 2.2-1 of DWR's November 2019 Erosion Plan and the most current Forest Service **National Best Management Practices for Water Quality Management on National Forest System Lands** (Forest Service 2012) and other appropriate documents.
- Format and schedule for reports to document, summarize, and analyze monitoring and implementation of the Erosion Plan. Reports shall include identification of any potential concerns, an assessment of the effectiveness of erosion and sediment control measures, and any proposed modifications to erosion control BMPs to better address Projects-related impacts. Reports shall be submitted to the Forest Service, CDFW, Lahontan Regional Water Board, and State Water Board staff. The Deputy Director may require implementation of additional monitoring or other actions in response to the information provided in the reports or other sources in order to protect water quality and beneficial uses.
- Documentation of consultation with CDFW, Forest Service, Lahontan Regional Water Board, and State Water Board staff, comments and recommendations made as part of consultation, and a description of how the Erosion Plan incorporates or addresses the comments and recommendations.
- Compliance with the Construction General Permit or Water Quality Monitoring and Protection Plans as described in the Construction and Maintenance section below.

The Deputy Director may require modifications as part of any approval. The Licensee shall file the Deputy Director-approved Erosion Plan, together with any required plan modifications, with FERC. The Licensee shall implement the Erosion Plan upon Deputy Director and any other required approvals. Any changes to the Erosion Plan shall be approved by the Deputy Director prior to implementation.

Construction and Maintenance. When applicable, the Licensee shall comply with the State Water Board's ***General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities*** (Construction General Permit)[11] (State Water Board 2009) and amendments thereto. For construction and maintenance activities with the potential to impact water quality or beneficial uses that are not subject to the Construction General Permit and/or that are not covered by another condition of this water quality certification (certification), the Licensee shall prepare and implement site-specific Water Quality Monitoring and Protection Plans (WQMP Plans) for Deputy Director review and consideration of approval. At a minimum, the WQMP Plans must demonstrate compliance with sediment and turbidity water quality objectives in the Santa Ana Regional Water Quality Control Board's (Santa Ana Regional Water Board) *Water Quality Control Plan for the Santa Ana River Basin* (Santa Ana Basin Plan) (Santa Ana Regional Water Board 2019) and the Lahontan Regional Water Quality Control Board's (Lahontan Regional Water Board) *Water Quality Control Plan for the Lahontan Region* (Lahontan Basin Plan) (Lahontan Regional Water Board 2019) (Basin Plans), as applicable.

The Licensee shall submit WQMP Plans to the Deputy Director for review and consideration for approval at least 120 days prior to the desired start date of the applicable construction or maintenance activity. The objective of the WQMP Plans shall be to identify and implement control measures for construction, maintenance, or other activities with the potential to cause erosion, stream sedimentation, fugitive dust, soil mass movement, release of hazardous materials, or other water quality impairment that are not covered by the Construction General Permit or another condition of this certification.

WQMP Plans shall be based on actual site geologic, soil, and groundwater conditions, and at a minimum shall include:

- A description of site conditions and the proposed activity.
- Detailed descriptions, design drawings, and specific topographic locations of all control measures in relation to the proposed activity, which may include:
    - Measures to divert runoff away from disturbed land surfaces;
    - Measures to collect and filter runoff from disturbed land surfaces, including sediment ponds;
    - Measures to dissipate energy and prevent erosion.
- Revegetation measures for disturbed areas, which shall include use of native plants and locally sourced plants and seeds.
- A monitoring, maintenance, and reporting schedule.

[11]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 amendments thereto. Available at: https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html. Accessed on April 5, 2022.

The Deputy Director may require modifications as part of any WQMP Plan approval. The Licensee shall file with FERC the Deputy Director-approved WQMP Plans, and any approved amendments thereto. The Licensee shall implement the WQMP Plans upon receipt of Deputy Director and any other required approvals, in accordance with the schedule and requirements specified therein.

CONDITION 3. Fish Stocking

Fish stocking shall not result in adverse impacts to water quality or native species. The Licensee shall implement its Aquatic Resources 1 environmental measure – Silverwood Lake Fish Stocking[12] no later than six months following FERC license issuance. The Deputy Director may require monitoring or other actions if it is determined that fish stocking may result in impacts to water quality or beneficial uses.

Any modifications to the Silverwood Lake Fish Stocking aquatic resource environmental measure shall be approved by the Deputy Director prior to implementation. The Licensee shall file with FERC any Deputy Director-approved modifications to the Silverwood Lake Fish Stocking aquatic resource environmental measure. The Licensee shall implement any Deputy Director-approved modifications to the Silverwood Lake Fish Stocking aquatic resource environmental measure upon receipt of Deputy Director and any other required approvals. The Licensee shall file with FERC any Deputy Director approved modifications to the Silverwood Lake Fish Stocking aquatic resource environmental measure.

CONDITION 4. Silverwood Lake Levels

Upon FERC license issuance, the Licensee shall implement the following water surface evaluation requirements for Silverwood Lake:

- From March 1 through September 15 of each year, water surface elevations at Silverwood Lake shall be maintained within a range of no more than 11-inches-per-day on weekdays and within a range of not more than 30-inches-per-seven-day period (beginning at midnight on Sunday through midnight the following Saturday) except that:
    - The Licensee may exceed the 11-inches-per-day water surface elevation limit at Silverwood Lake by three inches, for a total of 15 days between March 1 and September 15;
    - The Licensee may raise water surface elevations at Silverwood Lake up to 18 inches on weekends (i.e., midnight on Friday to midnight on Sunday); and
    - The Licensee may exceed the 30-inches-per-seven-day water surface elevation fluctuation limit at Silverwood Lake if required to allow the

[12] DWR submitted environmental measure Aquatic Resources 1 (AR1), Silverwood Lake Fish Stocking (Fish Stocking Plan) to FERC as part of its FLA on November 12, 2019. Available at: http://devil-canyon-project-relicensing.com/license/. Accessed on May 1, 2022.

Licensee to provide water in accordance with existing State Water Project (SWP) supply contracts. The Licensee shall provide the Deputy Director with at least five days' notice prior to exceeding the 30-inches-per-seven-day water surface elevation fluctuation limit and provide information on any potential impacts to beneficial uses or water quality that may result from the fluctuation and any steps (e.g., noticing to recreationalists, etc.) that will be implemented.

- The Licensee shall not lower Silverwood Lake Levels by more than three feet from April 1 through June 30 of each year.
- The Licensee shall maintain a minimum storage of no less than 7,800 acre-feet in Silverwood Lake.

The Licensee may deviate from the above water surface elevation requirements for Silverwood Lake during emergency conditions. Emergency conditions include the following:

- An electrical or mechanical failure, extraordinary maintenance, uncontrollable force, or other occurrence that impairs the ability of the collective facilities of the SWP to deliver to, store in, or deliver scheduled quantities of water from Silverwood Lake.
- An electrical or mechanical failure, extraordinary maintenance, uncontrollable force, or other occurrence that impairs water contractors' abilities to take scheduled quantities of water from the SWP and that, therefore, impact operation of the Project.
- Higher than scheduled water allocations from the SWP for water contractors.
- Conditions determined to be an emergency by the appropriate power authority that require generation at Devil Canyon Powerplant for such an extended period of time that greater than normal flows must be released from Silverwood Lake.

For the purposes of this condition, drought or extremely dry conditions do not qualify as an emergency.

The Licensee shall notify the Deputy Director as soon as the Licensee becomes aware of an emergency condition and provide a revised operating schedule that will be implemented during the emergency period and the recovery therefrom. The Deputy Director may require additional monitoring and reporting, or other actions as appropriate, related to the emergency deviation.

The Licensee shall report any deviation from this condition to the Deputy Director and the Executive Officer of the Lahontan Regional Water Board within 24 hours of the deviation. The Deputy Director may require monitoring or additional actions if the Deputy Director determines that operation of Silverwood Lake under the provisions of this condition are or may result in impacts to water quality or beneficial uses.

CONDITION 5. Mercury

No later than one year following the FERC license issuance, the Licensee shall submit a Mercury Monitoring and Management Plan to the Deputy Director for review and

consideration for approval. The Deputy Director may require modification as part of any approval. The Licensee shall develop the Mercury Monitoring and Management Plan consistent with the State Water Board's May 2, 2012 *Part 2 Of The Water Quality Control Plan For Inland Surface Waters, Enclosed Bays, and Estuaries Of California-Tribal And Subsistence Fishing Beneficial Uses And Mercury Provisions* and any amendments thereto, and in consultation with the California Department of Public Health, Office of Environmental Health Hazard Assessment, State Water Board, and Lahontan Regional Water Board staff. At a minimum, the Mercury Monitoring and Management Plan shall include:

- A statement of the goals and objectives for the plan;
- A description of proposed monitoring protocols and locations (within the reservoir), including aqueous methylmercury and inorganic mercury, fish tissue mercury, sediment mercury, and other ancillary parameters that affect mercury cycling (e.g., chlorophyll-a, dissolved organic carbon, and redox potential). This may be done as part of the Water Quality Monitoring Plan (Condition 1);
- A comprehensive description of procedures, including coordination with the California Department of Public Health and Office of Environmental Health Hazard Assessment to develop notification procedures that will be implemented to inform the public if hazardous levels of mercury are found in fish tissue;
- An evaluation of risks to piscivorous wildlife;
- A detailed description of reporting that will be implemented, including schedule;
- Proposed reservoir operations and fisheries adaptive management to reduce methylmercury pollution (e.g., bioaccumulation, methylation, and risks to piscivorous wildlife and human fish consumers), as appropriate;
- A plan for corrective measures and a timetable for implementation, if data indicate that the Project may be increasing bioavailable mercury concentrations and/or adversely affecting water quality; and
- Documentation of consultation with the California Department of Public Health, Office of Environmental Health Hazard Assessment, State Water Board, and Lahontan Regional Water Board staff, including any comments and recommendations made in connection with the plan, and a description of and how the plan incorporates or addresses the comments and recommendations.

The Licensee shall implement the Mercury Monitoring and Management Plan upon receipt of Deputy Director and other required approvals, in accordance with the schedule and requirements specified therein. The Licensee shall file with FERC the Deputy Director-approved Mercury Monitoring and Management Plan, and any approved amendments thereto.

CONDITION 6. Hazardous Materials Management

No later than six months following FERC license issuance, the Licensee shall submit a Hazardous Materials Management Plan to the Deputy Director for review and consideration for approval. The Deputy Director may require modifications as part of any approval. The Hazardous Materials Management Plan shall address the storage, spill prevention, cleanup, and disposal of oil and hazardous substances associated with

Project activities. The Licensee shall consult with the Lahontan Regional Water Board and State Water Board staff in the development of the Hazardous Materials Management Plan. At a minimum, the Hazardous Materials Management Plan shall include:

- Purpose for the plan;
- Provisions for and implementation of onsite containment for storage of chemicals classified as hazardous to be away from watercourses and include secondary containment and appropriate management as specified in California Code of Regulations, title 27, section 20320;
- Identification of locations of spill cleanup equipment suitable to contain and clean any Project spills in the Project area and information on the maintenance of such equipment;
- Immediate reporting to the Deputy Director, appropriate Executive Officer of the Santa Ana Regional Water Board or Lahontan Regional Water Board (as applicable based on the spill location), and other relevant agencies. Reporting shall include information on the magnitude, nature, time, date, location, and action taken for any spill;
- A monitoring and reporting component that details water quality monitoring and corrective measures that will be implemented to reduce water quality impacts if spills occur, as well as information on how hazardous substances will be properly disposed of once their useful life has past or as part of cleanup activities;
- Evaluation of any release and cleanup of hazardous substances. This evaluation shall be completed no later than 120 days after the release and include a report submitted to the Deputy Director with any proposed updates to the Hazardous Materials Management Plan to prevent or limit similar instances in the future; and
- Documentation of consultation with the Lahontan Regional Water Board and State Water Board staff, including comments and recommendations made in connection with the plan, and a description of how the plan incorporates or addresses the comments and recommendations.

The Deputy Director may require implementation of additional actions in response to the information provided as part of a report following a release or other information indicating a threat to water quality or beneficial uses. The Licensee shall file the Deputy Director-approved Hazardous Materials Management Plan, together with any required plan modifications, with FERC. The Licensee shall implement the Hazardous Materials Management Plan upon Deputy Director and any other required approvals. Any changes to the Hazardous Materials Management Plan shall be approved by the Deputy Director prior to implementation.

CONDITION 7. Aquatic Invasive Species Management

No later than nine months following FERC license issuance, the Licensee shall submit an Aquatic Invasive Species Management Plan to the Deputy Director for review and consideration of approval. At a minimum, the purpose of the Aquatic Invasive Species Management Plan shall be to minimize and prevent the introduction, establishment, and spread of aquatic invasive species associated with the Project. The Aquatic Invasive

Species Management Plan shall be developed in consultation with the Forest Service, CDFW, Lahontan Regional Water Board, and State Water Board staff. At minimum, the Aquatic Invasive Species Management Plan shall include:

- The purpose of the plan;
- Identification of Project waters with aquatic invasive species or the potential for such species, and identification of the aquatic invasive species that occur or have the potential to occur in these Project waters;
- BMPs that will be implemented to prevent the introduction into and spread of aquatic invasive species in Project waters;
- Education and outreach to ensure public awareness of aquatic invasive species effects and management of such species throughout Project waters to help the public avoid the introduction and spread of aquatic invasive species. The education program shall include appropriate signage and/or public information pamphlets at designated boat access sites;
- A monitoring and reporting program that will be implemented to ensure early detection of new aquatic invasive species and monitor for the spread or reduction of established aquatic invasive species. The monitoring program shall include the species that will be monitored for, monitoring protocols, frequency, and locations. Monitoring shall include early detection monitoring for quagga and zebra (dreissenid) mussels, consisting of surface surveys, artificial substrate monitoring, and/or plankton tow sampling using the **most current CDFW protocols**[13] in Silverwood Lake where recreational, boating, or fishing activities are permitted. The program shall describe how the Licensee will evaluate and report on the performance of aquatic invasive species management efforts. The program shall include the criteria that will be used to evaluate the performance of aquatic invasive species BMPs. The reports shall include identification of changes associated with the presence of aquatic invasive species in Project waters and recommendations to address the presence or change in density of aquatic invasive species;
- An adaptive management program that describes how the Licensee plans to adjust aquatic invasive species monitoring methods or BMPs based on evaluation of information and monitoring resulting from implementation of the plan; and
- Documentation of consultation with the Forest Service, CDFW, Lahontan Regional Water Board, and State Water Board staff, including comments and recommendations made in connection with the plan, and a description of how the plan incorporates or addresses the comments and recommendations.

The Deputy Director may require implementation of additional actions in response to the information provided as part of implementation of this condition or information in the record indicating a threat to water quality or beneficial uses. The Licensee shall file the

[13] Information available online at: https://www.wildlife.ca.gov/Conservation/Invasives/Quagga-Mussels. Accessed on May 24, 2022.

Deputy Director-approved Aquatic Invasive Species Management Plan, together with any required plan modifications, with FERC. The Licensee shall implement the Aquatic Invasive Species Management Plan upon receipt of Deputy Director and any other required approvals. Any changes to the Aquatic Invasive Species Management Plan shall be approved by the Deputy Director prior to implementation.

CONDITION 8. Recreation Management

No later than one year following FERC license issuance, the Licensee shall submit a Recreation Management Plan to the Deputy Director for review and consideration of approval. The Deputy Director may require modifications as part of any approval. The Recreation Management Plan shall be developed in consultation with the Forest Service, CDFW, California Department of Parks and Recreation (if operating recreation sites on behalf of the Licensee), and State Water Board staff. At a minimum, the Recreation Management Plan shall include:

- Purpose of the plan;
- A comprehensive list and map of recreation facilities associated with the Project, and any planned modifications to existing recreation facilities (including removal) or new facilities to be constructed during the term of the new FERC license. This list and map shall be updated throughout the term of the new FERC license as new information becomes available;
- For each recreation facility with proposed activities, the Licensee shall identify whether the Licensee plans to cover such activities under this plan, a separate WQMP Plan (Condition 2), or a description of why the recreation facilities/activities have no potential to impact water quality and beneficial uses with supporting documentation for no impacts;
- A description of routine recreation facilities maintenance that may have an impact on water quality or beneficial uses, and measures that will be implemented to minimize or avoid impacts. Maintenance activities related to recreation facilities that may impact water quality and beneficial uses shall be submitted for Deputy Director approval as part of the original or an amended Recreation Management Plan or as a separate WQMP Plan (Condition 2);
- Description of warning system and signage that will be implemented to warn the public of dangers and hazards. If such actions are covered by another condition, the plan may refer to the applicable condition. The system and signage shall be designed and implemented to ensure the public is effectively notified and warned of potential dangers, to reduce the risk of injury or death associated with the Project and associated recreation facilities;
- Reference to the Aquatic Invasive Species Management Plan (Condition 7) monitoring and actions for coverage of water quality related items associated with aquatic invasive species;
- Identification of the need for aquatic vegetation management at recreation sites, when applicable, and actions that may be implemented (e.g., Condition 29), as needed; and
- Documentation of consultation with the Forest Service, CDFW, California Department of Parks and Recreation (if operating recreation sites on behalf of

the Licensee), and State Water Board staff, comments and recommendations made in connection with the plan, and a description of how the plan incorporates or addresses the comments and recommendations.

The Licensee shall file the Deputy Director-approved Recreation Management Plan, together with any required plan modifications, with FERC. The Licensee shall implement the Recreation Management Plan upon receipt of Deputy Director and any other required approvals. Any changes to the Recreation Management Plan shall be approved by the Deputy Director and submitted to FERC prior to implementation.

CONDITION 9. Annual Ecological Consultation Group Meeting

Within six months of FERC license issuance, the Licensee shall establish an Ecological Consultation Group (ECG). The Licensee shall hold the first ECG meeting within the first full calendar year following license issuance. ECG meetings shall be open to representatives from the Forest Service, CDFW, State Water Board, and other interested agency representatives, who may fully participate in the meeting. The Licensee shall coordinate meeting agendas with interested agencies. The Licensee shall maintain an ECG e-mail contact list consisting of e-mail addresses (one primary and one alternate) provided to the Licensee by the Forest Service, CDFW, State Water Board, and organizations or individuals that notify the Licensee in writing of their interest in participating in the ECG meetings. The Licensee shall organize and host ECG meetings.

At least one ECG meeting shall be held each year by April 15, unless otherwise agreed to by the ECG. The Licensee shall organize and host additional ECG meetings or conference calls if agreed upon by the ECG and the Licensee. Unless otherwise modified by the ECG, the agenda shall at a minimum include the following:

- Comments from ECG members, agency representatives, and interested parties;
- Review the status of implementing FERC license, with an emphasis on certification conditions, including an overview of the Licensee's FERC filings since the last ECG meeting and identification of any deviations from the conditions in this certification;
- Review monitoring data from all monitoring conducted in the previous calendar year and monitoring planned for the coming calendar year, as well as the remainder of the current calendar year;
- Review prior calendar year's maintenance activities and planned routine and non-routine maintenance for the remainder of the existing calendar year and coming calendar year;
- Discuss any certification-required agency consultation in the upcoming calendar year and remainder of the current calendar year, and the Licensee's proposal to complete the consultation, if needed;
- Discuss any anticipated proposals in the remainder of the calendar year, coming calendar year, and beyond regarding: (1) changes or additions to facilities or features in the FERC license; (2) variances to conditions in the FERC license; (3) adaptive management that is required or may be required; or (4) amendments to the FERC license;

- Discuss necessary revisions or modifications to plans related to the certification;
- Identification of the Licensee's action items from this meeting, if any, and the Licensee's follow-up on action items from the last meeting;
- Review of the current lists of special-status species (species that are federally endangered or threatened, or proposed for listing as threatened or endangered under the federal Endangered Species Act (ESA); Forest Service sensitive species and species of conservation concern; state threatened, endangered, or candidate species under the California ESA; state species of special concern; state fully protected species; and state rare plants) that occur or have the potential to occur on Project-affected lands and may be affected by Project operation, maintenance, or recreation activities. As applicable, discuss:
    - Needed protection measures for species newly listed or proposed special status species;
    - Changes to existing plans for actions that may no longer be necessary due to delisting of a species; and
    - Changes to existing plans to incorporate new information about species requiring protection; and
- Identification of action items.

At least 30 days in advance of the ECG meeting, the Licensee shall make reports and other information from the previous calendar year required by FERC license conditions or implementation plans in the FERC license available to members of the ECG. The Licensee shall submit a report to State Water Board staff that summarizes the annual ECG meeting no later than 60 days following the annual ECG meeting.

CONDITIONS 10 – 31

CONDITION 10. 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 California Water Code section 13167.

CONDITION 11. This certification does not authorize any act which results in the take of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California 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 Licensee, the Licensee 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 Licensee is responsible for meeting all requirements of the applicable ESAs for the Project authorized under this certification.

CONDITION 12. This certification shall not be construed as replacement or substitution for any necessary federal, state, and local approvals. The Licensee 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 13. 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 14. Nothing in this certification shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 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 15. This certification is subject to modification or revocation upon administrative or judicial review, including but not limited to 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 section 3867).

CONDITION 16. 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 17. This certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28.

CONDITION 18. Notwithstanding any more specific provision of this certification, any plan 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 Licensee fails to provide or implement a required item in a timely manner. If a time extension is needed to submit an item for approval, the Licensee shall submit a written request for the extension, with justification, no later than 15 days prior to the deadline. The Licensee shall not implement any plan, proposal, or report until after receiving approval and any other necessary regulatory approvals.

CONDITION 19. 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.

CONDITION 20. The Licensee 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 21. This certification is contingent on compliance with all applicable requirements of the Basin Plans. 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 Licensee shall take all reasonable measures to protect the beneficial uses of waters of the state.

CONDITION 22. 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 23. In response to a suspected violation of any condition of this certification, the State Water Board, Santa Ana Regional 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 24. Upon request, a construction schedule shall be provided to State Water Board, Santa Ana Regional Water Board, and Lahontan Regional Water Board staff. The Licensee shall provide State Water Board, Santa Ana Regional Water Board, and Lahontan Regional Water Board staff access to the Project site to document compliance with this certification.

CONDITION 25. A copy of this certification shall be provided to any contractor, subcontractor, or other person conducting Project-related work, and copies shall remain in their possession at the Project site. The Licensee shall be responsible for work conducted by its contractors, subcontractors, or other persons conducting Project-related work.

CONDITION 26. Future changes in climate projected to occur throughout the term of the new FERC license may significantly alter the assumptions used to develop the

conditions of this certification. The State Water Board reserves authority to add to or modify the conditions of this certification, to require additional monitoring and/or other measures, as needed, to verify that Project operations meet water quality objectives and protect the beneficial uses assigned to Project-affected stream reaches and waterbodies.

CONDITION 27. 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 28. The Licensee shall ensure no net loss of wetland or riparian habitat functions and is responsible for compliance with the ***State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State*** (State Water Board 2019) and the California Wetlands Conservation Policy (Governor's Executive Order W-59-93 (Aug. 23, 1993)), and any amendments thereto.

CONDITION 29. The Licensee shall comply with the terms and conditions in the State Water Board's ***Statewide National Pollutant Discharge Elimination System Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications***[14] (State Water Board 2013), and amendments thereto.

CONDITION 30. The Licensee shall use analytical methods approved by California's Environmental Laboratory Accreditation Program, where such methods are available. Samples that require laboratory analysis shall be analyzed by Environmental Laboratory Accreditation Program-certified laboratories.

CONDITION 31. 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.

[14] Water Quality Order No. 2013-0002-DWQ and NPDES No. CAG990005, as amended by Order No. 2014-0078-DWQ, Order No. 2015-0029-DWQ, Order No. 2016-0073-EXEC, and any amendments thereto. Available at: https://www.waterboards.ca.gov/water_issues/programs/npdes/pesticides/weed_control.html. Last accessed: April 5, 2022.

DRAFT

Eileen Sobeck
Executive Director

Date

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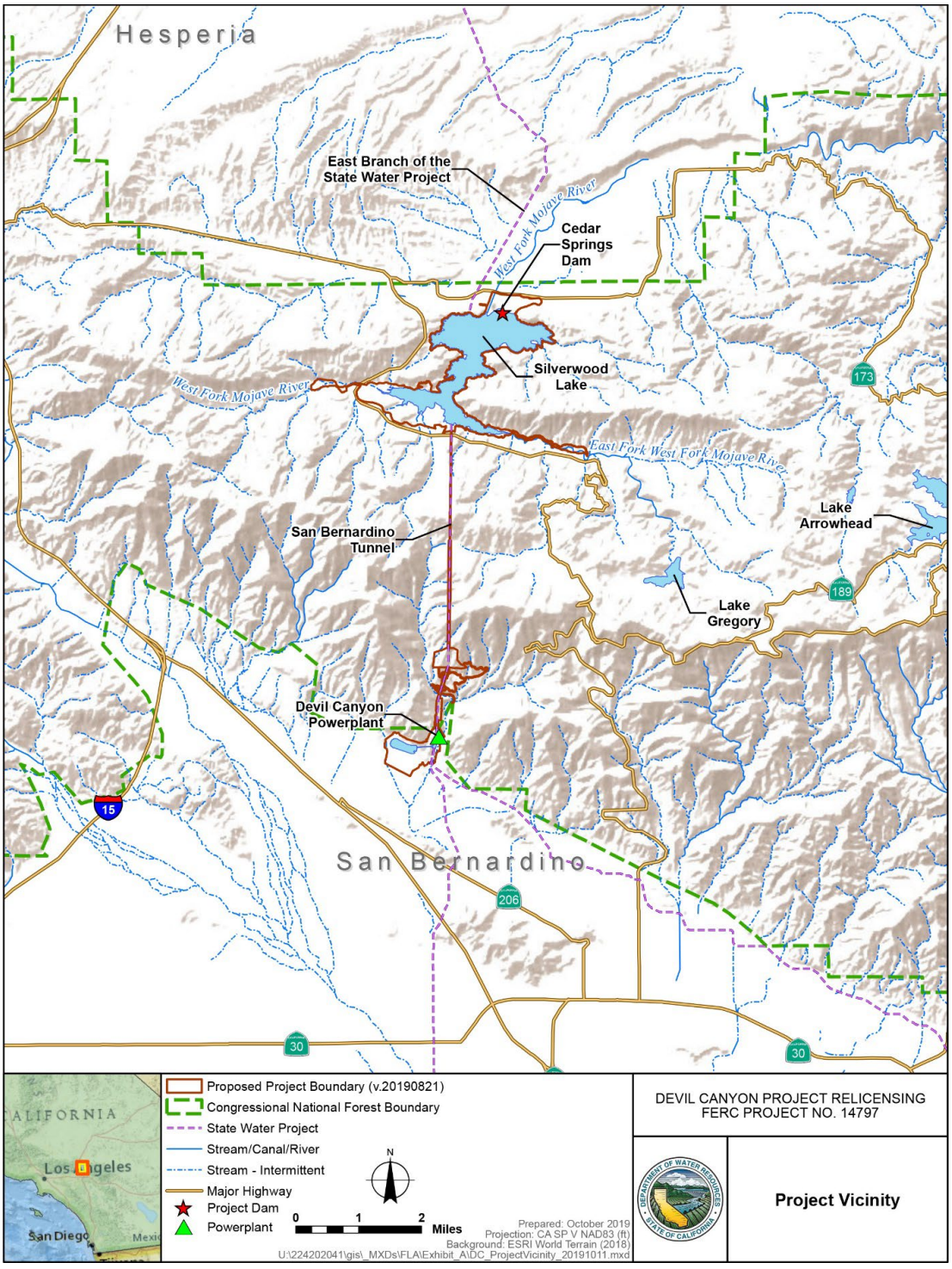

Figure 1. Overview Map of the Devil Canyon Project[15]

[15] Source: http://devil-canyon-project-relicensing.com/project/. Accessed on April 29, 2022.

ATTACHMENT A:
PROJECT DESCRIPTION

DRAFT WATER QUALITY CERTIFICATION
FOR
DEVIL CANYON PROJECT

The Devil Canyon Project (Project) is part of a larger water storage and delivery system known as the State Water Project (SWP). The SWP is the largest state-owned and operated water supply project in the United States. The Project is located in San Bernardino County at the southern end of the East Branch of the SWP. The Project has an authorized installed capacity of 280 megawatts.

Facilities and features associated with the Project under its existing Federal Energy Regulatory Commission (FERC) license include: (1) Cedar Springs Dam; (2) Silverwood Lake; (3) San Bernardino Tunnel, Intake, and Surge Chamber; (4) Devil Canyon Powerplant Penstocks; (5) Devil Canyon Powerplant and Switchyard; (6) Devil Canyon Afterbay and associated dam; (7) Devil Canyon Second Afterbay and associated dam; (8) Primary Project roads and recreation facilities access roads; and (9) Project-related recreation facilities and trails in the Silverwood Lake State Recreation Area, which is owned by the Department of Water Resources (DWR) and operated by the California Department of Parks and Recreation. The Project does not include any open water conduits other than the cross channel that connects the two afterbays. The Project also does not include any primary transmission lines but connects to Southern California Edison's system at the Devil Canyon Powerplant Switchyard.

The Project facilities generally range in elevation from 5,377 feet to 1,778 feet. The Project's existing FERC boundary includes 3,744 acres, of which 220.98 acres are National Forest Service lands managed by the United States Forest Service (Forest Service), as part of the San Bernardino National Forest. Of the existing FERC boundary, 5.9 percent of the land is owned by the Forest Service, 93.5 percent is owned by DWR, and 0.6 percent is private land.

As mentioned above, the Project is a hydroelectric facility that generates power as SWP water is delivered to water customers in Southern California. On the East Branch of the SWP, SWP water flows through several non-Project SWP facilities for several miles, including the following non-Project facilities: Tehachapi Afterbay, Tehachapi East Afterbay, Alamo Powerplant, Pearblossom Pumping Plant, Mojave Siphon, and Mojave Siphon Powerplant. From the Mojave Siphon Powerplant, water is conveyed into Silverwood Lake, which is the northernmost facility of the Project. The San Bernardino Tunnel Intake lifts SWP water from Silverwood Lake into the San Bernardino Tunnel, which directs water through the Devil Canyon Powerplant Penstocks and into the Devil Canyon Powerplant. From the Devil Canyon Powerplant, SWP water is either conveyed to the Devil Canyon Afterbay to meet downstream water supply demands, or to the Devil Canyon Second Afterbay via the cross channel for future SWP water supply deliveries. Both the Devil Canyon Afterbay and Devil Canyon Second Afterbay are upland engineered reservoirs that are not built on a natural streambed and that collect negligible surface runoff. A system of drainage ditches around the afterbays diverts local runoff around the afterbays.

Outflow from Silverwood Lake is governed by deliveries to SWP contractors and deliveries of natural inflow to the users identified in the Mojave River Adjudication Decree (Decree) (City of Barstow et al. v. City of Adelanto et al. 1996) issued by the Riverside County Superior Court in 1996. The Decree adjudicates the rights of all users of water in the Mojave River basin. The Mojave Water Agency (MWA) is the

Watermaster in charge of administering the Decree. In its role as Watermaster, MWA is responsible for managing the water supplies released from Silverwood Lake for use downstream. DWR makes releases from Silverwood Lake and the non-project Mojave Siphon per its agreements with MWA and SWP contractors. The Project has no rights to the natural inflow to Silverwood Lake and must release such inflow pursuant to the terms of its agreements with MWA and SWP contractors.

There are several features in the Project area that are not part of the Project. DWR notes the SWP water supply operations are not a component feature or purpose of the Project. Non-Project features that are used to deliver water from the afterbays include the: San Bernardino Valley Municipal Water District's San Bernardino Pipeline, SWP's Santa Ana Pipeline, San Gabriel Valley Municipal Water District's Azusa Pipeline, and Metropolitan Water District of Southern California's Rialto Pipeline that come from the Devil Canyon Afterbay. The Santa Ana Pipeline, Rialto Pipeline, and Inland Feeder Pipeline come from the Devil Canyon Second Afterbay; and associated valves, turnouts, meters, and connections.

Currently, the Devil Canyon Power Development is licensed with the Warne Power Development and Castaic Power Development as part of the South SWP Hydropower, FERC Project No. 2426. The South SWP Hydropower operates along the East and West Branches of the SWP in San Bernardino and Los Angeles Counties. The South SWP Hydropower generates power using SWP water as it is being transported through the SWP's water supply conveyance facilities. As part of the relicensing of the South SWP Hydropower, DWR and the Los Angeles Department of Water and Power (LADWP) are proposing to separately license the hydropower facilities on the East and West Branches of the SWP as follows:

- Devil Canyon Power Development, located along the East Branch of the SWP, would be licensed solely to DWR as the Devil Canyon Project (FERC Project No. 14797); and
- Warne Power Development and Castaic Power Development, located along the West Branch of the SWP, would be licensed to DWR and LADWP as part of South SWP Hydropower (FERC Project No. 2426).

This water quality certification is specific to Devil Canyon Project. The State Water Resources Control Board issued a water quality certification for the South SWP Hydropower, FERC Project No. 2426, on January 26, 2022.