

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

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**In the Matter of Water Quality Certification for**

**Placer County Water Agency's  
Duncan Creek Diversion Improvement Project**

Source: Duncan Creek

County: Placer

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

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## 1.0 Project Description

On August 12, 2021, Placer County Water Agency (PCWA or Applicant) applied for a water quality certification (certification) for the Duncan Creek Diversion Improvement Project (Project). The Project is required under the terms and conditions of the license the Federal Energy Regulatory Commission (FERC) issued for PCWA's Middle Fork American River Hydroelectric Project (MFAR Project; FERC Project No. 2079), on June 8, 2020. The MFAR Project is located approximately 20 miles northeast of the community of Foresthill in Tahoe National Forest, Placer County, California.

The Duncan Creek Diversion Dam is 165 feet in length and 32 feet in height and impounds approximately 20 acre-feet for diversion. The diversion intake structure, located approximately 140 feet upstream of Duncan Creek Diversion Dam, has a design capacity of 400 cubic feet per second (cfs) and diverts water to French Meadows Reservoir via the Duncan Creek–Middle Fork Tunnel for hydropower.

The Project goals are to improve diversion reliability, increase downstream flow capacity, increase natural sediment transport, and improve downstream fish passage. The Project includes:

- Construction of a new diversion approach channel;
- Construction of a new intake bay structure for the diversion and screening of water to the Duncan Creek – Middle Fork Tunnel Intake;
- Installation of two 1,500-watt micro-hydro units;
- Installation of two pneumatic gates that will regulate the pool elevation, pass sediment, and pass large woody material;
- Construction of a new fish screen structure; and
- Construction of instream flow piping<sup>1</sup>.

Construction is planned for March 2022 through December 2023. Water diversion and dewatering will occur during the dry period, after spring runoff and before winter storm events.

PCWA is seeking coverage for the Project from the United States Army Corps of Engineers (USACE) under section 404 of the Clean Water Act. The need for a Clean Water Act section 404 permit from USACE triggers the requirement for a Clean Water Act section 401 certification action.

## 1.1 Water Rights

Table A lists the MFAR Project water rights associated with Duncan Creek.

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<sup>1</sup> The MFAR Project license issued by FERC in 2020 required higher minimum instream flows than Duncan Creek Diversion Dam can pass. PCWA is adding a new pipe as part of this Project that will pass water from the forebay behind the Duncan Creek Diversion Dam, through the dam, and into Duncan Creek downstream of the dam. The pipe will be capable of passing 24 cubic feet per second.

**Table A. MFAR Project Water Rights Associated with Duncan Creek\***

<b>Application No. (Permit No.)</b>	<b>Source Stream(s)</b>	<b>Priority Date</b>	<b>Place of Storage or Diversion</b>	<b>Purpose of Use</b>
A018084 (013855)	Duncan Creek Middle Fork American River Rubicon River North Fork Long Canyon South Fork Long Canyon	1958	Storage in French Meadows Reservoir	Power and recreation
A018085 (013856)	Duncan Creek Middle Fork American River North Fork American River Rubicon River	1958	Storage in French Meadows Reservoir	Domestic, irrigation, municipal, recreational, and industrial
A018086 (013857)	Duncan Creek Middle Fork American River Rubicon River North Fork Long Canyon South Fork Long Canyon	1958	Storage in French Meadows Reservoir	Power and recreation

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

## **2.0 Regulatory Authority**

### **2.1 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). Section 401 of the Clean Water Act directs the agency responsible for certification to set effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with “any other appropriate requirement of State law.” (33 U.S.C. § 1341(d).) Section 401 further provides that certification conditions shall become

conditions of any federal license or permit for the project.

The State Water Resources Control Board (State Water Board) is the state agency responsible for Clean Water Act section 401 certification in California. (Wat. Code, § 13160.) The State Water Board has delegated authority to act on applications for certification to the Executive Director of the State Water Board. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

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

PCWA filed an application for certification with the State Water Board under section 401 of the Clean Water Act on August 12, 2021, in connection with its application to the USACE for a permit under section 404 of the Clean Water Act. The Project involves the construction of new structures associated with the Duncan Creek Diversion Dam, which impounds and diverts water to French Meadows Reservoir for hydropower generation. Accordingly, the State Water Board is acting on PCWA’s certification application. PCWA has indicated it plans to request an amendment to the MFAR Project license for the installation of the two micro-hydro generation units and the installation of the two pneumatic gates that are part of this Project. To the extent the activities covered under the FERC amendment request are consistent with the Project activities covered by this certification, this certification may be used to fulfill the certification requirements for the FERC license amendment.

State Water Board staff provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858, by posting notice of PCWA’s application on the State Water Board’s website on September 22, 2021. No comments were received.

On December 7, 2021, State Water Board staff requested comments from the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) on the certification. (See Cal. Code Regs., tit. 23, § 3855, subd. (b)(2)(B).) Central Valley Regional Water Board staff responded with comments on December 9, 2021. The comments were considered in developing this certification.

## **2.2 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, the water quality control plans designate the beneficial uses of water to be protected, water quality objectives established for the reasonable protection of those beneficial uses or the prevention of nuisance, and a program of implementation to achieve the water quality objectives. (Wat. Code, §§ 13241, 13050, subds. (h), (j).) The beneficial uses, together with the water quality objectives that are contained in the water quality control plans and state and federal anti-degradation requirements, constitute California's water quality standards for purposes of the Clean Water Act.

The Central Valley Regional Water Board adopted, and the State Water Board and USEPA approved, the *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin* (SR/SJR Basin Plan) (Central Valley Regional Water Board 2018). The SR/SJR Basin Plan designates the beneficial uses of water to be protected along with the water quality objectives necessary to protect those uses. The SR/SJR Basin Plan specifies that the beneficial uses of any specifically identified water body generally apply to its tributary streams.

The SR/SJR Basin Plan identifies beneficial uses of the Middle Fork American River, which also apply for Duncan Creek, as: municipal and domestic supply, irrigation, stockwatering, hydropower generation, contact water recreation, canoeing and rafting, other non-contact water recreation, cold freshwater habitat, cold spawning habitat, and wildlife habitat. Warm freshwater habitat is identified as a potential beneficial use.

### 2.3 Construction General Permit

PCWA 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)<sup>2</sup> (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 Act 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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<sup>2</sup> 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](https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html). Accessed on December 9, 2021.

## **2.4 State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State**

On April 2, 2019, the State Water Board adopted the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures)*<sup>3</sup>, which became effective on May 28, 2020 (State Water Board 2019). The *Procedures* provide California's definition of wetland, wetland delineation procedures, and procedures for submitting applications for activities that could result in discharges of dredged or fill material to waters of the state. The *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. PCWA must comply with the *Procedures* when conducting dredge or fill activities that may impact waters of the state, including wetlands.

## **3.0 California Environmental Quality Act**

PCWA is the lead agency for the purpose of compliance with the California Environmental Quality Act (CEQA) and CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). The State Water Board is a responsible agency under CEQA.

On July 23, 2012, FERC issued its Draft Environmental Impact Statement (EIS), which analyzed the MFAR Project, under the National Environmental Policy Act (NEPA). PCWA released a Draft CEQA Supplement to the Draft EIS on December 6, 2012. The CEQA Supplement augmented the sections of the Draft EIS that were insufficient to satisfy CEQA.

On February 22, 2013, FERC released the Final EIS for the MFAR Project, which included the Project. On April 26, 2013, PCWA issued the Final CEQA Supplement to the Final EIS. PCWA approved the Final CEQA Supplement for the MFAR Project and filed a Notice of Determination (NOD) with the State Clearinghouse and the Placer County Clerk and El Dorado County Clerk offices on May 17, 2013. The NOD states that the MFAR Project, including the Project, will not have a significant impact on the environment.

The Project's proposed modifications to Duncan Creek Diversion are included in both the EIS and CEQA Supplement. In PCWA's August 12, 2021 certification application, PCWA stated that the EIS and Final CEQA Supplement cover impacts of all Project activities (PCWA 2021a)<sup>4</sup>. In a September 10, 2021 letter from State Water Board staff to PCWA, State Water Board staff requested a final copy of CEQA documentation covering the two micro-hydro units, which were not considered in the EIS and CEQA supplement for the MFAR Project. On October 8, 2021, PCWA filed an addendum to the Final CEQA Supplement which stated, "The micro-hydro units will be installed

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<sup>3</sup> The *Procedures* are available online at:  
[https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/wrapp.html.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html.pdf).  
Accessed on December 9, 2021.

<sup>4</sup> PCWA. 2021. PCWA Duncan Creek Diversion Improvement Project, Placer County, California – 401 Water Certification Permit Application.



within the construction footprint analyzed in the Environmental Impact Statement for Hydropower License, MFAR Project-FERC Project No. 2079-069, California (2013 FEIS) and the Final CEQA Supplement to the FERC Final Environmental Impact Statement (CEQA Supplement) for the [MFAR Project]. In addition, installation of the micro-hydro units does not result in any new impacts not previously analyzed, or in the need for additional avoidance, protection, or mitigation measures” (PCWA 2021b). As the lead agency, PCWA made the following determinations:

- 1) The Project will not have any significant effect on the environment;
- 2) New mitigation measures were not made a condition of the approval of the Project;
- 3) A Statement of Overriding Considerations was not adopted for the Project; and
- 4) Findings were made pursuant to CEQA section 15164.

All documents and other material that constitute the public record are maintained by PCWA and available for public review at the following address: 144 Ferguson Road, Auburn, CA 95603.

The State Water Board will file a NOD with the State Clearinghouse within five days of issuing this certification.

#### **4.0 Rationale for Water Quality Certification Conditions**

Certification conditions were developed to ensure compliance with water quality standards and water quality requirements established under the Porter-Cologne Water Quality Control Act, the federal Clean Water Act, including requirements in the SR/SJR Basin Plan, and other appropriate requirements of state law. The conditions are necessary to protect the beneficial uses of water identified in the SR/SJR Basin Plan, prevent degradation of water quality, and ensure compliance with state and federal water quality requirements.<sup>5</sup>

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

- 1) PCWA’s August 2021 certification application;
- 2) PCWA’s June 2021 application to the USACE for a Letter of Permission;
- 3) PCWA’s October 2021 addendum to the Final CEQA Supplement for the MFAR Project;
- 4) FERC’s February 2013 Final EIS for the MFAR Project;
- 5) Additional information provided by PCWA in October 2021 at the request of State Water Board staff;
- 6) Central Valley Regional Water Board staff comments;
- 7) Comments and responses associated with the aforementioned documents;
- 8) Existing and potential beneficial uses, associated water quality objectives, and implementation measures and programs described in the SR/SJR Basin Plan

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<sup>5</sup> Designated beneficial uses for surface waters in the Project area are described in Section 2.2 of this certification and in Chapter 2 of the SR/SJR Basin Plan.

(Central Valley Regional Water Board 2018);

- 9) Existing water quality conditions;
- 10) Project-related controllable factors; and
- 11) Other information in the record.

#### **4.1 Rationale for Condition 1: Monitoring**

The Project involves dredging, excavation, and dewatering of the work area, modifications to Duncan Creek Diversion and the access road, and installation of new structures. These activities have the potential to violate the SR/SJR Basin Plan's water quality objectives. Condition 1 requires the Applicant to comply with applicable water quality objectives of the SR/SJR Basin Plan and implement its proposed water quality monitoring protection measures, as modified by this certification, to prevent water quality objective violations and impacts to beneficial uses. The modifications of and additions to the Applicant's water quality protection measures included in this certification further ensure that the Project will not substantially impact water quality.

**Turbidity.** Excavation, dewatering, re-watering, and other in-water or water-adjacent work may increase turbidity above levels protective of beneficial uses. Beneficial uses in Duncan Creek that would be most impacted by increased turbidity levels include cold freshwater habitat, cold spawning habitat, and wildlife habitat. Turbidity affects fish by impairing vision and altering feeding behavior, predator avoidance, and behavioral interaction with other fish. The SR/SJR Basin Plan prescribes numeric turbidity limits based on natural turbidity levels. The SR/SJR Basin Plan allows appropriate averaging periods to be applied when determining compliance with the turbidity limits, provided that beneficial uses will be protected. Condition 1 requires compliance with the SR/SJR Basin Plan's turbidity limits averaged over 24 hours for all in-water and water-adjacent work, as proposed by the Applicant.

**Dissolved oxygen.** Increased turbidity can decrease dissolved oxygen, which could adversely impact beneficial uses. Beneficial uses in Duncan Creek that would be most impacted by decreased dissolved oxygen levels include cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 1 requires the Applicant to comply with the SR/SJR Basin Plan water quality objective of 7.0 milligrams per liter for the cold freshwater habitat beneficial use (Central Valley Regional Water Board 2018) and monitor dissolved oxygen during in-water and water-adjacent work to ensure that Project activities do not decrease dissolved oxygen below the water quality objective.

**pH.** Construction materials, such as cement, can change pH beyond levels protective of beneficial uses. Beneficial uses in Duncan Creek that would be most impacted by altered pH levels include cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 1 requires the Applicant to comply with the SR/SJR Basin Plan pH water quality objective of 6.5 to 8.5 (Central Valley Regional Water Board 2018) and monitor pH during in-water and water-adjacent work to ensure that Project activities do not violate the water quality objective.

**Harmful Algal Blooms.** The California Water Quality Monitoring Council reported toxic algal mats in Duncan Creek in June 2021, upstream of Duncan Creek Diversion Dam. Specifically, microcystins were detected at 68 nanograms per gram dry weight in

samples collected on June 28, 2021. Condition 1 requires PCWA to conduct visual inspections for cyanobacteria, harmful algal blooms, and algal mats and notify the California Water Quality Monitoring Council Cyanobacteria and Harmful Algal Bloom Network<sup>6</sup> if cyanobacteria, harmful algal blooms, or algal mats are observed.

#### **4.2 Rationale for Condition 2: Project Activities**

Condition 2 requires the Applicant to implement the Project as described in its certification application and as modified by this certification. This condition will help ensure that the Applicant meets water quality objectives and avoids unreasonable impacts to beneficial uses. Any changes to the Project description (e.g., a significant change to the dredge and fill impact acreage) after certification issuance could impact the findings, conclusions, and conditions of the certification, as well as trigger additional environmental review.

#### **4.3 Rationale for Condition 3: Minimum Instream Flows**

Minimum instream flows are a key element to protecting the state's water quality. Minimum instream flows directly protect water quality to support beneficial uses, provide for improved ecosystem function that protects water quality and beneficial uses, and provide habitat for fish and wildlife. Ensuring instream flows do not greatly differ from natural instream flows ensures protection of biodiversity, recreation, and water quality. Condition 3 requires the Applicant to bypass minimum instream flows throughout the Project's implementation, including construction, dewatering and rewatering activities. This is consistent with the Applicant's proposal and its current FERC license for the MFAR Project. Bypassing the minimum instream flows established for Duncan Creek in the MFAR Project FERC license will avoid unreasonable impacts (e.g., stranding, habitat loss) to the cold freshwater habitat, cold spawning habitat, and wildlife habitat beneficial uses.

#### **4.4 Rationale for Condition 4: Erosion and Sedimentation Control Measures**

Project activities, including vegetation removal, grading and compaction during temporary road construction, stockpiling, instream dredge and fill work, and other ground disturbance activities, have the potential to cause erosion of Project roads and riparian habitat and increased sedimentation in Duncan Creek. Increases in erosion and sedimentation can violate water quality objectives (e.g., turbidity) and impact beneficial uses. Beneficial uses in Duncan Creek that would be most impacted by increased erosion and sedimentation include cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 4 requires the Applicant to implement erosion and sedimentation control measures to prevent water quality objective violations and unreasonable impacts to beneficial uses.

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<sup>6</sup> Information regarding the California Water Quality Monitoring Council Cyanobacteria and Harmful Algal Bloom Network, including how to report a harmful algal bloom, can be found on the [California My Water Quality website](https://mywaterquality.ca.gov/habs/) at: <https://mywaterquality.ca.gov/habs/>. Accessed on December 9, 2021.

#### **4.5 Rationale for Condition 5: Diversion and Dewatering Measures**

The Project includes in-water work, which will require the dewatering of part of Duncan Creek and water diversion around the dewatered area. Installation and removal of temporary dams or other artificial obstructions could violate turbidity water quality objectives and impact beneficial uses (e.g., dewater habitat and strand fish). Beneficial uses in Duncan Creek that would be most impacted by increased turbidity levels include cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 5 imposes conditions on any dewatering activities to prevent water quality objective violations and impacts to beneficial uses. Additionally, Condition 5 does not allow for new permanent water diversion, as the Applicant's certification application did not propose any permanent diversion or dewatering measures.

#### **4.6 Rationale for Condition 6: Hazardous Material Control Measures**

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

The SR/SJR Basin Plan includes 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" (Central Valley Regional Water Board 2018). Beneficial uses in Duncan Creek that would be most impacted by hazardous materials include contact water recreation, cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 6 requires implementation of hazardous material management measures to prevent hazardous material spills into waterways, including containment criteria pursuant to California Code of Regulations, title 27, section 20320.

#### **4.7 Rationale for Condition 7: Wetland and Riparian Habitat**

Condition 7 requires the Applicant to comply with the *Procedures* (State Water Board 2019) and mitigate for impacts to wetland, stream, and riparian habitat. The *Procedures* define what is considered a wetland and clarify requirements for applications to discharge dredged or fill material to waters of the state. The *Procedures* constitute an appropriate requirement of state law within the meaning of section 401(d) of the Clean Water Act (33 U.S.C. § 1341(d)). State Water Board staff understand that the Applicant anticipates 0.81 acre of temporary fill/excavation impacts and 0.20 acre of permanent fill/excavation impacts to stream channel areas. The Applicant must mitigate any impacts to riparian, stream, or wetland areas. Impacts to waters of the State are not authorized and shall not occur until a compensatory mitigation plan has been approved by the Deputy Director.

#### **4.8 Rationale for Condition 8: Project Activity Progress Reports**

Condition 8 requires the Applicant to submit Project Activity Progress Reports (Progress Reports) during construction to document Project status and compliance with certification requirements. The Progress Reports will inform the Deputy Director of potential water quality objective violations and/or impacts to beneficial uses. This will allow quick implementation of measures to limit or prevent any violations and/or impacts.

#### **4.9 Rationale for Condition 9: Fish Passage During Dewatering**

Condition 9 requires implementation of fish passage measures during Project-related dewatering activities. Project-related dewatering activities will temporarily block fish passage. According to Table 6-4 of the MFAR Project FERC License Pre-Application Document Supporting Document F, Rainbow trout, Brook trout, Speckled dace, Sacramento Sucker, and Prickly/Riffle Sculpin are known to occur in Duncan Creek (PCWA 2007). Downstream fish passage is the primary consideration with respect to fish passage as Duncan Creek is a steep stream with waterfalls and cascades interrupted by plunge pools, according to Appendix F of PCWA's certification application (PCWA 2021a). Appendix E, Figure 9 of the certification application, shows nine natural barriers and potential barriers and two MFAR Project infrastructure barriers, including Duncan Creek Diversion Dam, to fish passage along Duncan Creek (PCWA 2021a). According to Appendix E of the certification application, because MFAR Project infrastructure barriers are located in reaches already containing natural barriers, the MFAR Project facilities have little effect on habitat access or upstream distribution (PCWA 2021a). Condition 9 requires rescuing fish stranded by dewatering and relocating them downstream, in order to protect aquatic resources. Condition 9 is consistent with PCWA's proposal and will avoid unreasonable impacts (e.g., stranding, habitat loss) to the cold freshwater habitat, cold spawning habitat, and wildlife habitat beneficial uses.

#### **4.10 Rationale for Condition 10: FERC License Amendment for the Project**

State Water Board staff understand that FERC requested the Applicant submit an application for an amendment to the MFAR Project FERC license to cover the installation of the two micro-hydro units and two pneumatic crest gates at Duncan Creek Diversion Dam. In order to avoid unnecessary delay, this certification may also apply to the FERC license amendment, upon compliance with California Code of Regulations, title 23, sections 3858 and 3855, subdivision (b), unless new information becomes available during the certification period or in the FERC license application indicating that not all activities in the FERC amendment application are covered by this certification. The Applicant will need to seek an amendment to this Project certification if new activities are part of the FERC license amendment application that are not covered by the project description of this Project certification. To ensure all elements of the Project are covered under their respective federal permitting processes, within 30 days of submitting its MFAR Project license amendment request to FERC for this Project, PCWA is required to consult with State Water Board staff to confirm whether this certification covers all elements of the FERC amendment application, or whether an amendment to this Project certification is needed to cover elements of the FERC amendment that are not covered

by this certification.

#### **4.11 Rationale for Conditions 11 through 28**

This certification imposes additional conditions regarding Project approvals, monitoring, enforcement, and potential future revisions. Conditions 12 – 15 contain important clarifications concerning the scope and legal effect of this certification, and other legal requirements that may apply to the Project. In addition, Condition 11 is necessary to comply with Water Code section 13167 and Conditions 16 – 18 are required by California Code of Regulations, title 23, section 3860, which requires imposition of these conditions for all certifications. Conditions 19 – 28 are necessary to ensure that the Project is implemented to meet water quality standards and other appropriate requirements of state law, or that adjustments are made to ensure continued compliance with water quality requirements in light of new information, changes to the Project, determinations of invalidity or waiver, or changes to standards themselves.

#### **5.0 Conclusion**

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

## 6.0 Water Quality Certification Conditions

**ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER RESOURCES CONTROL BOARD CERTIFIES** that the Duncan Creek Diversion Improvement Project (Project) will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, if Placer County Water Agency (PCWA or Applicant) complies with the following terms and conditions.

### **CONDITION 1. Monitoring**

The Applicant shall monitor water quality associated with Project activities as outlined in this condition. Turbidity, dissolved oxygen, and pH shall be maintained in accordance with the *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin* (SR/SJR Basin Plan) water quality objectives (Central Valley Regional Board 2018). The water quality objectives for turbidity, dissolved oxygen, and pH are summarized below.

*Turbidity.* The turbidity limits for in-water and water-adjacent work shall be:

- 1) Where natural turbidity is less than one Nephelometric Turbidity Unit (NTU), controllable factors shall not cause downstream turbidity to exceed two NTUs.
- 2) Where natural turbidity is between one and five NTUs, increases shall not exceed one NTU.
- 3) Where natural turbidity is between five and 50 NTUs, increases shall not exceed 20 percent.
- 4) Where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs.
- 5) Where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Turbidity shall be measured using a 24-hour averaging period.

*Dissolved Oxygen.* The Applicant shall not decrease dissolved oxygen below 7 milligrams per liter.

*pH.* The Applicant shall maintain pH between 6.5 and 8.5.

The Applicant shall monitor water quality as described in Section Two of its water quality certification (certification) application and as modified by this condition.

The Applicant shall conduct water quality monitoring during all in-water work and work adjacent to waterways, including dewatering and re-watering activities. At a minimum, two monitoring locations in Duncan Creek shall be located, 1) more than 50 feet upstream of the intersection of Duncan Creek Diversion Intake Road and Duncan Creek; and 2) no more than 400 feet downstream of the work area, as the locations are identified on Map 4 of the certification application (PCWA 2021). The Applicant shall take a global positioning system point and a photograph for each

proposed monitoring location and provide them to Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) and State Water Resources Control Board (State Water Board) staff at least one week prior to starting construction. These locations shall be used for monitoring unless the Deputy Director of the Division of Water Rights (Deputy Director) directs the Applicant to use other locations or to work with staff to find alternate locations.

Unless otherwise approved by the Deputy Director, the Applicant shall:

- Monitor turbidity, dissolved oxygen, and pH at 15-minute intervals using an automated sensor system;
- Conduct visual inspections for turbidity plumes, oily sheens, and signs of construction-related pollutants<sup>7</sup> continuously throughout the construction period; and
- Conduct visual inspections for cyanobacteria, harmful algal blooms, and algal mats during dewatering and diversion activities. If cyanobacteria, harmful algal blooms, or algal mats are detected, the Applicant shall notify the California Water Quality Monitoring Council Cyanobacteria and Harmful Algal Bloom Network<sup>8</sup>, and include in monitoring reports required by this certification.

The Applicant shall submit the first monitoring report to State Water Board staff within 30 days of initiating monitoring and every two weeks thereafter for the remainder of any in-water and water-adjacent Project work. The monitoring reports shall include the turbidity, dissolved oxygen, and pH monitoring results, visual monitoring results, and any supplemental water quality monitoring data collected.

The Deputy Director and the Central Valley Regional Water Board Executive Officer (Executive Officer) shall be notified promptly, and in no case more than 24 hours, following an exceedance of a narrative or numeric water quality objective (for turbidity this may be with consideration of the averaging period), or identification of construction related pollutants. Project activities associated with the exceedance or pollutant shall immediately cease and the Applicant shall immediately implement measures to contain or clean up any pollutant or discharge. Construction shall not resume without approval from the Deputy Director.

The Applicant may request modifications to the water quality monitoring described in Condition 1. The Applicant shall submit the request to the Deputy Director for review and consideration of approval at least 30 days prior to starting in-water or water-adjacent work or 30 days prior to when the Applicant would like to modify its water

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<sup>7</sup> Visible construction-related pollutants may include oil, grease, foam, fuel, petroleum products, uncured concrete, and construction-related excavated, organic, or earthen material.

<sup>8</sup> Information regarding the California Water Quality Monitoring Council Cyanobacteria and Harmful Algal Bloom Network, including how to report a harmful algal bloom, can be found on the [California My Water Quality website](https://mywaterquality.ca.gov/habs/) at: <https://mywaterquality.ca.gov/habs/>. Accessed on December 9, 2021.



quality monitoring. The request shall include the proposed modifications and rationale.

**CONDITION 2. Project Activities**

Unless otherwise modified by conditions of this certification, the Applicant shall implement the Project as described in its August 12, 2021 certification application (PCWA 2021a) and any supplemental materials received prior to issuance of the certification or otherwise approved by the Deputy Director.

The Applicant shall obtain coverage under and comply with the *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*<sup>9</sup> (Construction General Permit) and any amendments thereto.

**CONDITION 3. Minimum Instream Flows**

Throughout Project implementation, including the duration of all construction and dewatering activities, the Applicant shall maintain the minimum instream flows (MIFs) presented in Table 1 in Duncan Creek below Duncan Creek Diversion Dam. The Applicant shall measure flows in 15-minute increments at United States Geological Survey (USGS) Gage No. 11427700 and USGS Gage No. 11427750. Flows shall be measured at the specified gage locations unless otherwise approved by the Deputy Director. Table 1 lists the minimum instream flows for Duncan Creek as established in the Middle Fork American River Hydroelectric Project (MFAR Project) Federal Energy Regulatory Commission (FERC) license.

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<sup>9</sup> 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](https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html). Accessed on December 9, 2021.

**Table 1. Duncan Creek MIF Requirements (in cubic feet per second) Downstream of Duncan Creek Diversion Dam by Water Year Type**

Period	EC/C <sup>1</sup>	DRY <sup>2</sup>	BN <sup>3</sup>	AN <sup>4</sup>	WET <sup>5</sup>
October	4 or NF <sup>6</sup>	8 or NF	8 or NF	8 or NF	8 or NF
November	4 or NF	8 or NF	8 or NF	8 or NF	8 or NF
December	4 or NF	8 or NF	8 or NF	8 or NF	8 or NF
January	4 or NF	8 or NF	8 or NF	8 or NF	8 or NF
February	4 or NF	8 or NF	8 or NF	8 or NF	8 or NF
March 1-14	4 or NF	8 or NF	8 or NF	8 or NF	8 or NF
March 15-31	9 or NF	11 or NF	13 or NF	16 or NF	16 or NF
April	13 or NF	14 or NF	17 or NF	24 or NF	24 or NF
May	13 or NF	14 or NF	17 or NF	24 or NF	24 or NF
June	7 or NF	7 or NF	9 or NF	12 or NF	12 or NF
July	No Div <sup>7</sup>	No Div	No Div	No Div	No Div
August	No Div	No Div	No Div	No Div	No Div
September	No Div	No Div	No Div	No Div	No Div

<sup>1</sup> EC/C – Extreme Critical/Critical refer to less than 1,000,000 acre-feet (ac-ft) for the American River Unimpaired Flow Below Folsom Lake.

<sup>2</sup> Dry – Dry year refers to between 1,000,000 and 1,500,000 ac-ft for the American River Unimpaired Flow Below Folsom Lake.

<sup>3</sup> BN – Below Normal year refers to between 1,500,000 and 2,400,000 ac-ft for the American River Unimpaired Flow Below Folsom Lake.

<sup>4</sup> AN – Above Normal year refers to between 2,400,000 and 3,400,000 ac-ft for the American River Unimpaired Flow Below Folsom Lake.

<sup>5</sup> Wet – Wet year refers to above 3,400,000 ac-ft for the American River Unimpaired Flow Below Folsom Lake.

<sup>6</sup> NF – Natural flow. If natural flow is less than the required MIF, the MIF shall be NF until NF equals or exceeds the required MIF.

<sup>7</sup> No Div – No Diversion.

Unless otherwise approved by the Deputy Director, the Applicant shall report any deviation from the required flows in this certification to the Deputy Director within 24 hours of the deviation.

**CONDITION 4. Erosion and Sedimentation Control Measures**

The Applicant shall implement erosion, sedimentation, and turbidity control measures as described in Section Two and Section Eight of its certification application and include the following measures:

- 1) Control measures for erosion, excessive sedimentation, and sources of turbidity shall be implemented and in place prior to the commencement of, during, and after any ground disturbing activities, or any other Project activities that could result in erosion or sediment discharges to surface water.

- 2) Stockpiles shall be located outside of riparian habitat and protected in accordance with appropriate best management practices (BMPs). If more than 0.25 inch of rain or snow is forecasted during the construction season, all stockpiles shall be covered with plastic and surrounded with sediment control technologies or berms to prevent sediment run-off.
- 3) Imported materials (i.e., not from on-site rock borrow locations) used for the rip-rap apron or rock slope protection shall be washed prior to use. If materials are washed on-site, washing shall occur and wash water shall be stored at least 300 feet from any waterway and either disposed of off-site or used for dust abatement.
- 4) If erosion or sedimentation causes increased turbidity above the limits described in Condition 1, the Applicant shall contain the turbid water using a cofferdam. All cofferdams shall be installed and maintained pursuant to Condition 5. The contained water may be released downstream once the water is below turbidity limits, disposed of off-site, or used for dust abatement, in a manner that does not impair water quality.
- 5) Dredged or excavated material shall be either used as backfill, to shape the approach channel and pool behind Duncan Creek Diversion Dam, road base, or disposed of off-site in a manner that does not impair water quality. Dredged or excavated material shall be stored at least 300 feet from any waterway.
- 6) Upon Project completion, the Applicant shall inspect the Project site for signs of excessive erosion or other water quality impairment. Inspections shall be conducted monthly for six months following Project completion. The Applicant shall provide its observations to State Water Board staff no more than two weeks following each inspection. If erosion or other impairments are observed, the Applicant shall notify the Deputy Director and Executive Officer and include: (1) a description of the erosion or impairment with photo documentation; (2) potential causes of the erosion or impairment; and (3) proposed measures to prevent future erosion or impairment. The Applicant shall implement the proposed measures upon receipt of Deputy Director approval. The Deputy Director may require modifications to the proposed measures as part of any approval.

#### **CONDITION 5. Diversion and Dewatering Measures**

The Applicant shall implement surface water diversion and dewatering measures as described in Section Two, subsection *Water Diversion, Dewatering, and Re-watering* (certification application, pp. 37-40.), and Section Eight, Table 9, Avoidance and Protection Measures and Water Quality Best Management Practices No. 38, *Cofferdam and Deep Excavation Construction Drawings* (certification application, p. 62.), and include the following measures.

- 1) Dewatering shall only occur within the approximately 2.5-acre Project area as described in Section Two, subsection *Work Area*, of the certification application.
- 2) For any temporary dam or other artificial obstruction being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream to maintain beneficial uses, including compliance with minimum instream flows (Condition 3). Construction, dewatering, and removal of temporary

cofferdams shall not violate Condition 1.

- 3) Any temporary dam or other artificial obstruction shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel that will cause little or no siltation. Stream flow shall be temporarily diverted using gravity flow through temporary culverts/pipes or pumped around the work site with the use of hoses or pipes.
- 4) This certification does not authorize permanent water diversion of flow from the receiving water or any other permanent dewatering measure.
- 5) The Applicant shall work with the Central Valley Regional Water Board to obtain coverage under a National Pollutant Discharge Elimination System (NPDES) permit if dewatering may result in discharges to surface water.

### **CONDITION 6. Hazardous Material Control Measures**

The Applicant shall implement hazardous materials<sup>10</sup> control measures as described in Section Eight of its certification application, including measures in Table 9 based on United States Department of Agriculture-Forest Service (USDA-FS) *Water Quality Management for Forest System Lands in California, Best Management Practices* (USDA-FS 2000) and USDA-FS *National Best Management Practices for Water Quality Management on National Forest System Lands* (USDA-FS 2012) and include the following measures.

- 1) Caution shall be used when handling and/or storing hazardous materials near waterways. Appropriate materials shall be on site to prevent and manage spills to prevent impacts to surface waters. When not in use, hazardous materials shall be stored at least 300 feet from any waterway.
- 2) When not in use, equipment shall be stored in upland areas outside the ordinary high-water mark of Duncan Creek and the Duncan Creek Diversion Pool, as delineated in Map 4 of the certification application (PCWA 2021).
- 3) All construction equipment shall be inspected for leaks before entering the Project area. All equipment shall be well maintained and inspected daily while on site to prevent leaks of fuels, lubricants, or other fluids into waters of the United States or waters of the state. Stationary equipment (e.g., generators) within 100 feet of waterways shall be parked over secondary containment.
- 4) Service and refueling procedures shall be conducted in a designated area, at least 300 feet from any waterway, where no potential exists for fuel spills to seep or wash into waterways. Service and refueling areas shall include secondary containment including drip pans and/or placement of absorbent material.
- 5) Containment areas shall include secondary containment. All containment structures shall comply with California Code of Regulations, title 27, section

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<sup>10</sup>Hazardous materials include, but are not limited to: petroleum products, pesticides, fuels, lubricants, oils, hydraulic fluids, raw cement, concrete or the washing thereof, asphalt, paint, coating material, drilling fluids, or other substances potentially hazardous to water quality and beneficial uses.

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- 6) Any water contaminated by hazardous materials shall be stored according to items (1) and (5) in this condition and disposed of properly off-site in a manner that does not impair water quality.
- 7) Wet concrete or cement shall not be placed into stream channel habitat. Concrete or cement shall be completely cured before coming into contact with waters of the United States or waters of the state. Any surface water that contacts wet concrete or cement must be pumped out and disposed of in accordance with applicable laws and regulations.

**CONDITION 7. Wetland and Riparian Habitat**

The Applicant shall comply with the [\*State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State \(Procedures\)\*](#) (State Water Board 2019) and ensure no net loss of wetland or riparian habitat functions. State Water Board staff understand that the Applicant anticipates 0.81 acre of temporary fill/excavation impacts and 0.20 acre of permanent fill/excavation impacts to stream channel areas. According to the *Procedures*, mitigation is required to compensate for wetland or stream losses. The Applicant must mitigate impacts to stream channel areas. The Applicant shall submit a Wetland and Riparian Habitat Mitigation Plan to the Deputy Director for review and consideration of approval prior to implementation. At a minimum the Wetland and Riparian Habitat Mitigation Plan shall include:

1. Demonstration of compliance with the *Procedures*;
2. Acreage of impacts to riparian, stream channel, or wetland areas;
3. Plan to mitigate the impacts to wetland, stream channel, and riparian habitat;
4. Proposed mitigation ratio (mitigation area: impacts); and
5. Mitigation implementation schedule.

The Deputy Director may require modifications to the Wetland and Riparian Habitat Mitigation Plan as part of any approval. The Applicant shall implement the Wetland and Riparian Habitat Mitigation Plan upon Deputy Director approval, in accordance with the schedule and requirements specified therein. Any revisions to the Wetland and Riparian Habitat Mitigation Plan shall be approved by the Deputy Director prior to mitigation implementation.

**CONDITION 8. Project Activity Progress Reports**

Every 30 days during construction, the Applicant shall submit a Project Activity Progress Report (Progress Report) to the Deputy Director. The Progress Report shall include:

- 1) A summary of Project activities performed;
- 2) Documentation of compliance with each condition of this certification and details

- of any failure to meet the certification requirements;
- 3) Details of Project-related adverse impacts to beneficial uses, if applicable;
  - 4) Any anticipated Project implementation activities (e.g., construction, dewatering, or diversion) differing from those described in the certification application or required by this certification;
  - 5) Requests for consultation regarding the need for development of additional site-specific construction measures;
  - 6) Requests for Deputy Director approval of any newly developed additional site-specific construction measures;
  - 7) A description of upcoming activities that may cause erosion; and
  - 8) Any additional Project-specific parameters of water quality that will be monitored as part of the Project.

The Deputy Director may require the Applicant to implement corrective actions in response to the information provided in a Progress Report. Within 60 days of Project completion, the Applicant shall provide the Deputy Director with a comprehensive Project report summarizing items 1 – 3, 7, and 8 as well as data gathered per Condition 4, item No. 6. The Applicant shall provide any additional information or clarification requested by the Deputy Director related to a Progress Report or the comprehensive Project report. Upon request from State Water Board staff, the Applicant shall meet with staff to discuss a Progress Report or the comprehensive Project report.

#### **CONDITION 9. Fish Passage During Dewatering**

The Applicant shall implement fish passage measures during construction as detailed below:

- 1) Conduct visual checks of the pool behind Duncan Creek Diversion Dam, the fish receiving pool, and the diversion structures for the presence of any fish prior to initiating dewatering;
- 2) Capture all fish inhabiting the affected reach of Duncan Creek prior to dewatering. Additionally, rescue and relocate any stranded fish that are present in the affected reach or diversion dam pool during dewatering, including those stranded by dewatering, downstream of the diversion dam, to a relocation site conducive to the fishes' well-being<sup>11</sup>;
- 3) Following capture, fish should be held or immediately transported to their relocation site in fresh water collected from Duncan Creek. Captured fish shall be kept in cool, shaded water protected from excessive noise, jostling, or overcrowding. During capture, transport, and relocation, fish shall be minimally handled. Fish shall be kept in water to the maximum extent possible during capture, transport, and relocation activities;

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<sup>11</sup>If the Applicant is using any sediment control structures in water (e.g., silt fences), fish shall be relocated below these structures.

- 4) If captured fish are held longer than two hours, the Applicant shall use holding coolers and check water temperature and dissolved oxygen levels periodically with a handheld YSI meter (or equivalent) to monitor the suitability of water quality. Water will be deemed suitable if its temperature remains no more than one degree Celsius above the initial ambient water temperature and its dissolved oxygen level remains at or above 6.0 milligrams per liter. If necessary, the water in the holding coolers will be refreshed to ensure temperature and dissolved oxygen levels remain suitable.
- 5) A record shall be maintained of all fish rescued and relocated. Data collected by the Applicant shall include the release location, start and end time, counts of each species, and any injury or mortality during transport and relocation efforts. The Applicant shall also record air temperature, water temperature, and dissolved oxygen at the time of release. The Applicant shall take photographs of the release site(s). The record shall include survey personnel names, date captured and relocated, and method of capture; and
- 6) A complete record of rescued fish shall be provided to the California Department of Fish and Wildlife (CDFW), USDA-FS, United States Fish and Wildlife Service (USFWS), Central Valley Regional Water Board, and State Water Board staff.

#### **CONDITION 10. FERC License Amendment for Project**

State Water Board staff understand that the Applicant will be seeking an amendment to the FERC license for the MFAR Project to cover the proposed installation of two 1,500-watt micro-hydro generation units and installation of two pneumatic crest gates at the Duncan Creek Diversion. Pursuant to California Code of Regulations, title 23, section 3855, subdivision (b), a Clean Water Act section 401 certification application must be filed with the State Water Board if a proposed activity involves an amendment to a FERC license or any other diversion of water for power use. State Water Board staff anticipate that all components of the FERC license amendment will be covered by the construction described in the project description for this certification's application and the project description of the USACE Clean Water Act section 404 permit for which this certification accompanies. Within 30 days of submitting its MFAR Project license amendment request to FERC for this Project, the Applicant shall consult with State Water Board staff to confirm whether all elements of the FERC license amendment are covered by this Project certification or whether an amendment to this certification is needed. If it is determined that all activities described in the FERC license amendment application are covered by the construction described in the project description for this certification's application, this certification may be used to cover the certification requirements for the FERC license amendment for the pneumatic gates and micro-hydro units, upon compliance with California Code of Regulations, title 23, sections 3858 and 3855, subdivision (b). If it is determined that activities described in the FERC license amendment application are not covered in the project description of this certification or new information becomes available within the certification period, the Applicant shall seek an amendment to this certification to cover certification requirements for the FERC license amendment.

## **CONDITIONS 11 – 28**

**CONDITION 11.** 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 12.** 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 Endangered Species Act (ESA) (Fish & G. Code, §§ 2050–2097) or the federal ESA (16 U.S.C. §§ 1531–1544). If a “take” will result from any act authorized under this certification or water rights held by the Applicant, the Applicant must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Applicant is responsible for meeting all requirements of the applicable ESAs for the Project authorized under this certification.

**CONDITION 13.** This certification shall not be construed as replacement or substitution for any necessary federal, state, and local approvals. The Applicant is responsible for compliance with all applicable federal, state, or local laws or ordinances and shall obtain authorization from applicable regulatory agencies prior to the commencement of Project activities.

**CONDITION 14.** 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 15.** 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 16.** 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 17.** This certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (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 18.** This certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28.



**CONDITION 19.** 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 Applicant 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 Applicant shall submit a written request for the extension, with justification, no later than 15 days prior to the deadline. The Applicant shall not implement any plan, proposal, or report until after receiving approval and any other necessary regulatory approvals.

**CONDITION 20.** 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 21.** 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 22.** Unless otherwise specified by conditions in this certification, Project activities shall be conducted in a manner consistent with all applicable water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act. The Applicant must take all reasonable measures to protect the beneficial uses of waters of the state.

**CONDITION 23.** The Applicant shall submit any change to the Project, including operations, facilities, technology changes or upgrades, or methodology, which could have a significant or material effect on the findings, conclusions, or conditions of this certification, to the State Water Board for prior review and written approval. The State Water Board shall determine significance and may require consultation with state and/or federal agencies. If the State Water Board is not notified of a change to the Project, it will be considered a violation of this certification.

**CONDITION 24.** 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 25.** In response to a suspected violation of any condition of this certification, the State Water Board or Central Valley 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 26.** Upon request, a construction schedule shall be provided to State Water Board and Central Valley Regional Water Board staff. The Applicant shall provide State Water Board and Central Valley Regional Water Board staff access to the Project site to document compliance with this certification.

**CONDITION 27.** A copy of this certification shall be provided to any contractor and all subcontractors conducting Project-related work, and copies shall remain in their possession at the Project site. The Applicant shall be responsible for work conducted by its contractor, subcontractors, or other persons conducting Project-related work.

**CONDITION 28.** The Applicant shall use analytical methods approved by California's Environmental Laboratory Accreditation Program (ELAP), where such methods are available. Samples that require laboratory analysis shall be analyzed by ELAP-certified laboratories.



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Eileen Sobeck  
Executive Director

December 21, 2021

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Date

## 7.0 References

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**ATTACHMENT A:**  
**PROJECT SCHEMATICS**  
**WATER QUALITY CERTIFICATION**  
**FOR**  
**DUNCAN CREEK DIVERSION IMPROVEMENT PROJECT**

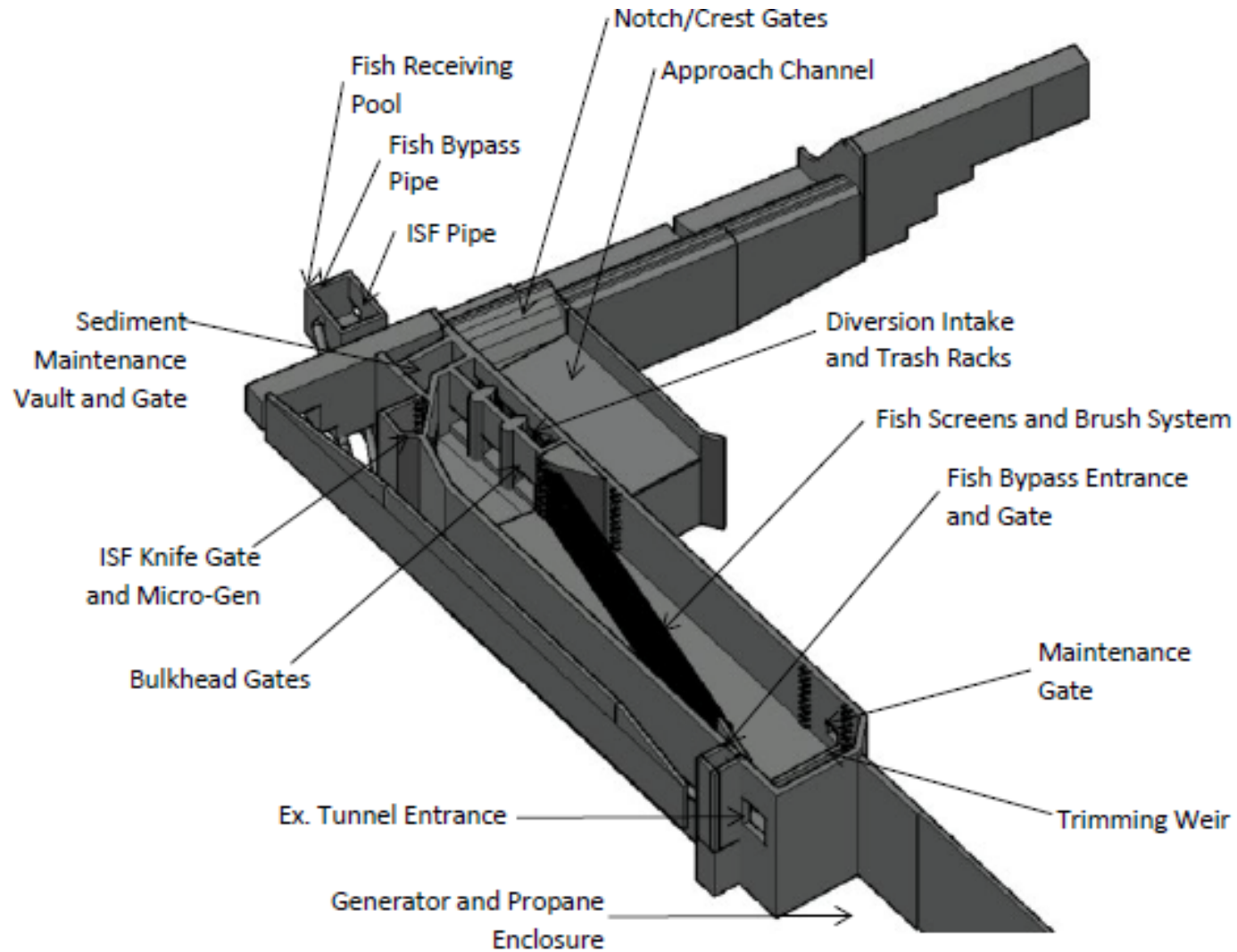


Figure A1. Isometric View of Duncan Creek Diversion Improvement Project Facilities (PCWA 2021a). (All labels correspond to components of the new diversion structure.)

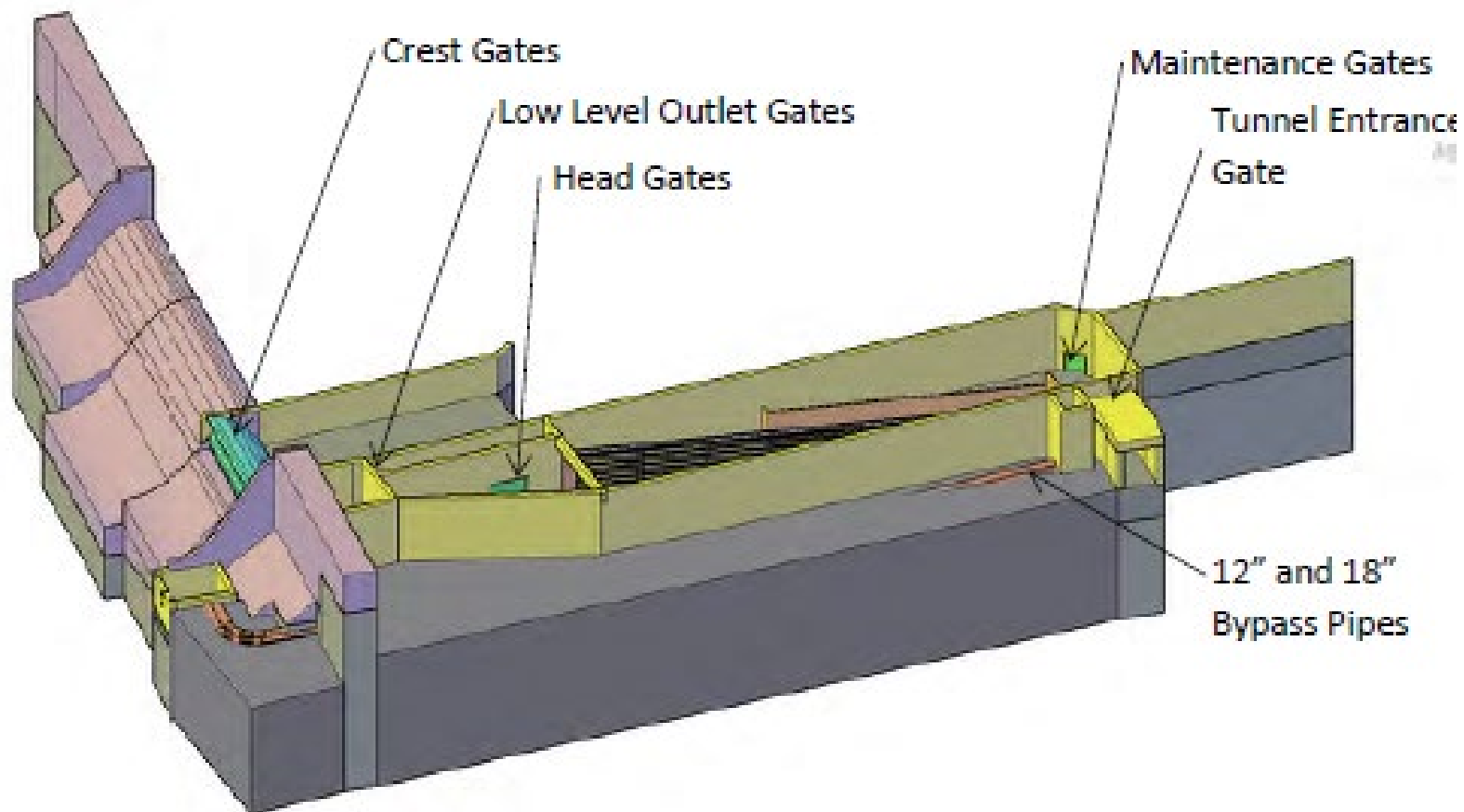


Figure A2. Side View of Duncan Creek Diversion Improvement Project (PCWA 2021a)

**ATTACHMENT B:**  
**PROJECT MAP**  
**WATER QUALITY CERTIFICATION**  
**FOR**  
**DUNCAN CREEK DIVERSION IMPROVEMENT PROJECT**



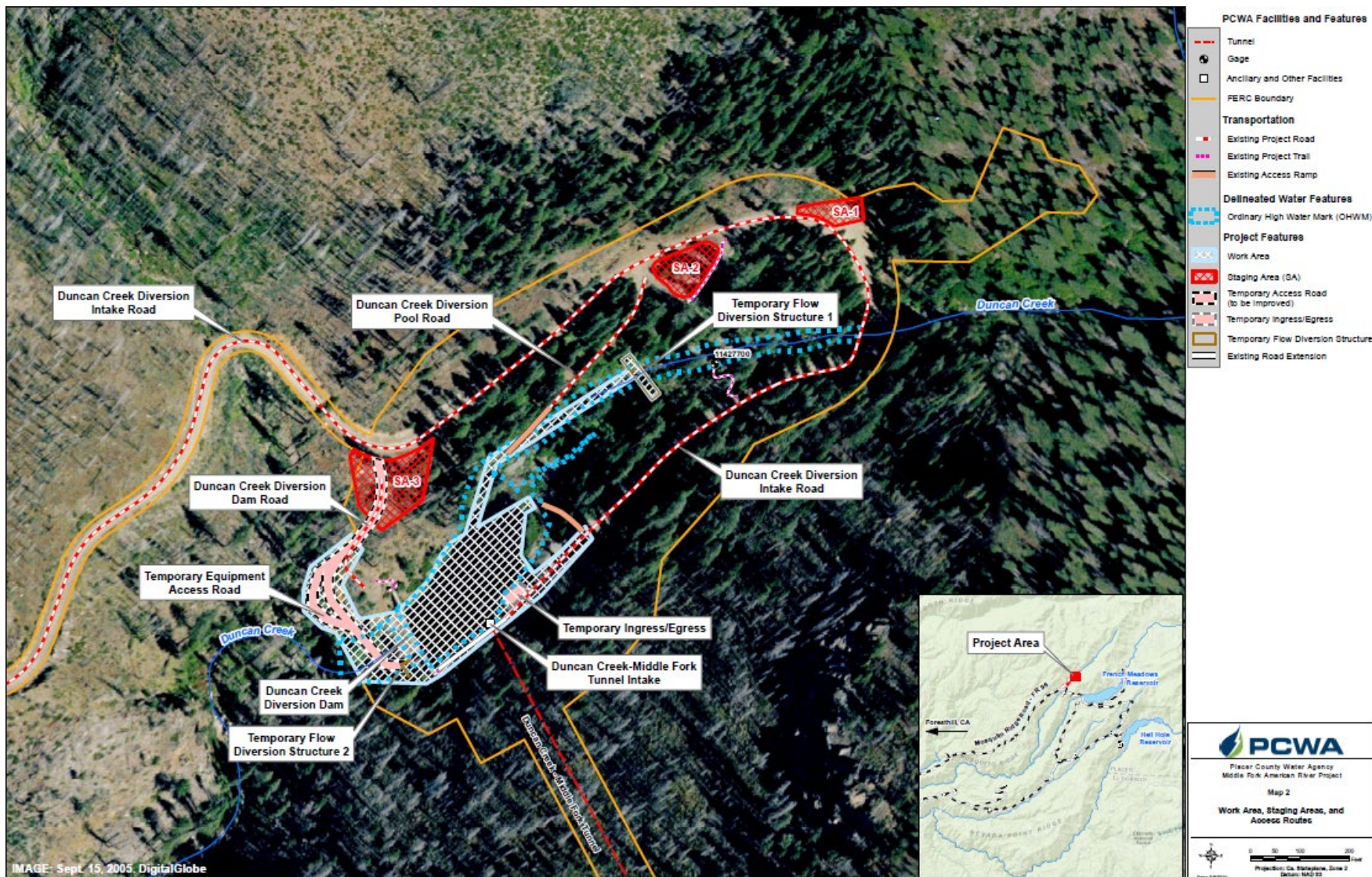


Figure B1. Overview Map of Duncan Creek Diversion Improvement Project (PCWA 2021a)