

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

In the Matter of Water Quality Certification for

**NEVADA IRRIGATION DISTRICT'S
WILSON CREEK DIVERSION CONDUIT REGULATING GATE INSTALLATION
PROJECT**

SOURCE: Wilson Creek

COUNTY: Nevada

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

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Acronyms and Abbreviations

<i>Aquatic Weed Control General Permit</i>	<i>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</i>
<i>BMPs</i>	<i>best management practices</i>
<i>CDFW</i>	<i>California Department of Fish and Wildlife</i>
<i>Central Valley Regional Water Board</i>	<i>Central Valley Regional Water Quality Control Board</i>
<i>CEQA</i>	<i>California Environmental Quality Act</i>
<i>certification</i>	<i>water quality certification</i>
<i>cfs</i>	<i>cubic feet per second</i>
<i>Deputy Director</i>	<i>Deputy Director of the Division of Water Rights</i>
<i>Dredge or Fill Procedures</i>	<i>State Wetland Definition and Procedures for Discharges of Dredged or Fill Materials to Waters of the State</i>
<i>ELAP</i>	<i>California's Environmental Laboratory Accreditation Program</i>
<i>ESA</i>	<i>Endangered Species Act</i>
<i>Executive Officer</i>	<i>Central Valley Regional Water Board Executive Officer</i>
<i>FERC</i>	<i>Federal Energy Regulatory Commission</i>
<i>Forest Service</i>	<i>United States Department of Agriculture-Forest Service</i>
<i>NID</i>	<i>Nevada Irrigation District</i>
<i>NPDES</i>	<i>National Pollutant Discharge Elimination System</i>
<i>NTU</i>	<i>Nephelometric Turbidity Unit</i>
<i>Project</i>	<i>Wilson Creek Diversion Conduit Regulating Gate Installation Project</i>
<i>Regional Water Boards</i>	<i>Regional Water Quality Control Boards</i>
<i>SNYLFs</i>	<i>Sierra Nevada yellow-legged frogs</i>
<i>SR/SJR Basin Plan</i>	<i>Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin</i>
<i>State Water Board</i>	<i>State Water Resources Control Board</i>
<i>TMDLs</i>	<i>total maximum daily loads</i>
<i>USEPA</i>	<i>United States Environmental Protection Agency</i>

1.0 Project Description

On November 18, 2021, Nevada Irrigation District (NID or Applicant) applied for a water quality certification (certification) for the Wilson Creek Diversion Conduit Regulating Gate Installation Project (Project). The Project is located in Nevada County (Figure 1) on United States Department of Agriculture-Forest Service land in the boundary of NID's Yuba-Bear Hydroelectric Project, which is also referred to as Federal Energy Regulatory Commission (FERC) Project No. 2266. The conduit is a facility of the Yuba-Bear Hydroelectric Project.

NID proposes to install and remove a Waterman regulating gate in the Wilson Creek Diversion Conduit to control the diversion of water. The Waterman regulating gate consists of a slide gate and valve, trash rack, and steel pipe. Installing the Waterman regulating gate would allow NID to more quickly and efficiently control its diversion of water and respond to water shortage conditions that require NID cease diversions. Under California water rights law, NID may need to reduce or cease diversions in response to curtailment orders issued by the State Water Resources Control Board (State Water Board) or to address other drought or water conservation-related needs or requirements.

Wilson Creek Diversion Conduit diverts water from Wilson Creek, a natural creek, and discharges to Milton-Bowman Conduit and Milton Reservoir, which is an impoundment of the Middle Yuba River (Figure 2). Flows diverted from Wilson Creek into the conduit are currently controlled using a hand-stacked rock dam. The gate will be installed immediately downstream of the hand-stacked rock dam and will be approximately six feet by six feet, with the rising stem and hand wheel extending approximately 6- to 12-inches above the elevation of the Wilson Creek Diversion Dam.

The Project Work Area includes an area 20-feet-upstream and 20-feet-downstream of the proposed Waterman regulating gate location (Figure 3). As the conduit is located in an incised bedrock channel, construction materials would be lowered into the conduit by an excavator staged on the existing Wilson Creek Diversion Road. Staging on the existing road would be limited to the disturbed road surface and shoulders. Per NID, the construction sequence is as follows:

- At the time of the Project application, the existing hand-stacked rock dam was in place and preventing flows in Wilson Creek from entering the conduit¹; therefore, the conduit is dry and NID does not anticipate the need to dewater the Work Area.
- Materials will be stockpiled in the staging area located on the existing Wilson Creek Diversion Road.
- Approximately 0.002 acre of shrubs (specifically mountain alders [*Alnus incana* ssp. *tenuifolia*]) on the banks of the Wilson Creek Diversion Conduit will be

¹ This certification does not cover the construction of the hand-stacked rock dam; however, this certification includes conditions to ensure that removal and any needed subsequent installation and/or removal of the hand-stacked rock dam in advance of the new regulating gate will be protective of water quality.

- hand-trimmed to allow for installation of the gate. Following construction, the shrubs will be allowed to re-establish along the conduit. Trimming of the shrubs will be completed, as necessary, on an ongoing basis to allow for continued access and operation of the gate.
- If water is present in the diversion conduit, a temporary cofferdam constructed of sandbags will be placed upstream of the work area to dewater the work area. Temporary piping will be installed to divert water from above the cofferdam through or around the work area. Following completion of the Project, the cofferdam and piping will be removed by hand.
 - An excavator will be used to lower all materials into the conduit and hand tools will be used to install the gate.
 - As the conduit channel is bedrock, which limits the potential for leveling or grading, sandbags, and a plastic liner if appropriate, will be placed to form the base for the new gate.
 - A 30-inch-diameter, 6-foot-long steel pipe will be placed on the base of the conduit. The sandbags and a welded ring will be placed around the steel pipe to provide stability.
 - A 30-inch Waterman regulating gate and valve will be installed on the upstream end of the steel pipe.
 - A steel grate trash rack will be installed on the upstream end of the gate and valve to limit debris from entering the gate and conduit.
 - Stabilizing bars will anchor the gate to the bedrock conduit walls via 0.25-inch bolts drilled into the walls of the conduit.
 - A rising stem and handwheel/crank will be installed at the top of the gate to allow for manual opening and closing of the slide gate.
 - A walkway will be placed over the top of the gate to provide personnel access for operation and maintenance of the gate.
 - Following installation of the gate, the hand-stacked rock dam will be removed, and all materials will be transported offsite.

According to NID, upon issuance of the new FERC license for the Yuba-Bear Hydroelectric Project, a new dam and diversion structure will be designed and installed in Wilson Creek (adjacent to the conduit), and the Waterman regulating gate and associated appurtenances in the Wilson Creek Diversion Conduit would be removed. The new dam and diversion structure would be designed in a way that allows NID to control water releases directly from the new diversion structure, such that the Waterman regulating gate is no longer needed and can be removed.

1.1 Water Rights

This certification does not authorize a new permanent water diversion nor modify NID’s existing water rights. Table A below lists the water rights held by NID for the Project.

Table A. Water Rights Held by NID for the Project

Application No.	Source	Priority Date	Place of Storage or Diversion	Purpose of Use
A008177 Licensed 7/10/1991	Wilson Creek	11/27/1934	Milton-Bowman Conduit, Bowman Lake	Irrigation, Domestic, Municipal
A008179 Licensed 7/10/1991	Wilson Creek	11/27/1934	Milton-Bowman Conduit, Bowman Lake	Power

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

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

Water Code section 13383 authorizes the State Water Board to “establish monitoring, inspection, entry, reporting, and recordkeeping requirements” and obtain “other information as may be reasonably required” for activities subject to certification under section 401 of the Clean Water Act. For activities that involve the diversion of water for

beneficial use, the State Water Board delegated this authority to the Deputy Director of the Division of Water Rights (Deputy Director), as provided for in State Water Board Resolution No 2012-0029 (State Water Board 2012). In the *Redelegation of Authorities* 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).

On September 8, 2021, NID requested a pre-filing meeting for the Project. On November 18, 2021, NID filed a certification application for the Project with the State Water Board under section 401 of the Clean Water Act. On January 6, 2022, 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.

On January 21, 2022, 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).) No comments were received.

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, 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 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 identifies beneficial uses for surface waters in the Yuba River, for sources to Englebright Reservoir, as: municipal and domestic supply; irrigation; stock watering; power; water contact recreation; canoeing and rafting; other noncontact recreation; cold freshwater habitat; cold spawning habitat; and wildlife habitat.

Species listed as threatened or endangered under the federal Endangered Species Act (ESA) that have the potential to occur in the Project area include the Sierra Nevada

yellow-legged frog (SNYLF). Although the Wilson Creek Diversion Dam is in the range of SNYLF, Wilson Creek is an ephemeral stream, and therefore, does not provide suitable breeding habitat. (CDFW, pers comm, 2022.) However, Wilson Creek may provide dispersal habitat when water is present. No SNYLF were observed during protocol level surveys conducted by NID in 2009 as part of the Yuba-Bear Hydroelectric Project (FERC Project No. 2266) relicensing. The California Department of Fish and Wildlife (CDFW) has requested preconstruction surveys be conducted for the Project and that CDFW be notified if SNYLF are identified in the Project area.

2.3 Clean Water Act Section 303(d) Listing

USEPA approved the 2018 303(d) list on June 9, 2021. 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.

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*](#) (Dredge or Fill Procedures),² which became effective on May 28, 2020. The Dredge or Fill Procedures provide California's definition of wetland, wetland delineation procedures, and procedures for submitting applications for activities that could result in discharges of dredged or fill material to waters of the state. The Dredge or Fill Procedures ensure that State Water Board regulatory activities will result in no net loss of wetland quantity, quality, or permanence, compliant with the *California Wetlands Conservation Policy*, Executive Order W-59-93. NID must comply with the Dredge or Fill Procedures when conducting dredge or fill activities that may impact waters of the state, including wetlands.

2.5 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)³ applies to projects that require aquatic weed management activities. The Aquatic Weed Control

² The Dredge or Fill Procedures are available online at:
https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/rs2021_0012.pdf. Accessed on January 14, 2022.

³ The Aquatic Weed Control General Permit is available online at:
https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/rs2021_0012.pdf. Accessed on January 14, 2022.

General Permit sets forth detailed management practices to protect water quality from pesticide and herbicide use associated with aquatic weed control.

2.6 California Environmental Quality Act

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

3.0 Overview 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.⁴ When preparing this certification, State Water Board staff reviewed and considered the following information:

- NID's application for certification (NID 2021);
- Recommendations provided by CDFW (CDFW, pers comm, 2022);
- Existing and potential beneficial uses, associated water quality objectives, and implementation measures and programs described in the SR/SJR Basin Plan;
- Project-related controllable water quality factors; and
- Other information in the record.

3.1 Rationale for Condition 1: Water Quality Monitoring

The Project involves modifications to Wilson Creek Diversion Conduit, potential dewatering and re-watering activities, use of an access road, trimming of vegetation, installation of new structures, and the removal to the newly installed structures. These activities have the potential to violate the SR/SJR Basin Plan's water quality objectives. Condition 1 requires NID 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

⁴ 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.

additions to NID's water quality protection measures included in this certification further ensure that the Project will not substantially impact water quality.

Dewatering, re-watering, and other in-water or water-adjacent work may increase turbidity above levels protective of beneficial uses. Beneficial uses in Wilson Creek that would be most impacted by increased turbidity include, but are not limited to, cold freshwater habitat, cold spawning habitat, and wildlife habitat. 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.

3.2 Rationale for Condition 2: Project Activities

Condition 2 requires NID to implement the Project as described in its certification application and as modified by this certification. This condition will help ensure that NID meets water quality objectives and avoids unreasonable impacts to beneficial uses. Any changes to the Project description after certification issuance could impact the findings, conclusions, and conditions of the certification, as well as trigger additional environmental review. This condition requires NID to implement the Project as describe in its Application for Water Quality Certification, Continuation Pages Section Two and Section Seven in order to ensure that this certification is protective of water quality and beneficial uses and covers all Project-related actions, including the removal of the regulating gate following installation of a new diversion dam and structure.

3.3 Rationale for Condition 3: 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, potential dewatering and re-watering, vegetation removal, and construction work in the diversion conduit, 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 existing beneficial uses including, but not limited to, wildlife habitat, cold freshwater habitat, municipal and domestic supply, and cold spawning habitat. This condition requires NID to implement erosion and sedimentation control measures to prevent water quality objective violations and unreasonable impacts to beneficial uses.

3.4 Rationale for Condition 4: Hazardous Materials Management

The Project involves construction using equipment that may require equipment refueling and/or 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 Wilson Creek that would be most impacted by hazardous materials include, but are not limited to, water contact recreation, cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 4 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.

3.5 Rationale for Condition 5: Project Activity Reporting

Condition 5 requires NID to notify the Central Valley Regional Water Board and State Water Board staff prior to implementing Project activities and to submit Project Completion Reports (Completion Reports) following construction and removal activities to document Project compliance with certification requirements. The Completion Reports will inform the Deputy Director of potential water quality objective violations and/or impacts to beneficial uses. This will provide for implementation of follow-up measures, if necessary, to limit or prevent any violations and/or impacts associated with Project implementation.

3.6 Rationale for Condition 6: Dewatering Measures

NID does not anticipate the need for dewatering due to the current presence of the hand-stacked rock dam that prevents flows in Wilson Creek from entering the conduit. However, the status of curtailments in Wilson Creek at the time of proposed construction is unknown. Therefore, in the event the hand-stacked rock dam is not in place when construction begins, NID may need to dewater the conduit as part of Project implementation. Installation and removal of temporary cofferdams or other artificial obstructions could violate turbidity water quality objectives and impact beneficial uses (e.g., dewater habitat and strand fish). Beneficial uses in Wilson Creek that would be most impacted by increased turbidity levels include, but are not limited to, cold freshwater habitat, cold spawning habitat, and wildlife habitat. Condition 6 imposes conditions on any dewatering activities, should they need to occur, to prevent water quality objective violations and impacts to beneficial uses.

3.7 Rationale for Condition 7: Aquatic Wildlife Measures

Condition 7 requires NID to implement aquatic wildlife measures as described in its application for certification and to conduct preconstruction surveys for special status species, including the SNYLF. Species listed as threatened or endangered under the federal ESA that have the potential to occur in the Project area include SNYLF. Although the Wilson Creek Diversion Dam is in the range of SNYLF habitat, Wilson Creek is an

ephemeral stream, and therefore, does not provide suitable breeding habitat (CDFW, pers comm, 2022). However, Wilson Creek may provide dispersal habitat when water is present. Preconstruction surveys are required to ensure that there are no Project-related impacts to SNYLF. If any SNYLF are observed during preconstruction surveys, CDFW must be notified and all construction activities will be halted until CDFW staff can complete an evaluation and ensure SNYLF will not be harmed.

3.8 Rationale for Condition 8: Environmental Awareness Training

Condition 8 requires NID to conduct a worker environmental awareness training program for all personnel who will work on-site. Special status species such as the SNYLF have the potential to occur in the Project area. The training program will ensure that all personnel are able to identify special status species and how to implement avoidance and minimization measures in order to reduce potential impacts to special status species and their habitat as a result of Project implementation.

3.9 Rationale for Conditions 9-29

This certification imposes additional conditions regarding Project approvals, monitoring, enforcement, and potential future revisions. Conditions 9 – 29 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 9 is necessary to comply with Water Code section 13167 and Conditions 10 – 126 are required by California Code of Regulations, title 23, section 3860, which requires imposition of these conditions for all certifications. Conditions 13 – 29 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 water quality standards themselves.

4.0 Conclusion

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

5.0 Water Quality Certification Conditions

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER RESOURCES CONTROL BOARD CERTIFIES THAT IMPLEMENTATION OF THE WILSON CREEK DIVERSION CONDUIT REGULATING GATE INSTALLATION 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

The Applicant shall monitor water quality associated with Project activities as outlined in this condition. Project activities requiring water quality monitoring include: installation of the regulating gate, removal of the hand-stacked rock dam, and removal of the regulating gate. Water quality monitoring also applies if the hand-stacked rock dam needs to be re-installed prior to installation of the regulating gate. Turbidity shall be maintained in accordance with the water quality objectives identified in the *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin* (SR/SJR Basin Plan) (Central Valley Regional Board 2018) and any amendments thereto. The water quality objectives for turbidity are summarized below.

Turbidity. The turbidity limits for in-water and water-adjacent work provided in the SR/SJR Basin Plan are:

- 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.

The Applicant shall conduct water quality monitoring during all work in and adjacent to waterways, including dewatering and re-watering activities. At a minimum, two monitoring locations in Wilson Creek shall be located: (1) approximately 50 feet upstream of the work area; and (2) no more than 400 feet downstream of the work area, at the locations identified on Map 3 of the certification application (NID 2021) (Figure 3). The Applicant shall take a global positioning system point and a photograph for each 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) approves the use of other locations.

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

- Monitor turbidity at 15-minute intervals using an automated sensor system; and
- Conduct visual inspections for turbidity plumes, oily sheens, and signs of construction-related pollutants⁵ continuously throughout the construction period.

The Applicant shall submit a monitoring report to State Water Board staff within 30 days of completing: (a) installation of the regulating gate; (b) removal of the hand-stacked rock dam; (c) removal of the regulating gate; and (d) any additional installations and removals of the hand-stacked rock dam completed before the installation of the regulating gage, if needed. Monitoring shall include the installation and removal of any cofferdam needed to implement the Project activities. The monitoring reports shall include the turbidity 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 water-adjacent work or 30 days prior to when the Applicant would like to modify its water quality monitoring. The request shall include the proposed modifications and supporting rationale.

CONDITION 2. Project Activities

Unless otherwise modified by conditions of this certification, the Applicant shall implement the Project as described in Nevada Irrigation District's November 18, 2021 water quality certification (certification) application for the Project (NID 2021) and any supplemental materials received prior to issuance of the

⁵ Visible construction-related pollutants may include oil, grease, foam, fuel, petroleum products, uncured concrete, and construction-related excavated, organic, or earthen material.

certification or otherwise approved by the Deputy Director. This includes all measures described in Section Eight of the application for certification (NID 2021).

In addition to the measures described in Section Eight of NID's application for certification, Section Seven of the attached Continuation Pages states that upon issuance of the new Federal Energy Regulatory Commission (FERC) license for the Yuba-Bear Hydroelectric Project (FERC Project No. 2266), a new dam and diversion structure will be designed and installed in Wilson Creek, and the Waterman regulating gate and associated appurtenances in the Wilson Creek Diversion Conduit will then be removed. If removal activities occur after the life span of this Project certification, the Applicant shall obtain all required federal and state permits needed for removal of the regulating gage and associated appurtenances, including but not limited to, a section 401 certification.

The trash rack shall be inspected and maintained to ensure it is kept clear of all debris on a regular basis. Any debris removed from the trash rack shall be disposed of in a manner protective to water quality and such that waste materials are not conveyed to surface waters.

CONDITION 3. Erosion and Sediment Control

The Applicant shall implement erosion, sedimentation, and turbidity control measures as described below:

- 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.
- 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 forecast during construction or removal, all stockpiles shall be covered with plastic and surrounded with sediment control technologies or berms to prevent sediment run-off.
- 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.
- Upon Project completion, the Applicant shall inspect the Project site for signs of excessive erosion or other water quality impairment. The Applicant shall provide its observations to State Water Board staff no more than two weeks following the 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 address the erosion or

impairment and 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 4. Hazardous Materials Management

The Applicant shall implement hazardous materials⁶ control measures as described in United States Department of Agriculture-Forest Service (Forest Service) *Water Quality Management for Forest System Lands in California, Best Management Practices* (Forest Service 2000) and USDA-FS *National Best Management Practices for Water Quality Management on National Forest System Lands* (Forest Service 2012) and as listed below:

- a) 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 in a manner that prevents them from spilling on the ground or reaching surface waters. Secondary containment equipment shall be specifically designed for hazardous material storage and sized to contain the most likely volume of hazardous material that could be spilled. Secondary containment must be positioned to catch any hazardous material spills due to overfilling the equipment or any other spills that may occur. In-situ construction equipment refueling and/or maintenance shall be conducted in a manner that prevents fuels or oils from spilling on the ground or reaching water ways. Service and refueling areas shall include secondary containment including drip pans and/or placement of absorbent material. In the event a spill is not captured by the secondary containment, it shall be considered hazardous waste and must be removed and disposed in accordance to local and state requirements.
- b) When not in use, equipment shall be stored in upland areas outside the ordinary high-water mark of Wilson Creek and the Wilson Creek Diversion Conduit, as described in Section Six of the Project certification application (NID 2021).
- c) 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., excavators) within 100 feet of waterways shall be parked over secondary containment.
- d) Containment areas shall include secondary containment. All containment structures shall comply with California Code of Regulations, title 27, section 20320.

⁶ 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.

- e) Any water contaminated by hazardous materials shall be stored according to items (a) and (d) in this condition and disposed of properly off-site in a manner that does not impair water quality.
- f) 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 shall be pumped out and disposed of in accordance with applicable laws and regulations.

The Applicant shall immediately cease any activities that result in the release of a hazardous substance and implement measures to limit and clean up the release of hazardous materials. The Applicant shall report the release and actions taken to the Deputy Director and Executive Officer within 24 hours of the event. The Deputy Director may require implementation of additional actions in response to the information provided following a release of hazardous materials or other information indicating a threat to water quality or beneficial uses.

CONDITION 5. Project Activity Reporting

At least seven days prior to starting Project activities (e.g., installation of the regulating gate, removal of the hand-stacked rock dam), the Applicant shall notify the Central Valley Regional Water Board and State Water Board staff that Project activities are anticipated to begin and provide a brief description of the anticipated schedule for that element of Project implementation.

The Applicant shall submit a Project Activity Completion Report (Completion Report) to the Deputy Director following completion of: (a) installation of the regulating gage; (b) installation of a hand-stacked rock dam; (c) removal of the regulating gate; and (d) any additional installation or removal of a hand-stacked rock dam necessary prior to installation of the regulating gage. The Completion Report shall include:

- A summary of Project activities performed for the relevant activity (e.g., installation or removal of the regulating gage), including any dewatering actions that may have been implemented;
- Documentation of compliance with each condition of this certification and details of any failure to meet the certification requirements;
- Details of Project-related adverse impacts to beneficial uses, if applicable; and
- Any anticipated Project implementation activities (e.g., construction, dewatering, or diversion) differing from those described in the Project certification application or conditions required by this certification.

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

CONDITION 6. Dewatering Measures

In the event the Wilson Creek Diversion Conduit must be dewatered to complete Project activities, the Applicant shall implement the following measures:

- Unless otherwise approved by the Deputy Director, dewatering shall only occur in the Project area as described in Section Two, subsection *Work and Staging Area*, of the Project certification application, and in the Dewatering Plan (NID 2022).
- At least seven days prior to installation of a cofferdam, the Applicant shall notify the Deputy Director that the Wilson Creek Diversion Conduit must be dewatered and a cofferdam or other artificial obstruction must be installed. The notification shall indicate the location of the cofferdam or other artificial obstruction, as well as the schedule for installation and removal of the cofferdam or other artificial obstruction.
- Any temporary dam or other artificial obstruction being constructed, maintained, or placed in operation, shall not impede flow in Wilson Creek. The Applicant shall at all times ensure sufficient water is allowed to pass downstream to maintain beneficial uses. Unless otherwise approved by the Deputy Director, the Applicant shall maintain the minimum instream flows in the FERC license for the Yuba-Bear Hydroelectric Project (FERC Project No. 2266). Construction, dewatering, and removal of temporary cofferdams shall not violate Condition 1 or other provisions of this certification. The cofferdam shall not obstruct flows in Wilson Creek.
- Any cofferdam 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.
- No more than 14 days following completion of the installation or removal of the regulating gate, the Applicant shall remove the entire cofferdam or other artificial obstruction.
- This certification does not authorize permanent water diversion of flow from the receiving water or any other permanent dewatering measure.
- The Applicant shall work with the Central Valley Regional Water Board to obtain coverage under a National Pollutant Discharge Elimination System permit if dewatering may result in discharges to surface water.

CONDITION 7. Aquatic Wildlife Measures

The Applicant shall install the trench plate/slide gate in the dry portion of the conduit channel, immediately downstream of the hand-stacked rock dam. The Applicant shall not use tightly woven fiber netting or similar material as part of Project implementation. Plastic mono-filament netting or similar material shall not be used for erosion control or other purposes within suitable habitat for Sierra Nevada yellow-legged frogs (SNYLFs) (82 feet of perennial or intermittent waterbodies), as individuals may become entangled or trapped in it.

Additionally, within three to five days prior to implementation of any Project activities, the Applicant shall conduct preconstruction visual encounter surveys for SNYLFs.

Preconstruction surveys shall:

- Be conducted by a qualified biologist.
- Consist of visual monitoring efforts within 500 feet upstream and downstream of the Project location along Wilson Creek.
- If any SNYLFs are observed during preconstruction surveys, the California Department of Fish and Wildlife (CDFW) shall be immediately notified and all construction activities shall be halted until an evaluation by CDFW staff is completed and re-initiation of construction activities is approved.

CONDITION 8. Environmental Awareness Training

Environmental awareness training shall be provided to all personnel prior to going out to the Project site. The training shall, at a minimum, include:

- A review of special-status species including pictures.
- A review of special-status habitat including primary constituent elements of each habitat.
- A review of the avoidance and protection measures that must be implemented to minimize the potential for effects to these species and habitats.
- A review of applicable elements of the Project certification to ensure personnel implement measures to protect water quality and beneficial uses.

The Applicant shall direct its staff and all contractors to: (a) avoid disturbance of sensitive species and areas, (b) to stop work and contact CDFW upon discovery of a special-status species in the Project area, and (c) implement certification conditions and notify the Applicant immediately if water quality or beneficial uses may be impacted by activities associated with Project implementation.

CONDITIONS 9 – 29

CONDITION 9. 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 10. 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 11. 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 12. This certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28.

CONDITION 13. 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 14. 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 15. 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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 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 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 24. 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 25. A copy of this certification shall be provided to any staff, contractors, and 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 staff, contractor, subcontractors, or other persons conducting Project-related work.

CONDITION 26. 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 27. The Applicant 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*⁷ (State Water Board 2019) and the California Wetlands Conservation Policy (Governor's Executive Order W-59-93 (August 23, 1993)), and any amendments thereto.

CONDITION 28. The Applicant 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*⁸ (State Water Board 2013), and ongoing amendments during the life of the Project.

CONDITION 29. 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.



Eileen Sobeck
Executive Director

February 17, 2022

Date

⁷ Available online at:

https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp/rs2021_0012.pdf. Accessed on January 14, 2022.

⁸ 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: January 14, 2022.

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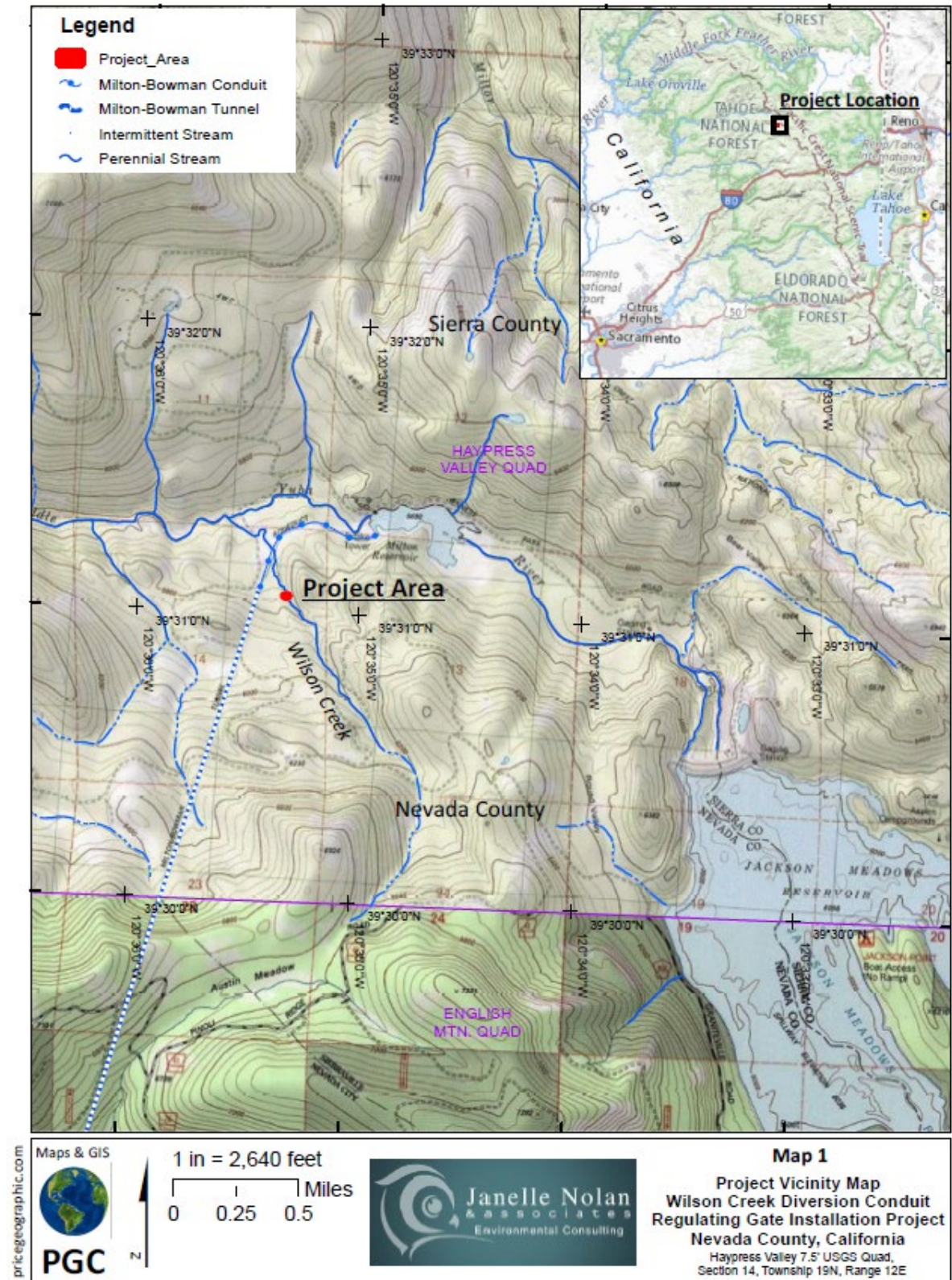
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Figure 1. Project Vicinity Map: Wilson Creek Diversion Conduit Regulating Gate Installation Project



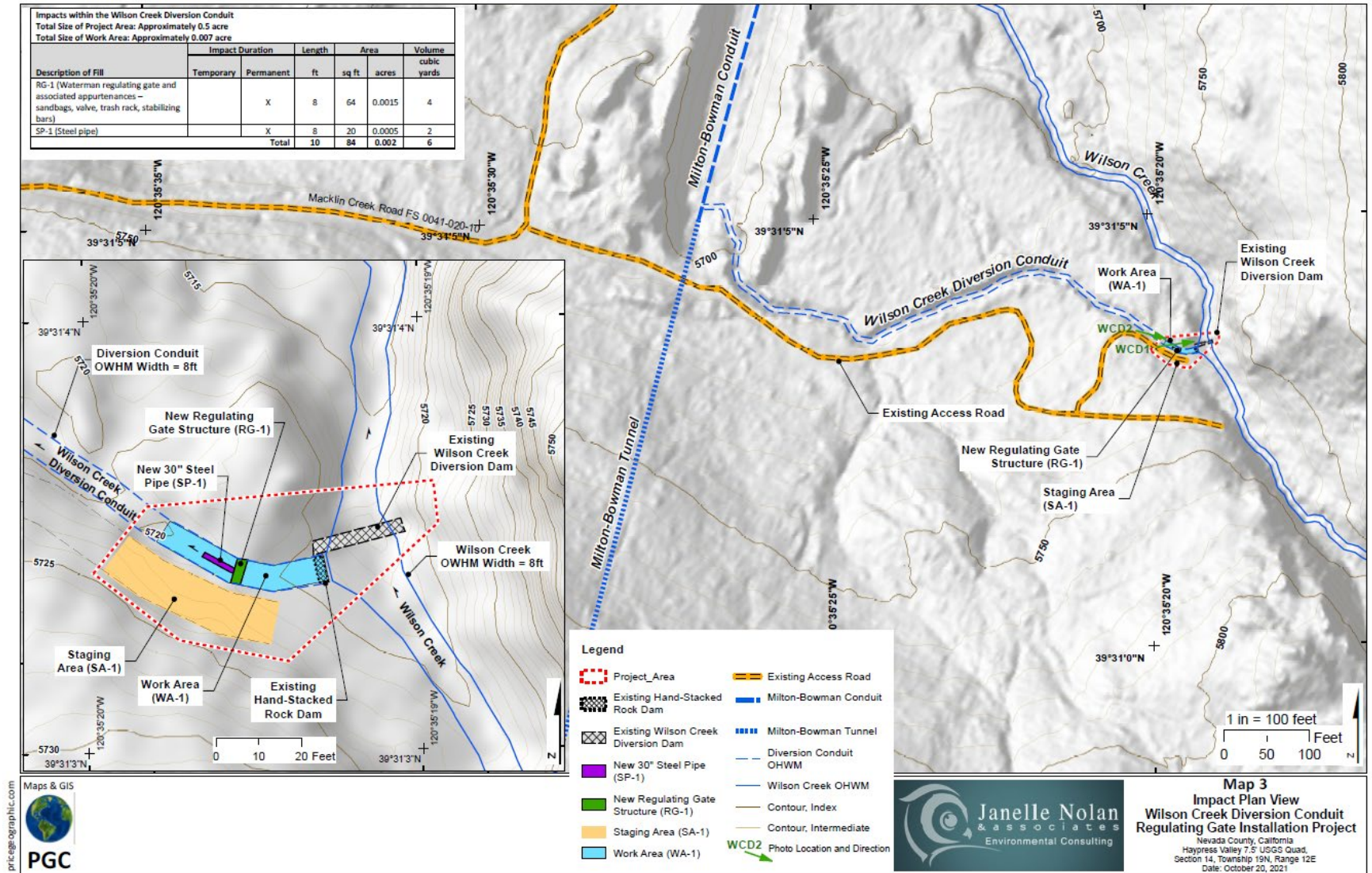
Source: NID CWA 401 water quality certification application maps

Figure 2. Project Location: Wilson Creek Diversion Conduit Regulating Gate Installation Project



Source: NID CWA 401 water quality certification application maps

Figure 3. Impact Plan View: Wilson Creek Diversion Conduit Regulating Gate Installation Project



Source: NID CWA 401 water quality certification application maps

