
State Water Resources Control Board

NOTICE OF OPPORTUNITY TO RESPOND TO PETITION FOR RECONSIDERATION OF WATER QUALITY CERTIFICATION FOR YUBA-BEAR HYDROELECTRIC PROJECT, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2266

NOTICE IS HEREBY GIVEN THAT the State Water Resources Control Board (State Water Board) has received a timely petition for reconsideration (Petition) of its water quality certification (certification) for the Yuba-Bear Hydroelectric Project (Project) from Nevada Irrigation District (NID or Petitioner). The Petition was filed pursuant to California Code of Regulations, title 23, section 3867.

BACKGROUND

The Project, which is owned and operated by NID, is undergoing relicensing before the Federal Energy Regulatory Commission (FERC). The Project is located on the South Yuba, Middle Yuba, and Bear rivers in Sierra, Nevada, and Placer counties. On March 15, 2012, NID filed a request with the State Water Board for Clean Water Act section 401 certification of the Project. (33 U.S.C. § 1341.) On January 25, 2019, the State Water Board denied without prejudice the most recent certification application submitted by NID. On February 19, 2019, NID requested that FERC determine that the State Water Board had waived its certification authority. On April 16, 2020, FERC granted NID's waiver request and determined that the State Water Board had waived its certification authority. On August 14, 2020, the Executive Director issued certification for the Project. Following litigation, on August 4, 2022, the U.S. Court of Appeals for the Ninth Circuit vacated and remanded FERC's finding that the State Water Board had waived its certification authority. On September 13, 2023, FERC noted that the State Water Board did not waive its certification authority for the Project and directed NID to submit additional information to FERC.

Within 30 days of issuance the final certification for the Project, the State Water Board received the Petition. The Petition is available as described in the *Availability of Documents* section below.

AVAILABILITY OF DOCUMENTS

Copies of the Petition and associated documents have been uploaded to a [File Transfer Protocol \(FTP\) site](#). Please use the following information to access the documents on the FTP site:

FTP Webpage Address: <https://ftp.waterboards.ca.gov/>
User Name: dwr-wqc-yuba-bear-petition-2020-ftp
Password: 08zfQPsp!{?KOQT0NC}\$3=uNL

If you have difficulty accessing the documents on the FTP site, please email WR401program@waterboards.ca.gov to arrange for an alternative method to access the documents. Responses received in answer to this notice will also be made available on the FTP site within 10 days of the deadline for responses.

Additional documents related to the Project, including the certification, are available on the State Water Board's webpage for the [Project](#)¹.

SUBMISSION OF RESPONSES TO PETITION

Any party or person wishing to file a response to the Petition with the State Water Board shall do so by 5:00 pm on March 5, 2024, as directed below. (Cal. Code Regs., tit. 23, § 3867.1.) Copies of responses must also be submitted to the Executive Officer of the Central Valley Regional Water Quality Control Board and the Petitioner, at the following electronic or mailing addresses:

Patrick Pulupa
Executive Officer
Central Valley Regional Water Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Patrick.Pulupa@waterboards.ca.gov

Andrew J. McClure
Minasian, Meith, Soares, Sexton &
Cooper, LLP
PO Box 1679
Oroville, CA 95945
Amcclure@minasianlaw.com
(Representing NID)

Electronic submittal of responses is preferred. Responses submitted to the State Water Board should be sent electronically to: WR401program@waterboards.ca.gov or hard copies can be mailed to:

Adam Cohen
State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
P.O. Box 2000
Sacramento, CA 95812-2000

EX PARTE DISCLOSURE REQUIREMENTS

Reconsideration of the certification is subject to the prohibition on ex parte communications, as described in a [Memo from the State Water Board's Office of the Chief Counsel](#) (http://www.waterboards.ca.gov/laws_regulations/docs/exparte.pdf). In general, communications about certain pending matters, such as reconsideration of the certification, in the absence of other parties and without notice and opportunity for all parties to participate in the communication are prohibited.

Any communications regarding reconsideration of the certification (except for non-controversial procedural matters) must occur at a publicly noticed meeting or workshop, or be submitted in writing and copied to the above-listed parties.

¹https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/yubabear_ferc2266.html

QUESTIONS REGARDING THIS NOTICE

If you have questions concerning this notice, please contact Adam Cohen by email at Adam.Cohen@waterboards.ca.gov, or by phone at: (916) 322-9258.

STAY INFORMED

To receive emails related to the Project and other projects pursuing certifications managed by the State Water Board's Division of Water Rights, interested persons should enroll in the "Water Rights Water Quality Certification" email notification service. Instructions on how to sign up for the State Water Board's email notification service are outlined below:

1. Visit the [State Water Board's Email Subscriptions Updates webpage](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml#rights) at: http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml#rights
2. Provide your email in the required field, then click the "Submit" button.
3. In the next page, below Subscription Topics, select "Water Rights," then "Water Rights Water Quality Certification."
4. Click the "Submit" button.
5. An email will be sent to you. You must respond to the email message to confirm your membership on the selected topic(s).

By enrolling in this email notification service, you will receive notices for other current projects overseen by the Division of Water Rights' Water Quality Certification Program, including the Project. If you do not have internet access or do not wish to participate in the email notification service, you may contact Adam Cohen by phone at (916) 322-9258 to request to receive notices for the Project by mail. You can enroll or unenroll from the email notification service at any time.

Parker Thaler
Parker Thaler
Water Quality Certification Program Manager

2/12/24
Date

ec: Petitioners (emails listed above)

Patrick Pulupa, Executive Officer
Central Valley Regional Water Quality Control Board
Email: Patrick.Pulupa@waterboards.ca.gov

Debbie-Anne Reese, Acting Secretary
Federal Energy Regulatory Commission
Filed via FERC e-Library to Project Dockets

cc: Interested Parties List