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## State Water Resources Control Board

### **NOTICE OF OPPORTUNITY TO RESPOND TO PETITIONS FOR RECONSIDERATION OF WATER QUALITY CERTIFICATION FOR MERCED RIVER HYDROELECTRIC PROJECT AND MERCED FALLS HYDROELECTRIC PROJECT FEDERAL ENERGY REGULATORY COMMISSION PROJECT NOS. 2179 AND 2467**

**NOTICE IS HEREBY GIVEN THAT** the State Water Resources Control Board (State Water Board) has received timely petitions for reconsideration (Petitions) of its water quality certification (certification) for the Merced River Hydroelectric Project and Merced Falls Hydroelectric Project (collectively, Projects) from the following parties (collectively, Petitioners):

1. Merced Irrigation District (MID); and
2. Gallo Vineyards, Inc. and G3 Enterprises, Inc.

The Petitions were filed pursuant to California Code of Regulations, title 23, section 3867.

#### **BACKGROUND**

The Projects, which are owned and operated by MID, are undergoing relicensing before the Federal Energy Regulatory Commission (FERC). The Projects are located on the Merced River in Merced and Mariposa counties. On July 31, 2020, the State Water Board's Executive Director issued a certification for the Projects, pursuant to section 401 of the Clean Water Act (33 U.S.C. § 1341). Within 30 days of certification issuance, the State Water Board received the above listed Petitions. The Petitions are available as described in the *Availability of Documents* section below.

#### **AVAILABILITY OF DOCUMENTS**

Copies of the Petitions 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:** Merced-FTP  
**Password:** NG6Sp8JXTO2QGLbl

If you have difficulty accessing the documents on the FTP site, please email [WR401program@waterboards.ca.gov](mailto: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.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Additional documents related to the Projects, including the certification, are available on the State Water Board's webpages for the [Merced River Hydroelectric Project](#)<sup>1</sup> and [Merced Falls Hydroelectric Project](#)<sup>2</sup>.

**SUBMISSION OF RESPONSES TO PETITIONS**

**Any party or person wishing to file a response to the Petitions with the State Water Board shall do so by 4:00 pm on November 18, 2022, 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 Petitioners at the following hard copy or email 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](mailto:Patrick.Pulupa@waterboards.ca.gov)

Colin L. Pearce  
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One Market Plaza, Suite 2200  
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Jolie-Anne S. Ansley  
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Thomas M. Berliner  
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Craig A. Carnes  
Ellison Schneider Harris and Donlan LLP  
2600 Capitol Ave. Suite 400  
Sacramento, CA 95816  
(*Representing Gallo Vineyards, Inc. and G3 Enterprises, Inc.*)

Phillip R. McMurray  
Merced Irrigation District  
744 W. 20<sup>th</sup> Street  
Merced, CA 95340  
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Tim Byrd  
Gallo Vineyards, Inc. and G3  
Enterprises, Inc.  
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Modesto, CA 95354

Michael N. McCarty  
Michael N. McCarty Law Office LLP  
1050 30<sup>th</sup> Street, NW  
Washington, DC 20007  
[michael@mccarty-legal.com](mailto:michael@mccarty-legal.com)

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<sup>1</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/mercedriver\\_ferc2179.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/mercedriver_ferc2179.html)

<sup>2</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/mercedfalls\\_ferc2467.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/mercedfalls_ferc2467.html)

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

Philip Meyer  
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) ([http://www.waterboards.ca.gov/laws\\_regulations/docs/exparte.pdf](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.

### **QUESTIONS REGARDING THIS NOTICE**

If you have questions concerning this notice, please contact Philip Meyer by email at [Philip.Meyer@waterboards.ca.gov](mailto:Philip.Meyer@waterboards.ca.gov) or by phone at (916) 341-5369.

### ***KEEP INFORMED OF PROJECT MILESTONES***

To receive emails related to the Projects and other hydroelectric and water diversion projects subject to water quality certification, interested persons should enroll in the "Water Rights Water Quality Certification" e-mail notification service. Instructions on how to sign up for the [State Water Board's Email Subscription List](#) are outlined below:

1. Visit:

[http://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.shtml](http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml)

2. Provide your name and email in the required fields.

3. In the categories below the email and name fields, select "Water Rights," then "Water Rights Water Quality Certification."

4. Click the "Subscribe" button.

5. An email will be sent to you. You must respond to the email message to confirm your membership on the selected list(s).

By enrolling in this email list, you will receive notices for Division of Water Rights' Water Quality Certification Program pertaining to the certification process for hydroelectric and other water diversion projects. If you do not have internet access or do not wish to participate in the email subscription list, you may contact Mr. Philip Meyer by phone at (916) 341-5369 to request to receive notices by mail. You can enroll or un-enroll from the email subscription service at any time.

  
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Erin Ragazzi  
Assistant Deputy Director  
Division of Water Rights

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October 17, 2022  
Date

ec: Petitioners (emails listed above)

Patrick Pulupa, Executive Officer  
Central Valley Regional Water Quality Control Board  
**Email: [Patrick.Pulupa@waterboards.ca.gov](mailto:Patrick.Pulupa@waterboards.ca.gov)**

Kimberly Bose, Secretary  
Federal Energy Regulatory Commission  
**Filed via FERC e-Library to Projects Dockets**

cc: Interested Parties List