State Water Resources Control Board

June 27, 2024

Mr. Bryan Kelly, Deputy General Manager
Merced Irrigation District
744 W. 20th Street
Merced, CA 95340
Sent via email: bkelly@mercedid.org

Merced River Hydroelectric Project and Merced Falls Hydroelectric Project
Federal Energy Regulatory Commission Project Nos. 2179 and 2467
Merced and Mariposa Counties
Merced River and Tributaries

Comments on Merced Irrigation District Notice of Intent to Rely on Federal Energy Regulatory Commission Final Environmental Impact Statement for the Merced River Hydroelectric Project and Merced Falls Hydroelectric Project

Dear Mr. Kelly:

On May 29, 2024, Merced Irrigation District (Merced ID) issued a Notice of Availability (NOA) for a Notice of Intent (NOI) to rely on the Federal Energy Regulatory Commission's (FERC) Final Environmental Impact Statement (FEIS) with mandatory conditions, in combination with a Supplemental Analysis, to satisfy California Environmental Quality Act (CEQA) requirements for the Merced River Hydroelectric Project (Merced River Project) and Merced Falls Hydroelectric Project (Merced Falls Project) (collectively Merced Projects). Enclosed are State Water Resources Control Board (State Water Board or Board) staff comments on Merced ID's NOI.

Background on Project Applications

Merced ID is seeking to relicense the Merced Projects with FERC. Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires any applicant for a federal license or permit for an activity that may result in any discharge to navigable waters to obtain water quality certification (certification) from the State that the activity will comply with the applicable water quality requirements, including the requirements of section 303 of the Clean Water Act (33 U.S.C. § 1313) for water quality standards and implementation plans. Clean Water Act section 401 directs that certifications shall prescribe effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with any other appropriate requirements of state law, such as the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.). Conditions of a certification shall become a condition of any federal license or permit subject to the certification. The Merced Projects will result in a discharge to navigable waters and

must obtain certification from the State Water Board as part of the FERC relicensing for continued operations.

A certification issued by the State Water Board for the Merced Projects must ensure compliance with the water quality standards in the Central Valley Regional Water Quality Control Board's (Central Valley Regional Water Board) *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin* (SR/SJR Basin Plan) (Central Valley Regional Water Board, 2019) and the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Bay-Delta Plan) (State Water Board, 2018). Water quality control plans designate the beneficial uses of water that are to be protected, water quality objectives for the reasonable protection of the beneficial uses and 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 contained in the water quality control plans, and applicable antidegradation requirements, constitute California's water quality standards for purposes of the Clean Water Act. The San Francisco Bay/ Sacramento-San Joaquin Delta Estuary (Bay-Delta) is a critically important natural resource that is both the hub of California's water supply system and the most valuable estuary and wetlands system on the West Coast. Because diversions of water within and upstream of the Bay-Delta Estuary are a driver of water quality in the Bay-Delta watershed, much implementation of the Bay-Delta Plan relies on the combined water quality and water right authority of the State Water Board. In issuing water quality certification for a project, the State Water Board must ensure consistency with the designated beneficial uses of waters affected by the project, the water quality objectives developed to protect those uses, and antidegradation requirements. (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology* (1994) 511 U.S. 700, 714, 719.)

The Merced River Project's facilities are located on the main stem of the Merced River in Mariposa County. The Merced Falls Project's facilities are located on the Merced River on the border of Merced and Mariposa Counties. Other waterbodies associated with the Merced Projects include Lake McClure and McSwain Reservoir. 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 existing beneficial uses for Lake McClure and McSwain Reservoir are: irrigation; power; contact recreation; other non-contact recreation; warm and cold freshwater habitat; and wildlife habitat. Additionally, municipal and domestic supply is a potential beneficial use for Lake McClure and McSwain Reservoir. The existing beneficial uses from McSwain Reservoir to the San Joaquin River are: municipal and domestic water supply; stock watering; process; service supply; power; contact recreation; canoeing and rafting; other non-contact recreation; warm and cold freshwater habitat; warm and cold migration; warm and cold spawning; and wildlife habitat.

The Merced River is a tributary to the Lower San Joaquin River and the Bay-Delta. In addition to the beneficial uses listed in the SR/SJR Basin Plan, the beneficial uses identified in the Bay-Delta Plan for the Bay-Delta are: municipal and domestic supply; industrial service supply; industrial process supply; agricultural supply; groundwater recharge; navigation; water contact recreation; non-contact water recreation; shellfish harvesting; commercial and sport fishing; warm freshwater habitat; cold freshwater

habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; estuarine habitat; wildlife habitat; and rare, threatened, or endangered species.

On April 15, 2024, the State Water Board received water quality certification (certification) applications from Merced ID for the Merced Projects pursuant to section 401 of the Federal Clean Water Act (33 U.S.C. § 1341). Per Merced ID's certification applications, Merced ID was in the process of preparing a CEQA document and intends to complete its CEQA process by the end of 2024.

On May 15, 2024, the State Water Board issued a letter notifying Merced ID that the certification applications are complete pursuant to California Code of Regulations, title 23, section 3835, subdivision (c). Also on May 15, 2024, Merced ID filed with FERC a status report regarding its activities related to obtaining certification for the Merced Projects. The report to FERC noted that Merced ID intends to start tribal consultation and issue an NOI to rely on FERC's FEIS, in combination with a Supplemental Analysis to satisfy CEQA. In the status report, Merced ID further noted its intent to adopt a final CEQA Negative Declaration or Mitigated Negative Declaration by the end of March 2025. MID's proposed timeline for adoption of a final CEQA document provides the Board with limited and potentially insufficient time to review a final CEQA document for the Merced Projects before taking action on the applications by the one-year deadline of April 15, 2025.

State Water Board staff submit the enclosed comments pertaining to Merced ID's NOI to rely on FERC's FEIS and Supplemental Analysis for the Merced Projects CEQA process.

If you have questions regarding this letter please contact Bryan Muro, Merced Project Manager, by email to: Bryan.Muro@waterboards.ca.gov, or by phone call to: (916) 327-8702. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights – Water Quality Certification Program
Attn: Bryan Muro
P.O. Box 2000
Sacramento, CA 95812-2000

Sincerely,

Bryan Muro

Bryan Muro
Water Resources Control Engineer
Water Quality Certification Program
Division of Water Rights

Enclosure: Comments on Merced Irrigation District's Notice of Intent to Rely on Federal Energy Regulatory Commission's Final Environmental Impact Statement for the Merced River and Merced Falls Hydroelectric Projects

ec: Ms. Debbie-Ann Reese, Acting Secretary
Federal Energy Regulatory Commission
Via e-filing to dockets P-2179 and P-2467

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ENCLOSURE:
COMMENTS ON MERCED IRRIGATION DISTRICT'S NOTICE OF INTENT TO RELY ON FEDERAL ENERGY REGULATORY COMMISSION'S FINAL ENVIRONMENTAL IMPACT STATEMENT FOR THE MERCED RIVER AND MERCED FALLS HYDROELECTRIC PROJECTS

State Water Resources Control Board (State Water Board or Board) staff are providing the following comments on Merced Irrigation District's (Merced ID) Notice of Intent (NOI) to rely on the Federal Energy Regulatory Commission's (FERC) Final Environmental Impact Statement (FEIS) for the Merced River Hydroelectric Project (Merced River Project, FERC Project No. 2179) and Merced Falls Hydroelectric Project (Merced Falls Project, FERC Project No. 2467) (collectively Merced Projects).

1. Compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) is required as part of the water quality certification process. CEQA Guidelines define the lead agency as "the public agency which has the principal responsibility for carrying out or approving a project." (Cal. Code Regs., tit. 14, § 15367.) As noted in the NOI, Merced ID intends to act as the lead agency for the purposes of CEQA. The State Water Board will act as a responsible agency for the purposes of CEQA.

   CEQA requires the lead agency to evaluate a project's potential impacts to environmental resources as well as identify mitigation measures and alternatives to reduce project impacts. CEQA also requires public input on identified impacts and mitigation measures. CEQA documentation must analyze and evaluate a project's potential impacts to all relevant resources, including aquatic biological resources, special status species, and water quality standards and other provisions of applicable water quality control plans and policies.

2. Under *County of Butte*, Merced ID must comply with CEQA by evaluating reasonable alternatives and mitigation, and is not preempted from considering mitigation that may conflict with a FERC license: On page nine of the NOI, Merced ID states:

   > The California Supreme Court ruled that a California government agency licensee generally must comply with CEQA in connection with FERC licensing or relicensing of a project in the state (County of Butte v. Department of Water Resources, 13 Cal.5th 612, decided Aug. 1, 2022). The court explained that the CEQA document serves as an informational source for the California agency's own decision-making regarding relicensing. It informs the decision about whether to accept the particular license and its terms and conditions, whether to request FERC to incorporate other terms into the license or seek reconsideration by FERC, and potential mitigation measures that may fall outside of FERC's jurisdiction. CEQA review also aids the assessment of options going forward.
   >
   > However, since FERC is a federal agency implementing a federal law (FPA [Federal Power Act]), the County of Butte court also concluded that CEQA is preempted by federal law to the extent that a CEQA requirement or action interferes or is inconsistent with the FERC license, FERC relicensing process under federal law, or FERC's

> exclusive jurisdiction over the FERC-licensed project. For example, Merced ID may be barred from incorporating mitigation measures under CEQA that would conflict with a term of the FERC license.

State Water Board staff note that Merced ID's statement diverges from the California Supreme Court's *County of Butte* opinion in several respects. As an initial matter, Merced ID's characterization of "FERC's exclusive jurisdiction over the FERC-licensed project" is not supported by the California Supreme Court's opinion. In *County of Butte*, the Court acknowledged FERC's exclusive licensing authority ((2022) 13 Cal.5th 612, 620, 634, 635) as well as its sole jurisdiction over licensing processes (see, e.g., *Id.* at p. 620), but also noted that the FPA and Clean Water Act provide roles for states in FERC-licensed projects through savings clauses and Clean Water Act section 401 water quality certifications. (*Id.* at pp. 623, 631.)

Second, in *County of Butte*, the Court explained that when the FERC licensee is an agency of the state such as Merced ID, the CEQA document "also informs decision-making about potential measures that may be outside of *or compatible with* FERC's jurisdiction." (13 Cal.5th at p. 620, emphasis added.) Merced ID's statement that CEQA informs "potential mitigation measures that may fall outside of FERC's jurisdiction" would omit consideration of mitigation or other measures that may be compatible with FERC's jurisdiction, such as those compatible with a FERC license's terms and conditions. Merced ID's statement also presumes that mitigation or other measures that exceed the requirements imposed by terms of a FERC license will necessarily conflict with the FERC license and be preempted. State Water Board staff are concerned that Merced ID's characterization of *County of Butte* could result in premature narrowing of the scope of mitigation and alternatives considered through CEQA. State Water Board staff note that CEQA, which the NOI acknowledges Merced ID must comply with, requires the consideration of a reasonable range of project alternatives and mitigation measures for each potentially significant environmental impact. (Cal. Code Regs., tit. 14, § 15126.6, subd. (a); Pub. Resources Code, §§ 21002.1, subd. (a), 21061, 21100, subd. (b)(3); Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1).)

At this stage in the CEQA process, the State Water Board is providing input regarding the scope and content of environmental analysis as a Responsible Agency. As FERC has not issued a license, the terms and conditions of such a license are not certain. Thus, Merced ID cannot determine whether a particular mitigation measure "would conflict with a term of the FERC license." In *County of Butte*, the Court held that nothing prohibits or preempts an agency of the state such as Merced ID from considering mitigation or other measures that conflict with the terms of conditions of a FERC license. On the contrary, the Court stated, "we are aware of no federal law — and the concurring and dissenting opinion cites none — that limits an applicant's ability to analyze its options or the proposed terms of the license before [amending its license application or seeking

reconsideration after FERC has issued a license]." (13 Cal.5th at p. 634.) The Court also concluded that an agency of the state "can undertake CEQA review . . . in order to assess its options going forward. Nothing about such use of CEQA review is incompatible with federal authority." (*Id.* at pp. 634-635.) Therefore, State Water Board staff believe that it would be premature and improper for Merced ID to choose not to analyze alternatives or mitigation measures solely due to a theoretical conflict. State Water Board staff request that Merced ID fulfill its obligation to comply with CEQA by analyzing a reasonable range of alternatives and mitigation measures for each potentially significant environmental impact, as required by CEQA.

3. Water quality certification issued by the State Water Board for the Merced Projects' will include mandatory conditions that must be analyzed as part of the CEQA process. Certification conditions will likely include, but not be limited to: minimum instream flows, pulse flows, Lower San Joaquin River flow objectives, reservoir carryover storage requirements, and erosion and sediment management. Implementation of such conditions needs to be included in the CEQA analysis. On July 20, 2020, the State Water Board's Executive Director (Executive Director) issued a certification for the Merced Projects.[1] The certification for the Merced Projects was set aside on the Board's own motion on May 7, 2024 (State Water Board Order WQ 2024-0046[2]) and is therefore no longer in effect. Although the 2020 certification for the Merced Projects was set aside, it may still be a helpful resource for Merced ID in identifying potential requirements or alternatives that should be analyzed as part of Merced ID's CEQA analysis. Merced ID's environmental documents should satisfy the legal requirements of CEQA, and support the Board's needs in acting on Merced ID's request for certification of the Merced Projects.

4. In issuing certification, the Board must include conditions that ensure the Merced Projects will comply with water quality standards and other applicable requirements of state law. This includes conditions to ensure the Merced Projects comply with the Central Valley Regional Water Quality Control Board's *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin* (SR/SJR Basin Plan) (Central Valley Regional Water Board, 2019) and the *Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary* (Bay-Delta Plan) (State Water Board, 2018). Accordingly, Merced ID must operate the Merced Projects in a manner consistent with the Bay-Delta Plan and any amendments thereto. Adaptive implementation is encouraged as a

[1] The 2020 certification can be accessed at the following address: https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/docs/401_cert/mid_final_wqc_.pdf

[2] State Water Board Order WQ 2024-0046 can be accessed at the following address: https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2024/wqo2024-0046.pdf

feature of the Bay-Delta Plan's program of implementation because it allows for adjustment of the required percentage of unimpaired flow in specified ways to improve the functions of those flows and better achieve the water quality objectives in response to changing information and conditions. Merced ID's CEQA analysis for the Merced Projects must include evaluation of compliance with the Bay Delta Plan. Updates to the Bay-Delta Plan adopted in 2018 were evaluated in accordance with CEQA in the *Substitute Environmental Documents (SED) for the Lower San Joaquin River and Southern Delta.*[3] In addition to relying on FERC's FEIS for the CEQA analysis for relicensing of the Merced Projects, Merced ID may also reference the State Water Board's SED.

5. In 2018, the Bay-Delta Plan established new and revised Lower San Joaquin River (LSJR) flow objectives and revised southern Delta salinity objectives. The LSJR flow objectives apply from February through June to the Stanislaus, Tuolumne, Merced, and Lower San Joaquin Rivers. The Bay-Delta Plan also includes a revised southern Delta salinity objective of 1.0 deciSiemens/meter electrical conductivity at Vernalis and at the three interior southern Delta stations for the protection of agricultural beneficial uses. Additionally, the 2018 Bay-Delta Plan states that the State Water Board will reevaluate the assignment of responsibility for meeting the October pulse flow objectives at Vernalis during a water right proceeding, FERC licensing proceeding, or other proceeding, and the recently set aside 2020 certification included provisions relative to this Bay-Delta Plan provision. Adaptive implementation of the LSJR flow objectives may be available to the extent that it is consistent with other certification conditions and the Bay-Delta Plan's program of implementation. In addition, subject to acceptance by the State Water Board, the Bay-Delta Plan expressly allows the use of a voluntary agreement that propose flows within the adopted range (30% to 50% unimpaired flow) as a means of implementing the LSJR flow objectives. With this information in mind, Merced ID's CEQA analysis should consider and evaluate the Merced Projects' operations relative to compliance with the LSJR flow objectives.

6. The State Water Board reserves the right to condition minimum instream flows in light of the whole record. The whole record includes, but is not limited to, the FERC record (i.e., recommendations by resource agencies), the final National Environmental Policy Act document, and the final/supplemental CEQA documents.

   Tables 3-9 and 3-10 in FERC's FEIS for the Merced Projects provide the targeted, proposed, and recommended minimum instream flow requirements by year type for the irrigation season (March through October) and non-irrigation

[3] The SED for the 2018 Bay-Delta Plan can be accessed at the following address: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/bay_delta_plan/water_quality_control_planning/2018_sed/

season (November through February). Additionally, flow recommendations from the National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife Service, and participating Conservation Groups are included in these tables. FEIS Table A-10 contains FERC staff's alternative recommended minimum instream flows.

In 2018, the Board's Bay-Delta Plan was updated to include flow objectives for the Merced River. The Bay-Delta Plan states: "*Maintain 40% of unimpaired flow, with an allowed adaptive range between 30% - 50%, inclusive, from each of the Stanislaus, Tuolumne, and Merced Rivers from February through June.*"

FERC's Final EIS for the Merced Projects was issued in December 2015 and did not include evaluation of the Board's Bay-Delta Plan flows. Merced ID's CEQA analysis should include evaluation of the range of flows discussed in FERC's FEIS and those required by the Board's 2018 Bay-Delta Plan update. This could be achieved by reference to applicable environmental analyses performed by FERC for the relicensing of the Merced Projects and the Board's SED in support of its 2018 Bay-Delta Plan update.

7. In 2022, the Merced River experienced very low flow and dry conditions during the summer and early fall that resulted in disconnection from the mainstem of the LSJR. The State Water Board received letters from NMFS, CDFW, and other parties notifying the Board of dry riverbed conditions, requesting an investigation into the reasons the Merced River went dry, and requesting actions to prevent dry river conditions in the future.

   As mentioned in the Executive Director's January 16, 2024 letter to NMFS:

   > The State Water Board is evaluating methods to maintain a year-round connected river to the confluence with the San Joaquin River as part of ongoing efforts to update and implement flow requirements for the Merced River and other Lower San Joaquin River tributaries. Current instream flow requirements may not prevent drying of the lower reaches of the Merced River during extremely dry hydrologic conditions because those requirements do not apply to the lower reaches of the Merced River. However, new and revised instream flow requirements are expected to be in effect in the future with implementation of the 2018 updates to the Bay-Delta Water Quality Control Plan (Plan). Implementation of the Plan will require flows on the Merced River (as well as the Tuolumne and Stanislaus Rivers) to the confluence with the San Joaquin River from February through June. In addition, the Federal Energy Regulatory Commission (FERC) relicensing and water quality certification processes for the Merced River and Merced Falls Hydroelectric Projects have evaluated year-round flow requirements below those facilities. We look forward to additional conversations with your [NMFS] team to consider

ways to add to these existing protections, including actions to ensure flows to the confluence from July through January.

Year-round flow requirements downstream of Merced Projects facilities (e.g., to the confluence of the Merced River with the San Joaquin River) may be included in the certification, and therefore should be analyzed in the supplemental CEQA document. Analysis should include the NMFS recommended preliminary baseflow target of 66 cubic feet per second (cfs) down to the Merced River confluence with the San Joaquin River during the dry season (approximately July through January) of dry years to protect fish passage, ecological processes, and essential fish habitat in the lower Merced River.

8. There are potential cumulative effects of the Merced Projects on water resources, aquatic resources, and threatened and endangered species. Merced ID's appropriative water right application (A033098) proposes a maximum annual diversion amount of 400,000 acre-feet per year from the Merced River and 11 other streams in eastern Merced County. The diversion of surface waters can have significant cumulative effects on the Merced Projects' reaches including, but not limited to, water quality, including water temperature, and the availability and accessibility of habitat for anadromous fish. These potential cumulative effects may extend downstream of the Merced Projects facilities and into the San Joaquin River and through the Delta. The cumulative impacts of Merced ID's new water right application, other Merced ID water resource activities, implementation of the Sustainable Groundwater Management Act (SGMA), and other reasonably foreseeable probable future projects should be considered in the CEQA analysis.

   With respect to water resources, the Clean Water Act section 303(d) (33 U.S.C. § 1313(d)) listing of the Lower Merced River as impaired due to temperature is evidence that water quality objectives are not being met downstream of the Merced Projects. The segment of the Merced River downstream of McSwain Reservoir to the confluence with the San Joaquin River includes beneficial use designations for cold freshwater habitat, cold migration, and cold spawning. The 303(d) listing is based upon information submitted by CDFW in the form of a report entitled "Temperature Water Quality Standards for the Protection of Anadromous Fish in the Stanislaus River, Merced River, Tuolumne River, and the San Joaquin River." This report provides an overview of how altered temperature conditions in both the San Joaquin River and its major tributaries (including the Merced River) may be affecting anadromous fish populations. During the Merced River 303(d) listing review in 2011, CDFW stated: "*[CDFW] believes that one critical factor limiting anadromous salmon and steelhead population abundance is high water temperatures which exist during critical life-stages in the tributaries and the main-stem. This results largely from water diversions, hydroelectric power operations, water operations and other factors.*"

It is important to consider the potential cumulative impacts of the Merced Projects on both water quality and fisheries resources in the Merced River and tributaries. A major factor that contributes to high water temperature is the reduction of instream flow due to major diversions from the Merced River at Merced ID's Crocker-Huffman Dam. Any certification issued must include conditions that show that the operation of the Merced Projects is consistent with water quality objectives and protective of the designated beneficial uses for the Merced and San Joaquin Rivers.

9. On May 15, 2024, the State Water Board issued a letter notifying Merced ID that its certification applications were complete pursuant to California Code of Regulations, title 23, section 3835, subdivision (c). In Merced ID's May 15, 2024 letter to FERC, Merced ID notes its intent to adopt a final CEQA Negative Declaration or Mitigated Declaration by the end of March 2025. Merced ID's new timeline provides the State Water Board with limited and potentially insufficient time to review a final CEQA document for the Merced Projects before acting on the applications by the one-year deadline of April 15, 2025.

10. Page 5-28 of FEIS states: "*We therefore recommend a fall pulse flow release of 1,000 cfs during October or November until a total volume of 12,500 acre-feet is released, not including the volume of water associated with the staff-recommended minimum flow during this period.*"

    Merced ID's Water Right Licenses (Nos. 2685, 6047, and 11395) state: "*provide 12,500 acre-feet of additional water in the month of October in all year types as measured above its current requirement of 2,350 acre-feet or 3,124 acre-feet (at Shaffer Bridge) as defined in the FERC license for the Exchequer Merced River Project.*"

    Per a memorandum of understanding with CDFW, Merced ID is required to supplement flows in the Merced River in October by providing 12,500 acre-feet of water in addition to the Merced Projects' existing FERC minimum flow requirements. It is State Water Board staff's understanding that FERC's recommended alternative suggested by CDFW allows Merced ID to also release fall pulse flows in November. State Water Board staff recommend Merced ID submit petitions to update its existing water rights for consistency and flexibility in providing fall pulse flows.

11. FEIS Page E-1: "*Within 3 months of license issuance, Merced Irrigation District (MID or Licensee) shall organize and host a meeting and all future meetings with the Merced River Anadromous Fish Committee (Committee). The Committee shall be comprised of one representative from MID, Pacific Gas and Electric Company (PG&E), National Marine Fisheries Service (NMFS), US Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDRN), State Water Board, and a non-governmental organization. Committee members shall be selected by the organizations represented.*"

Please invite the following State Water Board staff persons to Committee meetings moving forward: Bryan Muro (bryan.muro@waterboards.ca.gov), Oscar Biondi (oscar.biondi@waterboards.ca.gov), and Adam Cohen (adam.cohen@waterboards.ca.gov).

12. Figures 3-9, 3-10, 3-11, 3-12, 3-13, 3-14, 3-21, and 3-22 of FERC's FEIS contain water temperature data for Lake McClure, McSwain Reservoir, and the Merced River. The CEQA analysis should provide updates to reflect current water temperature monitoring data, as available.

13. FERC's FEIS Page 3-118 states: "*Construction of a pipe to deliver water released from Lake McClure to Crocker-Huffman diversion dam would require from 7.5 to 10-miles of construction. Reducing the amount of cold water released into McSwain reservoir would increase the temperature of water released from McSwain dam, which could cancel out the beneficial temperature effects to the lower Merced River.*"

    Operation of a pipe to deliver cold water to Crocker Huffman was not fully explored, developed, or modeled by the time FERC's FEIS was issued. In correlation with Comment 12 (above), the CEQA analysis should discuss any actions Merced ID has taken or plans to take to improve water temperature in the Merced River since issuance of FERC's FEIS.

14. FERC's FEIS Page G-46 states: "*NMFS recommends a long-term water temperature improvement plan that would include a feasibility study of potential operational and facility-based options for delivering cold water to reaches downstream of Crocker-Huffman diversion dam, including modifications of the New Exchequer dam outlet structure that would enable simultaneous withdrawal of water from multiple depths and other engineering alternatives capable of delivering cold water from Lake McClure downstream of Crocker-Huffman diversion dam that do not necessitate releasing large volumes of water to provide thermal insulation.*"

    FERC's FEIS notes that Crocker-Huffman diversion dam (River Mile 52.0) represents the upstream barrier to native resident and migratory fish in the Lower Merced River. Until a long-term water temperature improvement plan is developed, Merced ID should explore fish passage to cold-water habitat upstream of Crocker-Huffman diversion dam.

    Introduction of anadromous fish may require reevaluation of Merced Projects facilities, flow regimes, fish stocking plans, availability of large woody material, gravel augmentation, tribal cultural resources, and access to affected tributaries.