

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

In the Matter of Water Quality Certification for the
TRI-DAM PROJECT TULLOCH HYDROELECTRIC PROJECT
FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2067

SOURCES: Stanislaus River

COUNTY: Tuolumne and Calaveras Counties

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

BY THE EXECUTIVE DIRECTOR:

The Tri-Dam Project has applied to the Federal Energy Regulatory Commission (FERC) for a new license for the Tulloch Hydroelectric Project (Project). The Tri-Dam Project, owned by the Oakdale and South San Joaquin Irrigation Districts, is the Licensee of the Project. The Project is located on the Stanislaus River in Tuolumne and Calaveras Counties near the town of Copperopolis. The Project includes Tulloch Reservoir (67,000 acre feet capacity) and Dam (200 feet high and 1,600 feet long), two penstocks, and a powerhouse (two vertical-axis Francis turbines, 900 cubic feet per second capacity each, with 9,000 kilowatt combined capacity). The Tri-Dam Project is proposing to construct a new 7,000 kilowatt turbine/generator on the low level outlet of Tulloch Dam and build a 15 unit day use recreation area. The new generator would utilize water that spills over Tulloch Dam and would not require changes in current operations. The new day use area will be built on land owned by the Bureau of Land Management on the Black Creek arm of the reservoir or other suitable location.

1. The Federal Clean Water Act (33 U.S.C. §§ 1251-1387) was enacted “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” (33 U.S.C. § 1251(a).) Section 101 of the Clean Water Act (33 U.S.C. § 1251 (g)) requires federal agencies to “co-operate with the State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.”
2. Section 401 of the Clean Water Act (33 U.S.C. §1341) requires every applicant for a federal license or permit which may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will be in compliance with specified provisions of the Clean Water Act, including water quality standards and implementation plans 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 prescribe effluent limitations and other limitations necessary to ensure compliance with the Clean Water Act and with any other appropriate requirement of state law. Section 401 further provides that state certification conditions shall become conditions of any federal license or permit for the project. The State Water Board has delegated this function to the Executive Director by regulation. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

3. The California Regional Water Quality Control Boards have adopted, and the State Water Board has approved, water quality control plans (basin plans) for each watershed basin in the State. The basin plans designate the beneficial uses of waters within each watershed basin and water quality objectives designed to protect those uses. Section 303 of the Clean Water Act requires the states to develop and adopt water quality standards. (33 U.S.C. § 1313.) The beneficial uses together with the water quality objectives that are contained in the basin plans constitute State water quality standards under section 303.
4. The basin plan for the Central Valley-Sacramento/San Joaquin River Basins identifies irrigation, stock watering, power, warm freshwater habitat, contact and non-contact recreation, and wildlife habitat as beneficial uses of Tulloch Reservoir. The basin plan identifies municipal and domestic supply as a potential beneficial use of Tulloch Reservoir. Protection of the instream beneficial uses identified in the basin plan requires maintenance of adequate instream flows as well as effluent limitations and other limitations on discharges of pollutants from point and nonpoint sources to the Stanislaus River and its tributaries.
5. The State Water Board as responsible agency has reviewed and considered: (a) the Tri-Dam Project's final FERC License Application; (b) comments on the final License Application by agencies and interested parties; (c) the U.S. Forest Service Final 4(e) Conditions; and (d) the FERC Final Environmental Impact Statement prepared pursuant to the National Environmental Policy Act for the Stanislaus River Projects. Further, the State Water Board has considered the basin plan, the existing water quality conditions and project-related controllable factors.
6. The State Water Board as responsible agency has reviewed and considered the Mitigated Negative Declaration for this Project (State Clearinghouse Number 2004102062), adopted on November 18, 2004, by the Tri-Dam Project. Tri-Dam Project incorporated conditions into the Project that protect the environment. The State Water Board will file a Notice of Determination within five days from the issuance of this order.

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER BOARD CERTIFIES THAT THE OPERATION OF THE TULLOCH HYDROELECTRIC PROJECT BY THE TRI-DAM PROJECT UNDER A NEW LICENSE ISSUED BY FERC FOR TRI-DAM'S PROPOSED PROJECT will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided the Tri-Dam Project complies with the following terms and conditions:

1. Within one year of license issuance, the Licensee shall submit a shoreline erosion monitoring plan for review and approval by the Chief of the Division of Water Rights (Division). The plan shall include: (a) a schedule for monitoring the shoreline once every five years for erosion, (b) guidelines for determining the entity responsible for corrective actions, and (c) plans for corrective actions. The plan shall include a requirement to submit a report to the Chief of the Division and to the Executive Officer of the Central Valley Regional Water Quality Control Board that includes findings and recommended corrective actions, with a schedule to implement the corrective actions.
2. Prior to constructing the new turbine, Licensee shall submit a plan to the Chief of the Division that contains specific measures for the protection of water quality during construction of the new turbine. The plan shall include detailed construction plans and schedules, water quality protection methods, and reporting requirements. Upon review and approval by the Chief of the Division, Licensee shall implement the plan.
3. Licensee shall submit plans for the development of the day use area on the Black Creek arm of the reservoir to the Chief of the Division for review and approval prior to beginning construction.
4. Licensee shall maintain the water surface elevation of Tulloch Reservoir as high as possible to protect the recreational uses of the reservoir, consistent with United States Bureau of Reclamation contracts and agreements, dam safety requirements, and other mandatory operational requirements. Two weeks prior to any planned reservoir drawdown below normal operating levels, licensee shall provide notification to local homeowners associations, and shall post said notification at publicly accessible locations such as marinas, boat ramps, and local businesses. Notification shall include the expected duration of the drawdown period.
5. Licensee shall submit to the Chief of the Division a copy of the western pond turtle management plan prepared in consultation with the California Department of Fish and Game.
6. This certification is contingent on compliance with all applicable requirements of the Water Quality Control Plan for the Sacramento and San Joaquin River Basins, except as may be modified by the specific conditions of the certification.
7. Licensee must submit any change to the Tulloch Hydroelectric Project, including project operation that would have a significant or material effect on the findings, conclusions, or conditions of this certification, to the Chief of the Division for prior review and written approval.
8. Notwithstanding any more specific conditions in this certification, the Project shall be operated in a manner consistent with all 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 Licensee shall take all reasonable measures to protect the beneficial uses of water of the Stanislaus River.

9. The authorization to operate the Project pursuant to this certification is conditioned upon payment of all applicable fees for review and processing of the application for water quality certification and administering the State's water quality certification program, including but not limited to: timely payment of any annual fees or similar charges that may be imposed by future statutes or regulations for the State's reasonable costs of a program to monitor and oversee compliance with conditions of water quality certification.
10. This certification is not intended and shall not be construed to apply to issuance of any FERC license or FERC license amendment other than the FERC license specifically identified in the Licensee's application for certification described above.
11. This certification does not authorize any act which results in the "taking" of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code §§ 2050 - 2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531 - 1544). If a "take" will result from any act authorized under this certification or water rights held by the Licensee, the Licensee shall obtain authorization for the take prior to any construction or operation of the Project. The Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the Project authorized under this certification.
12. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be 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 assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to a suspected violation of any condition of this certification, the State 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. 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.
13. Any change to the operation of the Project that would have a significant or material effect on the findings, conclusions, or conditions of this certification must be submitted to the Chief of the Division of Water Rights for prior review and written approval.
14. This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with § 3867).

15. The State Water Board reserves authority to modify or revoke this certification if monitoring results indicate that continued operation of the project would violate water quality objectives or impair the beneficial uses of the Stanislaus River.
16. The State Water Board may add to or modify the conditions of this certification, as appropriate, 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.
17. The State Water Board may add to or modify the conditions of this certification as appropriate to coordinate the operations of this Project and other water development projects, where coordination of operations is reasonably necessary to achieve water quality standards or protect beneficial uses of water.

ORIGINAL SIGNED BY

Celeste Cantú
Executive Director

Date: September 14, 2005