

**DEPARTMENT OF WATER RESOURCES**

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STATE WATER RESOURCES  
CONTROL BOARD

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DIV OF WATER RIGHTS  
SACRAMENTO

July 2, 2013

Ms. Tammy Vallejo  
State Water Resources Control Board  
Division of Water Rights  
Water Quality Certification Program  
P.O. Box 2000  
Sacramento, California 95812-2000

Comments on Draft Memorandum of Understanding Between the Federal Energy Regulatory Commission and the California State Water Resources Control Board Concerning Coordination of Pre-Application Activities for Non-Federal Hydropower Proposals in California

Dear Ms. Vallejo:

The California Department of Water Resources (DWR) appreciates the opportunity to provide comments on the draft Memorandum of Understanding (MOU) between the Federal Energy Regulatory Commission (FERC) and the California State Water Resources Control Board (SWRCB) for coordinating their respective pre-application activities on non-federal hydropower proposals in California.

DWR's mission is to manage the water resources of California, in cooperation with other agencies, to benefit the State's people and to protect, restore, and enhance the natural and human environments. DWR has three existing hydropower licenses issued by FERC that regulate our hydropower facilities located along the California State Water Project (SWP). The SWP gathers water from the Feather River watershed for delivery to municipal, industrial, and agricultural consumers in Northern California, the San Francisco Bay area, San Joaquin Valley, Central Coast, and Southern California. The SWP delivers water through 20 pumping plants, 9 hydroelectric powerplants, 34 storage facilities, and over 700 miles of aqueducts and pipelines.

It is encouraging to see SWRCB's commitment to coordinate its activities with FERC on the pre-application process of FERC's Integrated Licensing Process (ILP), and to actively participate in the early identification of studies and the development of environmental documents to satisfy SWRCB's California Environmental Quality Act requirements and FERC's National Environmental Policy Act requirements. A genuine effort by both agencies to cooperate in this regard has the potential to make the licensing process generally more efficient and timely. It is also encouraging that the agencies have agreed to track the status and project completion dates for Clean Water Act Section 401 Water Quality Certifications (Water Quality Certification) applications.

However, many provisions of the draft MOU give cause for concern that the potential benefits will not be realized as envisioned. DWR offers the following comments in hopes of ensuring the desired coordination and efficiency benefits can be realized.

### ***Regulatory Deadlines Section***

Section II.1 includes a general commitment that SWRCB “will adhere to the regulatory deadlines specified in FERC’s ILP regulations.” However, every aspect of SWRCB’s coordination with the FERC process contained in this MOU is qualified in a manner that suggests SWRCB’s process may proceed separate and apart from FERC’s ILP, or cause ILP deadlines to be extended to an unpredictable extent. This would undercut the very purpose of the ILP. In addition, the Alternative Licensing Process (ALP) provides for stakeholder input into determining process schedules. This section as written suggests that FERC and the SWRCB alone would determine a mutually agreeable schedule for the ALP.

SWRCB is proposing to align its process deadlines to the FERC ILP regulatory deadlines for issuing a Water Quality Certification. Section II.2 specifically anticipates rescheduling the ILP deadlines. It is unclear if SWRCB contemplates occasional minor tweaks to FERC deadlines in response to conditions that may arise or more general modifications to make FERC deadlines align with SWRCB’s schedule.

### ***Pre-Application Filing Activities Under the ILP Section***

Section II.1a states that as part of the scoping process, SWRCB “will provide its process milestones, consistent with its regulations and this MOU, to FERC for inclusion in the ILP Process Plan.” This suggests that SWRCB expects FERC to modify the ILP deadlines in order to accommodate inconsistent SWRCB deadlines.

Section II.1b states that only if there is no consensus, each agency will proceed using its own geographic scope. However, it should be appropriate for FERC and SWRCB to attempt to reach consensus on the geographic scope of studies. As well, in order to provide clarity to license applicants and others, this section should be revised to state that the agencies will identify any differences in this regard, either in the Scoping Document 2, Study Plan Meetings, or in SWRCB comments on the applicant’s Proposed Study Plan. This will ensure the study plan is developed with full knowledge of the required geographic scope.

Section II.3 discusses FERC and SWRCB’s commitment to actively participate in study plan development. During study plan development, SWRCB will identify studies necessary for the Water Quality Certification in the ILP “to the extent possible.” In its

comments on the Proposed Study Plan, SWRCB “will note what studies it anticipates will be needed” for the Water Quality Certification. Section II.3d reserves authority for SWRCB to “require any study or information it later determines to be necessary.” Section II.3e states that SWRCB “may” notify the applicant following FERC’s Study Plan Determination requesting additional studies needed for the Water Quality Certification. It is unclear why SWRCB is unable to determine what studies will be needed in order to exercise its regulatory authority. Additionally, the MOU should provide that SWRCB will use FERC’s study request criteria of 18 CFR § 5.9(b).

Section II.3c states that FERC will “consider” in its Study Plan Determination any study that is necessary to ensure the environmental document meets the needs of both agencies. Since the goal of the approved study plan process is to have a study plan that serves the needs of all permitting agencies, it is unclear why FERC would not include any study SWRCB concludes is needed for the Water Quality Certification in the study plan.

Section II.5 states that before post-application actions begin under the ILP, FERC and SWRCB will discuss “what analyses, data, or information are expected to be necessary” for the agencies’ respective environmental documents. This seems to suggest that SWRCB’s determination of what information will be needed for the Water Quality Certification will not be made even when the FERC license application is filed notwithstanding the intensive ILP study plan development, interim and final study report, and pre-application draft application comment regime.

### ***Post-Application Filing Activities Section***

Section II.1 discusses that if both agencies determine that a single environmental document can be issued for the FERC license and the Water Quality Certification, they will develop a letter of understanding that “outlines the post-application filing procedures and schedules.” This suggests that the environmental document schedules in the FERC ILP regulations are negotiable.

Also, SWRCB will be required to participate in the post-filing activity of FERC ILP for developing the single environmental document within a minimum of two years. This will result in a minimum of two years until SWRCB issues a Water Quality Certification. In those instances where the SWRCB has completed its own certification of the final environmental document, clarify if SWRCB can proceed with issuing the Water Quality Certification, irrespective of FERC’s own certification of the same environmental document.

Ms. Tammy Vallejo  
July 2, 2013  
Page 4

Section II.2 states "...to the extent information is available, the State Water Board will provide comments and preliminary terms and conditions in response to FERC's Notice of Ready for Environmental Analysis". This implies that even after FERC has determined all the information necessary has been submitted for its environmental analysis, SWRCB may be waiting for, or perhaps have not yet requested, information it will require for the Water Quality Certification. Thus, this would seem to contradict the purpose of SWRCB's involvement in the pre-application activities for the early identification of studies.

### ***Baseline Section***

This section states that both agencies will use current environmental conditions as the baseline for analysis, but SWRCB's conditioning authority extends to "project-related impacts to water quality notwithstanding whether those impacts are due to existing conditions." This phrase is unclear as project-related impacts *are* existing conditions. It seems the intent of this sentence is to state that SWRCB may require conditions to address project-related impacts that occurred in the past, but are no longer considered existing conditions for imposing retroactive conditions. If so, this would be an assertion of significant concern. Moreover, it is not necessary to include a discussion of SWRCB's conditioning authority in an MOU concerning coordination of agency activities.

Thank you again for the opportunity to provide comments on the draft MOU. Please contact me at (916) 263-0261 if you would like to discuss this further.

Sincerely,



Ted Craddock, Chief  
Hydropower License Planning and Compliance Office  
Executive Division