



State Water Resources Control Board

February 17, 2023

Mr. Jeremiah McNeil, Acting Manager
Hydropower License Planning and Compliance Office
Executive Division
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

**Re-Operation of Pyramid Dam for the California Aqueduct Pump Storage Project –
South State Water Project Hydropower
Federal Energy Regulatory Commission Project No. 2426
Los Angeles and Ventura Counties
Pyramid Lake and Piru Creek**

TEMPORARY AMENDMENT TO WATER QUALITY CERTIFICATION

Dear Mr. McNeil:

On February 10, 2023, the State Water Resources Control Board (State Water Board) received the California Department of Water Resources' (DWR) request for a temporary variance to Condition 1 of the August 9, 2009 water quality certification (certification) for the Re-Operation of Pyramid Dam for the California Aqueduct Pump Storage Project¹ (Project). The variance is being requested to temporarily increase the amount of State Water Project (SWP) water that may be delivered to United Water Conservation District (United), from Pyramid Lake to Lake Piru via middle Piru Creek, from 3,150 acre-feet to a maximum of 25,000 acre-feet for Water Years (WYs) 2022-2023 and 2023-2024. Per Condition 1, SWP water deliveries to United are limited to 3,150 acre-feet from November 1 to the end of February each water year; therefore, a temporary variance is needed to increase SWP water deliveries. The additional SWP water deliveries are intended to replenish groundwater in the local area.

Background

On August 4, 2009, the State Water Board issued a certification for the Project, [Order WQ 2009-0007](#). Condition 1 of the Project's certification requires that stream releases from Pyramid Lake to Piru Creek match natural inflow into Pyramid Lake, and states in part:

¹ On July 7, 2011, the California Aqueduct Pump Storage Project was renamed the South State Water Project Hydropower to better reflect its location and its relation to the overall State Water Project.

Up to 3,150 acre feet of State Water Project water may be delivered to United Water Conservation District via middle Piru Creek between November 1 and the end of February of each water year. During this period, water deliveries may be made over a period of a few days, ramping flows up and down to simulate the hydrograph of a typical storm event, or they may be released more gradually over a longer period of time.

DWR's request to deliver up to 25,000 acre-feet of SWP water, in each of WYs 2022-2023 and 2023-24, to United prior to the end of February is 21,850 acre-feet greater than the 3,150 acre-feet limit in Condition 1 of the certification.

United Water Conservation District

Each year DWR delivers SWP water to United as part of the Ventura County Watershed Protection District's long-term water supply contract² with DWR. United receives up to 3,150 acre-feet per year of SWP Table A³ water, typically through releases by DWR into the Pyramid Reach⁴. United may also be contractually eligible for supplemental deliveries of SWP water under Article 21 of SWP long-term water supply contracts or through acquisitions from other SWP contractors.

The acquisition of supplemental SWP water is intended to improve the conditions of the Oxnard Plain and Pleasant Valley groundwater basins that are experiencing severely depleted groundwater conditions. Depleted groundwater basins are contributing to seawater intrusion in the southern Oxnard Plain and elevated levels of nitrates in the Oxnard plain sub-basin, which is the major potable water supply source for the cities of Oxnard and Port Hueneme.

Proposed Release Plan

To avoid adverse effects to listed species, the proposed increases in SWP water deliveries will be implemented within the November 1 to end of February period noted in the certification for SWP water deliveries. The release from Pyramid Dam will be within the range of historic flows and will mimic the natural hydrograph, including a gradual ramp up and ramp down of flows, with peak flows in the range of historic storm flows in middle Piru Creek (i.e., the peak will not exceed 1,400 cfs, which is less than the five-year return interval storm event), as stated in DWR's February 10, 2023 variance request.

² United is a party to the *Water Supply Contract Between the State of California Department of Water Resources and Ventura County Flood Control District* (executed in 1963).

³ Table A water refers to the annual entitlement of water each SWP contractor can receive.

⁴ Pyramid Reach refers to the 18.1-mile-long section of Piru Creek that extends from the spillway or low-level outlet at Pyramid Dam (impounding Pyramid Lake) to the normal maximum water surface elevation of Lake Piru.

Listed Species

Four species listed under the federal Endangered Species Act (ESA) are known to occur and/or have designated critical habitat in middle Piru Creek: arroyo toad (*Anaxyrus californicus*), California red-legged frog (*Rana draytonii*), least Bell's vireo (*Vireo bellii pussillus*), and southwestern willow flycatcher (*Empidonax traillii extimus*). Of these species, least Bell's vireo and southwestern willow flycatcher are also listed under the California ESA. State species of special concern (SSC) known to occur within middle Piru Creek including western pond turtle (*Emys marmorata*), two-striped gartersnake (*Thamnophis hammondi*), yellow warbler (*Setophaga petechia*), arroyo toad, California red-legged frog, and yellow-breasted chat (*Icteria virens*). Additionally, critical habitat for California condor (*Gymnogyps californianus*), listed as endangered under both the federal and state ESAs, overlaps a portion of middle Piru Creek. Based on information provided by DWR in its variance request, the proposed water deliveries from Pyramid Dam are not expected to result in adverse effects to these species or their designated critical habitats. This assessment is in part based on the short-term nature of the requested variance. Long-term changes to the amount and manner of water deliveries are undergoing additional environmental analysis.

California Environmental Quality Act

Issuance of a certification or amendment thereto is a discretionary action. Generally, the California Environmental Quality Act (CEQA) applies to discretionary projects that may cause a direct or indirect physical change in the environment (Pub. Resources Code, § 21000 et seq.)). When proposing to undertake or approve a discretionary project, state agencies must normally comply with the procedural and substantive requirements of CEQA.

In light of the extended California drought, on March 28, 2022, Governor Newsom issued California Executive Order N-7-22⁵ (Executive Order) authorizing drought emergency measures in addition to those authorized in a series of 2021 drought proclamations. Paragraph 5 of the Executive Order suspends CEQA for specific drought emergency projects, with approval of the Secretary of the California Natural Resources Agency (CNRA). Additionally, Paragraph 12 of the Executive Order suspends CEQA for projects to capture high flows for groundwater recharge. On February 7, 2023, United requested that the Secretary of the CNRA determine that the proposed temporary variance is eligible to be conducted under the suspension of CEQA pursuant to Paragraphs 5 and 12 of the Executive Order. On February 15, 2023, the Secretary of the CNRA approved a suspension of CEQA requirements for the requested variance. Therefore, the substantive and procedural requirements of CEQA do not apply. The State Water Board will file a Notice of Exemption with the State Clearinghouse within five days of issuing this certification.

⁵ California Executive Order N-7-22 declares a state of emergency due to extreme and expanding drought conditions across California. Available at: <https://www.gov.ca.gov/wp-content/uploads/2022/03/March-2022-Drought-EO.pdf>. Accessed on February 15, 2023.

Noticing and Comments

On February 13, 2023, the State Water Board provided public notice of DWR's request for a variance from Condition 1 of the Project certification, pursuant to California Code of Regulations, title 23, section 3858, by posting information describing the amendment request on the Water Quality Certification Program Public Notices webpage and noticing interested parties via email. The State Water Board received no comments.

State Water Board Approval

Based on review of available information, the State Water Board grants a variance to Condition 1 of the Project certification for WYs 2022-2023 and 2023-2024 for additional water releases at Pyramid Dam, as follows:

1. Unless otherwise approved in writing by the Deputy Director for the Division of Water Rights, a proposed release schedule shall be sent to the Project Manager at least 48 hours in advance of the additional Project water deliveries. The water deliveries shall be completed prior to the end of February in each water year (i.e., WYs 2022-2023 and 2023-2024) and otherwise conducted in accordance with the proposal submitted by DWR on February 10, 2023 (i.e., designed to mimic the natural hydrograph, including a gradual ramp up and ramp down of flows, and a peak flow similar to that of a storm event of the magnitude associated with the amount of water being delivered).
2. Within 10 days of completing a water delivery authorized under this certification amendment, DWR shall submit a report to the Project Manager detailing the release schedule, release amount, and ramping rates.
3. This certification amendment is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28, article 4, and owed by the applicant.
4. This certification amendment is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code, section 13330, and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).
5. This certification amendment is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent application for certification was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and that application for certification specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

If you have questions regarding this amendment, please contact Andrea Sellers, Project Manager in the Water Quality Certification Program of the Division of Water Rights, by phone at: (916) 327-8449 or by email at: andrea.sellers@waterboards.ca.gov. Written correspondence should be directed to:

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

Sincerely,



Eileen Sobeck
Executive Director

ec: Martha Guzman, Regional Administrator
U.S. Environmental Protection Agency
Region 9, Water Division
R9cwa401@epa.gov

Michael Plaziak, Executive Officer
Lahontan Regional Water Quality Control Board
Mike.Plaziak@waterboards.ca.gov

Renee Purdy, Executive Officer
Los Angeles Regional Water Quality Control Board
Renee.Purdy@waterboards.ca.gov

Simion Zewdu, Director
Los Angeles Department of Water and Power
Simon.Zewdu@ladwp.com

Kimberly D. Bose, Secretary
Federal Regulatory Energy Commission
Via eFiling to FERC Docket P-2426

Ramon Gamez
Los Angeles Department of Water and Power
Ramon.Gamez@ladwap.com

Victoria Tang
California Department of Fish and Wildlife
Victoria.Tang@wildlife.ca.gov

Joseph Brandt
United States Fish and Wildlife Service
Joseph_Brandt@fws.gov

cc: Interested Parties List