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**State Water Resources Control Board**

**APR 11 2014**

Ms. Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Dear Ms. Bose:

**COMMENTS ON TEMPORARY VARIANCE OF MINIMUM FLOW AND MINIMUM POOL REQUIREMENTS UNDER ARTICLES 40 AND 44 OF THE MERCED RIVER HYDROELECTRIC PROJECT LICENSE, FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. P 2179; MERCED AND MARIPOSA COUNTIES**

On March 27, and revised March 31, 2014, Merced Irrigation District (MID) filed a request with the Federal Energy Regulatory Commission (FERC) for a temporary variance of the minimum flow and minimum pool requirements in articles 40 and 44 of the license for the Merced River Hydroelectric Project (Project), FERC Project No. 2179. MID is required to maintain a minimum flow of 60 cubic feet per second (cfs) in dry years, as measured at Shaffer Bridge, downstream from Exchequer Afterbay Dam (FERC license article 40). MID is also required to maintain a minimum reservoir pool of not less than 115,000 acre-feet (AF) in Lake McClure, except for a drawdown as necessary to maintain minimum streamflow (FERC license article 44).

MID's request is for a temporary variance of the minimum flow and minimum pool requirements due to current drought conditions. MID proposes to maintain a daily average flow of 60 cfs at Shaffer Bridge, rather than an instantaneous flow of 60 cfs. Under this scenario, MID proposes to maintain an instantaneous flow of no less than 40 cfs. MID requests the temporary flow variance through May 2014. MID also requests that the minimum storage requirement in Lake McClure be reduced from 115,000 AF, to 85,000 AF for the duration of 2014.

On March 28, 2014, FERC issued a public notice to solicit comments or intervention requests for MID's temporary variance request. On April 2, 2014, FERC issued an order granting temporary variance of the minimum flow until May 2, 2014, and postponed action on MID's request for a minimum pool variance until the close of the public comment period on April 12, 2014.

The State Water Board, Division of Water Rights (Division) is responsible for the administration of appropriative water rights in California initiated after 1914, which are commonly referred to as "post-1914 appropriative water rights." On April 8, 2014, MID submitted two temporary urgency change petitions (TUCPs) to the Division for MID's post-1914 appropriative water rights (Licenses Nos. 11395 and 11396). MID's water right licenses contain the same minimum flow and minimum pool conditions as the FERC license and therefore would require approval by the State Water Board prior to implementation. Currently, State Water Board staff is reviewing MID's TUCPs.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

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California Water Code section 1435 provides that an appropriative water right holder (permittee or licensee) who has an urgent need to change the point of diversion, place of use, or purpose of use from that specified in the permit or license may petition for a conditional temporary change order. The State Water Board's regulations set forth the filing and other procedural requirements applicable to TUCPs. (Cal. Code Regs., tit. 23, §§ 805, 806.) The State Water Board's regulations also clarify that requests for changes to permits or licenses other than changes in point of diversion, place of use, or purpose of use may be filed, subject to the same filing and procedural requirements that apply to changes in point of diversion, place of use, or purpose of use. (Id., § 791, subd.(e).)

Before approving a TUCP, the State Water Board must make the following findings:

1. the permittee or licensee has an urgent need to make the proposed change;
2. the proposed change may be made without injury to any other lawful user of water;
3. the proposed change may be made without unreasonable effect upon fish, wildlife, or other instream beneficial uses; and
4. the proposed change is in the public interest. (Wat. Code, § 1435, subd. (b)(1-4).)

At this time, the State Water Board has not approved the TUCPs. Once the State Water Board makes a determination on the TUCPs, the decision will be filed with FERC.

State Water Board staff appreciates the continued cooperation of FERC and looks forward to working with FERC on this Project. If you have questions regarding this letter, please contact me at [amber.villalobos@waterboards.ca.gov](mailto:amber.villalobos@waterboards.ca.gov) or at (916) 323-9389. Written correspondence can be directed to:

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

Sincerely,



Amber Villalobos  
Environmental Scientist  
Water Quality Certification Program  
Division of Water Rights

cc: See next page.

cc: Ms. Kathleen A. Dadey  
US Army Corps of Engineers  
1325 J Street, Room 1350  
Sacramento, CA 95814

Mr. Steve Edmondson  
FERC Branch Supervisor  
National Marine Fisheries Service  
WCR, CCVO  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814-4706

Ms. Maria Rea  
Assistant Regional Administrator  
National Marine Fisheries Service  
West Coast Region  
California Central Valley Office  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814-4706

Mr. Thomas Hedt  
USDA  
National Resource Conservation Service  
430 G Street  
Davis, CA 95616

ec: Ms. Linda Connolly  
California Department of Fish & Wildlife  
Linda.Connolly@wildlife.ca.gov

Ms. Debra Mahnke  
Central Valley RWQCB  
Debra.Mahnke@waterboards.ca.gov

Mr. Adam Laputz  
Central Valley RWQCB  
Adam.Laputz@waterboards.ca.gov

Mr. Jeffery Single, Regional Manager  
California Department of Fish & Wildlife  
Jeff.Single@wildlife.ca.gov

Mr. Roger Porter  
US Fish & Wildlife Service  
rwporter@fs.fed.us

Mr. Kyle Stoner  
California Department of Fish & Wildlife  
Kyle.Stoner@wildlife.ca.gov

Ms. Deborah Giglio  
US Fish & Wildlife Service  
Deborah\_Giglio@fws.gov