

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of Water Quality Certification for

**KINGS RIVER CONSERVATION DISTRICT'S
JEFF L. TAYLOR – PINE FLAT HYDROELECTRIC PROJECT LICENSE
AMENDMENT**

FEDERAL ENERGY REGULATORY COMMISSION PROJECT NO. 2741

SOURCE: KINGS RIVER

COUNTY: FRESNO

WATER QUALITY CERTIFICATION FOR FEDERAL PERMIT OR LICENSE

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Acronyms and Abbreviations

<i>2020 Integrated Report</i>	<i>2020-2022 California Integrated Report (Clean Water Act Section 303(d) List / 305(b) Report)</i>
<i>Antidegradation Policy</i>	<i>State Water Board’s Statement of Policy with Respect to Maintaining High Quality Waters in California</i>
<i>CEQA</i>	<i>California Environmental Quality Act</i>
<i>Central Valley Regional Water Board</i>	<i>Central Valley Regional Water Quality Control Board</i>
<i>certification</i>	<i>water quality certification</i>
<i>cfs</i>	<i>cubic feet per second</i>
<i>Construction General Permit</i>	<i>National Pollutant Discharge Elimination System General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities</i>
<i>Deputy Director</i>	<i>Deputy Director of the Division of Water Rights</i>
<i>ESA</i>	<i>Endangered Species Act</i>
<i>Executive Officer</i>	<i>Executive Officer of the Central Valley Regional Water Board</i>
<i>FERC</i>	<i>Federal Energy Regulatory Commission</i>
<i>KRCD</i>	<i>Kings River Conservation District</i>
<i>Mercury Provisions</i>	<i>Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions</i>
<i>MW</i>	<i>megawatt</i>
<i>NOE</i>	<i>Notice of Exemption</i>
<i>NPDES</i>	<i>National Pollutant Discharge Elimination System</i>
<i>Progress Reports</i>	<i>Project Activity Progress Reports</i>
<i>Project</i>	<i>Jeff L. Taylor – Pine Flat Hydroelectric Project License Amendment</i>
<i>Regional Water Boards</i>	<i>Regional Water Quality Control Boards</i>
<i>State Water Board</i>	<i>State Water Resources Control Board</i>
<i>Tulare Lake Basin Plan</i>	<i>Water Quality Control Plan for the Tulare Lake Basin</i>
<i>TMDLs</i>	<i>total maximum daily loads</i>
<i>USACE</i>	<i>United States Army Corps of Engineers</i>
<i>USEPA</i>	<i>United States Environmental Protection Agency</i>
<i>Water Boards</i>	<i>State Water Resources Control Board and Regional Water Quality Control Boards, collectively</i>
<i>WQMP Plans</i>	<i>Water Quality Monitoring and Protection Plans</i>

1.0 Project Description

Kings River Conservation District (KRCD or Licensee) owns and operates the Jeff L. Taylor – Pine Flat Hydroelectric Project, which is also referred to as Federal Energy Regulatory Commission (FERC) Project No. 2741. The Jeff L. Taylor – Pine Flat Hydroelectric Project is located on the north bank of the Kings River approximately 200 feet downstream of the United States Army Corps of Engineers' (USACE) Pine Flat Dam in Fresno County, California.

The Jeff L. Taylor – Pine Flat Hydroelectric Project has a nameplate generation capacity of 165 megawatts (MW) and generates electricity from water released by USACE through Pine Flat Dam during flood control operations and as requested by the Kings River Water Association¹ for irrigation demand. The Jeff L. Taylor – Pine Flat Hydroelectric Project consists of power generation facilities and does not include any dams, impoundments, or transmission lines. Jeff L. Taylor – Pine Flat Hydroelectric Project facilities include: 1) six emergency gates (two per intake); 2) three penstock extensions; 3) Jeff L. Taylor Powerhouse that contains three 55-MW Francis turbines; 4) the North River Access Park that includes an access road, a parking lot, and day use area; and 5) appurtenant equipment. Currently, the Jeff L. Taylor Powerhouse generates energy from Pine Flat Dam flow releases between 500 – 8,000 cubic feet per second (cfs). Water used for hydroelectric energy generation is returned to the Kings River approximately 200 feet downstream of Pine Flat Dam.

KRCD proposes the Jeff L. Taylor – Pine Flat Hydroelectric Project License Amendment (Project), which includes the construction and operation of a new 6.3 MW generating unit (Unit 4) at the Jeff L. Taylor Powerhouse (See Attachment A: Project Overview Maps and Schematics). Unit 4 would allow for power generation at flows below 375 cfs. Unit 4 would connect to the Pine Flat Dam's Bypass System, which was installed by USACE in 2003 to provide improved water temperature conditions downstream of Pine Flat Dam. Construction of Unit 4 would include: 1) a 66-inch-diameter extension from the existing Bypass System to the new Unit 4 powerhouse; 2) an outdoor Unit 4 powerhouse that contains the 6.3 MW Francis turbine and associated generator equipment; and 3) appurtenant equipment. The new powerhouse would be located between Pine Flat Dam and the existing switchyard in the paved driveway above the Bypass System's walkway. The new generating unit would discharge flow at a maximum rate of 375 cfs into the Kings River adjacent to existing discharges from Jeff L. Taylor Powerhouse. The Project would increase the Jeff L. Taylor – Pine Flat Hydroelectric Project's nameplate generation capacity from 165 MW to 171.3 MW. For additional information on the Project, please refer to Attachment B (Project Description).

¹ A nonprofit organization comprising various irrigation and water districts.

2.0 Water Rights

Table A lists the water rights held by KRCD in relation to the Project.

Table A. KRCD Water Rights related to the Project*

Application No. (License No.)	Water Right Owner	Source Stream	Priority Date	Place of Storage or Diversion	Purpose of Use
A025169 (License No. 012885)	KRCD	Kings River	October 8, 1976	Pine Flat Dam**	Power

*Information is from the State Water Resource Control Board’s electronic Water Rights Information Management System.

** License No. 012885 states “The point of diversion of such water is located: Pine Flat Dam.”

3.0 Federal Energy Regulatory Commission Proceedings

FERC issued a 50-year license for the Jeff L. Taylor – Pine Flat Hydroelectric Project on September 25, 1979. On December 21, 2021, KRCD filed a license amendment application with FERC proposing to amend the Jeff L. Taylor – Pine Flat Hydroelectric Project license.

4.0 Regulatory Authority

4.1 Water Quality Certification and Related Authorities

The federal Clean Water Act (33 U.S.C. §§ 1251-1388) was enacted “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” (33 U.S.C. § 1251(a).) The Clean Water Act relies significantly on state participation and support in light of “the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution” and “plan the development and use” of water resources. (33 U.S.C. § 1251(b).) Section 101 of the Clean Water Act (33 U.S.C. § 1251(g)) requires federal agencies to “co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.” (33 U.S.C. § 1251(g))

Section 401 of the Clean Water Act (33 U.S.C. § 1341) requires any applicant for a federal license or permit that may result in a discharge into navigable waters to provide the licensing or permitting federal agency with certification that the project will comply 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 water quality certification (certification) to set effluent limitations and other conditions necessary to ensure compliance with the Clean Water Act and with “any other

appropriate requirement of State law.” (33 U.S.C. § 1341(d).) Section 401 further provides that certification conditions shall become conditions of any federal license or permit for the project. (*Ibid.*)

The State Water Resources Control Board (State Water Board) is the state agency responsible for Clean Water Act section 401 certification in California. (Wat. Code, § 13160.) The State Water Board has delegated authority to act on applications for certification to the Executive Director of the State Water Board. (Cal. Code Regs., tit. 23, § 3838, subd. (a))

Water Code section 13383 authorizes the State Water Board to “establish monitoring, inspection, entry, reporting, and recordkeeping requirements” and obtain “other information as may be reasonably required” for activities subject to certification under section 401 of the Clean Water Act. For activities that involve the diversion of water for beneficial use, the State Water Board delegated this authority to the Deputy Director of the Division of Water Rights (Deputy Director), as provided for in State Water Board Resolution No. 2012-0029 (State Water Board 2012). In the Redelegation of Authorities memo issued by the Deputy Director on June 6, 2022, this authority is redelegated to the Assistant Deputy Directors of the Division of Water Rights (State Water Board 2022).

Procedure, Application, and Noticing. On December 20, 2021, KRCD filed a certification application for the Project with the State Water Board under section 401 of the Clean Water Act (KRCD 2021a). On January 24, 2022, State Water Board staff provided public notice of the application, pursuant to California Code of Regulations, title 23, section 3858, by posting information describing the Project on the State Water Board’s website. No comments were received in response to this notice.

On November 17, 2022, State Water Board staff requested comments from the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) on the certification. (See Cal. Code Regs., tit. 23, § 3855, subd. (b)(2)(B).) On November 18, 2022, Central Valley Regional Water Board staff provided comments, which State Water Board staff addressed in the development of this certification.

4.2 Water Quality Control Plans and Related Authorities

The State Water Board’s certification for the Project must ensure compliance with applicable water quality standards and objectives in the Central Valley Regional Water Board’s *Water Quality Control Plan for the Tulare Lake Basin* (Tulare Lake Basin Plan) (Central Valley Regional Water Board 2018).

Water quality control plans designate the beneficial uses of water to be protected (such as municipal and domestic supply, agricultural supply, and fish and wildlife beneficial uses), 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 state and federal anti-degradation requirements, constitute California's water quality standards for purposes of the Clean Water Act. In issuing 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 anti-degradation requirements. (*PUD No. 1 of Jefferson County v. Washington Dept. of Ecology* (1994) 511 U.S. 700, 714-719.)

The California Regional Water Quality Control Boards (Regional Water Boards) have primary responsibility for the formulation and adoption of water quality control plans for their respective regions, subject to State Water Board and United States Environmental Protection Agency (USEPA) approval, as appropriate. (Wat. Code, § 13240 et seq.) As noted above, the State Water Board may also adopt water quality control plans², which will supersede regional water quality control plans for the same waters to the extent of any conflict. (*Id.*, § 13170.) The State Water Board and Regional Water Boards adopt the plans pursuant to their authorities under the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) and the federal Clean Water Act (33 U.S.C. § 1313).

Tulare Lake Basin Plan

The Central Valley Regional Water Board adopted, and the State Water Board and the USEPA approved, the Tulare Lake Basin Plan (Central Valley Regional Water Board 2018). The Tulare Lake Basin Plan designates the beneficial uses of water to be protected along with the water quality objectives necessary to protect those uses. The Tulare Lake Basin Plan specifies that the beneficial uses of any specifically identified waterbody generally apply to its tributary streams. The Tulare Lake Basin Plan identifies the beneficial uses of the Kings River from Pine Flat Dam to Friant-Kern as: municipal and domestic supply; agricultural supply; hydropower generation; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; wildlife habitat; spawning, reproduction, and/or early development; ground water recharge; and freshwater replenishment.

Antidegradation Policy

The State Water Board's ***Statement of Policy with Respect to Maintaining High Quality Waters in California*** (Antidegradation Policy)³ (State Water Board 1968) requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably impact present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur

² For example, the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (State Water Board 2018).

³ State Water Board Resolution No. 68-16 and any amendments thereto. Available at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf. Accessed on November 29, 2022.

and the highest water quality consistent with maximum benefit to the people of the state will be maintained. The state's Antidegradation Policy incorporates the federal Antidegradation Policy (40 C.F.R. § 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

In March 2019, the State Water Board submitted to FERC the plans and policies included in the state's comprehensive plan for orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state. This submission included the Tulare Lake Basin Plan, the Antidegradation Policy, and other applicable plans and policies for water quality control (FERC 2019).

4.3 Clean Water Act Section 303(d) Listing

On January 19, 2022, the State Water Board adopted the [*2020-2022 California Integrated Report \(Clean Water Act Section 303\(d\) List / 305\(b\) Report*](#) (2020 Integrated Report) (State Water Board 2022b), which was subsequently approved by USEPA on May 11, 2022.

The 2020 Integrated Report lists portions of the Kings River as follows:

- Kings River downstream from Pine Flat Reservoir to Island Weir is listed for alkalinity, copper, lead, paraquat, and toxicity; and
- Pine Flat Reservoir is listed for alkalinity and mercury.

Section 303(d) of the Clean Water Act requires total maximum daily loads (TMDLs) to be developed for impaired waterbodies. TMDLs are control programs that define the maximum amount of a pollutant that a waterbody can receive without exceeding water quality standards and establish waste load allocations and load allocations for point and nonpoint sources of pollution, respectively. No TMDLs have been developed for these listings.

4.4 Statewide Mercury Provisions

The State Water Board adopted [*Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions*](#) (Mercury Provisions) (State Water Board 2017)⁴. The Mercury Provisions provide a consistent regulatory approach throughout the state by setting mercury limits to protect the beneficial uses associated with the consumption of fish by both people and wildlife. The State Water Board also adopted three new beneficial use definitions (tribal traditional culture, tribal subsistence fishing, and subsistence fishing) for use by the State Water Board and Regional Water Boards (collectively Water Boards). The State Water Board also approved one narrative and four numeric mercury

⁴ The Mercury Provisions are available online at: https://www.waterboards.ca.gov/water_issues/programs/mercury/. Accessed on November 29, 2022.

objectives to apply to inland surface waters, enclosed bays, and estuaries of the state that have any of the following beneficial use definitions: commercial and sport fishing, tribal traditional culture, tribal subsistence fishing, wildlife habitat, marine habitat, preservation of rare and endangered species, warm freshwater habitat, cold freshwater habitat, estuarine habitat, or inland saline water habitat, with the exception of waterbodies or waterbody segments with site-specific mercury objectives. The Mercury Provisions will be implemented through National Pollutant Discharge Elimination System (NPDES) permits, certifications, waste discharge requirements, and waivers of waste discharge requirements.

4.5 Construction General Permit

KRCD will need to obtain coverage under the State Water Board's *National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit)⁵ (State Water Board 2009) for activities that disturb one or more acres of soil, or that disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres. Construction activities subject to the Construction General Permit include clearing, grading, and disturbances to the ground such as stockpiling or excavation, but do not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. Coverage is required pursuant to Clean Water Action sections 301 and 402 that prohibit certain discharges of stormwater containing pollutants except in compliance with a NPDES permit. (33 U.S.C. §§ 1311, 1342(p); 40 C.F.R. pts. 122, 123, and 124.)

5.0 California Environmental Quality Act

KRCD is the lead agency for the purposes of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). (Cal. Code Regs., tit. 14, § 15367.) As a responsible agency, the State Water Board relies on the environmental document prepared by the lead agency but makes its own determination as to whether and with what conditions to grant the certification, taking into consideration the information provided in the lead agency's document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).)

KRCD determined that the Project is exempt from CEQA under the General Rule Exemption (Cal. Code Regs., tit. 14 §15061(b)(3)). On May 18, 2022, KRCD filed a Notice of Exemption (NOE) for CEQA compliance with the State Clearinghouse. The State Water Board considered the NOE in connection with the issuance of this certification. Based on its independent judgement the State Water Board agrees that the Project is exempt from CEQA and finds that there is no substantial evidence in the

⁵ Water Quality Order No. 2009-0009-DWQ and NPDES No. CAS000002, as amended by Order No. 2010-0014-DWQ, Order No. 2012-0006-DWQ, Order No. 2022-0057-DWQ, and any amendments thereto. Available at: https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html. Accessed on November 29, 2022.

record that the Project will have a significant effect on the environment. The State Water Board will file an NOE as a responsible agency within five days of issuance of this certification.

6.0 Overview Rationale for Water Quality Certification Conditions

This section of the certification explains that the grant of certification, as conditioned, is within the scope of certification and why the conditions in Section 8.0 are necessary to ensure that the Project and its discharges will comply with water quality requirements. This section also includes, as necessary, citation to federal, state, or tribal law that authorizes the condition and sets forth citation to applicable regulatory authority. Section 4.0 also sets forth citations to applicable regulatory authority. The explanation and citations should be evaluated in the context of the water quality certification as a whole, but the certification conditions are set forth only in Section 8.0.

Pursuant to Clean Water Act section 401 and California Code of Regulations, title 23, section 3859, subdivision (a), the State Water Board, when issuing certifications, may set forth conditions to ensure compliance with applicable water quality standards and other appropriate requirements of state law. Under California Water Code section 13160, the State Water Board is authorized to issue certifications under the Clean Water Act and has delegated this authority to the Executive Director. (Cal. Code Regs., tit. 23, § 3838, subd. (a).)

As explained in Section 4.0, the conditions in this certification are generally required pursuant to the Tulare Lake Basin Plan, as described in the “Regulatory Authority” section above.

California Code of Regulations, title 23, sections 3830 et seq., set forth state regulations pertaining to certifications. In particular, section 3856 sets forth information that must be included in certification requests, and section 3860 sets forth standard conditions that shall be included in all certification actions.

Water Code sections 13267 and 13383 authorize the Water Boards to establish monitoring and reporting requirements for persons discharging or proposing to discharge waste to navigable waters, or to discharge waste thereto. Water Code section 13165 authorizes the State Water Board to impose reasonable investigation and reporting requirements regarding water quality control factors on state or local agencies (such as KRCD). Water Code section 1051 additionally authorizes the State Water Board to investigate waters diverted for beneficial use. Moreover, this certification ensures continued monitoring, reporting, and assessment of water quality for discharges that may impact waters of the state, including waters listed as impaired under Clean Water Act section 303(d).

Fish and Game Code section 5937 requires any owner of a dam to allow sufficient water to pass over, around, or through the dam to keep in good condition any fish that may be planted or exist downstream. Section 5937 and requirements to maintain or

monitor flow or other water quality characteristics as required to meet section 5937 are appropriate conditions of state law necessary to protect fishery beneficial uses.

In general, the code citations, plans, and policies that support issuance of this certification that are described in Section 4.0 and are not duplicated in this section. The conditions in this certification were developed to ensure compliance with water quality standards and water quality requirements established under the Porter-Cologne Water Quality Control Act and the federal Clean Water Act, including requirements in applicable water quality control plans, and other appropriate requirements of state law. The conditions in Section 8.0 of this certification are necessary to protect the beneficial uses of waters of the state identified in water quality control plans, prevent degradation of water quality, and help ensure compliance with state and federal water quality requirements.

When preparing the conditions in this certification, State Water Board staff reviewed and considered the following information:

- KRCD's December 20, 2021 application for certification (KRCD 2021);
- KRCD's December 21, 2021 *Application for a Non-Capacity Amendment of License for the Jeff L. Taylor-Pine Flat Hydroelectric Project (FERC Project No. 2741)* and February 2, 2022 *Kings River Conservation District Supplement to Application for a Non-Capacity Amendment of License*;
- KRCD's September 3, 2021 *Initial Information Package for Application for a Non-Capacity Amendment of License*;
- FERC March 1, 2022 *Notice of Application for a Non-Capacity Amendment of License* (FERC 2022);
- Beneficial uses, water quality objectives, and implementation measures and programs described in the Tulare Lake Basin Plan (Central Valley Regional Water Board 2018);
- Applicable water quality information, permits, policies, objectives, implementation measures, and programs (e.g., Construction General Permit, etc.);
- Project-related controllable water quality factors; and
- Other information in the record.

To the extent FERC considers any certification condition to include requirements outside the substantive scope of USEPA's *Clean Water Act Section 401 Certification Rule*, 85 Fed. Reg. 42,210 (July 13, 2020) (Certification Rule), the Certification Rule—including but not limited to 40 C.F.R. §§ 121.1(f) and (n), 121.3, 121.7(d)(1), and 121.9(b)—is inconsistent with federal law and controlling case law. Under section 401 of the Clean Water Act, when an activity requiring a federal permit or license “may result in any discharge into the navigable waters,” the applicant is required to obtain a certification that states the discharge will comply with applicable water quality standards and that also sets forth any “limitations” and “monitoring requirements” necessary to assure that the “applicant” will comply with water quality standards and “any other appropriate requirement of State law.” (33 U.S.C. § 1341(a) & (d).)

Certification is required for such activity as a whole, not merely for its point-source discharges to waters of the United States. (*PUD No. 1*, supra, 511 U.S. at pp. 711-712.) USEPA has indicated its intent to revise the Certification Rule because, among other faults, it “may prevent state and tribal authorities from adequately protecting their water quality,” “may result in a state or tribe’s certification or conditions being permanently waived as a result of non-substantive and easily fixed procedural concerns,” and “may limit the flexibility of certifications and permits to adapt to changing circumstances.” (86 Fed. Reg. 29,543-29,544 (June 2, 2021).) USEPA has maintained its “substantial concerns” and has asked that the Certification Rule be voluntarily remanded in ongoing litigation. Additionally, on June 9, 2022, USEPA published in the Federal Register a proposed rule to revise procedures for implementing section 401 of the Clean Water Act. The proposed rule would replace and update the Certification Rule (USEPA 2022). As explained in this certification, each certification condition is authorized by applicable state and federal law and is necessary to ensure compliance with such laws. This paragraph is hereby incorporated as part of the explanatory statement for each condition of this certification.

6.1 Rationale for Condition 1: Project Activities

As described in Section 4.0, this certification is granted based on the application and supporting information submitted in accordance with the State Water Board’s regulations and subject to requirements of the Porter-Cologne Water Quality Control Act. Condition 1 requires KRCD to implement the Project as described in its December 20, 2021 certification application, and as modified by the conditions of this certification. Condition 1 will help ensure that the Project is implemented in a manner that protects water quality objectives and avoids unreasonable impacts to beneficial uses. Any changes to the Project description that are inconsistent with the Project application provided to the State Water Board could impact the findings, conclusions, and conditions of the certification and may necessitate the filing of a new application as well as trigger additional environmental review.

6.2 Rationale for Condition 2: Minimum Instream Flow

At the time of certification issuance, the Jeff L. Taylor – Pine Flat Hydroelectric Project minimum instream flow releases are established by Article 35 of its November 19, 1993, amended FERC license.

Condition 2 requires that during Project construction, KRCD maintains minimum instream flow releases as required by its FERC license. Reduced minimum instream flow releases have the potential to impact water quality and associated beneficial uses of the Kings River. Beneficial uses that may be impacted by reduced minimum instream flow releases include: municipal and domestic supply; agricultural supply; hydropower generation; water contact recreation; non-contact water recreation; warm freshwater habitat; cold freshwater habitat; wildlife habitat; spawning, reproduction, and/or early development; ground water recharge; and freshwater replenishment.

6.3 Rationale for Condition 3: Construction and Maintenance

Erosion and sedimentation can contribute to degradation of the waters of the state; therefore, it is necessary to implement actions to limit or eliminate such discharges to protect water quality and associated beneficial uses. Project activities, including construction and other ground disturbing activities, have the potential to cause erosion to the Kings River. Increases in erosion can violate water quality objectives (e.g., turbidity) and impact beneficial uses. Beneficial uses of Kings River that could be impacted by increased erosion and sedimentation include, but are not limited to: warm freshwater habitat; cold freshwater habitat; and water contact recreation.

Condition 3 requires KRCD comply, as applicable, with the Construction General Permit, described in Section 4.5, to ensure that construction-related Project activities do not impact water quality and beneficial uses. This is required pursuant to Clean Water Act sections 301 and 402 that prohibit certain discharges of stormwater containing pollutants except in compliance with an NPDES permit. (33 U.S.C. §§ 1311, and 1342(p); 40 C.F.R. pts. 122, 123, and 124.) Protection of the beneficial uses identified in the Tulare Lake Basin Plan requires effluent limitations and other limitations on discharges of pollutants from point and non-point sources to the Kings River. Erosion from Project construction has the potential to result in discharges that violate water quality standards. Compliance with the Construction General Permit will help ensure protection of water quality and beneficial uses.

6.4 Rationale for Condition 4: Hazardous Materials

Implementation of a Hazardous Materials Management Plan is essential to ensure hazardous materials are properly stored, used, transported, and managed in the Project area to avoid and minimize the release of hazardous materials to water, and the associated impacts to beneficial uses, including impacts to aquatic resources and their habitats. Condition 4 requires KRCD to develop and implement a Hazardous Materials Management Plan to address the storage, use, transportation, and disposal of hazardous substances for the protection of water quality.

Site management requires implementation of best practices to prevent, minimize, and clean up potential spills and leaks during Project construction. For instance, fuels and lubricants associated with the use of mechanized equipment have the potential to result in toxic discharges to waters of the state in violation of water quality standards, including the toxicity and floating material water quality objectives. Secondary containment around hazardous material storage sites helps ensure that any leaks or spills of hazardous materials do not result in a discharge to waters. This condition protects water quality by ensuring that hazardous materials are not discharged to waters of the state when equipment is being used or stored.

The Tulare Lake Basin Plan includes narrative water quality objectives for oil, grease, and other materials in concentrations that can cause a nuisance or result in a visible film or coating on the surface of the water or on objects in the water. Condition 4 requires the development of a Hazardous Substance Plan that includes visual monitoring for oil

and grease during initial use of the new turbine. Additionally, Condition 4 requires development and implementation of a Hazardous Materials Management Plan to prevent hazardous material spills into waters of the state, including containment criteria pursuant to California Code of Regulations, title 27, section 20320. Implementation of this condition will avoid unreasonable impacts to water quality and beneficial uses including, but not limited to: wildlife habitat; warm freshwater habitat; cold freshwater habitat; and water contact recreation.

6.5 Rationale for Condition 5: Project Activity Progress Reports

Condition 5 requires KRCD to submit Project Activity Progress Reports (Progress Reports) during Project construction to document Project status and compliance with certification requirements. Additionally, Condition 5 requires KRCD to notify Central Valley Regional Water Board and State Water Board staff prior to implementing Project activities and to submit a Project Completion Report (Completion Report) following completion of Project construction. The Progress Reports and Completion Report will inform the Deputy Director of potential water quality objective violations and/or impacts to beneficial uses. This will allow implementation of measures to limit or prevent any violations and/or impacts.

6.6 Rationale for Conditions 6 through 25

This certification imposes additional conditions regarding Project approvals, monitoring, enforcement, and potential future revisions.

Condition 6 is necessary to comply with Water Code section 13167 and Conditions 7 through 10 contain important clarifications concerning the scope and legal effect of this certification, and other legal requirements that may apply to the Project.

Monitoring, reporting, and assessment actions, and the information developed through such actions, must be readable, shared, and coordinated with other appropriate entities, and accessible to ensure that a discharge activity complies with water quality requirements. Water Code section 13167 requires the Water Boards to ensure that monitoring data and assessment information are available in a single location and that the information is presented in a manner easily understandable by the public. To fulfill this legislative mandate, Condition 6 requires electronic data submittal in a compatible format with existing system specifications. Compliance with this condition enhances the accessibility of data and transparency of regulatory actions. This allows regulatory agencies and the public to better assess compliance and understand water quality trends or data anomalies by compiling data and making it readily available.

Pursuant to the California Endangered Species Act (Fish & G. Code, §§ 2050 et seq.) and federal Endangered Species Act (16 U.S.C. §§ 1531 et seq.), Condition 7 of the certification does not authorize any act which results in the taking of a threatened, endangered, or candidate species. An applicant for certification is required to identify other licenses, permits, and agreements in the application. In the event an applicant for certification needs authorization from the state or federal authorities, California Code of

Regulations, title 23, section 3856, subdivision (e), requires that the applicant provide copies of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.” To help ensure the integrity of the certification process and its focus on ensuring that Project activities meet water quality standards and other appropriate requirements of state law, Condition 8 serves to notify applicants that there may be additional applicable federal, state, or local laws or ordinances with which they must comply, including the state and federal Endangered Species Acts (Condition 7).

Water Code section 13160, subdivision (b)(1) allows the State Water Board to issue a certification when there is “reasonable assurance that an activity of any person subject to the jurisdiction of the state board will comply with applicable requirements” of state and federal law. Because agency organization and authorities change over time, Condition 9 provides direction for continuity of oversight in the event an agency’s authority or responsibility is transferred to or subsumed by another agency.

The State Water Board is responsible for the water right, water quality, and drinking water functions of the California state government. (Wat. Code, § 174.) Certain certifications involve an appropriation of water subject to part 2 of division 2 of the Water Code or the diversion of water for certain beneficial uses. (See, e.g., Cal. Code Regs., tit. 23, § 3855, subd. (b)(1)(A).) Condition 10 explains the State Water Board’s issuance of this certification is not adjudicating or approving the validity of water rights that may be related to the Project. It also recognizes the State Water Board’s authority, independent of its water quality authority, to prevent unauthorized or threatened unauthorized diversions of water. This helps to ensure that an applicant for a federal license or permit that involves a discharge to navigable waters understands that, except as specified in the certification, the certification does not constitute, or excuse the applicant from obtaining any other State Water Board approvals required for the activity.

Conditions 11 through 13 are necessary to assure that any discharge authorized under the certification will comply with water quality requirements. These conditions are included to comply with California Code of Regulations, title 23, section 3860, which sets forth conditions that must be included in all certifications. Condition 11 is a standard condition that “shall be included as conditions of all certification actions” pursuant to California Code of Regulations, title 23, section 3860, subdivision (a). This condition places the permittee on notice that the certification action may be modified or revoked following administrative or judicial review. Condition 12 is a standard condition that “shall be included as conditions of all water quality certification actions” pursuant to California Code of Regulations, title 23, section 3860(b). This condition clarifies the scope of the certification’s application and ensures that any applicant for a federal license or permit, which may result in a discharge into navigable waters, is subject to the appropriate State certification. Condition 13 is a standard condition that “shall be included as conditions of all water quality certification actions” pursuant to California Code of Regulations, title 23, section 3860(c). This fee requirement condition is also

required pursuant to California Code of Regulations, title 23, section 3833(b), which requires payment of fees by project proponents applying for certification. Fees are essential to support the Water Boards certification program, which includes the development of certifications and related inspections to ensure the protection of water quality and beneficial uses that may be impacted by a project.

Conditions 14 through 24 are necessary to ensure that the Project operates to meet water quality standards and other appropriate requirements of state law, or that adjustments are made to ensure continued compliance with water quality standards in light of new information, changes to the Project, or changes to the standards themselves.

This certification requires monitoring, reporting, and analysis as important elements to ensure that the Project activities will comply with state and federal water quality requirements and other appropriate requirements of state law. Conditions 14, 15, and 16 provide for extensions of time to comply with requirements, prevention or remedy of violations, and notification of changed conditions to ensure compliance and prevent violations of water quality standards. In the event of non-compliance, modified conditions may be necessary to return the Project to compliance and prevent violation of water quality standards. Conditions 17 and 18 require the Licensee to comply with the Tulare Lake Basin Plan and to take all reasonable measures to protect water quality and beneficial uses, in accordance with plans adopted pursuant to state and federal water laws. Water Code section 13267 authorizes the State Water Board to require any person or entity who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste to furnish, under penalty of perjury, technical or monitoring reports when necessary to investigate the quality of any waters of the State. Condition 19 requires such reports that are necessary to ensure compliance with water quality standards.

Condition 20, related to site access requirements, is authorized pursuant to the Water Boards' authority to investigate the quality of any waters of the State, including specific site access authorized under Water Code section 13267 and 13383. Site access is needed to ensure compliance with the certification and associated protection of water quality and beneficial uses. Condition 21 requires site personnel and agencies to be familiar with the content of the certification and availability of the document at the Project site. This condition is required to assure that site personnel are familiar with the conditions needed to protect water quality and any authorized discharge will comply with the terms and conditions of this certification, which requires compliance with water quality objectives and beneficial uses adopted or approved under sections 13170 or 13245 of the Water Code, and with other appropriate requirements of state law.

Condition 22 reserves the State Water Board's authority to add or modify conditions of this certification to ensure that Project activities meet water quality objectives and protect beneficial uses.

Condition 23 requires that the Licensee use analytical methods approved by California's Environmental Laboratory Accreditation Program, when available, to ensure that such analyses are done in a consistent manner.

Condition 24 provides that the State Water Board will provide notice and an opportunity to be heard in exercising its authority to add or modify certification conditions.

In the event that any provision of this certification is found invalid, Condition 25 ensures that all other provisions will remain effective and water quality will still be protected. (Wat. Code, § 13160.)

7.0 Conclusion

The State Water Board finds that, with the conditions and limitations imposed by this certification, the Project will be protective of the state and federal water quality standards and other appropriate requirements of state law.

8.0 Water Quality Certification Conditions

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE STATE WATER RESOURCES CONTROL BOARD CERTIFIES THAT THE JEFF L. TAYLOR – PINE FLAT HYDROELECTRIC PROJECT LICENSE AMENDMENT

(Project) will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of state law, under the following terms and conditions.

CONDITION 1. Project Activities

Unless otherwise modified by conditions of this water quality certification (certification) or approved by the Deputy Director of the Division of Water Rights (Deputy Director), the Licensee shall implement the Project as described in the Kings River Conservation District's December 20, 2021 certification application (KRCD 2021a).

CONDITION 2. Minimum Instream Flow Compliance

During Project construction, the Licensee shall comply with all minimum instream flow requirements of the current Federal Energy Regulatory Commission (FERC) license for the Jeff L. Taylor – Pine Flat Hydroelectric Project (FERC Project No. 2741).

CONDITION 3. Construction and Maintenance

The Licensee shall comply with the State Water Resources Control Board's (State Water Board's) *General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit)⁶ (State Water Board 2009), and amendments thereto. For construction and maintenance activities with the potential to impact water quality or beneficial uses that are not subject to the Construction General Permit and that are not covered by another condition of this certification, the Licensee shall prepare and implement site-specific Water Quality Monitoring and Protection Plans (WQMP Plans) for Deputy Director review and consideration for approval.

At a minimum, the WQMP Plans must demonstrate compliance with sediment and turbidity water quality objectives in the *Water Quality Control Plan for the Tulare Lake Basin* (Tulare Lake Basin Plan) as adopted and may be amended by the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board 2018).

The Licensee shall submit WQMP Plans to the Deputy Director for review and consideration for approval at least 120 days prior to the desired start date of the applicable construction or maintenance activity. The objective of the WQMP Plans shall

⁶ Water Quality Order No. 2009-0009-DWQ and NPDES No. CAS000002, as amended by Order No. 2010-0014-DWQ, Order No. 2012-0006-DWQ, Order No. 2022-0057-DWQ, and amendments thereto. Available at: https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html. Accessed on November 29, 2022.

be to identify and implement control measures for construction, maintenance, or other activities with the potential to cause erosion, stream sedimentation, fugitive dust, soil mass movement, release of hazardous materials, or other water quality impairment.

WQMP Plans shall be based on actual site geologic, soil, and groundwater conditions, and at a minimum shall include:

- A description of site conditions and the proposed activity;
- Detailed descriptions, design drawings, and specific topographic locations of all control measures in relation to the proposed activity, which may include:
 - Measures to divert runoff away from disturbed land surfaces;
 - Measures to collect and filter runoff from disturbed land surfaces, including sediment ponds;
 - Measures to dissipate energy and prevent erosion;
- Revegetation measures for disturbed areas, which shall include use of native plants and locally-sourced plants and seeds; and
- A monitoring, maintenance, and reporting schedule.

The Deputy Director may require modifications as part of any approval. The Licensee shall file with FERC the Deputy Director-approved WQMP Plans, and any approved amendments thereto. The Licensee shall implement the WQMP Plans upon receipt of Deputy Director and any other required approvals, in accordance with the schedule and requirements specified therein.

CONDITION 4. Hazardous Materials

A minimum of three months prior to commencement of Project construction, the Licensee shall submit a Hazardous Materials Management Plan (Hazardous Materials Plan) to the Deputy Director for review and consideration for approval. The Deputy Director may require modifications as part of any approval. The objective of the Hazardous Materials Plan shall be to identify measures for the storage and disposal of hazardous materials and identification of protocols that will be implemented to address any spills during Project construction. The Licensee shall develop the Hazardous Materials Plan in consultation with State Water Board and Central Valley Regional Water Board staff. At a minimum, the Hazardous Materials Plan shall include:

- (i) Identification of all hazardous materials to be used during Project construction;
- (ii) Identification of all on-site spill response materials, including those in spill kits, and their potential uses and locations. At a minimum, hazardous materials spill kits shall be maintained onsite and in vehicles for small spills for the duration of construction activities. These kits shall include oil-absorbent material and tarps to contain and control any minor releases. During Project implementation, emergency spill supplies and equipment shall be kept adjacent to all work and at staging areas and shall be clearly marked;

- (iii) Measures to manage, remediate, and dispose of hazardous and non-hazardous waste;
- (iv) Locations and protocols as defined in California Code of Regulations, title 27, section 20320, for storing hazardous materials during Project construction, which, at a minimum, shall not be stored in or near a floodplain;
- (v) Measures to limit, control, and clean up spills, which shall include, as applicable, use of bermed storage areas, regular equipment inspections, and fueling/refueling procedures;
- (vi) Measures to visually assess potential discharges of oil and grease to surface water from initial operation of the Unit 4 Powerhouse;
- (vii) Adaptive management actions to prevent and remediate any oil and grease discharges associated with initial operation of Unit 4 Powerhouse that could impact water quality;
- (viii) For any violation of oil and grease water quality objectives the Deputy Director and the Executive Officer of the Central Valley Regional Water Board (Executive Officer) shall be notified promptly, and in no case more than 24 hours following the violation. The notice shall include the cause of the violation, measures taken to correct the violation, and measures the Licensee will implement to prevent a future violation. Project activities associated with the violation shall immediately cease and may not resume without approval from the Deputy Director. The Deputy Director may require additional actions to address the discharge or help prevent similar violations in the future.
- (ix) Procedures for notifying State Water Board, Central Valley Regional Water Board, and other appropriate agencies of any hazardous materials spills, and the measures taken to contain and clean up the spills; and
- (x) Documentation of consultation with State Water Board and Central Valley Regional Water Board staff, comments and recommendations made in connection with the plan, and a description of how the plan incorporates or addresses the comments and recommendations.

Prior to Project construction, all staff and personnel of contractors and subcontractors shall receive training regarding the appropriate work practices necessary to effectively comply with the applicable environmental laws and regulations, including hazardous materials spill prevention and response measures. The training shall include identification and reporting to the appropriate onsite person of any visual observations that may indicate a water quality impairment (e.g., oil sheen, etc.) and information on the location and use of spill kits.

Hazardous materials or other materials that can affect water quality shall not be disposed of or released onto the ground, the underlying groundwater, or any surface water. All construction and maintenance waste, including trash and litter, garbage, other solid waste, petroleum products, and other potentially hazardous materials (including equipment lubricants, solvents, and cleaners), shall be removed to an appropriate waste facility permitted or otherwise authorized to treat, store, or dispose of such materials.

Any modifications to the Hazardous Materials Plan shall be approved by the Deputy Director prior to implementation. The Licensee shall file with FERC the Deputy Director-approved Hazardous Materials Plan and any approved amendments thereto. The Licensee shall implement the Hazardous Materials Plan and any amendments thereto upon receipt of Deputy Director and any other required approvals, in accordance with the schedule and requirements specified therein. The Licensee shall not commence Project construction without receipt of Deputy Director approval of the Hazardous Materials Plan.

CONDITION 5. Project Activity Progress Reports

Every 30 days following initiation of Project construction and for the duration of Project construction, the Licensee shall submit a Project Activity Progress Report (Progress Report) to the Deputy Director. The Progress Report shall include:

- (1) A summary of Project activities performed;
- (2) Documentation of compliance with each condition of this certification and details of any failure to meet the certification requirements;
- (3) Details of Project-related adverse impacts to beneficial uses, if applicable;
- (4) Any anticipated Project implementation activities differing from those described in the certification application or required by this certification⁷;
- (5) A description of upcoming activities that may cause erosion or water quality impairment; and
- (6) Any additional Project-specific water quality parameters that are being or will be monitored as part of the Project.

The Deputy Director may require the Licensee to implement corrective actions in response to the information provided in a Progress Report. Within 60 days of Project completion, the Licensee shall provide the Deputy Director with a Project Completion Report that comprehensively summarizes items 1 – 3, above. The Licensee shall provide any additional information or clarification requested by the Deputy Director related to a Progress Report or the Project Completion Report. Upon request from State Water Board staff, the Licensee shall meet with staff to discuss a Progress Report or the Project Completion Report.

CONDITIONS 6 – 25

CONDITION 6. Unless otherwise specified in this certification or at the request of the Deputy Director, data and/or reports shall be submitted electronically in a format accepted by the State Water Board to facilitate the incorporation of this information into public reports and the State Water Board's water quality database systems in compliance with California Water Code section 13167.

⁷ Identification of such activities in a Progress Report does not alleviate the need for the Licensee to request an amendment or approval for such deviation, if needed.

CONDITION 7. This certification does not authorize any act which results in the take of a threatened, endangered, or candidate species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (ESA) (Fish & G. Code, §§ 2050 – 2097) or the federal ESA (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 must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Licensee is responsible for meeting all requirements of the applicable ESAs for the Project authorized under this certification.

CONDITION 8. This certification shall not be construed as replacement or substitution for any necessary federal, state, and local approvals. The Licensee is responsible for compliance with all applicable federal, state, or local laws or ordinances and shall obtain authorization from applicable regulatory agencies prior to the commencement of Project activities.

CONDITION 9. Any requirement in this certification that refers to an agency whose authorities and responsibilities are transferred to or subsumed by another state or federal agency, will apply equally to the successor agency.

CONDITION 10. Nothing in this certification shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 or riparian claims. The State Water Board has separate authority under the Water Code to investigate and take enforcement action, if necessary, to prevent any unauthorized or threatened unauthorized diversions of water.

CONDITION 11. This certification is subject to modification or revocation upon administrative or judicial review, including but not limited to review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, division 3, chapter 28, article 6 (commencing with section 3867).

CONDITION 12. This certification 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.

CONDITION 13. This certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28.

CONDITION 14. Notwithstanding any more specific provision of this certification, any plan or report developed as a condition of this certification requires review and approval by the Deputy Director. The State Water Board’s approval authority, including authority delegated to the Deputy Director or others, includes the authority to withhold approval or to require modification of a plan, proposal, or report prior to approval. The State Water Board may take enforcement action if the Licensee fails to provide or implement a

required item in a timely manner. If a time extension is needed to submit an item for Deputy Director approval, the Licensee shall submit a written request for the extension, with justification, to the Deputy Director no later than 15 days prior to the deadline. The Licensee shall not implement any plan, proposal, or report until after the applicable State Water Board approval and any other necessary regulatory approvals.

CONDITION 15. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation is 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 ensure compliance with the water quality standards and other pertinent requirements incorporated into this certification. 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.

CONDITION 16. The Licensee shall submit any change to the Project, including, operations, facilities, technology changes or upgrades, or methodology, which could have a significant or material effect on the findings, conclusions, or conditions of this certification, to the State Water Board for prior review and written approval. The State Water Board shall determine significance and may require consultation with other state and/or federal agencies. If the State Water Board is not notified of a change to the Project, it will be considered a violation of this certification.

CONDITION 17. This certification is contingent on compliance with all applicable requirements of the Tulare Lake Basin Plan.

CONDITION 18. Unless otherwise specified by conditions in this certification, Project activities shall be conducted 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 waters of the state, including the Kings River and Pine Flat Reservoir.

CONDITION 19. In response to a suspected violation of any condition of this certification, the State Water Board or Central Valley Regional 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. (Wat. Code, §§ 1051, 13165, 13267, and 13383.)

CONDITION 20. Upon request, a construction schedule shall be provided to State Water Board and Central Valley Regional Water Board staff. The Licensee shall provide State Water Board and Central Valley Regional Water Board staff access to Project sites to document compliance with this certification.

CONDITION 21. A copy of this certification shall be provided to any contractor and all subcontractors conducting Project-related work, and copies shall remain in their possession at the Project site. The Licensee shall be responsible for work conducted by its contractors, subcontractors, or other persons conducting Project-related work.

CONDITION 22. The State Water Board reserves the authority to add to or modify the conditions of this certification: (1) to incorporate changes in technology, sampling, or methodologies; (2) if monitoring results indicate that Project activities could violate water quality objectives or impair beneficial uses; (3) 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; and (4) to require additional monitoring and/or other measures, as needed, to ensure that Project activities meet water quality objectives and protect beneficial uses.

CONDITION 23. The Licensee shall use analytical methods approved by California's Environmental Laboratory Accreditation Program, where such methods are available. Samples that require laboratory analysis shall be analyzed by Environmental Lab Accreditation Program-certified laboratories.

CONDITION 24. The State Water Board shall provide notice and an opportunity to be heard in exercising its authority to add to or modify the conditions of this certification.

CONDITION 25. The provisions of this certification are severable. If any provision of this certification is found invalid, affects the validity of the certification, or would result in a determination that the State Water Board has waived its section 401 certification authority for the Project, the State Water Board reserves authority to consider whether an alternative term would address the water quality issue without being found invalid or resulting in a waiver determination. If any provision of this certification is found invalid, affects the validity of the certification, or would result in a determination that the State Water Board has waived its section 401 certification authority for the Project, the remainder of this certification shall not be affected.



Eileen Sobeck
Executive Director

December 19, 2022

Date

9.0 References

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**ATTACHMENT A:
PROJECT OVERVIEW MAPS AND SCHEMATICS
WATER QUALITY CERTIFICATION
FOR
JEFF L. TAYLOR-PINE FLAT HYDROELECTRIC PROJECT LICENSE AMENDMENT**

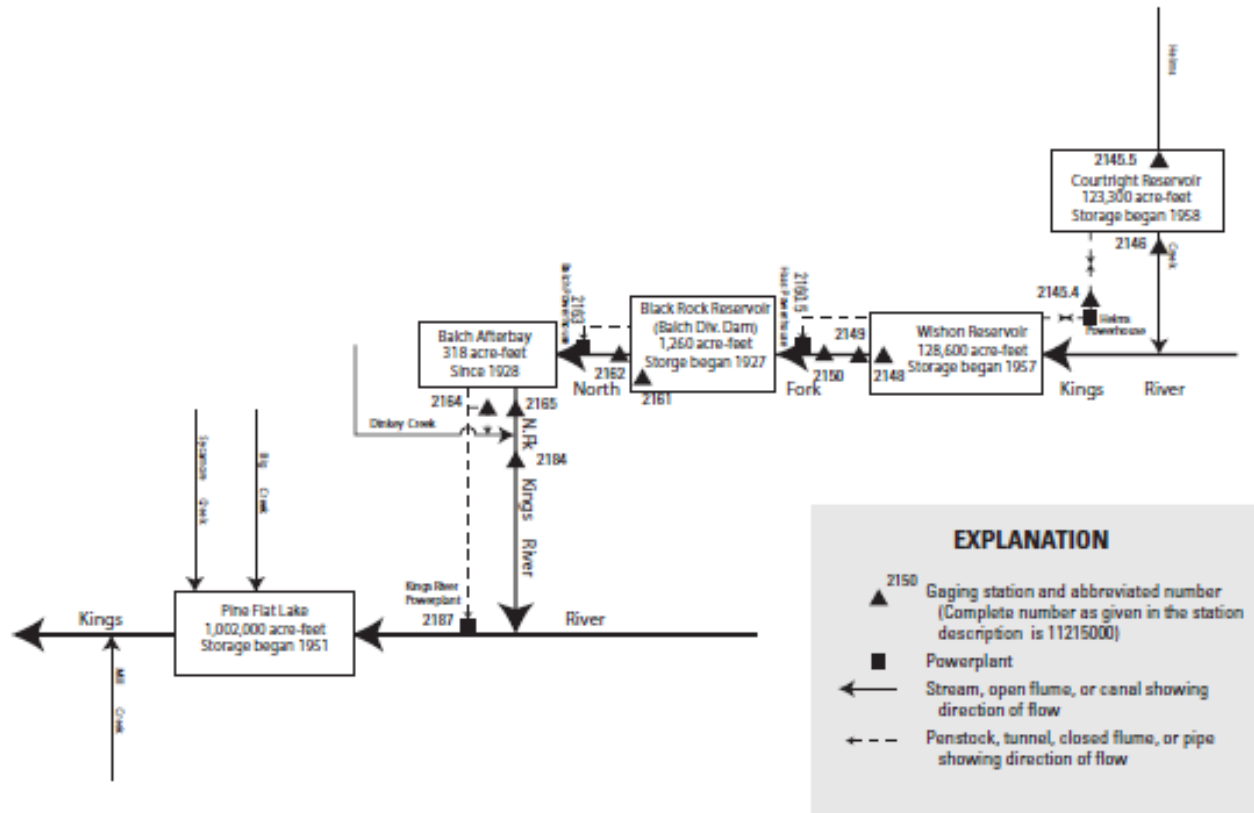


Figure A1. Figure Showing Diversions and Storage in Kings River Basin (USGS2010)



Figure A2. KRCD's Jeff L. Taylor Powerhouse Project Main Features (KRCD 2021)

**ATTACHMENT B:
PROJECT DESCRIPTION**

**WATER QUALITY CERTIFICATION
FOR
JEFF L. TAYLOR-PINE FLAT HYDROELECTRIC PROJECT LICENSE AMENDMENT**

The Jeff L. Taylor – Pine Flat Hydroelectric Project is located in Piedra, California, in Fresno County, 30 miles east of the City of Fresno, on the north bank of the Kings River about 200 feet downstream of the United States Army Corps of Engineers' (USACE) Pine Flat Dam. Existing facilities include: (1) six fixed-wheel emergency gates (two per intake), each approximately 9-feet-wide by 15-feet-high; (2) three penstock extensions, one each from the three USACE 13.5-foot-diameter underground penstocks; (3) the outdoor Jeff L. Taylor Powerhouse, which contains three Francis turbines and associated generating units each with an installed name-plate capacity of 55 megawatts (MWs); (4) three generator leads and a step-up transformer bank at the powerhouse, consisting of three 70 megavolt-amperes single-phase units; (5) the North Riverside Access Park that contains an approximately 1,050-foot-long access road from North Piedra Road, a 0.5-acre parking area, five day use sites, a two-stall American with Disabilities Act -compliant restroom, two interpretive kiosks, and visitor feedback stations; and (6) appurtenant equipment.

The 11.87-acre Federal Energy Regulatory Commission (FERC) Project Boundary includes 4.94 acres of federal lands administered by the USACE, 4.55 acres of State of California lands submerged by the Kings River, and 2.38 acres of Fresno County lands.

The Jeff L. Taylor – Pine Flat Hydroelectric Project is a run-of-river hydropower facility that generates electricity from USACE water releases from Pine Flat Reservoir during mandatory flood control operations and as requested by the Kings River Water Association through its Watermaster for irrigation. The Jeff L. Taylor – Pine Flat Hydroelectric Project does not currently generate electricity when releases from Pine Flat Dam are less than approximately 500 cubic feet per second (cfs), the flow level needed to generate electricity with existing units in the Jeff L. Taylor Powerhouse. Flows below this level commonly occur during the months of November through January. The maximum hydraulic capacity of the existing Jeff L. Taylor – Pine Flat Hydroelectric Project is 8,000 cfs.

The existing Jeff L Taylor – Pine Flat Hydroelectric Project does not include any dams, impoundments, transmission lines, or open water conduits. Pine Flat Dam and Reservoir were constructed by the USACE in 1954 to provide local and regional flood protection. Power is provided from the Pine Flat Switchyard to the grid via California Department of Water Resources' existing Pine Flat Transmission Line (FERC Project No. 2876), which interconnects with Pacific Gas and Electric Company's 230-kilovolt Balch #2-McCall Transmission Line.

In 2002, USACE constructed a Bypass System at Pine Flat Dam to improve downstream water temperatures. The Bypass System withdraws water from Pine Flat Reservoir through the intake gate and discharges the water into the air above the Kings River. Releases from the Bypass System are colder since they withdraw water from deeper in Pine Flat Reservoir. Responsibility for the Bypass System operations, repair, and maintenance is delegated to Kings River Conservation District (KRCD) under a Cooperative Agreement with the USACE.

On December 20, 2021, KRCD submitted to the State Water Resources Control Board (State Water Board) a water quality certification (certification) application for the Jeff L. Taylor – Pine Flat Hydroelectric Project License Amendment (Project). KRCD proposes to add a fourth generating unit to the Jeff L. Taylor – Pine Flat Hydroelectric Project that will use discharges from Pine Flat Dam up to 375 cfs that cannot be used to generate power in the existing powerhouse and are currently discharged through the Bypass System. The new unit will increase the generating capacity of the Project by approximately 6.3 MWs from 165 MWs to 171.3 MWs, an increase in name-plate generation capacity of 3.8 percent. The new unit will not increase the existing 8,000 cfs maximum hydraulic capacity of the Jeff L. Taylor – Pine Flat Hydroelectric Project.

The proposed new Unit 4 would include: (1) a 66-inch-diameter extension from the existing Bypass System's 66-inch-diameter pipes that connect to Unit 1 and Unit 2; (2) an outdoor Unit 4 Powerhouse that would contain a 6.3-MW Francis turbine and associated generator; (3) a generator lead and a step-up transformer consisting of one 6.6-megavolt-ampere, three-phase unit at the new powerhouse; and (4) appurtenant equipment. The new powerhouse would be located between Pine Flat Dam and the existing switchyard in the paved driveway above the Bypass System's piping walkways, and would be approximately 20 feet in height. The new unit would discharge at a maximum rate of 375 cfs into the Kings River via a draft tube outlet pipe penetrating the existing spray wall above the Kings River surface elevation (i.e., an aerial discharge). Unit 4 would connect to the existing switchyard and would operate in coordination with operations of Units 1, 2 and 3 and the existing Bypass System to provide the required water discharge below Pine Flat Dam that is currently released through the Bypass System.

No modifications are required to: USACE's Pine Flat Dam, spillway, intake, or penstocks; Units 1, 2, or 3; or the non-Project Bypass System connected to Unit 3. No changes to flood control operations, Pine Flat Reservoir elevations, delivery of irrigation water flow, or instream flow would result from the addition of Unit 4. The anticipated total duration of construction and commissioning is approximately one year, commencing after FERC amends KRCD's license to include the fourth unit, and after detailed design, approval of detailed construction plans, acquisition of any additional required permits or approvals, and purchase of equipment are complete.