



# State Water Board Water Quality Certification Environmental Impact Documents

## Is NID trying to avert environmental laws?

Framing NID as not following state environmental laws is a stretch and ignores the significant mitigation proposed by state and federal resource agencies and other stakeholders and imposed by FERC on NID's Yuba-Bear Project license.

For more than a decade, NID has met with state and federal agencies, environmental groups, and interested stakeholders to extensively analyze the terms under which NID's Project can be relicensed.

There have been approximately 130 meetings, with significant participation by:

- US Department of Agriculture
- US Forest Service
- US Department of Interior
- US Bureau of Land Management
- CA Department Fish and Wildlife
- CA State Water Resources Control Board (State Water Board)
- Foothills Water Network
- California Sportfishing Protection Alliance
- American Whitewater

The purpose of the meetings has been for resource agencies and stakeholders to request and review specific studies of project impacts and mitigation efforts.

The new FERC license includes, among other requirements:

- Up to about \$216 million in infrastructure improvements, recreation enhancements, temperature monitoring, studies, and environmental mitigation efforts over the next 40 years
- Up to nearly 60,000 acre-feet per year of NID's water supply that must flow through the rivers and cannot be used by NID to meet customer demands (up from 5,000 acre-feet per year from the previous license)
- Additional operational changes to affect instream temperature and other environmental benefits.

## Why did NID not start on the CEQA?

NID waited to commence the California Environmental Quality Act (CEQA) until all the regulators in the relicensing process made their determinations and the National Environmental Policy Act (NEPA) was completed. Any attempt to complete CEQA would have been deemed either premature (because the "Project Description" was not final), or required a recirculation of the Environmental Impact Report (EIR) after all of these elements fell into place.

One of the fundamental requirements of CEQA is a 'stable and finite' project description. At the time NID submitted its relicensing application, the District was still actively engaged in negotiations with federal agencies. For instance, the USFS conditions were finalized in late 2013. These entities had the authority to impose conditions that could materially impact and change the project described in the relicensing application.

In addition, the Federal Energy Regulatory Commission (FERC) had not yet completed its NEPA environmental impact statement (EIS) for the project, which outlines the impact on its surrounding environment. The EIS would include staff recommendations that had the potential to change the project described in the relicensing application. The final environmental statement (FEIS) was issued in December 2014.

To this day, Endangered Species Act consultation is still ongoing with NMFS/USFWS, 10 years after the license application was submitted. The National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS) have not completed the ESA Section 7 consultation for the Yuba River Development Project/Yuba Bear Project/Drum Spaulding Project.



## Why did the NID Board of Directors not have it front and center for 10 years?

For the reasons stated above, a determination was made that it would be futile and/or counterproductive to attempt to complete CEQA before the Project became subject to final conditions.

## What is the plan if U.S. Supreme Court sides with the Ninth Court of Appeals?

This would be a discussion for the NID Board of Directors. The Board always is committed to protecting NID's water supply, continuing the District's financial viability, and complying with federal and state environmental laws.

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## Timeline of Key Actions

**2012: March 2012:** NID submits its application to FERC for a new license for the Yuba-Bear Project, and separately applied to the State Water Board for Water Quality Certification. For the next six years, the State Water Board directs NID to withdraw and resubmit its 401 Application to prevent the running of the one-year Clean Water Act limitations period.

**2019: January 25, 2019:** the U.S. Court of Appeals for the Ninth Circuit issues its Hoopa Valley decision, concluding the Clean Water Act's requirement that state regulators act on Certification requests within one year means exactly what it says – one year.

**January 25, 2019:** the State Water Board issues a Denial Without Prejudice of NID's pending application for water quality certification.

**February 2019:** NID requested that FERC clarify whether the DC Circuit's Hoopa Valley Decision applied to NID, such that the State Water Board had waived its 401 authority, or alternatively, whether NID should submit another application for Certification in March.

**March 18, 2019:** the State Water Board files a response to NID's request, asking that FERC find the State Water Board did not waive its water quality certification authority

**2020: April 16, 2020:** FERC issues an "Order on Waiver of Water Quality Certification," finding that by failing to act on NID's initial application for Certification within one year, the State Water Board had waived its 401 Certification authority. Shortly thereafter, the State Water Board and local non-government organizations sought rehearing of the FERC Order.

**July 21, 2020:** FERC issues its "Order Addressing Arguments Raised on Rehearing," and upheld its original Order Granting Waiver.

**August 14, 2020:**, with no notice, no public hearing, or opportunity to be heard, the State Water Board's Executive Director issues the purported Yuba-Bear 401 Water Quality Certification to NID.

**August 17, 2020:** Foothill Water Network et al. petitions the Ninth Circuit Court of Appeals for review of FERC's Orders Granting waiver of Water Quality Certification requirements.

**2021: May 2021:** the Ninth Circuit Court of Appeals grants the parties' joint motion to consolidate the similar 401 certification considerations of NID, the Yuba Water Agency, and Merced Irrigation District cases.

**2022: August 4, 2022:** the Ninth Circuit Court of Appeals rejects FERC's waiver orders, holding that NID's 401 Certification holds.

**2023: February 6, 2023:** legal petition pending before the U.S. Supreme Court.