



Meeting: **Reservoir Committee & Authority Board Agenda
Item 2.5**

October 16, 2026

Subject: **Clean Water Act Section 401 Water Quality Certification**

Requested Action:

Reservoir Committee and Authority Board accept the Clean Water Act (CWA) Section 401 Water Quality Certification issued by the State Water Resources Control Board (State Water Board) for the Project and direct staff to proceed with implementation.

Detailed Description/Background:

On May 29, 2026, the State Water Board released a Draft Section 401 Water Quality Certification for public review. At its June 26, 2026 meeting, the Authority Board reviewed the Draft Certification and provided direction regarding the Authority's comments. Staff subsequently submitted comments to the State Water Board identifying several areas where revisions were requested to improve implementation certainty and better coordinate the certification with the Project's other permits and approvals. The Authority's primary concerns included the lack of defined review timelines for State Water Board approval of individual work packages, the relationship between the certification and the separate water right proceeding, potential duplication with other environmental permits and programs, and certain biological and aquatic resource requirements. (See Attachment A for discussion how the Authority's comments were or were not addressed in the final permit terms.)

In September 2026, the State Water Board issued the Final Section 401 Water Quality Certification for the Project. The Final Certification represents a significant Project permitting milestone and provides the overarching Section 401 authorization for construction of the Project. The certification is intended to cover Project construction activities associated with the individual Section 404 permits to be issued by USACE and establishes the framework under which the Authority will obtain approval for individual construction work packages.

How the Final Certification Will Be Implemented

The Final Certification uses an Individual Work Package Plan approach that generally aligns with the Authority's construction permitting approach. Rather than requiring a separate Section 401 certification for each USACE authorization, the Final Certification establishes the water quality requirements applicable to the overall Project and requires the Authority to obtain State Water Board approval of the specific plans and measures applicable to each work package before the associated work begins. For each work package, the Authority must submit an Individual Work Package Plan to the Deputy Director of the State Water Board's Division of Water Rights at least six months before the desired start of the activities or the date the

Authority applies to USACE for coverage under the work package, whichever occurs first.

Each Individual Work Package Plan must describe the proposed activities and existing site conditions; identify direct and indirect impacts to wetlands and surface waters; provide new or updated plans, as applicable; identify applicable avoidance and minimization measures and best management practices; and include the corresponding USACE application or permit. Where a particular plan or requirement is not applicable to a work package, the Authority may explain why an update or separate plan is not necessary.

Importantly, construction associated with a work package may not begin until the Deputy Director has approved the Individual Work Package Plan and the plans applicable to that package. This makes timely development, coordination, submittal, and approval of the work packages an important component of the Project's construction schedule. Once a work package has been approved, changes may be requested as construction progresses. The Authority must submit proposed changes to the Deputy Director at least 30 days before the desired date to implement the change, including the proposed change and supporting rationale. The change cannot be implemented until approved by the Deputy Director. This process is generally consistent with the other Project construction permits and has been successfully implemented on other recent large scale infrastructure projects in California.

Staff Assessment

Overall, staff believe the Final Certification provides a workable framework for implementing the Project and represents an important step forward from the Draft Certification. The State Water Board made meaningful revisions addressing several of the Authority's comments, particularly by providing additional flexibility for preliminary activities before issuance of the water right and limiting the CRAM requirement to permittee-responsible mitigation.

The certification also provides the Authority with a single overarching Section 401 framework that can be implemented through individual construction work packages rather than requiring separate water quality certifications as the Project progresses. This approach is generally consistent with the Authority's planned construction and Section 404 permitting strategy and provides flexibility to update environmental plans as Project design and construction advance.

The most important issue for the Authority going forward will be management of the State Water Board review and approval process. Staff will continue working closely with State Water Board staff to establish practical review procedures, coordinate upcoming work packages well in advance of formal submittal, integrate Section 401 requirements with the Project's other environmental permits, and elevate potential schedule issues early.

Based on staff's review, the remaining implementation requirements and risks are manageable and do not warrant delaying acceptance of the Final Certification. Staff therefore recommend that the Authority Board concur with the terms and conditions of the Final Section 401 Water Quality Certification and direct staff to proceed with implementation.

Prior Action:

June 2026: Comment on the Clean Water Act (CWA) 401 Draft Permit ahead of the public comment period closing June 26 and provide Board direction on the key points of the Authority's comments.

Fiscal Impact/Funding Source:

Implementation of the Final Certification will require ongoing staff and consultant resources for development of Individual Work Package Plans, environmental compliance plans, agency coordination, monitoring, reporting, and construction compliance. These activities are part of the Project's planned environmental permitting and construction compliance program and will be incorporated into applicable Project work plans and budgets.

Staff Contact:

Ali Forsythe

Primary Service Provider:

HDR and ICF

Attachments:

The final water quality certification can be found at:

https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/sites.html

Attachment A – Authority comments on the draft certification and how the Authority's comments were addressed

Authority Comments on the May 2026 Draft Section 401 Water Quality Certification and how the Authority's Comments were Addressed in the September 2026 Final Water Quality Certification

The State Water Board made several helpful revisions between the May 2026 Draft Section 401 Water Quality Certification to the September 2026 Final Certification in response to issues raised during the public review process. A summary of the Authority's comments on the May 2026 Draft Certification and how each of those was addressed by the State Water Board in the September 2026 Final Certification is provided below.

- **State Water Board Review and Approval Timelines.** The Authority's most significant concern with the Draft Certification was the absence of defined timelines governing Deputy Director review and approval of Individual Work Package Plans and associated plans. The Authority requested defined review periods and other procedures that would provide reasonable certainty regarding State Water Board review schedules. The Authority's requested changes were not made. Staff believe this risk can be managed through early and continuing coordination with State Water Board staff. The Authority will need to develop work packages substantially in advance of construction, coordinate draft materials with agency staff before formal submittal where appropriate, and actively track State Water Board review as part of the Project's integrated permitting and construction schedule.
- **Relationship to the Water Right Proceeding.** The Authority also requested that the State Water Board more clearly distinguish the Section 401 certification from the separate water right proceeding. The Draft Certification prohibited the Authority from beginning any ground-disturbing Project activity until the State Water Board issued the Project water right. The Final Certification meaningfully narrows this restriction. The prohibition now applies to ground-disturbing activities with the potential to discharge to or impact surface waters and provides a process for exceptions.
- **Coordination with Other Environmental Permits.** The Authority commented that the Draft Certification created the potential for duplicative plans, consultation, monitoring, and reporting requirements given the extensive environmental compliance framework already applicable to the Project, including the Project's environmental commitments, federal Biological Opinions, state Incidental Take Permits, stormwater requirements, USACE requirements, and other agency-approved monitoring programs. The Authority requested that the State Water Board coordinate its requirements with these existing programs to avoid unnecessary duplication and inconsistencies. This change was largely not made. However, the certification provides some flexibility to rely on existing materials.

- **California Rapid Assessment Method (CRAM).** The Authority requested that the State Water Board clarify that CRAM would be required for aquatic resources mitigated through permittee-responsible mitigation, rather than requiring the Authority to perform separate CRAM assessments where mitigation obligations are satisfied through an approved mitigation bank or in-lieu fee program. This change was made.