

CHAPTER 7.0

REGULATORY PERMITS, APPROVALS, AND AUTHORITIES
RELATED TO RELICENSING THE OROVILLE FACILITIES

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7.0 REGULATORY PERMITS, APPROVALS, AND AUTHORITIES RELATED TO RELICENSING THE OROVILLE FACILITIES

Table 7-1 below lists the regulatory permits, approvals, and authorities related to relicensing the Oroville Facilities and the status of each.

Table 7-1. Regulatory permits, approvals, and authorities.

Regulatory Permit or Approval	Status
Water Quality Certification (Section 401 of the Federal Clean Water Act)	The SWRCB has been involved throughout the collaborative process in reviewing study plan design and implementation and providing guidance on analyses needed to support the Section 401 application and certification process. The application for Section 401 certification was filed and received by the SWRCB on October 26, 2005 (within 60 days of FERC's issuance of the Ready for Environmental Analysis [REA] notice). The application was withdrawn and resubmitted on October 16, 2006. The SWRCB is expected to issue Section 401 certification within 1 year of the re-submittal of the application for Section 401 certification.
Fishway Prescriptions (Section 18 of the Federal Power Act [FPA])	USFWS and NMFS have been working with DWR and other interested parties to develop appropriate Section 18 conditions. The Department of the Interior, on behalf of USFWS, filed its reservation of authority to prescribe fishways on March 31, 2006, and NMFS filed its preliminary fishway prescription (in the form of a reservation of authority) on January 31, 2007.
Federal Land Management Conditions (Section 4(e) of the FPA)	BLM and USFS have authority over lands occupied by the Oroville Facilities and have been involved throughout the collaborative process. BLM did not exercise its 4(e) conditioning authority but USFS issued Final Section 4(e) conditions on January 31, 2007.
Section 7 of the Federal Endangered Species Act (FESA)	Species protected under FESA and potentially affected by the Proposed Project were identified early in the relicensing process through consultation with NMFS and USFWS. DWR developed draft biological assessments (BAs) for submission to FERC. FERC initiated formal consultation under FESA on October 24, 2006, and referenced the DWR-prepared draft BA. USFWS and NMFS are expected to issue a final biological opinion (BO) within 135 days from initiation of formal consultation.
Recommendations under Section 10(j) of the FPA	The Department of the Interior, on behalf of the USFWS, filed its recommendations on March 31, 2006, NMFS filed its preliminary terms and conditions on March 29, 2006, and DFG issued recommendations regarding fish and wildlife mitigation measures on March 29, 2006. FERC would decide whether to adopt these recommendations prior to license issuance.
Section 106 of the National Historic Preservation Act (NHPA)	FERC is responsible for ensuring that the Oroville Facilities are compliant with the NHPA. FERC is also required to consult with the California Office of Historic Preservation (OHP); other land management agencies where the undertaking may have an effect; and federally recognized Indian Tribes that may have cultural affiliations with affected properties. FERC authorized DWR to initiate consultation with the OHP under Section 106 of the NHPA. Representatives from key agencies and entities involved in historic preservation participated in the Cultural Resources Work Group. DWR continues to consult with FERC and OHP in compliance with Section 106, including submittal of a draft Historic Properties Management Plan for review and comment.

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Americans with Disabilities Act (ADA)	Access needs of the disabled and ADA standards were addressed in the collaborative process. As public facilities are updated, expanded, or newly developed, ADA issues would be addressed.
Clean Water Act Section 303(d) Total Maximum Daily Load (TMDL)	The lower Feather River is identified on the SWRCB's most recent 303(d) list as being impaired by the pesticide diazinon, Group A. The TMDL has been developed for the control of pesticides (i.e., organochlorine pesticides), mercury, and unknown toxicity (State Water Resources Control Board 2003). The TMDL for control of diazinon was recently prepared and is designed to control diazinon primarily from agricultural operations (Central Valley RWQCB 2003). TMDL development programs have not been established yet for the other listed contaminants of concern.
Clean Water Act Section 402 National Pollutant Discharge Elimination System (NPDES) Permit Compliance	The most applicable NPDES permit for the anticipated activities associated with the Oroville Facilities is the Statewide stormwater permit for general construction activity (SWRCB Order 99-08-DWQ, as amended) that applies to all construction projects that disturb greater than 1 acre of land. The construction activity permit requires filing a Notice of Intent with the SWRCB and preparation of a storm water pollution prevention plan. DWR would file for these permits as construction activities proceed.
Clean Water Act Section 404 Dredge and Fill	Implementation of the Proposed Project would require Section 404 permits and their associated Section 401 water quality certification. Engineering designs, environmental reviews, and plans required for regulatory agency reviews and permit processes would be completed in a timely manner as necessary for construction activities.
California Fish and Game Code—Section 1600 (Streambed Alteration)	DWR has worked with DFG throughout the Oroville Facilities FERC relicensing process. DWR would obtain all necessary permits in compliance with California Fish and Game Code Section 1600.
California Fish and Game Code Section 5937 (Flows below Dams)	The Proposed Project (SA) requires DWR to release water for the benefit of fishery resources. Since DFG is a signatory to the SA, DWR expects the Oroville Facilities would be operated in a manner consistent with Section 5937 of the California Fish and Game Code.
California Endangered Species Act (CESA) (Fish and Game Code Sections 2050–2116)	The Oroville Facilities have the potential to affect species listed under CESA. DWR would consult with DFG and obtain appropriate authorization in accordance with Section 2081 of CESA as necessary. The SA indicates that the SA articles satisfy the statutory, regulatory, or other legal requirements for the protection, mitigation, or enhancement of natural resources.
SWP Authorization (Burns-Porter Act)	DWR is charged as the State agency responsible for management of the SWP with managing operation, maintenance, renewals and replacements, and power purchases necessary for the ongoing operation of the Oroville Facilities.
State Water Code Sections 11900–11901 (Implementing the Davis-Dolwig Act)	DWR implements the provisions of this act in accordance with Agency Order No. 6, dated March 13, 1963, and in coordination with other State departments, including DPR, the California Department of Boating and Waterways, and DFG, with designated responsibilities defined by this act.
Fish and Wildlife Coordination Act (16 United States Code 661 et seq.)	Reports and recommendations of the fish and wildlife agencies are to be included in any authorizing documents for construction or for modification of projects. The decision to adopt fish and wildlife agency recommendations presented in association with the Oroville Facilities relicensing rests with FERC.

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Regulatory Permit or Approval	Status
Magnuson-Stevens Fishery Conservation and Management Act	It is anticipated that NMFS would provide its essential fish habitat conservation recommendations coincident with its BO.
Federal Migratory Bird Treaty Act of 1918 (MBTA)	The federal MBTA protects eggs, nests, young, and the adult life stages of migratory birds. The MBTA was initiated in 1918 and most recently amended in 1989. Migratory game birds and birds of prey, including members of the families Tytonidae (barn owls), Strigidae (typical owls), Acciptridae (kites, eagles, hawks), and Falconidae (caracaras and falcons) are protected under this act.
U.S. Army Corps of Engineers (USACE) Flood Storage Requirements under Flood Control Act of 1944 (Act of Congress, Public Law 78-534, 58 Stat. 890)	Flood control releases are based on the release schedule in the flood control diagram or the emergency spillway release diagram prepared by USACE, whichever requires the greater release. Decisions regarding such releases are made in consultation with USACE.
Executive Order 11988 (Protection of Floodplains), 1977	DWR has reviewed development plans with all agencies having jurisdiction to avoid to the extent possible any long- and short-term adverse effects associated with the occupancy and modification of floodplains. Goals are to reduce the risk of flood loss; to minimize the impact of floods on human safety, health, and welfare; and to restore and preserve the natural and beneficial values served by floodplains.
Executive Order 11990 (Protection of Wetlands), 1977	DWR would review development plans with each agency having jurisdiction over federal lands or any action funded, authorized, or permitted by the federal government. The goal is to ensure that actions taken would minimize the destruction, loss, or degradation of wetlands, while preserving and enhancing the natural and beneficial values of wetlands.
Executive Order 12898 (Environmental Justice for Low Income and Minority Populations), 1994	The goals of Executive Order 12898 are twofold: (1) to identify and address, as appropriate, disproportionately high and adverse human health, environmental, economic, and social effects of federal programs, policies, and activities on minority populations and low-income populations; and (2) to ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.
Federal Land Policy and Management Act of 1976	DWR would review development plans with each agency having jurisdiction to ensure that public lands shall continue to be managed in a manner that would provide protection of lands in accordance with this act.
American Indian Religious Freedom Act of 1978	In collaboration with the Cultural Resources Work Group, DWR has completed an ethnographic and ethnohistoric study into areas of sacred and traditional concern to the local Native American community, and continues to consult with local Maidu tribes on behalf of FERC.
Antiquities Act of 1906	BLM and USFS have been involved with DWR throughout the collaborative process. Before conducting archaeological excavations on these federal lands, DWR would ensure that the proper permits were obtained.
Archaeological Resources Protection Act (ARPA) of 1979	BLM and USFS have been involved with DWR throughout the collaborative process, and would issue ARPA permits before archaeological excavations or the collection of archaeological materials from federal lands.

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Wild and Scenic Rivers Act	The Middle Fork Feather River component of the National Wild and Scenic Rivers System is to be administered by the Secretary of Agriculture. The Middle Fork Feather River was one of the nine original rivers designated under the act in 1968. The Oroville Facilities are not affected and do not affect this designation.
CEQA	DWR officially initiated the CEQA process in the September 20, 2002, <i>Final NEPA Scoping Document 1 and CEQA Notice of Preparation</i> and the January 6, 2003, <i>NEPA Scoping Document 2 and Amended CEQA Notice of Preparation</i> . These two documents indicate that DWR has used the scoping documents, meetings, study results, and documentation to satisfy the consultation and reporting requirements of both processes.
NEPA	In September 2001, DWR distributed Draft SD1 to interested parties, which initiated formal scoping for the NEPA process. SD1 supported the development of either two separate environmental documents or a single joint NEPA/CEQA document. It also served as the CEQA notice of preparation. On October 29 and October 30, 2001, public scoping meetings were held in the cities of Oroville and Sacramento, respectively. On September 20, 2002, DWR distributed the <i>Final NEPA Scoping Document 1 and CEQA Notice of Preparation</i> , and on January 6, 2003, DWR distributed <i>NEPA Scoping Document 2 and Amended CEQA Notice of Preparation</i> . These two documents indicated that DWR would be using the scoping documents, meetings, study results, and documentation to satisfy the consultation and reporting requirements of both processes. On January 26, 2005, DWR submitted the PDEA as part of its Application for License to FERC. The FERC is responsible for NEPA compliance for new License Applications.
Regional Water Quality Control Board (RWQCB) Stormwater Permit	Dischargers whose projects disturb 1 or more acres of soil or whose projects disturb less than 1 acre but are part of a larger common plan of development that in total disturbs 1 or more acres, are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 99-08-DWQ). Construction activity subject to this permit includes clearing, grading, and disturbances to the ground such as stockpiling or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. DWR would apply for these permits as necessary.
Surface Mining and Reclamation Act	This act's requirements apply to anyone, including government agencies, engaged in surface mining operations in California (including those on federally managed lands) that disturb more than 1 acre or remove more than 1,000 cubic yards of material. This includes, but is not limited to, prospecting and exploratory activities, dredging and quarrying, streambed skimming, borrow pitting, and the stockpiling of mined materials.
Reclamation Board Authorization	Any project that proposes to work in a regulated stream, designated floodway on federal flood control project levee slopes or within 10 feet of the levee toe. Such activities might include, but are not limited to, boat docks, ramps, bridges, sand and gravel mining, placement of fill, fences, landscaping, and irrigation facilities.
Federal Emergency Management Agency Review	DWR would confer with applicable counties for projects occurring in 100-year floodplains.

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RWQCB Waste Discharge	RWQCBs regulate discharges under Porter-Cologne primarily through issuance of waste discharge requirements. If DWR were to discharge materials that could affect water quality (other than to a community sewer system), it would file a report of waste discharge.
Site Assessment	DWR would continue to comply with applicable State, federal, and local environmental laws and regulations, which include site assessment. Site assessment may be necessary to confer boundaries, for the protection and restoration of the ecosystem, and to minimize liability for hazardous substance contamination and remediation.

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