



## FOOTHILLS WATER NETWORK



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### **Contacts:**

Ashley Overhouse, Policy Manager  
South Yuba River Citizens League  
(530) 265-5961 x215; [ashley@yubariver.org](mailto:ashley@yubariver.org)

Traci Sheehan, Coordinator  
Foothills Water Network  
(530) 919-3219; [traci@foothillswaternetwork.org](mailto:traci@foothillswaternetwork.org)

Colleen McNally-Murphy, Associate National Director  
Hydropower Reform Coalition  
(202) 243-7037; [colleen@hydroreform.org](mailto:colleen@hydroreform.org)

### **Feds Undermine Clean Water Act Protections**

#### **American River Project Center Stage of National Precedent**

Sacramento, CA - The Federal Energy Regulatory Commission ("FERC") recently ruled that California does not need to provide water quality certification for the Middle Fork American Hydroelectric Project (Middle Fork Project) in Placer and El Dorado counties, operated by Placer County Water Agency (PCWA). This order effectively waives California's authority to ensure water quality and environmental protections for hydropower operations. Conservationists decried the loss of protection for local rivers and claim the precedent will limit the authority of states to implement and enforce the Clean Water Act nationwide. This is the latest event in an ongoing saga of regulatory rollbacks under the Trump Administration, specifically targeting environmental protections.

"The ruling was a disappointing setback for FWN and members of the California Hydropower Reform Coalition (CHRC), who were seeking to uphold water quality protections in the American River watershed and preserve states' authority to issue what is known as a '401 certification.'" stated Traci Sheehan, coordinator for Foothills Water Network (FWN).

Earlier this year in April, FERC declared that the State Water Resources Control Board (State Water Board) had waived their right to issue 401 water quality certification for the Middle Fork Project. Actions by FERC were based on the ruling *Hoopa Valley Tribe v. FERC*, which opened the door for hydropower operators to bypass state approval processes. At that time, FWN asked FERC to revisit their ruling based on the fact that the State Water Board had issued a 401 certification on the day before they issued their Order. But, FERC's Order found that the State Water Board's 401 certification, though issued the day before their original ruling, has no "legal significance."

PCWA has been waiting for the State Water Board to issue a 401 certification since 2013. FERC concluded that the State Water Board's extended delay in issuing the permit "constituted a failure or refusal to act," effectively waiving their authority.

Chris Shutes, FERC Projects Director for the California Sportfishing Protection Alliance, observed: "The Middle Fork American relicensing had a negotiated outcome in which PCWA got everything it needed and more for its lucrative hydropower project. But PCWA couldn't resist piling on the *Hoopa Valley Tribe v. FERC* court case to gain an unnecessary benefit for itself at the expense of the rules that protect water quality across the county."

"This is a serious blow to cooperation in years-long hydropower relicensing," said Ashley Overhouse, Policy Manager at the South Yuba River Citizens League.

"FERC's broad and retroactive application of *Hoopa Valley Tribe v. FERC* sets a dangerous precedent for hydropower proceedings in the future. The Middle Fork Project will now continue to operate for another thirty to fifty years without Clean Water Act protections or oversight from California's State Water Board. "

Combined with other local operators who have also sought waivers, conservationists fear that this poses a significant risk to environmental resources affected by hydropower operations in the Sierra foothills.

The Middle Fork American Project consists of five powerhouses, two storage reservoirs, and a series of diversions in the Middle Fork American and Rubicon River watersheds. FERC issued a 50-year license for the project in 1963. The license expired on March 1, 2013 and has been operating on a series of temporary annual licenses since then. The American River is an important source of drinking water for California's capitol, Sacramento, and is part of the Sacramento River and San Francisco Bay watersheds.

A rash of requests from utilities and water agencies for a waiver of their water quality requirements began in February 2019 with Nevada Irrigation District for the Yuba-Bear Hydroelectric Project. Since then, at least five other licensees have used the *Hoopa Valley Tribe v. FERC* decision to seek waiver of their 401s, including PCWA for the Middle Fork American. However, this is the only hydropower project in California to receive a waiver from FERC to date.

If this trend continues, FERC could potentially exempt licenses for over a dozen California hydropower projects from Clean Water Act protection for the next 30 to 50 years.

Click [here](#) to read FERC's order.

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*Based in Nevada City, CA, the South Yuba River Citizens League (SYRCL, pronounced "circle"), is the leading voice for the protection and restoration of the Yuba River watershed. Founded in 1983 through a rural, grassroots campaign to defend the South Yuba River from proposed hydropower dams, SYRCL has developed into a vibrant community organization with more than 3,500 members and volunteers.*

*The Foothills Water Network represents a broad group of non-governmental organizations and water resource stakeholders in the Yuba River, Bear River, and American River watersheds. The overall goal of the Foothills Water Network is to provide a forum that increases the effectiveness of non-profit*

*conservation organizations to achieve river and watershed restoration and protection benefits for the Yuba, Bear, and American rivers.*

*The Hydropower Reform Coalition is an association of over 160 national, regional, and local conservation and recreation organizations dedicated to protecting and restoring rivers affected by hydropower dams, ensuring public access to these lands and waters, and reforming the federal licensing process to ensure public participation and to improve the quality of the resulting decisions. The Coalition's combined membership represents more than 1.5 million people across the country. Working together, the Coalition has protected or restored thousands of river miles, thousands of acres of watershed land, and countless opportunities for boating, fishing, and other recreation.*