



The Honorable Mike Collins
Chairman
Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Collins:

On behalf of the Modesto Irrigation District and Turlock Irrigation District (collectively, “the Districts”), we write to express our strong support for H.R. 3898, the *Promoting Efficient Review for Modern Infrastructure Today Act (PERMIT Act)* and thank you for introducing this important bill. This legislation represents a much-needed reform to Section 401 of the Clean Water Act (CWA) that would restore clarity, accountability, and discipline to the water quality certification process for federally licensed infrastructure projects.

Section 5 of the PERMIT Act amends Section 401 of the CWA to ensure that state or federal water quality certifications are based on compliance with specified water quality provisions of the CWA and to rein in the overly broad implementation of this law that thwarts important energy projects.

We support these reforms because they respond directly to issues the Districts have faced in our own efforts to relicense the Don Pedro Project and license the La Grange Project, which together provide over 200 megawatts of clean, renewable hydroelectric energy.

Despite initiating the FERC relicensing process in 2011 and completing more than 30 technical studies and extensive stakeholder engagement, the Districts have spent over 14 years and \$30 million without receiving a final license—largely due to delays and overreach under Section 401. The California State Water Resources Control Board (SWB) denied two certification requests without prejudice to avoid the statutory one-year deadline, and in 2021 issued a certification even though the Districts had not filed a valid application at the time. The SWB’s withdrawn certification included 45 prescriptive and burdensome conditions that extended far beyond the scope of water quality, sought to control overall project operations, and conflicted with FERC’s conclusions in its Final Environmental Impact Statement.

Section 401 is an important safeguard to ensure that federal projects comply with applicable water quality laws. However, as demonstrated in our case and in others nationwide, the provision is being exploited by some states to exert broad regulatory control over energy infrastructure. This not only undermines the federal licensing process, it imposes unnecessary costs and uncertainty that jeopardize critical clean energy investments.

We thank you for introducing H.R. 3898 and for your leadership in addressing this pressing issue. The bill will help realign Section 401 with its original purpose while preserving water quality protections.

To that end, we offer some suggested amendments to the current language of Section 5 to ensure that the bill is as consistent with the plain language of Section 401 as possible. These language changes include consistently reaffirming throughout the bill that Section 401 is directly tied to the discharge, and to compliance with CWA Sections 301, 302, 303, 306 and 307. These sections are focused on discharges of pollutants, and our suggested revisions make clear this does not include water flow release requirements. Additionally, where a state imposes limitations or requirements outside the scope of CWA Sections 301, 302, 303, 306 and 307, such as changes to water flow release requirements, the federal licensing or permitting agency is not required to include such limitations or requirements. The suggested revisions also clarify that 401 conditions are enforceable solely by the federal action agency and are subject to appeal only as part of the federal action under review. While we view these suggestions as important clarifications consistent with the text of Section 401, given the fact that states like California have applied Section 401 more extensively, these amendments may be controversial.

We respectfully urge the Committee and your colleagues in Congress to advance this legislation without delay. We further respectfully request your consideration of our suggested amendments, which provide additional clarifications for internal consistency within the bill, as well as with the plain language of CWA Section 401. We would welcome the opportunity to provide additional information or share more details about our experience with the 401 process and how this bill would improve it.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jimi Netniss".

Jimi Netniss, General Manager
Modesto Irrigation District

A handwritten signature in blue ink, appearing to read "Brad Koehn".

Brad Koehn, General Manager
Turlock Irrigation District

Cc: The Ferguson Group