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GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy to follow

April 19, 2016
CIWQS Place ID 818597 (SG)
Regulatory Measure ID: 403119

Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3614
Email: MRichardson@valleywater.org

Subject: Response to Santa Clara Valley Water District March 30, 2016, Letter Regarding Upper Berryessa Flood Risk Management Project

Dear Ms. Richardson:

Thank you for your letter expressing concerns about our intention to bring a tentative order for waste discharge requirements (WDRs) for the Upper Berryessa Flood Risk Management Project (Project) to our Board for consideration of adoption at its June 8, 2016, hearing.

As we have discussed, it is standard protocol for the Water Board to name all co-sponsors of projects as responsible parties in the water quality certifications and waste discharge requirements we issue. As co-sponsors of this Project, the District would normally have been named along with the Corps in the certification and WDRs issued for this Project. However, in response to requests from the District and Corps, our Executive Officer agreed to separate permitting mechanisms: a water quality certification issued pursuant to the federal Clean Water Act naming the Corps as the responsible party during construction of the Project, and a waste discharge requirements order issued to the District pursuant to the California Water Code for post-construction management of the Project reach. Our Executive Officer also agreed to accommodate the District's request not to be named in the certification, and the Corps' request not to be named in the waste discharge requirements order. Accordingly, we were surprised to receive your request to postpone our Board's consideration of WDRs.

As Keith Lichten stated in his January 21, 2016, email correspondence to you:

"...Subsequent to that [*issuing a certification to the Corps*] and likely later this spring, we expect to bring Waste Discharge Requirements for the project before our Board for its consideration. Similar to our approach on past projects, such as the Bay Bridge, where we issued a fairly quick cert to facilitate contracting and then issued

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separate WDRs, the WDRs are likely to address aspects of the project in greater detail, including post-construction monitoring, alternate mitigation to address the project design issues, and potentially operation and maintenance (O&M), to the extent that O&M isn't covered under the District's Stream Maintenance Program WDRs."

The two-stage permitting strategy, as outlined in Mr. Lichten's email, resulted in the Water Board issuing water quality certification to the Corps on March 14, 2016. This allowed the Corps to initiate timely contracting procedures so that Project construction can be completed before the targeted December 2017 deadline.

To your point that the Corps will not provide an O&M manual until after the Project construction is completed, our expectation is that the Project reach after construction will be maintained consistent with the District's existing Stream Maintenance Program (SMP). As necessary, we can condition the WDRs such that a final O&M plan is not due until after the Corps releases its O&M requirements, so that the District will have a chance to go over the Corps O&M specifications and incorporate them into its SMP Program approach for the Project.

Your letter also states that the District does not anticipate the need for O&M related activities for some time after the Project is constructed. Geomorphic evidence over time shows consistent channel filling on channels with over-widened trapezoidal cross-sections, and our modeling expert has remaining questions on interpreting the Project's modeling results. An approach whereby the WDRs authorize O&M activities consistent with the SMP would allow the District to perform maintenance earlier than may be anticipated and prior to receiving the Corps O&M specifications, and/or in the event the post-construction Project performance deviates from the anticipated conditions.

In summary, given the earlier agreements established for this Project, we cannot accommodate your request for delay. However, we are willing to work with you to address the District's specific concerns as part of the permit issuance process. We will shortly transmit an administrative draft Tentative Order to you for review and comment. We plan to release the Tentative Order for public comment by May 16 and to ask our Board to consider it at the Water Board's July 13, 2016, meeting.

If you have any additional questions, please feel free to contact me at dwhyte@waterboards.ca.gov or (510) 622-2441.

Sincerely,

Dyan Whyte
Assistant Executive Officer

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