

November 1, 2016

Via email and U.S. Mail

Mr. Bruce Wolfe
Executive Officer
Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Dear Mr. Wolfe:

On behalf of the Santa Clara Valley Water District (District), I write to express our concern that the Regional Water Quality Control Board (Regional Board) staff are planning a hearing next week on a significantly modified proposal for regulating the Berryessa Flood Risk Management Project – a project currently under construction. This project is a necessary component of a major infrastructure investment, in partnership with the U.S. Army Corps of Engineers (USACE), to protect 650 residents and businesses from a 100-year flood event and to ensure that the new VTA BART station being extended to the South Bay is adequately protected. Regional Board staff's proposed changes to the existing permit places this regionally important project, and the many millions in federal and local dollars already committed to it, at risk. The District, the USACE, and the public have not had adequate time to analyze the significant changes the Regional Board staff are proposing. As such, to ensure that there is maximum transparency for the public, and to allow for the District, the USACE and other interested parties to respond to the proposed changes, I respectfully ask that you postpone next week's hearing on this matter.

In March 2016, the Regional Board, in an order signed by you pursuant to Section 401 of the Clean Water Act, certified that construction of this project "will comply" with all applicable provisions of state and federal law. Nothing about the project, or the applicable law, has changed since then. In reliance on that certification, construction of the project has already begun.

But now, for reasons yet to be explained, Regional Board staff is proposing to rescind that certification, and impose unwarranted new mitigation conditions on the District and the USACE. As the USACE made clear in its letter to you dated September 19, 2016, new mitigation requirements "could adversely impact the benefit cost ratio of the Project thereby leading to its cancellation." Regional Board staff's proposal risks cancellation of this entire project.

The District and the USACE sent letters in September questioning your authority to impose these unwarranted new mitigation requirements at this time. Regional Board staff have not provided a response to those concerns and now propose rescinding the Section 401 certification altogether. No authority is cited that might give the Regional Board the authority to rescind a previously issued Section 401 certification at this late date and with no changed circumstances. Regional Board staff is also proposing to give the District, the USACE, and the public only one week to respond before the public hearing scheduled for November 9, 2016.

The Administrative Procedure Act requires adequate "notice and an opportunity to be heard" of proposed Regional Board actions. (Gov. Code 11425.10(a)(1).) Regional Board regulations "discourage the introduction of surprise testimony and exhibits". (23 CCR § 648.4(a).) Regional Board staff's current proposal to rescind the Section 401 certification, nearly 8 months after



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issuing that certification and with construction already underway is of great concern to our Board of Directors. The one week notice given to respond to this new proposal is inconsistent with the Administrative Procedure Act, and does not allow us adequate time to consider the proposed changes, or to provide a meaningful opportunity to be heard.

Again, I respectfully ask that you postpone the public hearing on this matter so as to give all interested parties, the District Board of Directors and our staff, sufficient time to properly evaluate this significantly modified proposal.

Sincerely,



Norma Camacho
Interim Chief Executive Officer

cc: B. Keegan (Chair), T. Estremera, R. Santos, L. LeZotte, G. Kremen, N. Hsueh, J. Varela (Directors), J. Morrow (USACE), M. Richardson