

## State Water Resources Control Board

August 28, 2020

Mr. Mauricio Guardado  
United Water Conservation District  
1701 N. Lombard Street, Suite 200  
Oxnard CA, 93030

### **Freeman Diversion Facility Renovation Project Ventura County**

#### **SUBJECT: DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION**

Dear Mr. Guardado:

On June 30, 2020, United Water Conservation District (United) submitted to the Executive Director of the State Water Resources Control Board (State Water Board or Board) a new request for water quality certification (certification) pursuant to section 401(a)(1) of the Federal Clean Water Act (33 U.S.C. § 1341 et seq.) for the Freeman Diversion Facility Renovation Project (Project). Waterbodies associated with the Project include the Santa Clara River.

After review of the application for certification and other relevant information, the State Water Board must either: (1) issue an appropriately conditioned certification; or (2) deny certification. (Cal. Code Regs., tit. 23, § 3859.) The State Water Board may issue certification if the Board determines that an activity will comply with applicable water quality standards and other appropriate requirements. The Board may deny a certification application if an application does not comply with applicable water quality standards and other appropriate requirements; or where compliance with water quality standards and other appropriate requirements is not yet determined, but the application suffers from procedural inadequacies (e.g., failure to meet California Environmental Quality Act (CEQA) requirements). (Cal. Code Regs., tit. 23, §§ 3836, subd. (c); 3837, subd. (b)(2).)

United is the lead agency for the Project for purposes of CEQA compliance, but it has not completed the CEQA process, and has not issued a draft CEQA document for public review and comment. As a responsible agency, the State Water Board relies on the environmental document prepared by the lead agency, but makes its own determination as to whether and with what conditions to grant the certification, taking into consideration the information provided in the lead agency's document. (Pub. Resources Code, §§ 21080.1, subd. (a), 21002.1, subd. (d).) The State Water Board

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

may elect to not issue a certification until the requirements for compliance with CEQA are met.

Additionally, as stated by United in its June 30, 2020 certification application:

United has been ordered to submit “regulatory applications” to your agency, and others, by today’s date. However, the relevant regulatory agencies are not similarly under a court order to complete tasks, or respond to applications, by a date certain. Also, there are motions pending before the Court, and ongoing discussions with the Court’s Special Master, contemplating additional engineering design work and associated deadline extensions. As this work directly relates to one of the primary conservation measures in the [Multiple Species Habitat Conservation Plan] (CM 1.1.1 Construct, Operate, and Maintain an Updated Steelhead Passage Facility), **United anticipates changes and updates to the application that will account for any data and conclusions derived therefrom.** [emphasis added] As such, United is not requesting a formal response to the application at this time.

Furthermore, based on an August 21, 2020 *Order Re Stipulation Resolving Plaintiffs’ Motion for Contempt and Defendant’s Motion to Modify* (Order), United is still in conversations with the National Marine Fisheries Service and California Department of Fish and Wildlife on the design of the fish ladder at the Freeman Diversion Facility, which will either be vertical slots or a hardened ramp. The Order requires United to select its preferred fish passage alternative for inclusion in its regulatory permits by May 9, 2022. The certification application only mentions the vertical slot design and it is the State Water Board’s understanding that this may change based on ongoing consultation. Without a more complete and definite Project description, the State Water Board cannot appropriately condition the Project.

United is hereby notified that the June 30, 2020 request for certification for the Project is denied without prejudice, effective the date of this letter. The State Water Board encourages United to submit a new request for certification once its Project description is established and a final CEQA document has been certified.

If you have questions regarding this letter, please contact Philip Meyer in the Water Quality Certification Program of the Division of Water Rights, at (916) 341-5369 or at [Philip.Meyer@waterboards.ca.gov](mailto:Philip.Meyer@waterboards.ca.gov). Written correspondence should be directed to: State Water Resources Control Board; Division of Water Rights – Water Quality Certification Program; Attn: Philip Meyer; P.O. Box 2000; Sacramento, CA 95812-2000.

Sincerely,



Eileen Sobeck  
Executive Director

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