

***AMENDED/APPENDED**
NOTICE OF MEETING – REQUEST FOR RSVPS

July *22, 2016

Members of the Capital Improvement Program (CIP) Ad Hoc Committee

Director Nai Hsueh, *Chairperson*

Director Tony Estremera, *Committee Member*

Director John Varela, *Committee Member*

And Supporting Staff Members

Norma Camacho, Interim Chief Executive Officer

Leslie Orta, Senior Assistant District Counsel

*Liang Lee, Acting Chief Operating Officer, Watersheds

Jim Fiedler, Chief Operating Officer – Water Utility

Jesus Nava, Chief Administrative Officer

Katherine Oven, Deputy Operating Officer

*Melanie Richardson, Deputy Operating Officer

Sudhanshu Tikekar, Deputy Administrative Officer

Ravi Submaranian, Deputy Administrative Officer

Chris Elias, Communications/Public Relations Manager

Beth Redmond, Technical Support Unit Manager

Todd Bridgen, Management Analyst II

Eva Sans, Board Administrative Assistant

A meeting of the Santa Clara Valley Water District CIP Ad Hoc Committee will take place at **1:00 p.m. on Monday July 25, 2016**, at the Santa Clara Valley Water District Headquarters Building Conference Room A-124, 5700 Almaden Expressway, San Jose, California.

Enclosed for your convenience is a copy of the agenda, minutes from the Committee's previous meeting *and corresponding agenda reports and attachments. Additional materials may be distributed at the meeting.

Please RSVP at your earliest convenience by calling 408-630-2557 or by email to mmeredith@valleywater.org.

Thank you!

Michelle Meredith

Michelle Meredith
Deputy Clerk of the Board
Santa Clara Valley Water District
Office of Clerk of the Board

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CAPITAL IMPROVEMENT PROGRAM (CIP) AD HOC COMMITTEE

District 1 Director J. Varela

District 6 Director T. Estremera

District 5 Director N. Hsueh, Chairperson



***APPENDED AGENDA
CIP AD HOC COMMITTEE**

**Santa Clara Valley Water District Headquarters Building
Conference Room A124
5700 Almaden Expressway
San Jose, CA 95118**

**MONDAY JULY 25, 2016
1:00 PM**

Time Certain:

1:00 p.m. 1 Call to Order/Roll Call

2 Time Open for Public Comment on Any Item Not on the Agenda

Comments should be limited to two minutes. If the Committee wishes to discuss a subject raised by the speaker, it can request placement on a future agenda.

3 Approval of Minutes

Recommendation: Approve the minutes of May 13, 2016

4 Action Items:

***4.1** Strategies for improving the delivery of Environmental Stewardship projects.
(M. Richardson / K. Oven)

Recommendation:

- A. Receive a staff presentation on delivery of Environmental Stewardship projects;
- B. Discuss issues related to delivery of Environmental Stewardship projects; and
- C. Develop action items, if needed, for Board consideration, related to delivery of Environmental Stewardship projects.

***4.2** Strategies for managing regulatory permit challenges to delivering capital projects.
(M. Richardson / K. Oven)

Recommendation:

- A. Receive a staff presentation on strategies for managing regulatory permit challenges to delivering capital projects;
- B. Discuss strategies for managing permitting issues, and communicating permit-related impacts; and
- C. Develop action items, if needed, for Board consideration.

5. Discussion of Next Committee Meeting Agenda and Schedule

6. Adjourn.

REASONABLE EFFORTS TO ACCOMMODATE PERSONS WITH DISABILITIES WISHING TO ATTEND COMMITTEE MEETINGS WILL BE MADE. PLEASE ADVISE THE CLERK OF THE BOARD OFFICE OF ANY SPECIAL NEEDS BY CALLING (408) 630-2277.

Meetings of this committee will be conducted in compliance with all Brown Act requirements. All public records relating to an open session item on this agenda, which are not exempt from disclosure pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the same time that the public records are distributed or made available to the legislative body, at the following location:

Santa Clara Valley Water District, Office of the Clerk of the Board
5700 Almaden Expressway, San Jose, CA 95118

CIP Ad Hoc Committee Purpose: The CIP Ad Hoc Committee is established to provide a venue for more detailed discussions regarding capital project validation, as well as recommendations on prioritizing, deleting and/or adding projects to the CIP.

MINUTES
SANTA CLARA VALLEY WATER DISTRICT
CAPITAL IMPROVEMENT PROGRAM
AD HOC COMMITTEE
Friday, May 13, 2016

(Paragraph numbers coincide with agenda item numbers)

1. Call to Order/Roll Call: A meeting of the Santa Clara Valley Water District Capital Improvement Program (CIP) Ad Hoc Committee was called to order at 1:05 p.m. on May 13, 2016, at the Santa Clara Valley Water District (District), Headquarters Building, Conference Room A124, at 5700 Almaden Expressway, in San Jose, California.

Committee members in attendance were District 1 Director John Varela, District 6 Director Tony Estremera, and District 5 Director Nai Hsueh, Chairperson presiding, constituting a quorum of the Committee.

Staff members in attendance were N. Camacho, Interim Chief Executive Officer (Interim CEO), L. Orta, Senior Assistant District Counsel, R. Blank, C. Hakes, M. Meredith, J. Nava, K. Oven, H. Phan, B. Redmond, M. Richardson, R. Subramanian, and S. Tikekar.

2. Time Open for Public Comment: Chairperson Hsueh declared time open for public comment on any item not on the agenda, and acknowledged receipt of the attached letter from Mr. Richard McMurtry, Santa Clara County Creeks Coalition, identified as Handout 2-A herein. Copies of the letter were distributed to the Committee and made available to the public.

Mr. McMurtry encouraged the Committee to consider taking a unified Capital Improvement Program approach to fisheries restoration, and suggested the Committee consider future discussion on strategies to complete all Fisheries and Aquatic Habitat Collaborative Effort (FAHCE) identified barrier removals within the next one or two years.

Chairperson Hsueh requested that staff agendize Mr. McMurtry's letter for discussion at a future meeting.

3. Approval of Minutes: The Committee considered the minutes of the March 11, 2016, meeting. It was moved by Director Estremera, seconded by Director Varela, and unanimously carried that the minutes be approved as presented.

4. Action Items: Chairperson Hsueh reviewed the list of Priorities identified during the March 11, 2016 Committee meeting, and the corresponding direction for today's discussion on funding and resources.

4.1 Fiscal Year 2016 and 2017-22 CIP Resource and Funding Needs: Ms. Katherine Oven, Deputy Operating Officer, reviewed the *Staff Resource Utilization* section of the attached Committee Agenda Memo, and explained the data contained in Attachment 2 as follows: the column marked *Mixed* represents projects with combined staff and consultant use, where sufficient in-house expertise exists but overflow work is referred to consultants; and the column marked *Primarily Consultant* represents projects presenting short-term increased staffing needs that are referred to consultants to avoid recruitment of full time employees for workload that would not be sustainable after the project's completion.

The Committee expressed concern with the perception that amendments to consultant agreements resulted from errors or omissions in project planning, and suggested that staff compile examples of various consultant contract amendments over time, to provide clearer understanding of standard amendments types, and reasons.

The Committee expressed further concern with a lack of prioritization for environmental stewardship projects; suggested that staff investigate whether fish barrier removal projects could be used as mitigation for other projects and provide cost savings over other alternatives, such as purchasing mitigation lands; and requested that staff come back with analysis on whether existing staff resources could be reallocated during project slow-times to establish dedicated environmental stewardship project teams, in conjunction with other Water Utilities and Flood Control work.

Chairperson Hsueh suggested that the table in Attachment 1 be revised to more clearly demonstrate the ongoing construction work that occurs after large contracts are awarded.

The Committee noted the information received in the staff presentation, discussed relevant issues, and took no formal action for Board consideration.

4.2 Update on Board member Input Received Since Last Meeting Related to Resource Utilization and Funding Requirements: Chairperson Hsueh reported receiving the following input from other Board members since the March 11, 2016 Committee meeting, in regards to Resource Utilization and Funding Requirements:

- Director Kremen requested information on the process and criteria for cutting projects from CIP; and
- Board Chair Keegan requested more clear communications on Capital Project schedule changes, including a statement on rationale for the change and a revised schedule that overlays the original schedule, illustrating where changes were made.

5. Discussion Establishing Next Meeting Date/Time: After discussion among the committee members, it was decided that the next Committee meeting would be held on Monday July 18, 2016, from 1:00 to 3:00 p.m. Topics to be discussed at the next meeting will include regulatory permitting and staff's response to the Committee's request for analysis on reallocating existing staff resources to dedicated Flood Control and Water Utility project environmental stewardship teams during times when projects have a slower schedule.

7. Adjourn: Chairperson Hsueh adjourned the meeting at 2:20 p.m., to the next meeting at 1:00 p.m. on July 18, 2016, in the District Headquarters Building, Conference Room A-124, 5700 Almaden Expressway, San Jose, California.

Respectfully submitted,

Michelle Meredith
Deputy Clerk of the Board



Committee: CIP Ad Hoc
Meeting Date: 07/25/16
Agenda Item No.: *4.1
Unclassified Manger: M. Richardson
Email: mrichardson@valleywater.org

COMMITTEE AGENDA MEMO

SUBJECT: Strategies for improving the delivery of Environmental Stewardship projects.

RECOMMENDED ACTION:

- A. Receive a staff presentation on delivery of Environmental Stewardship projects;
- B. Discuss issues related to delivery of Environmental Stewardship projects; and
- C. Develop action items, if needed, for Board consideration, related to delivery of Environmental Stewardship projects.

SUMMARY:

At the May 13, 2016 Committee Meeting, Committee members identified delivery of Environmental Stewardship projects as a topic that they wanted to explore with staff and asked staff to bring back an analysis of the barriers to timely delivery of Environmental Stewardship projects. Permit issues and the allocation of staff resources were both discussed as possible issues.

BACKGROUND:

Each year, in the July/August timeframe, there is an opportunity for staff in the operations divisions to propose new capital projects. These projects go through a validation process to determine if there is a business reason for the district to undertake the capital expense or if the objectives can be better met through some other means. The Projects are usually identified through master plans or asset management plans which works well for Flood Protection and Water Utility Projects. Environmental projects are usually identified through regulatory permitting requirements, Board approved enhancement opportunities or community input.

Environmental enhancements that are identified through community input related to an ongoing project are, when reasonable, incorporated into the project and completed along with the primary objectives of the project. See Section A of Attachment 1. Projects that are identified outside of an existing capital project may become a standalone project after going through the validation process or being approved by the Board. See Section B Attachment 1. Potential projects identified by community that are not well enough defined to pass the validation process as well as projects that are included in FAHCE, currently do not have a clear path forward.

To better capture all of the identified Environmental Stewardship projects staff is including Attachment 1. It shows projects completed, projects currently in process, and identifies projects which do not yet have a clear plan. Staff believes that this Attachment will provide a basis for the committee to begin discussion on how to move forward with Environmental Stewardship Projects.

ATTACHMENT(S):

Attachment 1: Environmental Stewardship Activities

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Environmental Stewardship Activities

Project No.	Project Name	Description of Improvement	Status	Notes	
Activities to be completed in conjunction with Flood Protection Projects:					
26174041/ 26174042	Berryessa Creek (Calaveras to I-680)	<ul style="list-style-type: none"> Plant native trees and shrubs. Remove concrete lining upstream of Montague Expressway. 	Construction Fall 2016		
40174005	Berryessa Creek (Lower Penitencia Crk to Calaveras Blvd.)	<ul style="list-style-type: none"> Approximately 2.5 acres of riparian habitat will be created for the planting of native plants and cuttings. 	In Construction		
40264011	Cunningham Flood Detention Certification	<ul style="list-style-type: none"> Removal and replacement of non-native trees. 	Construction Spring 2017		
40334005	Lower Penitencia Creek Improvements (Berryessa to Coyote Crks)	<ul style="list-style-type: none"> Project will create vegetated benches in Reaches 1 and 2. 	Construction in 2018		
40264008/ 40264012	Lower Silver Creek Flood Protection Project (Reach 4-6)	<ul style="list-style-type: none"> On-site native revegetation plant mitigation. Implementation of bank stabilization to reduce TMDL's to SF Bay. Improved water quality. In-stream complexities-rock boulder clusters. 	In Construction		
26284002	San Francisquito Creek (SF Bay to Middlefield Road)	<ul style="list-style-type: none"> Establishes approximately 15 acres of marshplain habitat, including habitat for endangered species Ridgway's rail and salt marsh harvest mouse. Provides for enhancement of the Faber Marsh berms with plantings for additional habitat, including refugia islands for the rail and mouse at high tide. Instream-refugia for endangered steelhead through the addition of rootwads and rock, in areas which exceed the fishery threshold velocity for steelhead migration. 	In Construction		
26444001	San Francisco Bay Shoreline, EIA 11	<ul style="list-style-type: none"> Restoration of 2,900 acres of tidal marsh habitat using Ponds A9-A15 and Pond A18. Placement of ecotone fill to expedite low, middle, and high tidal marsh habitat (116 acres) to allow for recovery of endangered species. 	Construction in 2018	Construction will be performed by USACE.	
	Upper Guadalupe River (26154001s)	Guadalupe Fish Passage Modification (26154001)	<ul style="list-style-type: none"> Removal of fish barriers at Hillsdale Avenue. Installation of fish ladder near Almaden Expressway. Fish Passage Improvements at Guadalupe Mines Road. Net gain of 15 acres of riparian forest habitat. 	Complete	
		I-280 to SPRR (Reach 6) (26154002)	<ul style="list-style-type: none"> Addition of 19 miles of suitable upstream spawning and rearing habitat for Chinook salmon and steelhead trout. Addition of approximately 14,000 linear feet of Shaded Riverine Aquatic cover (SRA). 	Complete	Gravel Augmentation to be completed in Spring 2017.
		SPRR to Blossom Hill Road (Reach 7-12) (26154003)	<ul style="list-style-type: none"> 2,500' of gravel augmentation in five locations to improve fish habitat. Installation of debris jam structures, undercut bank structures, rock stream barb, and rootwad bank structures. 	Partial Completion	Construction of Reach 12 by USACE is complete.
26074002	Sunnyvale East and West Flood Protection Project	<ul style="list-style-type: none"> Mitigation for tidal and non-tidal impacts. Implementation of bank stabilization to reduce TMDL's to SF Bay. Improved water quality. 	Construction Summer 2017		
26174051/2 6174052	Upper Llagas Creek Flood Protection Project	<ul style="list-style-type: none"> Creation of approximately 5 acres of wetlands. Revegetation of 96 acres with native plantings. Installation of Cobble gravel lined low flow channel for improved migratory fish habitat. Invasive plant removal. Installation of turtle basking sites within wetlands. Installation of owl boxes and bat boxes. Removal of legacy trash & hardscape debris. 	Construction Fall 2017		

Environmental Stewardship Activities

Project No.	Project Name	Description of Improvement	Status	Notes	
Water Resources Stewardship Projects in the CIP:					
26044001	Almaden Lake Improvements (Planning and Design)	<ul style="list-style-type: none"> Reduction of the thermal barrier for the migration of anadromous fish. Removal of entrainment and impacts from predatory species of anadromous fish. Reduction of mercury concentration in target fish to meet applicable water quality objectives. 	Spring 2017	Indicated date is for completion of EIR. (Not a construction project at this time).	
	FAHCE Stevens Creek Fish Passage Enhancement (00294001s)	Moffett Boulevard Fish Passage	<ul style="list-style-type: none"> Removal of barrier at Moffett Blvd to create favorable stream conditions to restore and maintain fisheries. 	TBD	Both of these Projects are currently listed in the CIP, but have been awaiting completion of FAHCE agreement.
		Multi-Port Outlet at Dam	<ul style="list-style-type: none"> Provide a suitable spawning and rearing habitat below Stevens Creek Dam within a cold water management zone. 	TBD	
26164001	Hale Creek Enhancement Pilot Study	<ul style="list-style-type: none"> Removal of the existing concrete lined channel and replacement with a vegetated soft-bottom channel. 	Construction Summer 2018		
91854002	Jacques Gulch Mercury Reduction	<ul style="list-style-type: none"> Removal of Mercury calcine deposits. Stabilization of stream banks and restoration of natural habitat. 	Complete		
20444001	Salt Ponds A5-11 Restoration	<ul style="list-style-type: none"> Restoration of Salt Ponds A5-11 to marshes and tidal ponds. 	Construction in 2019	Feasibility Study to be completed in by June 2017.	
	SCW Fish Passage Improvements (D.4.) (26044002)	Singleton Road Fish Passage	<ul style="list-style-type: none"> Removal of barrier at Singleton Road to create favorable stream conditions to restore and maintain fisheries. 	Construction TBD by CSJ	City of San Jose to Construct. PSR completed.
		Evelyn Road Fish Passage	<ul style="list-style-type: none"> Removal of barrier at Evelyn Road to create favorable stream conditions to restore and maintain fisheries. 	Complete	
		Bolsa Road Fish Passage	<ul style="list-style-type: none"> Removal of barrier at Bolsa Road to create favorable stream conditions to restore and maintain fisheries. 	Construction Spring 2017	
26444003	South Bay Salt Ponds Restoration	<ul style="list-style-type: none"> Reuse of sediments from local streams flowing into San Francisco Bay to create and rehabilitate habitat in the South Bay Salt Pond Alviso Complex. 	Ongoing	Ongoing coordinated effort with other agencies.	
62184001	SMP Mitigation Stream and Watershed Land Preservation	<ul style="list-style-type: none"> Preservation of approximately 720 to 950 acres of streams and watershed lands to provide long-term habitat protection. Approximately 108 acres of land preservation for protection of riparian and upland habitat known to support the California red-legged frog and Western pond turtle. 	Ongoing	This project will purchase multiple sites for preservation as they become available in the Santa Clara Basin.	
Stream Stewardship Activities in Safe, Clean, Water (D.4.):					
N/A	Countywide Steelhead Habitat Improvement Study (D.4.)	<ul style="list-style-type: none"> Countywide study of steelhead streams for identification of habitat improvements through augmentation of wood and gravel. 	Summer 2017	A final program document will be completed in August 2017.	
26044001	Almaden Lake Improvements (D.4.)	<ul style="list-style-type: none"> Reduction of the thermal barrier for the migration of anadromous fish. Removal of entrainment and impacts from predatory species of anadromous fish. Reduction of mercury concentration in target fish to meet applicable water quality objectives. 	Unfunded	Board to determine if/when construction will happen. CSC has funding for Almaden Lake <u>or</u> Ogier ponds.	
N/A	Ogier Ponds Feasibility Study (D.4.)	<ul style="list-style-type: none"> Investigate the feasibility of a creek/lake separation to improve aquatic habitat in Coyote Creek for steelhead and other native fish. 	Unfunded	SCVWD and SCC Parks entered into MOA in March 2016 to study feasibility of creek/lake separation.	

Committee: CIP Ad Hoc
Meeting Date: 07/25/16
Agenda Item No.: *4.2
Unclassified Manger: M. Richardson
Email: mrichardson@valley
water.org

COMMITTEE AGENDA MEMO

SUBJECT: Strategies for managing regulatory permit challenges in delivering capital projects. (Melanie Richardson / Katherine Oven)

RECOMMENDED ACTION:

- A. Receive a staff presentation on strategies for managing regulatory permit challenges in delivering capital projects;
- B. Discuss strategies for managing permitting issues, and communicating permit-related impacts; and
- C. Develop action items, if needed, for Board consideration.

SUMMARY:

At the March 11, 2016 Committee Meeting, Committee members identified Permitting as a topic that they wanted to explore with staff, and identified the need for further discussion on strategies for managing permit issues and communicating permit-related impacts to the public and the Board.

BACKGROUND:

To address regulatory issues impacting District projects and programs, staff developed policy proposals (See Attachment 1) that were adopted by the Board at the October 27, 2015 Board meeting, including:

- Extended Delays in Issuing Permits: Resolving Staffing Issues at Regulatory Agencies to Improve Timely Permit Issuance and;
- Coordination of Mitigation Requirements Among Regulatory Agencies is Needed.

Permit issues were reviewed by staff and determined to have been mostly resolved. All but 2 of the flood protection projects that have applied for permits have received them and it is anticipated that the final 2 projects will receive permits by the end of the calendar year. There remain some fundamental issues with staffing/resource capacity and approach to permitting with key agencies that have not been fully resolved. Staff will be prepared to discuss.

ATTACHMENT(S):

Attachment 1: Federal and State Proposals and Priorities
Attachment 2: Letter to State Water Resources Control Board – dated July 18, 2016

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RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

FEDERAL PROPOSALS AND PRIORITIES

(NOTE: NEW PROPOSALS ARE UNDERLINED)

1. Extended Delays in Issuing Permits: Resolving Understaffing at Regulatory Agencies To Improve Timely Permit Issuance

Summary of Administrative Needs

Regulatory agencies appear to lack adequate staff to process permits in a timely and predictable manner. Left understaffed, U.S. Army Corps of Engineers (USACE) San Francisco District Regulatory Division now recommends that applicants should anticipate two years to obtain individual permits, contrary to well-defined statutory timelines. Often permit applications are placed into a queue, and processing of multiple permit requests from a single entity do not appear to be handled concurrently.

For example, when a permittee submits multiple permits to the USACE, the agency asks for the permittee to prioritize the permits in numerical order and the regulatory agency then handles the permits sequentially. Therefore, until one permit has been completed, the next permit will not be taken under consideration. This current practice makes it difficult for large, multi-divisional permittees with several projects on parallel schedules to complete their work within required timelines.

District's Approach to Address Administrative Needs

Request and support adequate funding for regulatory agencies, and collaborate with regulatory agencies at all levels to address issues and improve the overall permit process. Where feasible, support standardizing regulatory agency internal processes and procedures to optimize the permitting application process.

2. Coordination of Mitigation Requirements Among Regulatory Agencies is Needed

Summary of Administrative Needs

Complying with multiple and often conflicting mitigation requirements of state and federal agencies has become increasingly common, often driving up the price tag on projects and delaying projects which often are responsible for the protection of the health and safety of the community. It has become increasingly difficult to comply with conflicting regulations that govern day-to-day operations and the building of infrastructure projects.

Federal compensatory mitigation for impacts to wetlands and Waters of the United States should comply with the hierarchy established by the Mitigation Rule (Compensatory Mitigation for Losses of Aquatic Resources; Final Rule [33 CFR parts 325 and 332] and Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines for the South Pacific Division) which stipulates in descending order of preference 1) mitigation banks, 2) in-lieu fee programs, and 3) permittee-responsible mitigation in consideration of a watershed approach.

Conversely, state agencies typically place higher value on permittee-responsible mitigation, on-site or as close to the impacted site as possible. Compliance with the federal mitigation hierarchy is likely to result in higher state agency mitigation ratios and requirements.

The best mitigation option for the District may be the establishment of an in-lieu fee program. However, state and federal agencies have not been supportive of in-lieu fee programs despite

RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

their priority level in the Federal Mitigation Rule and their strong recommendation that in-lieu fee is an effective and useful approach to satisfy compensatory mitigation requirements.

District's Approach to Address Administrative Needs

A forum or process should be created which allows for agencies to understand the requirements being placed on permittees, which will decrease the conflicts which are often present. Federal and state agencies should agree to and accept the same mitigation for the same project impacts to reduce the financial burden on the District. This will allow for more efficient permitting and responsible spending of public funds. In-lieu fee programs should be an allowable mitigation option for the District. Staff will lobby both Congress and the State Legislature for increased budget appropriations for regulatory agencies.

3. Clarification of Lead Agency in Making the Least Environmentally Damaging Practicable Alternative (LEDPA) Determination

Summary of Administrative Needs

Currently, the USACE is responsible for making the determination if a project meets the 404(b)(1) guidelines, also known as the LEDPA. However, some state agencies, specifically the RWQCB also makes a determination of the LEDPA which can vary from the USACE determination. Legislative clarification is sought on whether the USACE is the sole determining agency for LEDPA and whether State agencies must adhere to this determination.

To construct any project involving the Waters of the US, one must obtain a 404 permit from the United States Army Corps of Engineers (Corps). An applicant for a 404 permit must demonstrate to the Corps that, among other things, the proposed project is the LEDPA to achieve the project's purpose. To determine the LEDPA, an applicant conducts a 404(b)(1) Alternatives Analysis. Though the LEDPA determination is only one of many determinations the Corps will make for a project and that the applicant must pass, the LEDPA determination is often the "steepest hurdle" in obtaining a 404 permit. Where a proposed project is not the LEDPA, the Corps may not approve the project or grant the applicant a 404 permit. In other words, the LEDPA determination can be fatal to the project. However we currently have state agencies, such as the Regional Water Quality Control Board asserting that they are responsible for the determination of the LEDPA.

Because the LEDPA is one determination among many that the Corps will make in deciding whether a project is in the public interest and complies with the 404(b)(1) it is important to ensure that clarification on who makes the determination is established.

It may be beneficial to seek and establish an understanding if Congress intended to put into place preemption on the issue on which agency is responsible for the LEDPA determination. Preemption can be either expressed or implied and when Congress chooses to expressly preempt state law, the only question becomes determining whether the challenged state law is one that the federal law is intended to preempt. Implied preemption presents more difficult issues, at least when the state law in question does not directly conflict with the federal law.

District's Approach to Address Administrative Needs

Pursue either legislative or administrative clarification that the US Army Corps of Engineers LEDPA finding preempts the field, via either administrative rulemaking on the issue or a legislative amendment.

RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

4. Public Entities Need Flexibility in Financial Assurance Mechanisms for Long-Term Management of Compensatory Mitigation Sites

Summary of Legislative and Administrative Needs

Permitting agencies are requiring financial assurances for long-term management of compensatory mitigation sites as a condition of permit issuance. Federal and state agencies have recently been insistent that endowments are the only avenue to ensure the long-term sustainability of a compensatory mitigation site.

The USACE, through its district engineer, determines the compensatory mitigation for a specific project. As part of this compensatory mitigation, the district engineer requires financial assurances for the completion of the mitigation project, as well as financing mechanisms for the long-term management of the mitigation property.

Financing of long-term sustainability of a mitigation project after its completed, PP 19649 Final Rule, Supplemental Information re 33 CFR 332.7 (ACOE) and 40 CFR 230.97 Management (d) (USEPA) states "In cases where compensatory mitigation project sites are owned by public entities, it may not be necessary to include provisions for the financing of any required long-term management if, for example, a formal, documented commitment from a government agency is provided (i.e., stewardship commitment). For public agencies identifying adequate financing at the time of permit issuance may be problematic since agency funding can vary from year-to-year with budget cycles, thus underscoring the need for a formal, documented commitment.

The State Government Codes 65966 (b) and 65967 (a) & (b) indicate there is flexibility in methods of funding for the long term stewardship of mitigation property, and that an endowment is not the only option.

District's Approach to Address Legislative and Administrative Needs

The District seeks to engage with applicable state and federal agency senior officials to ensure flexibility in long-term financial assurances is available to public entities including exemption from endowments, and to clarify changes in agency codes if necessary.

5. Funding the Upper Llagas Creek Flood Protection Project through the Water Resources Development Act or Other Appropriations

Summary of Legislative Needs

The District's Upper Llagas Creek Flood Protection Project authorization language needs to be revised to eliminate an errant paragraph which was included in the Water Resources Development Act of 2007 (WRDA) authorization bill. This language has created confusion in providing direction to the U.S. Army Corps of Engineers (Corps) and the Office of Management and Budget. In addition, the project's progress has been severely impacted by lack of appropriations from Congress. One way to address this is to explore reversing WRDA authorization back to the National Resource Conservation Service (NRCS), who had it prior to 1999. Since the Corps replaced NRCS for this project as part of WRDA 1999, funding has dwindled significantly, hampering this project's progress. Critical focus needs to be put on securing appropriations for the project going forward. Due to the restrictions on earmarks, WRRDA 2014 was not a vehicle which was available to fix the errant paragraph.

RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

District's Approach to Address Legislative Needs

Continue to seek language clarifying the intent for the Upper Llagas Creek Flood Protection Project in WRDA legislation, or seek alternative federal sponsorship through WRDA or other federal legislation. Emphasis will be placed at all levels both locally and in Washington D.C. to secure future federal funding for the Upper Llagas Creek Flood Protection Project.

Additional emphasis will be placed on securing alternative funding, including funding from the Department of Agriculture through the Farm Bill or other agricultural appropriations as appropriate to ultimately allocate funding to NRCS.

6. Dam Evaluation, Rehabilitation, and Repair Legislation

Summary of Legislative Needs

The District operates ten dams in Santa Clara County as part of our reservoir system. Several of these dams are undergoing seismic evaluations to assess their ability to withstand current standards for earthquakes. These evaluations have revealed that gravelly soils that can liquefy were left in the foundations of many of our dams. The Anderson Reservoir dam evaluation recently concluded that the dam needs to be seismically retrofitted, at an approximate cost of \$169 million. The National Dam Safety Program currently provides financial assistance to states for strengthening their dam safety programs, but does not provide assistance for infrastructure improvements when a dam is found to be deficient. A comprehensive federal assessment of the state of the nation's dams would enable Congress to fully understand what role, if any, Congress should have in the rehabilitation and repairs of non federally funded dams.

District's Approach to Address Legislative Needs

Continue to support the introduction of a Dam Evaluation, Rehabilitation, and Repair Act that will assess the state of the nation's dams and will ultimately provide grants or infrastructure loans for structurally unfit dams.

7. U.S. Army Corps of Engineers Levee Vegetation Policy

Summary of Legislative Needs

The U.S. Army Corps of Engineers (USACE) currently requires all vegetation other than grasses to be removed from levees and within a 15-foot buffer zone on either side of Corps-inspected levees, which often provide high quality riparian habitat. If the District doesn't remove the vegetation, the Corps may "fail" the levee and remove it from its rehabilitation and inspection program, which would then alert FEMA and others that the levee is unacceptable, and eliminate the possibility of Corps funding for flood-related work. Consequently, it is in the District's interest to encourage the Corps to revise this policy in order to 1) prevent required removal of valuable riparian vegetation, and 2) prevent the consequences associated with the Corps "failing" levees that retain this valuable vegetation.

In the recently passed Water Resources Reform and Development Act of 2014, the Corps has been directed by Congress to evaluate the current Levee Vegetation Policy, including preservation of habitat, vegetation impacts during flooding, historic links between vegetation and flood risk, economic and environmental impacts, and factors that promote regional variances in the program.

District's Approach to Address Legislative Needs

Work with the USACE and Congress to ensure that the District's desires relative to vegetation on levees are addressed through the implementation phase of WRRDA.

RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

8. U.S. Army Corps of Engineers Section 104/221 Authority

Summary of Legislative Needs

In 2011, the Assistant Secretary of the Army for Civil Works (ASA-CW) decided to no longer approve Section 104 applications. Section 104 crediting (Water Resources Development Act of 1986) allowed non-federal interests to repair design deficiencies and to make levee improvements as quickly as possible, while not impacting the Corps study processes.

Instead of utilizing Section 104, the ASA-CW elected to process credit requests under Section 221 of the Flood Control Act of 1970 (as amended by Section 2003 of the Water Resources Development Act of 2007). Section 221 as implemented by the ASA-CW does not promote construction by non-Federal interests.

Without a reasonable policy, local agencies' ability to move projects along faster with local dollars would be jeopardized.

District's Approach to Address Legislative Needs

Work with the USACE and Congress to ensure that the District's needs are addressed through the implementation phase of WRRDA. Continue to lobby and create support for the ASA-CW to grant and approve Section 104 credit until a new acceptable policy on crediting is put into place.

9. Recycled Water Indirect/Direct Potable Use Proposal

Summary of Legislative Needs

To ensure an adequate and reliable supply of high-quality water, the water district has partnered with cities and water retailers in the county to develop recycled water supplies. Recycled water use is expected to expand in the coming years. The District has recently completed the Silicon Valley Advanced Water Purification Center, an advanced water treatment facility, that will produce up to 10 million gallons per day of highly purified recycled water that will be blended into existing recycled water supplies, thereby improving overall recycled water quality so that the water can be used for a wider variety of irrigation and industrial purposes. Longer term, the District is investigating the possibility of using highly purified recycled water for replenishment of groundwater basins, similar to the successful groundwater replenishment system operated by the Orange County Water District for over 30 years. To aid these efforts, the District should encourage the use of recycled water and indirect/direct potable use in our communities.

District's Approach to Address Legislative Needs

Continue to facilitate the creation of coalitions and efforts to support adequately funding recycled water and other programs that will allow full integration of storm water, groundwater recharge, flood water, gray water, water conservation, and indirect and direct reuse for potable supplies.

10. Improved Water Efficiency Labeling Program

Summary of Legislative Needs

The Water Efficiency Labeling Scheme (WELS) is an international water efficiency labeling program designed to provide information to consumers, through the use of specific labels, that indicate the level of water efficiency of products that use water. Both Australia and New Zealand have implemented these labels on the following types of products: washing machines, dishwashers, toilets, urinals, showers and faucets. The purpose of the label is to help

RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

consumers choose products that use less water while still providing a satisfactory level of quality and performance.

In the United States, the Environmental Protection Agency (EPA) manages the WaterSense partnership program. Under this program, water efficient products are certified independently. For companies to use the WaterSense label, they must sign a partnership agreement. Unlike the WELS program, WaterSense labels do not indicate the level of water efficiency of a specific product. Instead the label indicates that the product is 20 percent more water efficient than the average product in that category (as well as other criteria). Changing the labeling to indicate the level of water efficiency of a product (much like the Energy Star program on appliances) provides consumers with a better understanding of how water efficient a product is that they are considering buying.

District's Approach to Address Legislative Needs

Initiate discussions with Congressional members and the EPA on potential changes to the water efficiency labeling program in the WaterSense and other relevant programs at the federal level.

RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

STATE PROPOSALS AND PRIORITIES (NOTE: NEW PROPOSALS ARE UNDERLINED)

1. Extended Delays in Issuing Permits: Resolving Understaffing at Regulatory Agencies To Improve Timely Permit Issuance

Summary of Administrative Needs

Regulatory agencies appear to lack adequate staff to process permits in a timely and predictable manner. Left understaffed, U.S. Army Corps of Engineers (USACE) San Francisco District Regulatory Division now recommends that applicants should anticipate 2 years to obtain individual permits, contrary to well-defined statutory timelines. Often permit applications are placed into a queue, and processing of multiple permit requests from a single entity do not appear to be handled concurrently.

For example, when a permittee submits multiple permits to the USACE, the agency asks for the permittee to prioritize the permits in numerical order and the regulatory agency then handles the permits sequentially. Therefore, until one permit has been completed, the next permit will not be taken under consideration. This current practice makes it difficult for large, multi-divisional permittees with several projects on parallel schedules to complete their work within required timelines.

District's Approach to Address Administrative Needs

Request and support adequate funding for regulatory agencies, and collaborate with regulatory agencies at all levels to address issues and improve the overall permit process. Where feasible, support standardizing regulatory agency internal processes and procedures to optimize the permitting application process.

2. Coordination of Mitigation Requirements Among Regulatory Agencies is Needed

Summary of Administrative Needs

Complying with multiple and often conflicting mitigation requirements of state and federal agencies has become increasingly common, often driving up the price tag on projects and delaying projects which often are responsible for the protection of the health and safety of the community. It has become increasingly difficult to comply with conflicting regulations that govern day-to-day operations and the building of infrastructure projects.

Federal compensatory mitigation for impacts to wetlands and Waters of the United States should comply with the hierarchy established by the Mitigation Rule (Compensatory Mitigation for Losses of Aquatic Resources; Final Rule [33 CFR parts 325 and 332] and Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines for the South Pacific Division) which stipulates in descending order of preference 1) mitigation banks, 2) in-lieu fee programs, and 3) permittee-responsible mitigation in consideration of a watershed approach.

Conversely, state agencies typically place higher value on permittee-responsible mitigation, on-site or as close to the impacted site as possible. Compliance with the federal mitigation hierarchy is likely to result in higher state agency mitigation ratios and requirements.

The best mitigation option for the District may be the establishment of an in-lieu fee program. However, state and federal agencies have not been supportive of in-lieu fee programs despite

RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

their priority level in the Federal Mitigation Rule and their strong recommendation that in-lieu fee is an effective and useful approach to satisfy compensatory mitigation requirements.

District's Approach to Address Administrative Needs

A forum or process should be created which allows for agencies to understand the requirements being placed on permittees, which will decrease the conflicts which are often present. Federal and state agencies should agree to and accept the same mitigation for the same project impacts to reduce the financial burden on the District. This will allow for more efficient permitting and responsible spending of public funds. In-lieu fee programs should be an allowable mitigation option for the District. Staff will lobby both Congress and the State Legislature for increased budget appropriations for regulatory agencies.

3. Water Use Efficiency Standards for Landscaping Irrigation Equipment

Summary of Legislative and Administrative Needs

Water efficiency standards for indoor water fixtures and appliances are created and approved by the Federal Environmental Protection Agency and the California Energy Commission. Currently, efficiency standards exist for indoor fixtures and appliances such as toilets, showerheads, urinals, washing machines, etc., but there are no standards for landscape irrigation equipment even though legislation passed in 2006 that required the creation of standards for some types of irrigation equipment.

AB 1881 (Laird), the Water Conservation in Landscaping Act of 2006, required the California Energy Commission (CEC) to adopt regulations for performance standards and labeling requirements for landscape irrigation equipment, including irrigation controllers, moisture sensors, emission devices, and valves to reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy or water. Unfortunately, the CEC postponed that effort indefinitely, citing a lack in scientific evidence that such standards could actually reduce energy and water consumption.

Earlier this year, the California Water Commission approved a new State Water Efficient Landscape Ordinance as directed by Executive Order. DWR will be establishing a landscape stakeholder committee in order to take care of those issues that could not be agreed to on the expedited schedule necessitated by the emergency regulatory process. The committee is expected to begin meeting in early 2016. Thus, the time could be right to encourage the CEC, on a parallel track, to reexamine creating efficiency standards for landscaping irrigation equipment.

District's Approach to Address Legislative and Administrative Needs

In recognition of the facts that water efficiency standards for landscape irrigation equipment may assist the District in our water conservation efforts, and could assist District customers in making water wise decisions, staff recommends sponsoring and pursuing legislation that would require the creation of water efficiency standards for landscape irrigation equipment, and encourage the CEC to restart the effort to create such standards as required by AB 1881, possibly in concert with DWR's efforts on the Water Efficient Landscape Ordinance.

RECOMMENDED 2016 POLICY PROPOSALS AND PRIORITIES

4. Public Entities Need Flexibility in Financial Assurance Mechanisms for Long-Term Management of Compensatory Mitigation Sites

Summary of Legislative and Administrative Needs

Permitting agencies are requiring financial assurances for long-term management of compensatory mitigation sites as a condition of permit issuance. Federal and state agencies have recently been insistent that endowments are the only avenue to ensure the long-term sustainability of a compensatory mitigation site.

The USACE, through its district engineer, determines the compensatory mitigation for a specific project. As part of this compensatory mitigation, the district engineer requires financial assurances for the completion of the mitigation project, as well as financing mechanisms for the long-term management of the mitigation property.

Financing of long-term sustainability of a mitigation project after its completed, PP 19649 Final Rule, Supplemental Information re 33 CFR 332.7 (ACOE) and 40 CFR 230.97 Management (d) (USEPA) states "In cases where compensatory mitigation project sites are owned by public entities, it may not be necessary to include provisions for the financing of any required long-term management if, for example, a formal, documented commitment from a government agency is provided (i.e., stewardship commitment). For public agencies identifying adequate financing at the time of permit issuance may be problematic since agency funding can vary from year-to-year with budget cycles, thus underscoring the need for a formal, documented commitment.

The State Government Codes 65966 (b) and 65967 (a) & (b) indicate there is flexibility in methods of funding for the long term stewardship of mitigation property, and that an endowment is not the only option.

District's Approach to Address Legislative and Administrative Needs

The District seeks to engage with applicable state and federal agency senior officials to ensure flexibility in long-term financial assurances is available to public entities including exemption from endowments, and to clarify changes in agency codes if necessary.

5. Recycled Water Indirect/Direct Potable Use Proposal

Summary of Legislative Needs

To ensure an adequate and reliable supply of high-quality water, the District has partnered with cities and water retailers in the county to develop recycled water supplies. Recycled water use is expected to expand in the coming years. The District currently is constructing the Silicon Valley Advanced Water Purification Center, an advanced water treatment facility, that will produce up to 8 million gallons per day of highly purified recycled water that will be blended into existing recycled water supplies, thereby improving overall recycled water quality so that the water can be used for a wider variety of irrigation and industrial purposes. Longer term, the district is investigating the possibility of using highly purified recycled water for replenishment of groundwater basins, similar to the successful groundwater replenishment system operated by the Orange County Water District for over 30 years. To aid these efforts, the District should encourage the use of recycled water and indirect/direct potable use in our communities.

District's Approach to Address Legislative Needs

Continue to facilitate the creation of coalitions and efforts to reform regulations that will allow full integration of storm water, groundwater recharge, flood water, gray water, water conservation, and indirect and direct reuse for potable supplies.

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July 18, 2016

VIA E-MAIL

Ms. Felicia Marcus, Chair
 State Water Resources Control Board
 1001 I Street
 Sacramento, CA 95814

Mr. Thomas Howard, Executive Director
 State Water Resources Control Board
 1001 I Street
 Sacramento, CA 95814

Re: Request for Additional Outreach and Extension of Public Comment Period for Proposed Procedures for Discharges of Dredged or Fill Materials to Waters of the State

Dear Ms. Marcus and Mr. Howard,

Our organizations write to respectfully request that the State Water Resources Control Board (“State Board”) conduct additional outreach and extend the public comment period in connection with the *Proposed Amendments to the California Ocean Plan and Inland Surface Waters, Enclosed Bays, and Estuaries of California Plan to Include Procedures for Discharges of Dredged or Fill Materials to Waters of the State* (the “Proposed Amendments”). Our organizations and members have a substantial interest in this proposal but have not been afforded adequate time to evaluate the Proposed Amendments and prepare substantive comments for the State Board. We understand that many other stakeholders have the same concerns. For the reasons in this letter, we ask that the State Board extend the comment period by at least ninety days, through Friday, November 4, 2016.

The purpose of the Proposed Amendments is to impose statewide requirements regulating discharges of dredged or fill materials to all waters of the state. Although the State Board had been previously working on a related state wetland policy, this proposal – as recognized in the accompanying staff report – is a departure from that effort and would create a broader program.

We have not, therefore, had the opportunity to consider the broader scope of the program as now proposed until it was issued for comment in late June.

The Proposed Amendments would supersede all existing policies for the regulation of fill of waters of the state being used by the nine Regional Water Quality Control Boards (“Regional Boards”), adopt a definition of “wetlands” that departs from the long-standing federal definition and may extend to features beyond the scope of the state’s regulatory authority under the Porter Cologne Act, and impose new and potentially burdensome permitting requirements for many public and private projects across the state. It appears that in many instances these new requirements would be unnecessarily duplicative of, or largely overlap existing permitting requirements, including the federal Clean Water Act § 404 program and the California Fish and Wildlife Lake and Streambed Alteration program. The creation of an entirely new state-wide program of this magnitude would have broad consequences for a number of public and private sectors and, if not carefully considered, could affect economic growth, delay important public projects, introduce substantial uncertainty for stakeholders, increase the potential for litigation over proposed projects, and impose significant costs without a concomitant environmental benefit.

Despite the potentially widespread programmatic implications of the Proposed Amendments, there is only limited information in the documentation provided by the State Board about how the proposal may actually impact future projects in California. For example, the Staff Report accompanying the Proposed Amendments concludes that the “universe of future applicants and projects involving dredged or fill discharges is largely unknown” and, therefore, does not provide more than a qualitative assessment of potential costs or consequences associated with the proposal. We anticipate, however, that this proposal would impose new requirements on thousands of public and private permit applicants and projects annually with as yet unclear consequences. For example, the Regional Boards issue more than one thousand Clean Water Act § 401 certifications annually¹ and it is not unusual for Regional Board action on requested certifications to take in excess of eighteen months. Those § 401 certifications represent only a fraction of the projects that would be subject to the proposed new requirements which would also impose additional requirements on federal Nationwide Permit applicants and projects potentially impacting state waters not subject to federal jurisdiction (or otherwise subject to long-standing exclusions from the federal program). An overly broad, ambiguous, or poorly planned new program of this magnitude could stretch Regional Board resources beyond the breaking point and have both immediate and long-term consequences for all projects across the State.

In addition, we understand that State Board staff are working to prepare uniform draft waste discharge requirement application forms and a uniform alternative analysis form that all Regional Boards will be required to use. These forms, which have not been released yet, will provide stakeholders important insight into how the Regional Boards may implement any final program. The public must be afforded an opportunity to review these forms and provide feedback to the State Board. It would be premature, therefore, to close the comment period without providing adequate opportunity for stakeholders to review the forms.

¹ See Environmental Law Institute, *State Wetland Protection: Status, Trends & Model Approaches* (March 2008) at 15.

We also believe there is a critical need for the State Board to conduct additional outreach to stakeholders across California about the Proposed Amendments during an extended comment period. There have only been two workshops to provide information about the Proposed Amendments to the public. The first workshop -- on June 28 in Los Angeles -- was scheduled six business days after the Proposed Amendments were first publicly announced. This did not provide sufficient time for stakeholders to learn of the workshop or participate. The second workshop, in Sacramento, was held during the week of the 4th of July when many stakeholders were likely unavailable due to the holiday and shortened work week. Neither of these workshops was well attended. Poor attendance does not reflect a lack of interest in the Proposed Amendments. Instead, the limited attendance confirms the need for more outreach. To provide appropriate outreach we recommend, at a minimum, that the State Board conduct at least one public meeting in each of the nine Regional Water Quality Control Board districts during an extended comment period.

In consideration of the breadth and potential impact of the Proposed Amendments, it is essential that stakeholders with first-hand experience and knowledge about permitting projects have an opportunity to thoroughly review the Proposed Amendments, discuss the scope of the proposed new program with State Board staff at local workshops, and prepare substantive comments. A forty-five day comment period is much too short to reasonably accomplish this goal. The problems with the overly short comment period have been further exacerbated here because the comment period was scheduled in the middle of summer when many stakeholders have been on vacation. We urge the State Board, therefore, to extend the comment period by ninety days to November 4, 2016.

We appreciate your consideration of this request and look forward to a response.

Sincerely,



Rebecca Franklin
Association of California Water Agencies



John Coleman
Bay Planning Coalition



Shanda Beltran
Building Industry Association of Southern California and
Building Industry Legal Defense Foundation



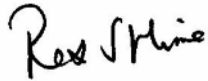
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California Association of REALTORS®



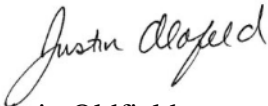
Tyler Blackney
California Association of Winegrape Growers



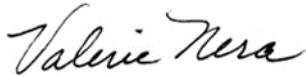
Richard Lyon
California Building Industry Association



Rex S. Hime
California Business Properties Association



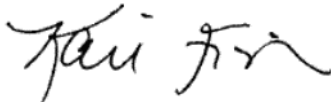
Justin Oldfield
California Cattlemen's Association



Valerie Nera
California Chamber of Commerce



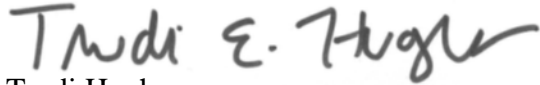
Gary Hambly
California Construction and Industrial Materials Association



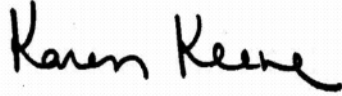
Kari Fisher
California Farm Bureau Federation



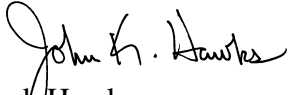
David Bischel
California Forestry Association



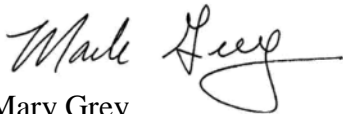
Trudi Hughes
California League of Food Processors



Karen Keene
California State Association of Counties



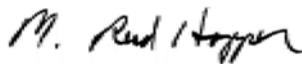
Jack Hawks
Executive Director
California Water Association



Mary Grey
Construction Industry Coalition on Water Quality



Bryan Starr
Orange County Business Council



Reed Hopper
Pacifica Legal Foundation



Mary Ann Warmerdam
Rural County Representatives of California



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Gail Delihant
Western Growers Association

Kevin Buchan

Kevin Buchan
Western States Petroleum Association

Mike Falasco

Mike Falasco
Wine Institute

cc: Frances Spivy-Weber, Vice Chair
Tam Doduc
Steven Moore
Dorene D'Adamo