Santa Clara Valley Water District

# NON-AGENDA

## February 17, 2017

**Board Policy: EL-7 Communication and Support to the Board**

The BAOs shall inform and support the Board in its work.


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| | **C. BOARD MEMBER REQUESTS & INFORMATIONAL ITEMS** |
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| 17 | Memo from Rick Callender, DAO – Government Relations & Communications, to Norma Camacho, Interim CEO, dated 02/10/17, regarding the Monthly Legislative Summary for January 2017. |
| 29 | Memo from Rick Callender, DAO – Government Relations & Communications, to Norma Camacho, Interim CEO, dated 02/14/17, regarding the Governor's interim project list. |
| 34 | Memo from Rick Callender, DAO – Government Relations & Communications, to Norma Camacho, Interim CEO, dated 02/14/17, regarding Little Hoover Commission's hearings on Special Districts and State permitting. |
| | **D. INCOMING BOARD CORRESPONDENCE** |
| 68 | **Board Correspondence Weekly Report:** 02/16/17 |
| 69 | Email from Arlene Goetze to Chair Varela, dated 02/10/17, regarding water fluoridation (C-17-0058). |
| 72 | Email from Xenia Hammer to the Board, dated 02/12/17, regarding San Francisquito Creek Flood Control (C-17-0059). |
| 73 | Letter from Daniel Cozad, General Manager - San Bernardino Valley Water Conservation District, to Director Hsueh, dated 01/31/17 (rec'd 02/13/17), regarding ACWA/JPIA Executive Committee nominations (C-17-0060). |
| 76 | Email from Lana & Ron Kimball to the Board, dated 02/13/17, regarding housing homeless in vacant District-owned rental properties in Mountain View (C-17-0061). |
| 77 | Email from Arlene Goetze to Chair Varela, dated 02/13/17, regarding water fluoridation (C-17-0062). |
| 81 | Email from Laura Brown to the Board, dated 02/13/17, regarding housing homeless in vacant District-owned rental properties in Mountain View (C-17-0063). |

**83** Email from Patrick Williams to the Board, dated 02/13/17, regarding arming San Jose Park Rangers (C-17-0064).

**84** Email from Stephanie Morris to the Board, dated 02/13/17, regarding support for the Education Outreach Program (C-17-0065).

**86** Email from Karan Sandhu to the Board, dated 02/13/17, regarding housing homeless in vacant District-owned rental properties in Mountain View (C-17-0066).

**87** Email from Larry Mehringer to the Board, dated 02/14/17, regarding the Campbell percolation ponds (C-17-0067).

**88** Email from Samina Shaikh, Raw Water Operations, to Gerhard Eschelbeck (cc: BOD) dated 02/14/17, regarding Stevens Creek Reservoir (C-17-0068).

**89** Email from Patrick Kearns to the Board, dated 02/14/17, regarding water conservation and rate calculations (C-17-0069).

**90** Email from Mary Jo Townzen to Chair Varela, Director Hsueh, and Director Kremen, dated 02/14/17, regarding elimination of drought surcharges (C-17-0070).

**91** Email from Michelle Wilson to Director Kremen, dated 02/14/17, regarding housing homeless in vacant District-owned rental properties in Mountain View (C-17-0071).

**92** Email from David Lane to the Board, dated 02/14/17, regarding water levels in Anderson Reservoir (C-17-0072).

**93** Email from Ron Kanemoto to the Board, dated 02/14/17, regarding his support of the Education Outreach Program (C-17-0073).

**94** Email from John Corson and Ellen Judd, to the Board, dated 02/15/17, regarding his support of housing homeless in vacant District-owned rental properties in Mountain View (C-17-0074).

**95** Email from Barbara Long to the Board, dated 02/15/17, regarding housing homeless in vacant District-owned rental properties in Mountain View (C-17-0075).

**96** Email from Carolyn Stuart to the Board, dated 02/16/17, regarding the public meeting on housing homeless in vacant district-owned properties in Mountain View that took place on 02/15/17 (C-17-0076).

## E. OUTGOING BOARD CORRESPONDENCE

**100** Reply email from Michele King, Clerk of the Board, to Sue McElwaine, dated 02/14/17, regarding her dissatisfaction with the response time to her email (C-17-0056).

**101** Reply email from Chair Varela, Director Hsueh, and Director Kremen, to multiple constituents (via bcc), dated 02/14/17, regarding the 01/31/17 Special Board meeting and the water retailer surcharge (C-17-0045).

Board correspondence has been removed from the online posting of the Non-Agenda to protect personal contact information. Lengthy reports/attachments may also be removed due to file size limitations. Copies of board correspondence and/or reports/attachments are available by submitting a public records request to publicrecords@valleywater.org.

# NEWSLETTERS & BRIEFINGS

Published on *Association of California Water Agencies* (http://www.acwa.com)



# ACWA eNews for Feb. 15, 2017

in ACWA eNews

ACWA's eNews is a weekly roundup of California water news and events. Manage your subscription here.

## Mandatory Evacuations Lifted as Lake Level Drops at Oroville

Submitted by Lisa Lien-Mager on Tue, 02/14/2017 - 4:25pm

The Butte County Sheriff's Department on Tuesday lifted mandatory evacuation orders for more than 180,000 people as the California Department of Water Resources continued to stabilize the spillway emergency at Oroville Dam.

Sheriff Kory Honea said residents could return home but would remain under an evacuation warning, noting that though the immediate threat has ended the potential for an emergency still exists and residents should be prepared to move again if the situation changes.

Read more

## State Water Board Launches Human Right to Water Web Portal

Submitted by Emily Allshouse on Tue, 02/14/2017 - 3:37pm

The State Water Resources Control Board on Feb. 14 launched a new Human Right to Water web portal intended to help the public find information related to efforts to address the state's drinking water safety and affordability issues.

The portal was first announced during the State Water Board's Feb 8 Workshop addressing drinking water safety and affordability issues and options for developing and implementing a plan for a statewide low-income water rate assistance (LIRA) program as required by AB 401 (Dodd) of 2015.

Read more

## New NASA Report Shows "Troubling" Increase in Subsidence, Impacts to Water Infrastructure

Submitted by Emily Allshouse on Thu, 02/09/2017 - 12:18pm

The California Department of Water Resources Wednesday released a new report from NASA showing that areas of the San Joaquin Valley continue to experience significant subsidence, resulting in damage to state and federal water infrastructure.

According to DWR, sinking land, known as subsidence, is caused by excessive groundwater pumping and is a well-known and long-term issue for California that often accelerates during times of drought. Over time, subsidence can permanently reduce an underground aquifer's water storage capacity.

Read more

## State Seeks Federal Funding for $100 Billion in Priority Infrastructure Projects Needed Statewide

Submitted by Emily Allshouse on Thu, 02/09/2017 - 9:54am

Hoping to receive a portion of the $1 trillion in federal infrastructure investment funding promised by President Donald Trump, Gov. Jerry Brown's office Wednesday submitted a list of priority infrastructure projects needed throughout the state. The project list represents a total of $100 billion of targeted investments identified by the California State Transportation Agency and the California Natural Resources Agency.

Read more

## Exceptional ACWA Members Recognized with Two Upcoming Awards - Deadline March 1

Submitted by Marie Meade on Thu, 02/02/2017 - 9:11am

Do you know someone who has made a remarkable contribution to California water? Does your agency have a capital project that deserves statewide recognition? Now is the time to submit entries for ACWA's spring awards.

Read more

## ACWA Energy Committee Meeting

Thu, 02/16/2017 - 10:00am - 2:00pm
**Location:** ACWA Boardroom, 910 K Street, Sacramento, CA 95814

## ACWA DC2017: Washington, D.C. Conference

Tue, 02/28/2017 - 8:00am - Thu, 03/02/2017 - 5:00pm
**Location:** St. Regis Hotel, Washington, D.C.

ACWA's 2017 Washington, D.C. Conference is set for February 28-March 2, 2017, at the St. Regis Hotel in Washington, D.C.

*Other hotels:*

Hyatt Place
1522 K Street NW, Washington, DC 20005
(202) 830-1900 Online only rate

Capital Hilton
1001 16th St. NW, Washington, DC 20005
(202) 393-1000

***Online Registration & cancellation deadline is February 10, 2017 - 4:30 p.m. (PST)***

*Why Attend?*

Registration

Read more

## Event Examines Water Stress and a Changing San Joaquin Valley

Tue, 03/07/2017 - 9:00am - 1:30pm
**Location:** Clovis Veterans Memorial District, Clovis

The PPIC Water Policy Center and the California Water Institute at Fresno State will hold a free, half-day public event featuring panels of local leaders and experts exploring key water issues facing the San Joaquin Valley—California's largest agricultural region.

Register Here

Read more

## WEF Central Valley Tour 2017 Field Trip

Wed, 03/08/2017 - Fri, 03/10/2017
**Location:** This tour starts and ends at the Sacramento International Airport

The Water Education Foundation is presenting a 3-day, 2-night tour through California's Central Valley, known as the nation's breadbasket thanks to an imported supply of surface water and local groundwater. Covering about 20,000 square miles through the heart of the state, the valley provides 25 percent of the nation's food, including 40 percent of all fruits, nuts and vegetables consumed throughout the country.

REGISTRATION

Read more

## ACWA 2017 Legislative Symposium

Wed, 03/08/2017 - 9:00am - 4:30pm
**Location:** Sacramento Convention Center, Sacramento, CA

ACWA's 2017 Legislative Symposium is set for March 8, 2017, at the Sacramento Convention Center in Sacramento, CA.

***Online Registration & cancellation deadline is February 24, 2017 - 4:30 p.m. (PST)***

Hotel options (*No ACWA Room block available at these properties*)

Sheraton Grand Sacramento:
1230 J Street, (916) 447-1700

Residence Inn by Marriott Sacramento Downtown at Capitol Park:
1121 15th Street, (916) 443-0500

**IMPORTANT LINKS:**

Registration

Read more

## ACWA Water Quality Committee Meeting

Thu, 03/09/2017 - 10:00am - 2:00pm
**Location:** ACWA Boardroom, 910 K Street, Sacramento, CA 95814

## Water Education Foundation 2017 Executive Briefing

Thu, 03/23/2017 - 8:15am - 5:00pm
**Location:** Hilton Sacramento Arden West hotel, 2200 Harvard St.

With a theme focusing on “Wave of Change: Breaking the Status Quo,” the Water Education Foundation’s 34th annual Executive Briefing will be held March 23 in Sacramento. The event will examine new approaches to water management, tools to extend supplies, plans to prepare for drought, and the intersection between politics and policy.

This water conference will offers the opportunity to hear from top policymakers and leading stakeholders on key water topics:

REGISTRATION

Read more

## ACWA Energy Storage Summit in Partnership with CESA

Thu, 03/30/2017 - 9:00am - 5:00pm
**Location:** ACWA Board Room, Sacramento, California

ACWA's 2017 Energy Storage Summit in Partnership with CESA is set for March 30, 2017, in the ACWA Boardroom, 910 K Street, Sacramento, CA.

***Online Registration & cancellation deadline is March 22, 2017 - 4:30 p.m. (PST)***

**IMPORTANT LINKS:**

REGISTRATION

Read more

## LOWER COLORADO RIVER TOUR 2017

Wed, 04/05/2017 - Fri, 04/07/2017
**Location:** The tour begins in Las Vegas (with an optional start in Ontario) and ends at Ontario International Airport.

Presented by the Water Education Foundation. Explore the Lower Colorado River where virtually every drop of the river is allocated, yet demand is growing from a myriad of sources — increasing population, declining habitat, drought and climate change.
Registration

Read more

## HEADWATERS TOUR 2017

Thu, 04/27/2017 - Fri, 04/28/2017
**Location:** The tour begins and ends at Sacramento International Airport.

Presented by the Water Education Foundation.

Registration

Read more

## ACWA 2017 Spring Conference & Exhibition

Tue, 05/09/2017 - Fri, 05/12/2017
**Location:** Monterey, CA

ACWA's 2017 Spring Conference & Exhibition is set for May 9-12, 2017, at the Monterey Marriott and Portola Hotel & Spa in Monterey. Further details to come.

***Online Registration & cancellation deadline is April 14, 2017 - 4:30 p.m. (PST)***

**IMPORTANT LINKS:**

REGISTRATION

Read more
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**Source URL:** http://www.acwa.com/newsletter/acwa-enews/acwa-enews-feb-15-2017

# CEO BULLETIN

**To:** Board of Directors
**From:** Norma J. Camacho, Interim CEO

# Chief Executive Officer Bulletin

## Week of February 10 - 16, 2017

**Board Executive Limitation Policy EL-7:**

***The Board Appointed Officers shall inform and support the Board in its work. Further, a BAO shall 1) inform the Board of relevant trends, anticipated adverse media coverage, or material external and internal changes, particularly changes in the assumptions upon which any Board policy has previously been established and 2) report in a timely manner an actual or anticipated noncompliance with any policy of the Board.***

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| 2 | **Water District Credit Rating Updates** |
| 2 | **Status of the Safe, Clean Water funded Water Conservation Research Grant Program, including projects selected for the 2017 round of funding** |
| 3 | **Santos**<br>**Prepare Board Item considering policy restricting District funded travel to states of Kansas, Mississippi, North Carolina, and Tennessee, due to sexual orientation, gender identify, gender expression discriminatory laws**<br>**R-17-0002** |

**Report of Non-Compliance with Executive Limitation (EL) Policy EL-1: California Political Reform Act Non-Compliance**

This is to notify the Board of a non-compliance with Executive Limitations Policy-1.

California Government Code Section 86113 requires registered lobbyists to file with the Secretary of State a quarterly Lobbyist Report (Form 615) which discloses expenses paid, incurred, or arranged by the lobbyist for the purpose of influencing legislative or administrative action. This report must be filed even when the lobbyist has no qualifying expenses to report.

The water district employs staff who are registered lobbyists. The Lobbyist Reports for the 3rd and 4th quarters of 2015 were prepared, disclosed there were no reportable expenses, but were mistakenly not filed in a timely manner. The water district discovered the error, subsequently filed the required reports, and submitted a Request for Waiver of Liability to the Secretary of State for the late filing of Form 615 for the two quarters in question. The person who failed to file the required reports is no longer employed by the water district.

In December 2016, the Secretary of State notified the water district that the Request for Waiver of Liability had been denied and that a fine of $100 per quarter must be paid. The water district paid the fines totaling $200.

Failure to timely file disclosures required by law constitutes non-compliance with the governance policy number EL-1. Corrective steps taken to ensure the timely filing of all future lobbyist disclosures include a staffing change and a procedure to verify the electronic filing of required documents.

For further information, please contact Rick Callender at (408) 630-2017.

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**Water District Credit Rating Updates**

On February 8, 2017, Fitch Ratings, Inc. ("Fitch") upgraded the water district's Water Utility credit rating to ‘AA+’ from ‘AA’, and adjusted the Watersheds credit rating to the same level as Water Utility rating of ‘AA+’ from ‘AAA’.

These adjustments are due to Fitch's revised 'U.S. Tax-Supported Rating Criteria', published April 18, 2016, which required the assignment of an Issuer Default Rating (IDR) that reflects overall operating risk for issuers of tax-supported debt. Fitch emphasized that the Watersheds credit rating adjustment "reflects the implementation of the IDR cap, not a weakening in credit fundamentals" (source: https://www.fitchratings.com/site/pr/1018747 ). In addition, on February 7, 2017, Moody's Investor Services (Moody's) affirmed the Watershed credit rating at 'Aa1'.

With the rating changes, the water district's overall credit rating profile is now as follows:

(1) Watersheds Credit Ratings: Fitch AA+; Moody's Aa1; S&P AA+
(2) Water Utility Credit Ratings: Fitch AA+; Moody's Aa1; S&P AA-

The Watersheds credit ratings for all three rating agencies are one notch below the highest category of 'AAA'. These ratings reflect very high credit quality as a result of the water district's large size, diverse sources of revenues, strong liquidity position, economic strength of the service area, strong management team, and the board's leadership in maintaining a strong financial position.

The Fitch upgrade for the Water Utility credit is a strong positive for the water district, and should allow the water district to borrow at lower costs for future debt issuances to finance the Water Utility Capital Improvement Plan.

For further information, please contact Darin Taylor at (408) 630-3068.

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**Status of the Safe, Clean Water funded Water Conservation Research Grant Program, including projects selected for the 2017 round of funding**

The Safe, Clean Water funded Water Conservation Research Grant Program provides funding for research projects of new and innovative water conservation programs and technologies. The primary goal is to identify water savings devices and strategies that can assist the water district in meeting its long-term water savings goal of 98,500 acre-feet per year by 2030.

On September 27, 2016, the board approved the fourth cycle for the Safe, Clean Water funded Water

Conservation Research Grant Program (Program). The board approved a funding amount for the 2017 grant cycle of up to $100,000, approved the evaluation criteria, and authorized the CEO to execute grant agreements consistent with the Program.

The water district released the request for grant proposals on September 30, 2016. Significant outreach was conducted, including: email notification to over 400 stakeholder groups, and an additional 210 schools (including public elementary, middle, high schools, and charter schools); notification letters from the water district to City Managers and executive directors; notification letter from the board to city mayors and the County of Santa Clara President of the Board of Supervisors; web page updates; and a pre-bid workshop. Eight applications were received by the due date of November 30, 2016.

A four-member review panel (two internal and two external) evaluated the eight proposals based on the approved criteria. The following two proposals received the highest scores and were selected for funding:

- Fisher Nickel, Inc. - Dipper Well Replacement Study, $37,500
- Ecology Action - Every Drop Counts-Investigation of water savings from using captured rainwater for indoor purposes such as toilet flushing and clothes washing, $49,940

Funding for these projects totaled $87,440. The remaining unused funding ($12,560) will be allocated in future rounds.

For further information, please contact Garth Hall at (408) 630-2750.

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**Santos**
**Prepare Board Item considering policy restricting District funded travel to states of Kansas, Mississippi, North Carolina, and Tennessee, due to sexual orientation, gender identify, gender expression discriminatory laws**
**R-17-0002**

The requested board item is being prepared and will be presented to the board on April 25, 2017.

For further information, please contact Rick Callender at (408) 630-2017.

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# BOARD MEMBER REQUESTS & INFORMATIONAL ITEMS

| Request | Completed Date | Meeting Date | Director | GM / AGM | Description | 20 Days Due Date | Expected Completion Date | Disposition |
|---|---|---|---|---|---|---|---|---|
| R-17-0005 | Pending | 02/14/17 | Estremera | Fiedler | Staff to prepare a response to Ms. Geotze's handout and questions on Fluoride presented during public comments. (See X Drive \ Conformed Board Agenda Items \ 2017 Board Meetings \ 021417 Regular Meeting \ Handout 2.6-A)) | 03/06/17 | | |
| R-16-0048 | Pending | 12/13/16 | Estremera Lezotte | Camacho | Staff is to return with information and potential policy language on "Wall Street" banks and how we deal with them in the future on financing. | 01/04/17 | 02/14/17 | 01/05/17 CEO Bulletin. |
| R-17-0001 | Pending | 01/24/17 | Hsueh | Fiedler | Staff is to prepare for Chair Signature, thank you letters to water retailers, commending efforts that enabled county meeting 20% conservation measures. | 02/15/17 | | |
| R-17-0004 | Pending | 02/14/17 | Hsueh | Camacho | Look at how our Flood Protection projects performed during recent storms to protect properties. If a project hasn't been completed, investigate what impact the storms had on the community. | 03/06/17 | | |
| R-16-0021 | Pending | 04/12/16 | Keegan | Nava | Staff to take a preliminary look at the use of PLAs on Non-federal District projects. | 05/03/16 | 09/13/16 | 07/28/16 CEO Bulletin. |
| R-16-0049 | Pending | 12/13/16 | Keegan | Fiedler | Staff is to prepare a fact sheet on water rates that shows the different elements of District costs, etc. | 01/04/17 | 02/03/17 | 01/05/17 CEO Bulletin. |
| R-17-0003 | Pending | 02/14/17 | Keegan | Fiedler | After storm season is over, staff to review our rule curve in terms of discharge to see if they still serve us well. | 03/06/17 | | |
| R-17-0002 | Pending | 01/24/17 | Santos | Camacho | Prepare Board item considering policy restricting District funded travel to states of KS/MS/NC/TN, due to sexual orientation, gender idenity, gender expression discriminatory laws. | 02/13/17 | | |

| Request | Completed Date | Request Date | Director | GM / AGM | Description | 20 Days Due Date | Expected Completion Date | Disposition |
|---|---|---|---|---|---|---|---|---|
| I-17-0001 | Pending | 02/15/17 | Varela | Stanton | Staff to create a website and send mailer to all agricultural well owners with information and frequently asked questions about crop factors, rate increases, and water production statement. | 03/07/17 | | |

Santa Clara Valley Water District

# MEMORANDUM

FC 14 (01-02-07)

**TO:** Norma J. Camacho

**FROM:** Rick L. Callender

**SUBJECT:** Monthly Legislative Summary for January 2017

**DATE:** February 10, 2017

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## FEDERAL ISSUES

### Congressional Update—Budget

February 6 was the statutory deadline for the Administration to release its FY 2018 budget. Staff is hearing that a full budget may not emerge until April or May. The delay is complicated by the fact that Congress has not completed its spending legislation for FY 2017 which began last October. The current stop gap funding measure will end April 28, 2017.

Staff will continue to prepare funding requests as will need to be ready to ask for FY 2017 workplan and other funding as soon as budget decisions are made.

### Federal and State Lobbyist Briefing

The Office of Government Relations (OGR) staff coordinated and hosted our Washington DC and Sacramento lobbyists briefings with staff on January 23 and 24. These briefings provide a forum for staff to discuss issues they are experiencing on their projects and programs so that strategies at the federal, state, and local levels can be formulated.

OGR and consultants also presented their annual outlook to our Board of Directors the evening of January 24. Staff is following up on action items, including scheduling the spring Washington DC Advocacy trip, which will occur May 1–3, 2017.

### Federal Legislation

A flurry of bills have been introduced in the new session and OGR staff has been reviewing them for potential impacts on the District. Staff is currently conducting full analysis on four bills and will determine if they should be brought to the Board for an official position.

## STATE ISSUES

### State Water Resources Control Board—Water Conservation Regulation Workshop

On January 18, 2017, OGR staff attended the State Water Resources Control Board (Water Board) workshop on the emergency water conservation regulations. As the regulations are only effective for 270 days and were approved on May 8, 2016, the Water Board is required to decide whether to renew them by February 8, 2017. The water agencies present at the workshop called for the Board to allow the regulations to end as the drought has ended in most areas of the state. The water agencies major point of contention with the regulations is the difficulty in messaging an emergency drought situation when there is so much precipitation and in some areas the potential for flooding.

The Water Board has released an update to the emergency water conservation regulations which they will take up at their meeting on February 8, 2017. The updated regulation continues the requirements of the past year but also acknowledges the need to revisit and reconsider at the end of the rainy season in May.

**District-Sponsored State Legislation**

The District is seeking to sponsor two bills in the Legislature this year: one would expand the state's design-build law to include more types of public works projects, and the other would revise the District Act to address homelessness, Board vacancies, and create an independent compensation commission. In January, the District's OGR staff drafted bill language for submittal to the state's Legislative Counsel to prepare the proposals for possible introduction in February. Concurrently, OGR staff vetted the proposals with stakeholders including the Santa Clara County state legislative delegation, the Assembly Speaker Anthony Rendon's policy staff, select water districts, and key labor advocates.

Legislators representing Santa Clara County are considering the District's sponsored bill proposals for possible authorship. Most state bills are introduced just prior to the February 17th bill introduction deadline, and legislators usually make final decisions on authorship just prior to that date. OGR staff will continue to work with legislators and key stakeholders and are hopeful we will see the District proposals introduced in the weeks ahead.

**State Legislation With Board-Approved Positions**

Currently, there are no bills in the new session on which the Board has adopted formal positions. OGR staff is reviewing over 650 bills that have been introduced to date for potential impacts on District operations. Once identified, OGR staff will work with District program staff to analyze the bills and bring them before the Board for an official position.

## LOCAL AND REGIONAL ISSUES

**Joint Meeting of the Santa Clara Valley Water District and the Santa Clara Valley Open Space Authority**

On January 17, OGR staff coordinated a Joint Meeting of the District Board of Directors and the Santa Clara Valley Open Space Authority (Authority) Board of Directors. The meeting included policy-level discussions on environmental resource collaborative efforts between the two agencies and opportunities and constraints for collaboration. Authority staff provided an overview of the Santa Clara Valley Greenprint, Regional Conservation Investment Strategy, and the Climate and Agricultural Protection Plan. District staff provided an overview of the One Water Plan and Water Supply Master Plan. Topics also included discussion for potential collaboration in the Coyote Valley and on the Loma Fire Watershed Management. This first-ever joint meeting was successful for both agencies, and policymakers and staff on both sides committed to continuing to work together on issues impacting our mutual constituencies.

**Upper Berryessa Creek Flood Risk Mitigation Project Hearing Before the Regional Water Quality Control Board**

On January 11, 2017, Vice Chair Richard P. Santos led a strong delegation of business, labor, faith, and neighborhood leaders attending the San Francisco Bay Regional Water Quality Control Board (Regional Board) meeting to testify in support of the Upper Berryessa Flood Risk Management Project (Upper Berryessa Project). On behalf of the District, Vice Chair Santos, Deputy Operating Officer Melanie Richardson, and other subject matter experts provided presentations and compelling testimony about the importance of the Regional Board to authorize the implementation of the Upper Berryessa Project without proposed Waste Discharge Requirements. Ultimately, District leadership and meaningful testimony from leaders such as Reverend Jeff Moore, president of the Silicon Valley-San Jose NAACP, Frank Cancilla, president of the Berryessa Business Association, Linda Locke, president of the Berryessa Citizens Advisory Council, and Joseph Sanchez of the San Benito/Santa Clara Building & Trades Council helped to convince the Regional Board to grant a continuance on the issue to March 8, 2017. In advance of that hearing, District staff is securing additional letters of support and will mobilize another delegation of community supporters to testify in support of this critically-important project.

**Briefings With Newly-Elected Officials**

OGR advances District and the Board's goals and interests in large part through the engagement, education, and advocacy of elected officials. It is with this purpose in mind that following each election, OGR conducts outreach to all newly-elected officials to schedule one-on-one briefings. These meetings serve a three-prong purpose: to provide a formal introduction to the District's mission, goals, and major initiatives; to educate newly-elected officials about the District Board of Directors' legislative priorities and goals; and to learn about the goals and priorities of newly-elected officials in order to identify opportunities for collaboration and potential issues of interest that align with the Board of Directors' legislative priorities, goals, initiatives, and projects. This year, there are 37 newly-elected officials, and the one-on-one briefings are underway.

**Upcoming Community Events and Festivals for 2017**

OGR prepared a list of upcoming festivals in which the District will be participating in 2017 and submitted it to the Board via a Non-Agenda Memorandum. This community outreach provides a valuable forum for the District to communicate with broad sectors of our diverse community on water-related issues, such as water conservation, water recycling and purification, the drought, winter preparedness, and District projects in specific communities, among many others. With the addition of the District's 'Water Truck' in July of this year, it will enable us to promote the quality and taste of our water and engage at an even higher level with the public at these events.

Deputy Administrative Officer
Office of Government Relations & Communications

rc:fd

**MONTHLY REPORTS FROM**
**WASHINGTON D.C. AND SACRAMENTO**

**Contract Representatives**

**December 2016**

(Please Note: The consultant reports will be one month behind due to the fact that monthly report of the Office of Government Relations is provided prior to the consultant reports being due).

**MONTHLY REPORT**
**CARPI & CLAY**

**December 2016**

On behalf of the Santa Clara Valley Water District (District), the report below summarizes the Federal Agency and Executive Branch activities advanced and monitored by Carpi & Clay during the month of December.

## CONGRESS KEEPS AGENCIES FUNDED THROUGH NEXT SPRING

With the clock running out on government funding, the Senate voted to approve a Continuing Resolution (CR) to keep the federal government operating until April 28, 2017. The vote of 63 to 38 came after Democrats dropped a demand for a full-year's funding for coal miner's pension and health benefits be added to the plan. The House had already approved the CR by a vote of 326-96 and left town for the remainder of the year. Senate Majority Leader Mitch McConnell had pledged at the outset of the fight to make finding a long-term fix for the issue a priority of the next Congress, a position accepted by Sen. Joe Manchin (D-WV) to end of the stand-off. The CR funds most government programs at the same level provided in the FY2016 Omnibus Appropriations Act through April 28, 2017. Congress approved a full year of funding for veterans and military construction programs earlier this year.

When Congress addresses the remainder of FY2017 funding next spring, they can adjust these levels to meet current needs. However, with only five months remaining in the fiscal year and with work already underway at that point on FY2018 funding, most programs will probably see little change and it is possible Congress will simply pass another CR through September 30, 2017. A major impact of a CR is that agencies generally do not award discretionary grants until the full fiscal year's funding has been decided. This could push out final awards from several important grant programs until late summer or even closer to the end of the fiscal year on September 30.

The CR contains an added $170 million to help communities affected by contaminated drinking water, with most of these funds destined for Flint, Michigan. This funding includes grants for infrastructure improvements, lead poisoning prevention care for mothers and children, and a lead exposure registry. Within this total, the CR also provides $20 million to capitalize the Water Infrastructure Finance and Innovation Act (WIFIA) water-financing program administered by the Environmental Protection Agency (EPA). This funding will allow EPA to begin making loans from the program in the coming calendar year.

## U.S. ARMY CORPS OF ENGINEERS AND THE CR

Under the rules of a CR, the U.S. Army Corps of Engineers (Corps) can only fund those projects, programs, and activities that were funded in the previous fiscal year. While this is not an immediate issue for the District's priorities, we have begun conversations with the Corps regarding future year funding given that the Congressional outlook for finalizing the FY2017 appropriations bills by April 28, 2017, is cloudy at best. As well, the CR timeline further delays the Corps' ability to assign funding to projects not recommended in the President's FY2017 Budget Request to Congress. Funding for projects that fall into this category are typically allocated through a work plan. The work plan, at the direction of Congress through the final appropriations bill, is produced within 45–60 days of the appropriations act being signed into law by the President. Without a resolution to the final FY2017 funding bills, the Corps does not have the ability to move forward with formal work plan

considerations. Regardless of this timing, the District has already begun its advocacy efforts to secure FY2017 work plan funding.

## WATER RESOURCES DEVELOPMENT ACT OF 2016

Before recessing for the remainder of the 114th Congress, both the House and Senate were successful in passing the Water Resources Development Act of 2016 (WRDA). This marks a tremendous achievement for the House Transportation & Infrastructure Committee and the Senate Environment and Public Works Committee as both committees pledged a commitment for returning WRDA to its biennial cycle. With a WRDA bill in 2014 and now in 2016, committee leadership is already turning its attention to WRDA 2018.

WRDA is also significant for the District as it authorizes the South San Francisco Bay Shoreline Study. This action, will allow the District to seek construction funding and a new starts construction designation in a future budget cycle.

Once the President signs WRDA into law, the Corps will begin its implementation of the legislation. This is something that we are watching closely and we will guide the District through this process. The Corps still has several outstanding provisions from WRDA 2014 that have not been implemented, such as its vegetation on levee policy, so it will be interesting to see how the Corps completes its work on WRDA 2014 and moves ahead with WRDA 2016.

## AGENCY PROMOTIONS

**Cheree Peterson**, the acting Programs Director for the Corps South Pacific Division (SPD), has been selected to serve this role on a permanent basis. The Programs Director covers the entire portfolio of the Corps including both civil works and military functions. SPD hosted a promotion ceremony for Cheree on December 21st and Norma J. Camacho was invited to attend. The District has a long-standing relationship with Cheree given her prior involvement in District priority projects.

**Doug Lamont**, the current Deputy Assistant Secretary for Project Planning & Review in the Office of the Assistant Secretary of the Army for Civil Works (ASA) will serve as the Acting ASA in the new Administration. Over the years, the District has consistently met with Doug and his team. He will serve in this capacity until President-elect Trump nominates a new ASA. For reference, President Obama did not nominate ASA Darcy until April 3, 2009, and she was confirmed by the Senate on August 7, 2009.

## COMPETITIVE FUNDING OPPORTUNITIES

- **Bureau of Reclamation Arsenic Sensor Challenge**: Seeks to identify new or improved sensors, devices, or test kits to measure arsenic in water in natural and engineered systems.

- **Bureau of Reclamation the More Water, Less Concentrate prize challenge**: Seeks innovative solutions to expand usable water supplies by maximizing fresh water production from inland desalination systems in a cost effective and environmentally sound manner.

More information about both opportunities is available through the Reclamation's Water Prize Challenge Center www.usbr.gov/research/challenges/.

## BUREAU OF RECLAMATION RELEASES WATER MARKETS REPORT

A report jointly released by the Department of the Interior and the Bureau of Reclamation examines the role of Reclamation in water markets. Entitled "Water marketing activities within the Bureau of Reclamation," the report takes an informative look at Reclamation facilities involved in water transactions and calls for continued collaboration, innovation, and program enhancements to increase flexibility in the use of water facilities. Per Reclamation's press release, Reclamation Commissioner Estevan López said, "States and local water users are quietly solving water resource challenges in the West through market-based agreements. This report will help us identify ways that Reclamation can enable and support continued innovation in the face of increasing pressures on scarce water supplies."

## EPA RELEASES WIFIA RULES

EPA released two rules to aid in the implementation of the WIFIA program. According to EPA's press release:

- **Credit Assistance for Water Infrastructure Projects** (interim-final rule), provides the administrative framework for implementing the WIFIA program. It also establishes guidelines for the application process, selection criteria, and project selection. It also defines threshold requirements for credit assistance, limits on credit assistance, reporting requirements, and the application of other federal statutes.

- **Fees for the Water Infrastructure Project Applications under WIFIA** (proposed rule), would establish the fee schedule for the application process. EPA is proposing an initial application fee, credit processing fee, servicing fee, and fee for extraordinary expenses.

Further information regarding both rules can be found at: https://blog.epa.gov/blog/2016/12/epa-is-ready-to-launch-new-water-finance-program/

**MONTHLY REPORT**
**KADESH & ASSOCIATES**

**December 2016**

December was focused on the follow-up to the November Santa Clara Valley Water District (District) fly-in and Congressional office visits as well as monitoring and weighing in on District priorities, the presidential transition, Senate and House committee assignments, and plans for the 115th Congress.

## LEGISLATION

December of 2016 saw the final passage into law of the WRDA/WIIN legislation, which included the long-sought legislative language enabling projects which improve "drought resilience" to be eligible for WIFIA funding. This loan authority is conservatively estimated by EPA to provide a 50:1 end-user benefit to facilitate water projects—up to $1 billion in credit assistance for water infrastructure projects. More at: www.epa.gov/wifia

WRDA/WIIN also included the District's leading priority of the $177m in construction funding for the Shoreline project.

Follow up carried out with Rep. Lofgren's office regarding leading letter formerly led by former Rep. Honda. Other follow-up items (i.e., closing the loop with Joe Sheehy, etc.) carried out.

## CONCLUSION OF 114TH CONGRESS, TRANSITION, 115TH CONGRESS AND PREPARATION FOR 2017

We kept the District informed of post-election developments both in the Congress and in the incoming administration that may affect the District's interests and programs.

December legislative high notes:

Continuing Resolution funding the Federal Government to the end of April 2017 passed the U.S. House on December 8, 2016, by 326-96 and the U.S. Senate on December 9, 2016, by 63-36. WRDA/WIIN passed and signed into law.

With the Senate adjourning on December 10, 2016, the 114th Congress adjourned sine die (i.e., "without a date") to return on January 3, 2017. All 435 Members of the House were sworn in on January 3, as well as the 34 new and reelected Members of Class II of the U.S. Senate. Donald Trump will be sworn in as the 45th President on Friday, January 20th, at noon.

The Senate plans to be in session all four weeks of January and the House will be in for three of them. (While the House is not formally in session the week of January 15th, it is expected that most or all of them will be in Washington for the inaugural on Friday of that week.) The Senate will be 52 R and 48 D (including two Independents who caucus with the Democrats). The House will be 241 R to 194 D. Highlighting that January in the Senate will be dominated by the confirmation process, six cabinet-level confirmation hearings scheduled on one day (January 11), the most on one day since 2001.

**FULL COMMITTEE MEMBERSHIP ON THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS:**

**Majority**:
John Barrasso, (WY), Chairman
James Inhoffe (OK)
Shelley Moore Capito (WV)
John Boozman (MT)
Roger F. Wicker (MS)
Deb Fischer (NE)
Jeff Sessions (AL)
Jerry Moran (KS)
Mike Rounds (SD)
Joni Ernst (IA)
Dan Sullivan (AK)

**Minority**:
Thomas R. Carper (DE), Ranking Member)
Benjamin L. Cardin (MD)
Bernard Sanders (VT)
Sheldon Whitehouse (RI)
Jeff Merkley (OR)
Kirsten Gillibrand (NY)
Cory A. Booker (NJ)
Edward Markey (MA)
Tammy Duckworth (IL)
Kamala Harris (CA)

**CALIFORNIA SENATE COMMITTEE ASSIGNMENTS AND PERSONNEL DECISIONS**

**Senator Kamala Harris**

Senate leadership assigned Senator Kamala Harris to four Senate committees:

Homeland Security and Government Affairs;
Environment and Public Works;
Senate Select Committee on Intelligence; and the
Budget Committee.

In a public statement, Sen. Harris said: "These four committees will be key battlegrounds in the fight for the future of our country. At a time when so many Californians and Americans are uncertain about our future, I will aggressively fight for our families and the ideals of our nation. No state will be more impacted by any potential changes to federal immigration policy than California, and I look forward to zealously protecting our state's interests on the Homeland Security Committee. California also is a world leader on climate change policy, and I will fight hard against attempts to roll back key environmental protections on the Environment and Public Works Committee. As our country faces major intelligence challenges and cybersecurity threats, I will fight for our security, our civil rights, and our liberties on the Intelligence Committee. And, on the Committee on Budget, I will fight to preserve the Affordable Care Act to protect health care access for all Americans."

Sen. Harris has named several critical staff selections:

*Nathan Barankin as Chief of Staff*

In a public statement, Sen. Harris said, "Nathan has been my trusted advisor and right hand for many years in the Attorney General's office. He is an exceptional lawyer, legislative expert, and career public servant. He has served three different Attorneys General of California in executive roles and has worked as a constitutional litigator and an advisor to the California Senate leadership for many years. I look forward to continuing to work with Nathan in the United States Senate." (Barankin has been chief deputy attorney general under Harris for the past four years, managing the department's nearly 5,000 employees, including 1,100 lawyers.)

*Julie Chavez Rodriguez to serve as State Director*

In a public statement, Sen. Harris said, "I am thrilled that Julie has agreed to continue her service to our state and nation as my State Director. Julie has been a leader in this state and across the country fighting to advance policies to help Californians. From her leadership at the Cesar Chavez Foundation to the years she has spent organizing groups and communities in support of President Obama's agenda. She most recently served in the White House as Principal Deputy Director of Public Engagement, Senior Policy Advisor, and Special Assistant to President Obama. Julie oversaw White House engagement with Immigration, Muslim, AAPI, Latino, Veterans, Youth, LGBTQ, Education, Labor, and Progressive communities. She is a graduate of UC Berkley and a daughter of the Central Valley. She grew up in a family steeped in the tradition of union organizing and civil rights leadership and is a granddaughter of Cesar E. Chavez."

*Clint Odom to serve as Legislative Director*

In a public statement, Sen. Harris said, "I'm thrilled that Clint has decided to join our team and I look forward to our work together." He previously served as Democratic General Counsel and Policy Director for the U.S. Senate Committee on Commerce, Science, and Transportation; as Senator Bill Nelson's Deputy, Legislative Director; and at the Federal Communications Commissions. He is a graduate of Louisiana State University and the University of Pennsylvania Law School.

Other hires include:

Lily Adams as her Communications Director
Dwayne Paige as her Administrative Director
Rohini Kosoglu to be her Deputy Chief of Staff

**Senator Dianne Feinstein**

Senator Dianne Feinstein is now eighth most senior in the Senate.

She will be taking over as the Ranking Minority Member on the Senate Judiciary Committee. She will continue to serve on the Appropriations Committee. In 1991, she was the first woman appointed to the Judiciary Committee which will serve as a key locus of conformation issues, starting with the Attorney General nomination, at least one Supreme Court nomination and over 100 pending federal judicial vacancies.

Sen. Feinstein also announced two major staff changes, both effective as of January 9, 2017.

Her current Chief (since 2013), **Jennifer Duck** will take over as the Chief of Staff for the Minority on the Senate Judiciary Committee.

Long-serving Capitol Hill aide **Steve Haro** was announced to take over as Feinstein's Chief of Staff.

Per public statements, Jennifer Duck has served as Feinstein's chief of staff since June 2013. Before that, she served as vice president of government relations and corporate leadership for Pfizer. Prior to Pfizer, Jennifer Duck served as staff director and chief counsel to Feinstein on the Senate Judiciary Committee. She also worked as counsel to former Democratic Leader Senator Tom Daschle (D-S.D.); counsel to Senator Ted Kennedy (D-Mass.) on the Senate Health, Education, Labor and Pensions Committee; and senior policy advisor for the Senate Democratic Policy Committee.

In a public statement, Sen. Feinstein said, "Jennifer Duck is well-suited to serve as my lead staffer on the Judiciary Committee. She not only has significant experience in the public and private sectors, she also has worked on the Judiciary Committee in the past during key administration and judicial confirmations. I trust her counsel and look forward to working with her as ranking member of the Judiciary Committee."

Per public statements, Steve Haro joins Senator Feinstein's office from the Department of Commerce, where he serves as assistant secretary for legislative and intergovernmental affairs. Prior, he served as chief of staff to Martin Heinrich (D-N.M.) in both the Senate and House of Representatives and also served as Western regional political director and national Hispanic outreach coordinator for the Democratic Congressional Campaign Committee, and served in various senior positions for Rep. Xavier Becerra.

In a public statement, Sen. Feinstein said, "I'm pleased to welcome Steve Haro to my personal office. He has a long history of key positions in Washington, and his familiarity with California will be a significant asset. Steve will be supervising a staff of more than 70 in five offices in Washington and California, and I will rely on his experience to keep the operation running steadily and build on our successes to help the people of California."

**MONTHLY REPORT**
**GOVERNMENTAL ADVOCATES, INC.**

**December 2016**

The legislature has been on their final leg of their recess returning January 4, 2017. They have moved offices in the Capitol and the newly-elected members have worked towards putting their staff into place as well as getting their District offices up and running. Additionally, they are all attempting to put together their 2017–18 legislative packages. While the Senate has announced what the committee membership will look like, the Assembly has only announced committee chairs at this point. This always makes it difficult for members to put together their legislative packages as they like focus on areas that are both important to them as well as their constituents; part of the equation depends on which committees they are assigned to. We are hopeful that these assignments will be released in late January.

Our delegation is almost fully staffed, but we are still waiting on a few announcements. Your Sacramento staff and I made the rounds just before the capitol shut down for the winter break to do introductions to the newest member of your team, Bart Broome, while some offices had already shut down for the year, we did manage to see most of them. We will follow up in early January with staff to plan a more formal meet and greet with the elected in late January.

In anticipation of the Governor's January 10 budget, which should be released next week, we plan to work closely with Santa Clara Valley Water District (District) staff to determine the local impacts of this budget. As we understand it, with the new President being sworn-in on January 20, 2017, there are some unexpected changes that will be happening at the federal level that will impact many state programs that are key to the District's priorities, which our local delegation and our Governor are very mindful of, as such this will be a very different budget than what had originally been planned. Again, we will keep staff updated.

In addition to our legislative priorities, we are fully aware of the two water/parks bonds introduced, so we need to gear up for those and work closely with our delegation, our partners, the authors, and the sponsors to ensure our projects are eligible for any potential funding. We will also need to review all of the introduced legislation to determine what the local impacts may be and where we will need to request amendments.

## CONCLUSION

As we begin the 2017–18 legislative session, we must remember some key deadlines: January 20, 2017, is the legislative counsel deadline and February 17, 2017, is the bill introduction deadline. Please recall, these are hard deadlines so we must be mindful to follow them. As our delegation completes their hiring of new staff and gets settled into their new offices, we should begin to schedule more formal meet and greets with our Sacramento staff to ensure the legislators know we are fully staffed and ready to go in Sacramento. This will also be helpful should they have any questions on potential legislation or introduced legislation to ensure that the District's needs are met. As the bills are introduced, I will work with staff to review potential local impacts and we will keep the Board updated. As always, should you or your staff have any questions, please don't hesitate to let me know.

Santa Clara Valley Water District

# MEMORANDUM

FC 14 (01-02-07)

**TO:** Norma J. Camacho **FROM:** Rick L. Callender

**SUBJECT:** Governor's Interim Project List **DATE:** February 14, 2017

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The Governor's Office created an interim list of California infrastructure projects that were submitted to the National Governor's Association on February 7, 2017. The list includes more than $100 billion in projects including energy, transportation, veterans' facilities, flood control and water recycling. Two projects of interest to District operations include:

1. Facilitate low-interest loans for water users funding California Water Fix
2. Enlarge the San Luis Reservoir and improve resiliency of existing dam

The California Resources Agency created the interim list on short notice and the District's Office of Government Relations staff is engaged with the California Resources Agency and has been assured that we will be included in all future stakeholder calls and development of lists. Staff is developing a project list which we hope to transmit to the Governor's office by February 24.

Deputy Operating Officer
Office of Government Relations & Communications

Attachment

OFFICE OF THE GOVERNOR

February 7, 2017

Scott D. Pattison
National Governors Association Executive Director & Chief Executive Officer
444 North Capitol Street, Suite 267
Washington, D.C. 20001

Dear Mr. Pattison:

Per your request, attached is California's initial list of key infrastructure projects, representing more than $100 billion in targeted investment across the state. These investments will build and improve: roads; levees; bridges; ports; train and public transit systems; water storage and recycling projects; as well as energy, military, veterans and emergency operations facilities and services.

In the short-term, these projects will benefit businesses up and down the state and put thousands to work – many in communities with the highest rates of unemployment. Long-term, this investment will have lasting, expansive economic benefits by moving goods and people faster, protecting vulnerable communities from flooding, bolstering emergency response capabilities, saving and storing more water and improving energy reliability.

To prepare for the future – and complement federal investments – California is doing its part by working on legislation to ensure a permanent and sustainable funding stream is in place to further support road, highway and other critical infrastructure construction and improvements – part of a 10-year transportation investment plan.

California is home to one out of every eight Americans and when we build in California, we build for America.

Sincerely,

Nancy E. McFadden
Executive Secretary

| Priority Infrastructure Projects - 2017 | | | |
|---|---|---|---|
| **Project** | **Sector** | **Revenue Stream** | **State** |
| Widen and replace critical interchanges on I-710 (South Corridor Project Phase 1) to improve freight corridor service to the ports of LA and Long Beach. | Highway and Bridge | No | CA |
| Strengthen Otay Mesa Mexican border security with a new port of entry for secure and efficient crossings. | Highway and Bridge | Yes - Tolls | CA |
| Construct 16 miles of managed express lanes in major commute corridors on I-405 in Orange County. | Highway and Bridge | Yes - Managed Lanes | CA |
| Construct express lanes on Highway 15 in Riverside County between Cajalco Road and SR 60, a major freight and regional corridor. | Highway and Bridge | Yes - Managed Lanes | CA |
| Construct express lanes on I-10 in San Bernardino County between the LA County line and SR 15, a major freight and regional corridor. | Highway and Bridge | Yes - Managed Lanes | CA |
| Replace the Gerald Desmond Bridge, a vital bridge for freight movement to and from ports of LA and Long Beach. | Highway and Bridge | No | CA |
| Construct multi-county express lane network to relieve Bay Area congestion for freight and major job centers along US 101, I-80, I-680, I-880, SR 85 and SR 237. | Highway and Bridge | Yes - Managed Lanes | CA |
| Improve highway interchange and truck scales at the I-80/I-680 Highway interchange. | Highway and Bridge | Yes | CA |
| Expand I-5 HOV lanes in Sacramento County from the City of Sacramento to City of Elk Grove. | Highway and Bridge | No | CA |
| Build new lanes and interchanges on SR 99 through Tulare, Madera, Livingston, Turlock and Fresno in the San Joaquin Valley. | Highway and Bridge | No | CA |
| Construct new connectors to improve freight movement and congestion in Bakersfield and Kern County on the SR 99/SR 58 corridor. | Highway and Bridge | No | CA |
| Construct HOV lanes connecting Ventura and Santa Barbara along US 101. | Highway and Bridge | No | CA |
| Build four express lanes on Highway 156, a major freight and regional connector in Monterey and San Benito Counties. | Highway and Bridge | Yes - Managed Lanes | CA |
| Replace substandard rail and highway grade separation on I-5 from Redding to Anderson. | Highway and Bridge | No | CA |
| Complete HOV lanes on US 101 through Marin and Sonoma. | Highway and Bridge | No | CA |
| Construct 3 miles of rail in the North Coast I-5 Multimodal Corridor in San Diego and complete 23 miles of new managed lanes. | Highway, Bridge and Rail | Yes - Managed Lanes | CA |
| Expand and improve Los Angeles Metro Transit (Purple Line, Airport Connector, Orange Line BRT) to benefit commuters and the 2024 Olympic bid. | Rail and Transit | Yes - Fares | CA |
| Modernize and replace LA Metro rail fleet and service. | Rail and Transit | Yes - Fares | CA |
| Link Santa Ana and Garden Grove with the Orange County Streetcar Project. | Rail and Transit | Yes - Fares | CA |
| Extend BART to San Jose Project. | Rail and Transit | Yes - Fares | CA |
| Electrify the Caltrain Peninsula Corridor. | Rail and Transit | Yes - Fares | CA |
| Expand and replace BART and Muni rail fleet. | Rail and Transit | Yes - Fares | CA |
| Construct streetcar system in Sacramento and improve the regional transit vehicle fleet. | Rail and Transit | Yes - Fares | CA |

| Project | Sector | Revenue Stream | State |
|---|---|---|---|
| Expand the ongoing Central Valley to Silicon Valley High-Speed Rail construction to include service from San Francisco to San Jose, Merced to San Jose, North of Bakersfield to Bakersfield, and construct the Southern California improvements from Burbank to Anaheim, benefiting High-Speed Rail, freight, commuter rail and the 2024 Olympic bid. | Rail and Transit | Yes - Fares | CA |
| Reconfigure and expand Port of Long Beach Pier B On-Dock Rail Support Facility. | Rail and Sea Port | Yes | CA |
| Build out the Earthquake Early Warning System to alert public and California private industries, utilities and critical infrastructure sectors before major earthquakes. | Emergency Response | Yes - Private | CA |
| Upgrade the State Public Safety Telecommunications Network with next generation 911 capabilities. | Emergency Response | Yes | CA |
| Expand and integrate satellite and broadband towers to enhance coverage in rural areas. | Emergency Response | Yes | CA |
| Modernize the California Specialized Training Institute in San Luis Obispo to improve training capabilities for first responders and emergency managers. | Emergency Response | No | CA |
| Build a Northern California Regional Emergency Operations Center in Fairfield to consolidate two outdated facilities that serve 47 counties in the northern, coastal and central regions. | Emergency Response | No | CA |
| Build a Southern California Regional Emergency Operations Center at the Joint Forces Training Base in Los Alamitos to serve as the primary operation and coordination center and defense support for the National Guard. | Emergency Response/Military | No | CA |
| Repair and modernize Los Alamitos Airfield for critical emergency operations. | Military | No | CA |
| Modernize the Army National Guard's helicopter maintenance facility in Fresno, which serves 13 western states. | Military | No | CA |
| Replace outdated skilled nursing facility at Yountville Veterans Home, the nation's largest veterans home. | Veterans | No | CA |
| Facilitate low-interest loans for water users funding California Water Fix, a major upgrade to Sacramento-San Joaquin Delta conveyance infrastructure to improve water quality, ecosystems and reliability of water deliveries. | Water Reliability | Yes | CA |
| Construct Recharge Fresno Project to improve pipelines and water system facilities that will capture, treat and deliver water to Fresno homes and businesses. | Water Reliability | Yes | CA |
| Enlarge the San Luis Reservoir and improve resiliency of existing dam. | Surface Storage | Yes | CA |
| Reduce flooding risk to the City of Marysville and critical hospital infrastructure with the Marysville Ring Levee Project. | Flood Control | Yes | CA |
| Raise Folsom Dam to improve flood protection for Sacramento region and improve dam safety. | Flood Control | No | CA |
| Construct the Lower Elkhorn Basin Levee Setback Project to expand the capacity of the Yolo and Sacramento Bypasses to improve flood protection in the Sacramento region. | Flood Control | Yes | CA |
| Construct the American River Common Features Natomas Basin Project, to reduce the risk of flooding in the Sacramento region. | Flood Control | No | CA |

| Project | Sector | Revenue Stream | State |
|---|---|---|---|
| Rehabilitate existing levees and make other improvements in the Sacramento River Bank Protection Project. | Flood Control | No | CA |
| Construct the Los Angeles Regional Recycled Water Program to purify water currently being discharged to the ocean for recharging groundwater basins. | Water Recycling | Yes | CA |
| Construct the Pure Water Monterey Project to implement advanced water recycling technology in Monterey County. | Water Recycling | Yes | CA |
| Construct the Pure Water San Diego Phase 1 Projects to implement advanced water recycling technology in the San Diego region. | Water Recycling | Yes | CA |
| Construct the North Bay Water Reuse Project to provide reliable recycled water for the counties of Marin, Sonoma and Napa counties. | Water Recycling | No | CA |
| Construct the San Francisco Westside Recycled Water Project to replace the use of drinking water with recycled water for irrigation. | Water Recycling | Yes | CA |
| Restore habitat and improve dust suppression at the Salton Sea. | Ecosystem Enhancement | No | CA |
| Build a 1,300 MW pumped hydroelectric energy storage project in Riverside County near the town of Desert Center. | Energy | Yes - Private | CA |
| Add 500 MW of energy storage capability to the San Vicente Reservoir to enhance reliability of the electricity grid. | Energy | Yes - Private | CA |
| Complete multiple upgrades to current electrical grid infrastructure, including investments to improve security. | Energy | No | CA |

Santa Clara Valley Water District

# MEMORANDUM

FC 14 (01-02-07)

**TO:** Norma J. Camacho

**FROM:** Rick L. Callender

**SUBJECT:** Little Hoover Commission's Hearings on Special Districts and State Permitting

**DATE:** February 14, 2017

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On February 23, 2017, District staff will testify before the State of California's Little Hoover Commission. The proceeding is titled, "Public Hearing on State Permitting Processes" and will be held at 9:30am in the State Capitol in Sacramento. Vincent Gin, Deputy Operating Officer for Watershed Stewardship and Planning Division, and Christopher Hakes, Assistant Operating Officer for Water Utility Capital Division will be presenting the District's perspective on our permitting challenges.

**BACKGROUND:**
In August 2016, the Little Hoover Commission (LHC) held a hearing on special districts to inform a forthcoming update to their May 2000 report on special districts titled, "Special Districts, Relics of the Past or Resources for the Future?" In the August hearing, the Howard Jarvis Taxpayers Association provided incorrect testimony regarding the District's fiscal position, and the District submitted a letter to the LHC in September that corrected the record.

The LHC convened a follow-up hearing in October 2016 focused on special districts' adaptation to climate change, and invited the District to appear and testify on the South San Francisco Bay Shoreline Project and Study, as an example of a special district's effort to respond to climate change. Additionally, LHC's formal invitation to testify included an extensive number of inquiries for written testimony ranging from the District's basic operations and fiscal position to the District's coordination around the Bay Area to the challenges facing the District's projects and work.

After the October hearing on climate change, the LHC called for a further hearing concentrating on the state permitting challenges that the District and other agencies discussed in our testimony and in public comment. For their next hearing to be held on February 23, the LHC again has invited the District to appear and testify, as well as provide written testimony answering their inquiries.

In coordination with Vincent Gin, Christopher Hakes, and staff from other units around the District, the Office of Government Relations & Communications prepared responses and testimony for the LHC discussing the permitting challenges we face on the South San Francisco Bay Shoreline Study, Upper Berryessa Creek Flood Risk Management Project, Permanente Creek Flood Protection Project, and San Francisquito Creek Flood Reduction, Ecosystems Restoration, and Recreation Project.

The LHC's state permitting hearing will be held on February 23, 2017, at 9:30 AM in Room 437 in the State Capitol in Sacramento. On the morning of the hearing, the District's written testimony will be published on the LHC's hearing webpage: http://www.lhc.ca.gov/studies/agendas/Feb17.html.

Deputy Administrative Officer

Attachment # 1: Invitation to Testify
Attachment # 2: Public Agenda for the Hearing
Attachment # 3: Written Testimony

*State of California*

# LITTLE HOOVER COMMISSION

December 15, 2016

Pedro Nava
*Chairman*

Jack Flanigan
*Vice Chairman*

Scott Bernett

David Beier

Anthony Cannella
*Senator*

Chad Mayes
*Assemblymember*

Don Perata

Sebastian Ridley-Thomas
*Assemblymember*

Richard Roth
*Senator*

Jonathan Shapiro

Jeana Sidley

Helen Torres

Sean Varner

Carole D'Elia
*Executive Director*

Norma Camacho
Interim Chief Executive Officer
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118-3686

Dear Ms. Camacho,

The Little Hoover Commission invites you or a designated representative to participate in its public hearing on state permitting processes and timelines on **Thursday, February 23, 2017, at 9:30 a.m. in Room 437 of the State Capitol.** In this study the Commission would like to examine state permitting issues described during its October 27, 2016, public hearing on special districts and climate adaptation. The Commission heard testimony and public comment from the Santa Clara Valley Water District and East Bay Regional Parks District about delays, rising costs and permitting complications for projects reviewed by state agencies including the California Department of Fish and Wildlife and the San Francisco Regional Water Quality Control Board.

The Commission is reviewing California's state agency permitting requirements and how they impact the timelineas and viability of natural resource projects planned by government agencies and special districts at the local and regional level. The Commission is particularly interested in public projects that are increasingly necessary to protect California residents, wildlife and environments – both natural and human-altered – from the anticipated impacts of climate change. The February hearing will examine state permitting timelines and processes, as well as requirements for endowments to fund perpetual maintenance of lands established for environmental mitigation purposes.

The Commission has heard from some public agencies that endowment requirements and lengthening unpredictable timelines to receive permits due to inadequate state agency staffing are adding months or years to project schedules, as well as driving up costs. Representatives of public agencies have contended to the Commision that endowment requirements of several million dollars remove large one-time sums from annual budgets and limit their ability to allocate taxpayer dollars effectively. Several have tried seeking exemptions through the legislative process.

Land trusts and other supporters of required endowments maintain that endowments, as a permitting mechanism, are essential to fund long-term mitigation land management, especially in volatile financial environments in which public agency budgets can vary dramatically year to year. There is additional concern that waiving certain requirements for public agencies could create an uneven playing field in environmental mitigation land projects. The issue has received considerable legislative attention in recent years. The Commission intends to provide recommendations that improve state permitting processes, especially given the anticipated need for flexibility and faster action on climate change adaptation projects.

Because of your extensive experience in managing water and flood water – and your position as interim chief executive officer of the Santa Clara Valley Water District – the Commission welcomes your participation. The Commission is particularly interested in your perspective on state permitting requirements and their impacts on district projects.

Specifically, the Commission is interested in:

- A brief history and overview of the Santa Clara Valley Water District. Please provide any fundamental information which will help the Commission understand the district's role and daily operations within the San Francisco Bay Area's large metropolitan landscape.

- A detailed overview of how district operations and projects are impacted by state permitting requirements and processes. Please describe in more detail some of the permitting concerns first outlined by the district at the Commission's October 27, 2016, hearing on special districts and climate change adaptation. Among those were financial assurance mechanisms, including endowments, for long-term management of compensatory mitigation sites, as well as suitable and legal alternatives to these requirements. Please also offer your assessment of the timeliness of project permitting from state agencies and how that interacts with federal agency timelines. The Commission also is interested in hearing about staffing issues at state permitting agencies and the Santa Clara Valley Water District's practices of paying for staff time at these agencies to process state permits. Finally, the Commission is interested in hearing greater detail about state agency redesigns of district projects, the apparent rationale behind those redesigns and the impacts on specific district projects. Please provide specific examples and case studies throughout.

- Perspective on conversations your district has had with state permitting agencies about is permitting concerns and what, if any, actions have occurred as a result. Please also describe district attempts through legislation – and additional considered strategies – to address these permitting issues.

These are the general topics the Commission would like to explore during the hearing and it welcomes any additional information that you believe will contribute to its analysis.

The Commission is requesting written testimony from all witnesses to give Commissioners an opportunity to review comments prior to the hearing. I would appreciate receiving written testimony by **Monday, February 6, 2016**. Guidelines for testimony are attached, and my staff and I would be happy to work with you on the details of your testimony.

Thank you for your willingness to help the Commission with this important project. If you have any questions, please do not hesitate to contact me or deputy executive director Jim Wasserman. We can be reached at (916) 445-2125 or by email at carole.d'elia@lhc.ca.gov or jim.wasserman@lhc.ca.gov. We look forward to working with you.

Sincerely,

Carole D'Elia

Carole D'Elia
Executive Director

*State of California*

# LITTLE HOOVER COMMISSION

**Public Hearing on State Permitting Processes**
**Thursday, February 23, 2017**
**State Capitol, Room 437**
**Sacramento**

Pedro Nava
*Chairman*

Jack Flanigan
*Vice Chairman*

Scott Barnett

David Baker

Anthony Cannella
*Senator*

Chad Mayes
*Assemblymember*

Don Perata

Sebastian Ridley-Thomas
*Assemblymember*

Richard Roth
*Senator*

Jonathan Shapiro

Jason Sidley

Helen Torres

Sean Varner

Carole D'Elia
*Executive Director*

***Public Hearing: 9:30 a.m.***

***State Permitting Practices Slow Us Down and Drive Up Costs: An Overview***

1. Vincent Gin, Deputy Operating Officer for Watershed Stewardship and Planning Division, Santa Clara Valley Water District
2. Christopher Hakes, Assistant Operating Officer for Water Utility Capital Division, Santa Clara Valley Water District

***Permitting Practices Improve Projects and Protect Natural Systems***

3. Kevin Hunting, Chief Deputy Director, California Department of Fish and Wildlife
4. Bruce H. Wolfe, Executive Officer, San Francisco Bay Regional Water Quality Control Board

***Permitting and Mitigation Are Necessary, but Be Reasonable***

5. Chris Stone, Assistant Deputy Director, Los Angeles County Department of Public Works
6. Maureen Spencer, Environmental Services Manager, Santa Barbara County Department of Public Works

**Business Meeting**
**Thursday, February 23, 2017**
**925 L Street, Room 175**
**Sacramento, CA 95814**

**The Commission will consider agenda items I-VI at approximately 12:30 p.m. The precise time will vary depending upon the testimony of witnesses and will be determined at the discretion of the chair. The chair may convene the business meeting to establish a quorum and open the vote for items I and II at approximately 10:30 a.m. and reconvene the business meeting after the hearing concludes. Members of the public will have an opportunity to make comments about Commission agenda items during the meeting.**

I. Business Meeting Minutes from October 27, 2016, January 26, 2017 and February 13, 2017
II. CalVet – Draft Report to be considered for Adoption
III. Special Districts – Draft Report for Discussion
IV. Subcommittee Reports and Project Selection
V. Implementation
VI. Reports from the California State Auditor's Office

State of California
Little Hoover Commission

Hearing on State Permitting
February 23, 2017

# Santa Clara Valley Water District

Written Testimony Prepared for

Vincent Gin, Deputy Operating Officer for Watershed Stewardship and Planning Division

Christopher Hakes, Assistant Operating Officer for Water Utility Capital Division

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## I. Introduction

We thank the Little Hoover Commission (hereinafter "Commission") for holding this hearing on state permitting and inviting the Santa Clara Valley Water District (hereinafter "District") to appear and testify. Before proceeding to our responses to the Commission's formal inquiries for this hearing on state permitting, we first as a preliminary matter want to establish and recognize how our interactions with state permitting agencies have largely helped to improve our projects, as well as drive the state of the art regarding climate resiliency. To be certain, our testimony below is not premised by an intention to shirk our stewardship of the environment, nor avoid compliance with promulgated standards. Rather, it discusses issues arising from when four vital and necessary projects, two of which included sea-level rise considerations as part of their design-criteria, were impeded and delayed by disputable exercises of authority during and after adjudication of our permit applications.

## II. Formal Responses to Commission Inquiries

### A. Overview of the District and our Role within the Bay Area's Metropolitan Landscape

The District was formed in 1929 as the Santa Clara Valley Water Conservation District, and it merged fifty years ago with the Santa Clara Valley Flood Control District. In 2001, the District Act was updated by SB 449 to certify that within Santa Clary County we provided comprehensive water management for all beneficial uses and protection from flooding and that our purposes included the enhancement, protection, and restoration of natural resources, streams, and riparian corridors.

Today, the District manages an integrated water resources system on behalf of Santa Clara County's 1.8 million residents. The District provides flood protection, the supply of clean, safe water, and environmental stewardship of waterways throughout Santa Clara County. To perform these services, the District oversees two hundred and seventy-five miles of creeks, streams, and rivers and administers ten dams and surface water reservoirs, three water treatment plants, an advanced recycled water purification center, and nearly four hundred acres of groundwater recharge ponds. We also provide wholesale water to nine local water retailers comprised of both municipalities and investor-owned water utilities.

In the Bay Area, there are over three hundred organizations whose work pertains to water.[1] The District partners with local and state agencies on several projects along the San Francisco Bay shoreline to improve flood resilience, habitat, and various ecosystem functions. The District is partners in multiple regional committees, associations, and coalitions related to water supply, flood protection, and environmental protection, including:

- Advanced Quantitative Precipitation Information Project – The District is a partnering agency with Sonoma County Water Agency, San Francisco Public Utilities Commission, Bay Area Flood Protection Agencies Association, California Department of Water Resources, and National Oceanic and Atmospheric Administration. The main purpose of the project is to install five X-band weather radars in the Bay Area to improve rainfall forecast ability to reduce flood risks.

[1] http://bairwmp.org/organizations

- Association of Bay Area Governments (hereinafter "ABAG") – The District is a member of ABAG, a unique and dynamic Bay Area association that came together in 1961 in response to state legislation that would have supplanted local control over all bridges, ports, and transit operations in the Bay Area. ABAG works to strengthen cooperation and collaboration among local Bay Area governments to provide innovative and cost effective solutions to common problems that they face involving land use planning, housing, transportation, environmental climate change, earthquakes and disaster resilience, and economic equity.

- Association of California Water Agencies – The District is an active member in the Association of California Water Agencies (hereinafter "ACWA"), whose members collectively are responsible for 90% of the water delivered to cities, farms and businesses in California. The District's staff members in the Office of Government Relations & Communications actively engage in ACWA's various meetings, including Region 5 meetings, the State Legislative Committee, and their Federal committees. District staff members from across several other water utility and watersheds units also are engaged in substantive ACWA-convened conferences, summits, and legislative and regulatory workgroups.

- Bay Area Clean Water Agencies – The District is an associate member of the Bay Area Clean Water Agencies, an organization of wastewater treatment and recycled water agencies. Our participation is consistent with our policies to expand recycled water use for water supply reliability, especially in light of increased droughts associated with climate change.

- Bay Area Flood Protection Agencies Association – The District also participates in the Bay Area Flood Protection Agencies Association, which regularly meets to discuss and collaborate on common flood protection challenges and issues, including sea level rise.

- Bay Area Integrated Regional Water Management Committee – The District was instrumental in forming the Bay Area Integrated Regional Water Management Coordinating Committee, which developed the Bay Area Integrated Regional Water Management Plan (hereinafter "IRWM Plan"). The IRWM Plan describes the Bay Area's water and water-related resources, objectives related to those resources, projects and programs to achieve the objectives, and considerations for climate change mitigation and adaptation on a regional scale.

- Bay Area Regional Reliability Program – The District is one of eight partners working on the Bay Area Regional Reliability Program (hereinafter "BARR"). Currently, BARR is developing a Drought Contingency Plan that will identify regional mitigation and response actions for addressing droughts and other water shortages. BARR also is coordinating its planning efforts with ABAG.

- Bay Area Water Agencies Coalition – The District is one of ten water supply agencies that participate in the Bay Area Water Agencies Coalition, which regularly meets to discuss and collaborate on common water supply challenges and issues, including droughts and climate change.

- Coastal Hazards Adaptation Resiliency Group – The District participates in this regional group that is comprised of federal and state agencies and local cities, counties, and water districts in the Bay Area. The purpose of this group is to coordinate solutions related to coastal hazards along the San Francisco Bay. The District participates in the Steering Committee and Technical Advisory Committee.

- Joint Venture Silicon Valley's Sea Level Rise Planning Assumptions & Activities Working Group – The District participates in this regional group that is comprised of Joint Venture Silicon Valley, United States Fish and Wildlife Services (hereinafter "USFWS"), California Coastal Conservancy, County of Santa Clara, City of Milpitas, City of Mountain View, City of Palo Alto, City of Sunnyvale, and the District. The purpose of this group is to coordinate activities and improve knowledge about sea level rise.

- San Francisco Bay Resiliency by Design – The District is a managing partner with San Francisco Estuary Institute, City of San Francisco, Metropolitan Transportation Commission, San Francisco Bay Conservation and Development Commission, and ABAG to develop a background technical description of the Bay Area with respect to climate change and sea level rise that can be used to support resilient and sustainable design.

The District also coordinates activities related to its State Water Project deliveries with other contractors who rely on the South Bay Aqueduct, specifically Zone 7 Water Agency and Alameda County Water District. The District coordinates activities related to its Central Valley Project (hereinafter "CVP") deliveries with San Benito County Water District, another contractor in the San Felipe Division of the project. The District is also considering whether to partner with Contra Costa Water District, another CVP contractor, on expanding Los Vaqueros Reservoir.

## B. Impact of State Permitting Requirements and Processes on District Operations

State permitting processes are complex endeavors. Amongst the many reasons, this is attributable to the numerous permits which must be obtained from multiple authorities with jurisdiction at the project site in different branches of government, as well as from different levels of government.

For the District's projects, we frequently submit permit applications to regional authorities[2] (San Francisco Bay Regional Water Quality Control Board (hereinafter "SF Regional Board"); Central Coast Regional Water Quality Control Board; San Francisco Bay Conservation and Development Commission) and state authorities (California Department of Water Resources; California Department of Fish & Wildlife (hereinafter "DFW")), as well as to federal authorities on projects on which they have jurisdiction at the site or for which we have partnered with the U.S. Army Corps of Engineers (hereinafter "USACE.")

[2] The State Water Resources Control Board was created by the State Legislature in 1967 under the Porter-Cologne Act and has jurisdiction throughout California to protect water quality by setting statewide policy and supporting nine regional boards. The regional boundaries are based on watersheds, and the water quality requirements are based on the unique differences in climate, topography, geology and hydrology for each watershed. The nine Regional Water Quality Control Boards are semi-autonomous and comprised of seven part-time board members appointed by the Governor and confirmed by the senate. Each regional board makes water quality decisions for its region, including setting standards, issuing permits, determining compliance standards, and taking appropriate enforcement actions. The State Water Resources Control Board reviews petitions that contest Regional board actions. See: http://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/boardoverview.pdf

With regards to our applications, interactions, and conversations with state permitting agencies, we are frequently engaged in communications with them, both formally and informally. For a better sense of the flow and nature of communications, please see the consultation histories included for the Permanente and San Francisquito Creek projects in Appendices C and D.

The District traditionally structured its projects in three phases: planning, design, and construction. Permitting applications can now take up to three years between design and construction, as exhibited below in our case studies in section II.E, and as observed in the aforementioned consultation histories in the appendices. Beyond the reasons we discuss elsewhere, this period of time is also attributable to the variance in information requested from permitting authorities on their respective applications and their varying acceptable standards and thresholds. Accordingly, we now plot a "permitting phase" for our projects, because of the lengthy, technical, and comprehensive process involved for obtaining permits, and thus we consider it a five-phase process: planning, design, environmental review, permitting, and construction.

The permitting phase is inextricably linked to the environmental review phase. The California Environmental Quality Act[3] (hereinafter "CEQA") requires substantial environmental documentation to ensure a project's adherence with CEQA. So towards the end of the project planning or during the design phase, applicants must produce environmental documentation under CEQA, typically a Mitigated Negative Declaration (hereinafter "MND") or an Environmental Impact Report (hereinafter "EIR"), which will be relied upon to support their applications for permits. For a rudimentary primer on how CEQA steers the processes for a development permit, the Governor's Office of Planning and Research has published an overview of the environmental review and permit approval process.[4]

In compliance with CEQA, proposed projects undergo thorough environmental review, prior to lead agency approval. State regulatory agencies are tasked with providing comments to the lead agency through the environmental review process in order to offer guidance and direction on suitable project alternatives and mitigation measures, during both scoping and public review periods for environmental documents.

As discussed below in the Permanente Creek case study in section II.E.3, our experience was that a permitting authority did not timely engage, thus resulting in project delays when the District eventually received their feedback and reason for not approving our permit application. This challenge for our projects is compounded by the fact that the USACE, a frequent partner for the District and with agencies across California, does not start its permitting processes until a stable and final project description is confirmed.

Another challenge for applicants when applying for permits is the unpredictability within the permitting process itself, due partially to the lack of formal, technical guidance and procedures. While there are provisions and materials for applying for a permit, and even supplemental information provided on permitting authorities' websites too, we believe the application instructions do not go far enough in explaining what are the standards being used when a reviewer assesses an application, and what the anticipated timeline will be for completion.

[3] California Public Resources Code § 21000–21177.
[4] http://resources.ca.gov/ceqa/guidelines/intro.html

As one example of the lack of guidance, a clear definition of impact thresholds would be beneficial for understanding what constitutes a "substantial" change to a waterway. Likewise, if the guidance materials were appended with firm, quantifiable mitigation requirements, the project development process would be improved from the outset of planning. Another important concern is the need for a clear explanation of how different permitting authorities define mitigation feasibility, because nearly anything can be argued feasible if enough money is spent.

To be sure, environmental stewardship is central to the District's mission. We are not averse to lengthy, complex, and detailed applications for permits. We understand their utility and appreciate their function. But we protest when there are insufficient directions, guidelines, and procedures for our submissions resulting in unpredictable and inconsistent follow-up requests for additional information to complete our application, thereby protracting the permitting phase of our projects and delaying them from proceeding to construction.

C. **Endowments and Alternative Financial Assurance Mechanisms.**

Public agencies that conduct or approve projects with significant environmental impacts are required to obtain permits from various government authorities. As a condition of receiving the permits, the public agency is required to mitigate for the environmental impacts. Permitting authorities determine the compensatory mitigation for a specific project, including the financial assurances for the completion of the mitigation project and the financing mechanisms for long-term management of the mitigation property, in certain cases.

The mitigation may take the form of setting aside other resource conservation lands. When lands are set aside in mitigation, the law requires that the mitigation lands be protected in perpetuity, and state permitting agencies have been insistent that endowments are the only acceptable means to ensure the long-term sustainability of a compensatory mitigation site, despite state code allowing alternative financial assurances to secure projects.[5]

An endowment provides a means of ensuring that funding will be available to provide for the long-term management of the mitigation lands in perpetuity. If an entity fails to meet its mitigation obligations, the land and the cost of maintaining it revert back to the state or another local government entity.[6] Typically though, the interest on the principle for the endowment funds the annual management costs.

The jurisdictional authority to whom we've applied for a permit determines the compensatory mitigation for a specific project, including the financial assurances for the completion of the mitigation project, as well as financing mechanisms for the long-term management of the mitigation property. By requiring endowments of public agencies, large sums of public funds are locked into an endowment, which otherwise could be used for other essential capital projects and their maintenance.

Further, requiring public agencies to fund endowments significantly reduces the funds available to public infrastructure agencies for critical projects. Yet, state permitting agencies have been insistent that endowments are the only acceptable avenue to ensure the long-

[5] See California Government Code §§ 65966 - 67.
[6] Id. at § 65967(e).

term management of a compensatory mitigation site, in spite of state code allowing for other financial assurance mechanisms.

Permitting authorities justify their insistence on endowments by the fact that public agencies have not always been the best steward of the environment when an endowment was not required, and also that when an endowment was required, it is public agencies' whose mitigation sites most commonly fall into violation. Thus they argue that the upkeep and maintenance of compensatory mitigation sites cannot be guaranteed except through the interest of an endowment.

While plausible, their latter argument is not supported, in that the violations by public agencies are concentrated between two state agencies, and most of the remaining violations are minor in nature and would not have been prevented with an endowment, e.g. insufficient reporting, late filings, etc. Moreover, public agencies are enduring institutions with constitutionally prescribed tax revenues, so for those agencies with a sufficient credit rating, they at least should be exempted from endowments and allowed to use other financial mechanisms for which California law provides.[7]

One solution for this issue is legislation clarifying that an endowment or other financial mechanism is not required if a governmental entity or special district provides evidence to the local or state authority that it (1) possesses an investment-grade credit rating (by a nationally recognized statistical rating organization, or other equivalent evidence of financial stability), and (2) enters into a contractual agreement, containing certain elements, with the agency enforcing the mitigation requirements.

Opposition to allowing alternatives to endowments is led by land managers, who have a vested financial interest in endowments, given it's the source of their principal revenue stream. To be certain, we are not arguing for private development to be relieved from the requirement of endowments, nor the same for public agencies or special districts that are not financially sound and cannot be entrusted to fulfill their mitigation responsibilities. Rather, because of the numerous reasons we have discussed, we think it is reasonable for public agencies and special districts to use other financial assurance mechanisms for compensatory mitigation sites.

Given the likelihood and opportunity for more infrastructure projects over the next few years, granting public agencies and special districts this flexibility will ensure that both: (1) more public funds are available to pursue long-needed infrastructure projects, and (2) California applicants partnering with or applying to the USACE will not be competitively disadvantaged against projects from other states without the same local standards and requirements. So concluding, we request for your report to recommend allowing qualified public agencies to use other financial mechanisms to maintain compensatory mitigation sites.

### D. Staffing Resources at Permitting Agencies

Permitting authorities appear to lack adequate staffing to process applications in a timely and predictable manner. Given the volume of applications that permitting authorities receive, many have responded by allowing applicants to contract and pay to fund a full-time

[7] Id. at § 65967(b).

employee on the authority's staff, to work primarily, if not exclusively, on the applicant's submissions, with applicants prioritizing the projects needing review by the staff member.

As part of the District's strategy to expedite permitting processes in order to commence its projects, the District currently pays for one full-time staff member at DFW, and one at the SF Regional Board who review our applications. Funding for the SF Regional Board staff is routed through ABAG.[8]

With regard to DFW, our last staff member worked on the District's projects for several years and routinely met 30-day timelines to respond to our applications. However, she recently has taken on a new role and her previous position has not been filled, meaning potentially there is less staff available to review our applications.

Regionally, despite funding a SF Regional Board staff member, there still are seemingly low staffing levels at the SF Regional Board. They reported they could not simultaneously review both our Lower Berryessa and Upper Berryessa Creek applications, discussed below in section II.E.2, and instead informed the District that the earlier we resolved the Upper Berryessa Creek permit, the sooner they would accelerate review of our Lower Berryessa Creek application.

Interestingly, this arrangement for a SF Regional Board staff member funded through ABAG has not been replicated by some of the other regional boards in the state. These other regional boards maintain that allowing an applicant to pay for a staff member creates a perceived conflict of interest. This proposition however is counter to the practices of other major agencies that rely on this manner of staffing, like DFW and the USFWS.[9]

Thus we request the Commission's report to recommend funding for additional staff at the regional water quality control boards, as well as recommend they allow for public agency applicants to fund a regulatory staff member, with the appropriate measures to prevent conflicts of interest. This is especially important with the foreseeable wave of local infrastructure projects that are pledged with forthcoming federal legislation, and the subsequent permit applications.

## E. Project Redesign Case Studies

As mentioned in Part B above, CEQA requires substantial environmental documentation. The basic purposes of CEQA are to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities, identify the ways that environmental damage can be avoided or significantly reduced, and prevent significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures.

Substantive regulatory agency comments that satisfy the requirements of CEQA ensure proper project development in the prescribed open and transparent public forum. However, permitting authorities have demonstrated a practice of effectively proposing redesign of

[8] ABAG formed in the 1960s to strengthen cooperation and collaboration among local Bay Area governments to provide innovative and cost effective solutions to common problems that they face involving land use planning, housing, transportation, earthquakes and disaster resilience, environmental climate change, and economic equity.
[9] Federally, the District currently pays for one full-time staff member at the U.S. Fish & Wildlife Service.

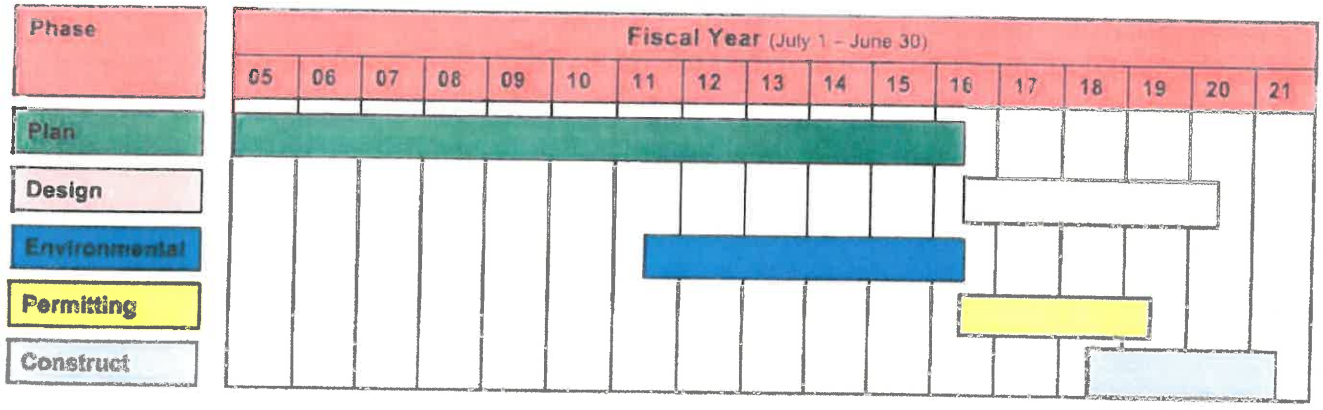
projects by raising environmental issues towards the end of the permitting phase, which should have been provided to the lead agency during the environmental review phase.

In some instances, the SF Regional Board has attempted to require, as a condition of issuing the 401 water quality certification, that we mitigate for impacts not associated with a proposed project. We are concerned with the use of regulatory authority to request improvements as compensatory mitigation, that exceed the baseline and existing conditions at a project site. Consistent with law, compensatory mitigation must be "roughly proportional" to the impacts of a project,[10] and mitigation measures are not required for effects not found to be significant.[11]

Even with the best of intentions, having to redesign a project after the completion of planning and lead agency project approval is inconsistent with the tenets of the open public process established by CEQA. More, it does not support the collaborative effort of planning projects amongst: internal and external stakeholders, members of the community affected by the project, interested members of the public, and local, state, and federal agency staff. Operationally, redesign forces state and federal agencies to either wait to begin their own respective permitting processes or inefficiently review an application and then have to redo their previous work. Most importantly, redesign is likely to require additional environmental documentation in compliance with CEQA, which is expensive, takes additional time to perform, and can be reasonably anticipated to produce further project delays and cost overruns.

Below are case studies about four different projects featuring the various permitting challenges discussed and that resulted in additional work pertaining to redesign.

1. **The South San Francisco Bay Shoreline Study**[12]




Project Overview

Our testimony for the Commission's October 2016 climate change hearing discussed this project as an example of a special district's work to combat climate change. Since that time, it has warranted inclusion in our testimony pertaining to permitting issues.

[10] See CEQA Guidelines § 15126.4[a][4][B].
[11] See CEQA Guidelines § 15126.4[a][3].
[12] See Appendix A for an Aerial Map of businesses on page 17. See also: http://www.southbayshoreline.org/images/Flood%20Risk%20and%20Sea%20Level%20Rise.jpg

The South San Francisco Bay Shoreline Study (hereinafter "Shoreline Study") is an integrated, multi-purpose project that will safeguard hundreds of homes, businesses, and vital infrastructure from the risk of tidal flooding by providing tidal flood risk management, ecosystem restoration and opportunities for recreational and public access along the Santa Clara County's bay shoreline. It is funded by a partnership between the USACE, the California State Coastal Conservancy, and the District. The Study is congressionally authorized for the USACE to identify and recommend flood protection and ecosystem restoration projects in the South San Francisco Bay for Federal funding. The Shoreline Study additionally takes into account providing protection from sea level rise for the next 50 years (2017-2067).

The Shoreline Study is proceeding in phases. The first phase focuses on the section of the Santa Clara County shoreline that was among the greatest risk to tidal flooding now and in the future due to sea level rise: the north San Jose shoreline area between Alviso Slough and Coyote Creek, which includes the Alviso community, the San Jose-Santa Clara Regional Wastewater Facility, several high tech businesses, and the new Silicon Valley Advanced Water Purification Center. This area is known within the Shoreline Study as Economic Impact Area 11, or EIA 11, this section of the shoreline includes homes, commercial, and industrial facilities generally located below sea level and protected by former salt pond berms. Here, the project proposes to construct four miles of engineered levees and restore 2,900 acres of tidal marsh habitat to provide integrated tidal and fluvial flood protection. When completed, the levees will be certified by the Federal Emergency Management Agency (hereinafter "FEMA") and will protect the region from up to 2.5 feet of sea level rise for the next 50 years. Construction of the EIA 11 project is estimated to cost $174 million. Additionally, once the EIA 11 project is constructed, further breaching could occur of the former salt pond berms to aid in returning them to coastal habitat as proposed by the California State Coastal Conservancy's South Bay Salt Pond Restoration Project.

In December 2014, the EIA 11 draft Feasibility Integrated Document and Environmental Impact Statement/Report was released to the public, followed by a public comment period and a public meeting. The final report was released in September 2015, shortly followed by a successful USACE Civil Works Review Board in October. In December 2015, the USACE Chief of Engineers recommended that Congress authorize the Shoreline Study to proceed with pre-engineering and design. The project was included in the Water Infrastructure Improvements for the Nation Act (WIIN) that passed in December 2016.

Permitting Issues

With the passage of WIIN, the EIA 11 project is now eligible for federal construction funding. Construction of the EIA 11 project is anticipated to occur over three years, beginning early 2018 to late 2020. To maintain this project schedule, final permits will be required by February 2018. The project team has begun engaging with the SF Regional Board, and after the teams' first meeting, the SF Regional Board requested for USACE to consider shifting the last reach of the levee alignment that was authorized in the December 2015 Chief's Report. The SF Regional Board wants full exploration of this alignment shift before they will permit the project, which impends to cause design and construction delays. If the project team is unable to reach an agreement on the alignment of the last reach in a timely manner, the project delays could further threaten, continued receipt of Federal funding for the entire project.

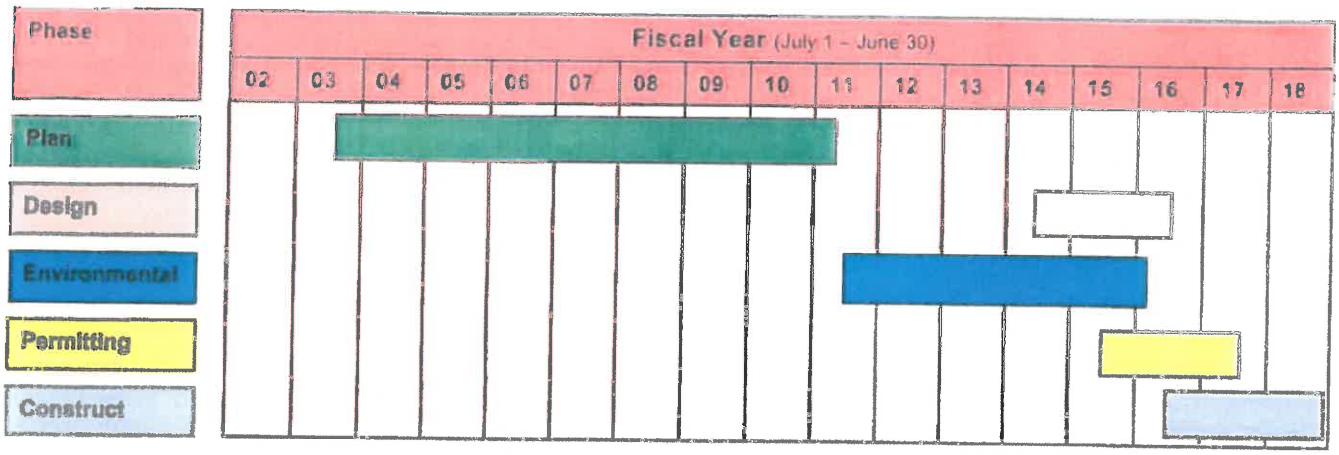
Shifting the alignment is a concern because it would include a portion of the San Jose-Santa Clara Regional Wastewater Facility's (hereinafter "Facility") inactive legacy lagoons and active sludge lagoons. For the active lagoons, the Facility has stated these lagoons will not be available any earlier than 2027, a date that is after when EIA 11 construction is scheduled to be completed, and which assumes there will be no delays in the Facility's transitioning out of these lagoons.

Additionally if the shift in alignment results in new impacts or increases the severity of existing impacts, under CEQA the District will have to prepare a supplemental EIR and re-release it for public review. If this additional process is required, it will add time to the project schedule and permitting process, which will impact the construction start date. Moreover, the shift in alignment would deviate from the Congressionally authorized project, meaning USACE would have to determine if a re-evaluation process would be required, which if it was, could require an act of U.S. Congress to approve.

As for the inactive legacy lagoons, the SF Regional Board likely will regulate activities in these lagoons due to the presence of jurisdictional wetlands. The EIA 11 project's concern is that the SF Regional Board will require mitigating for impacts to these inactive legacy lagoons, despite the project including an ecosystem restoration component to restore 2,900 acres of tidal marsh habitat. The addition of the inactive lagoons also is a concern because they contain materials that may require special handling in the form of removal or capping. Both the mitigation of existing legacy lagoon material and jurisdictional wetlands in these lagoons may increase the project costs, which should not be borne by the EIA 11 project since these lagoons fall under the ownership of the Facility. As such, addressing any identified impacts to these lagoons is the responsibility of the Facility and identifying a way forward to address these cost would ensue in lengthy discussions.

The USACE has a "no net loss" policy for projects that include habitat restoration. Despite one of the project's goals of restoring 2,900 acres of open water to historic coastal wetlands and tidal marsh, the SF Regional Board is challenging that there is a loss and the project will require mitigation. The SF Regional Board asserts that mitigation is required because of conversion of Waters of the United States (existing pond waters) to wetlands, regardless of this being a beneficial project. The mitigation requirements would increase if the EIA 11 project adjusts its authorized alignment to encompass the inactive legacy lagoons. Regardless of whether any Facility lagoons are included or not, the SF Regional Board is stating mitigation is required, so the USACE and SF Regional Board are now beginning discussions and negotiations. Should the alignment or requirement of mitigation not be resolved by July of 2017, with final permits by February 2018, these issues will threaten the design and construction schedule, as well as a continued funding stream.

## 2. Upper Berryessa Creek Flood Risk Management Project[13]




### Project Overview

The District's Berryessa Creek Flood Protection Project, when completed, will protect 2,447 parcels in the city of Milpitas from the threat of a 100-year flood event. The project includes two parts, the Upper Berryessa Creek portion, and the Lower Berryessa Creek portion. Work on the Upper Berryessa portion of the project will protect 624 parcels.

The Upper Berryessa Creek Flood Risk Management Project is a USACE project on which the District is the local sponsor. This project supports a wider $2.1 billion project for construction of a Bay Area Rail Transit (hereinafter "BART") station, of which $900 million is federally funded. The USACE is the lead in constructing the Flood Risk Management Project, which requires issuance of a 401 water quality certification (hereinafter "401 certification") from the SF Regional Board certifying that the project will meet all applicable state water quality standards, thereby allowing construction to proceed. The District will be responsible for performing maintenance activities on the site, after the completion of construction, if it is required. These potential maintenance activities will require submission and approval of an application to the SF Regional Board for a Waste Discharge Requirement Permit (hereinafter "WDR").

The Upper Berryessa project is scheduled for completion in December 2017 in order to provide flood protection from the 100-year event for the previously referenced BART extension. Due to the priority and urgency of the project, we agreed to a two-phased approach to the project, whereby a 401 certification is issued to USACE to commence and complete construction, and then after the completion of construction, a WDR would be issued to the District for maintenance activities, if required.

Accordingly, this past summer, the SF Regional Board approved the USACE permit application for the Upper Berryessa project and granted the USACE a 401 certification with no mitigation requirements beyond the elements already identified within the project. This 401 certification affirms that all construction impacts have been mitigated to acceptable levels, thereby allowing construction to proceed without further mitigation.

[13] See Appendix B for an Aerial Map on page 18.

Permitting Issues

This past fall, in-channel construction work commenced and was continued on the project site until the rainy season began. Construction is scheduled to resume next month in March, however, the SF Regional Board is now proposing to rescind the 401 certification issued to USACE, and replace it with a combined 401 certification and WDR to both USACE and the District. This combined 401 certification and WDR also would require an additional 20 acres of mitigation be performed to account for construction impacts, despite them not being required in the original permit the SF Regional Board issued to USACE for construction. Furthermore, the District would be listed as a joint permittee on the combined permit, in spite of the fact that the District has not applied for a 401 certification, nor a WDR, the District previously objected to being listed as a permittee on a proposed 401 certification, and the District does not estimate that issuance of a WDR is warranted at this time.

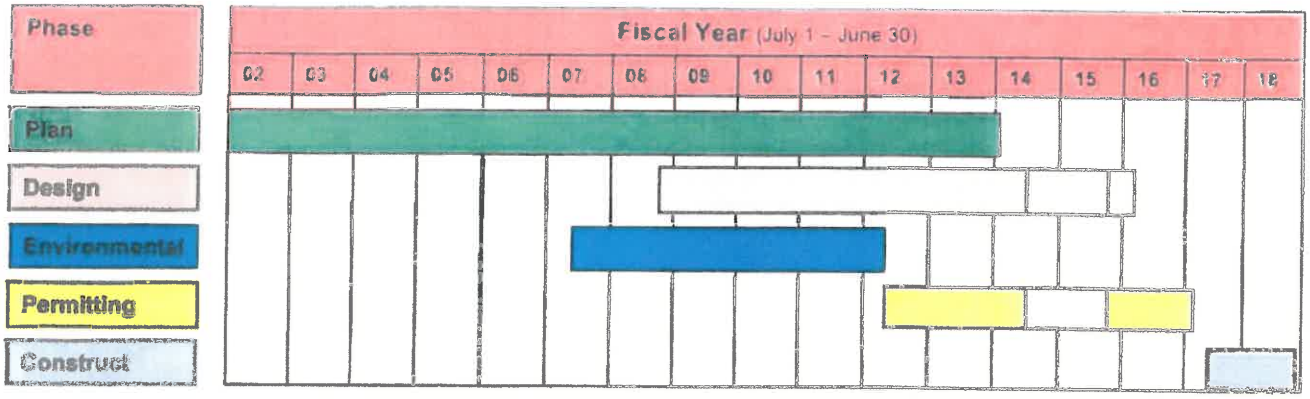
Amongst the District's concerns on this project is the retroactive decision making. The SF Regional Board's environmental issues could have been communicated during the federal environmental impact study comment period, the EIR comment period, or at any time before our Board certified the EIR. By the time our Board certifies the EIR, the scope of the federally authorized project has been finalized, as has the associated federal funding, and thus significant deviations from the scope of the project require a new congressional authorization, potentially impacting the project's viability.

The SF Regional Board explained their action positing that by utilizing a two-phased approach to permitting, the USACE and District had agreed to the prospect of additional compensatory mitigation. In fact, it is their contention that we were the one who has deviated from the arrangement of the parties on this project. However, it should be evident by the plain actions which have transpired that a party who agreed to the two-phased approach would not agree to how this approach has been borne out. That is, while we had agreed to the two-phase approach of the SF Regional Board issuing a 401 certification and then later on, a WDR if necessary, it was understood that phase one would pertain to issuing a permit to USACE for all construction related activities, and in phase two, a WDR would be issued to the District, if necessary, for maintenance activities. The two-phased approach corresponds to the division of responsibilities between USACE and the District for construction and maintenance, respectively. But these phases are not represented in what the SF Regional Board has proposed by issuing USACE its certification, proposing to rescind it and then reissue it with District as a joint Phase 1 permittee, and newly requiring 20 acres of compensatory mitigation for construction impacts.

We are currently awaiting follow up from the SF Regional Board's staff, as directed by their Board Members at the board meeting where these issues were raised and contested.

Finally, despite the District providing funding for the regulatory activity, this project also is impacted by staffing levels at the SF Regional Board, as they reported they could not simultaneously review both our Lower Berryessa Creek application and our Upper Berryessa Creek application, informing the District that the earlier we resolved the Upper Berryessa permit, the sooner they could accelerate the review of the Lower Berryessa application.

## 3. Permanente Creek Flood Protection Project[14]




### Project Overview

Our Permanente Creek Flood Protection project would provide improvements along 10.6 miles of Permanente and Hale Creeks. Project improvements would be constructed in several places along Permanente Creek, and work includes constructing floodwalls, widening channels, and building off-stream flood detention facilities at Rancho San Antonio County Park in and adjacent to the City of Cupertino and at McKelvey Park in the City of Mountain View.

Permanente Creek has a history of flooding, having experienced major flooding in 1862, 1911, 1940, 1950, 1952, 1955, 1958, 1963, 1968, 1983, 1995, and 1998. Flooding can result in millions of dollars in damage to homes, businesses and schools. In addition, disruption to businesses and transportation networks can result in significant loss of productivity and revenue. Each winter, thousands of households, schools and businesses in Mountain View and Los Altos are susceptible to flooding from Permanente Creek during a major storm.

The project is funded by the countywide parcel tax passed by voters in November 2000 titled the Clean, Safe Creeks and Natural Flood Protection Plan. In November 2012, 74% of Santa Clara County voters enacted a successor plan titled Safe, Clean Water and Natural Flood Protection Program, known as Measure B.[15] The plans make it possible to protect homes, schools and businesses from flooding, while improving the health of creek and bay ecosystems and creating trails and parks for recreational enjoyment. For the Permanente project, the programs provide $68.7 million for design and construction.

The Project would accomplish the following objectives: (1) provide flood protection to 1,664 parcels, (2) reduce erosion and sedimentation, (3) reduce maintenance costs, and improve safety and stability of the failing channel on Permanente Creek from San Francisco Bay to Foothill Expressway, (4) Provide environmental restoration and enhancement benefits, (5) Provide recreation enhancements, and (6) Provide natural flood protection by taking a multiple-objective approach.

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[14] See Appendix C for an Aerial Map on page 19 and Consultation History on page 20.
[15] http://www.smartvoter.org/2012/11/06/ca/scl/meas/B/

Permitting Issues

On our Permanente Creek project, we engaged with the SF Regional Board in project development in the following years: 2004 (conceptual alternatives development), 2006 (early consultation), 2007 (Notice of Preparation (hereinafter "NOP")), 2009 (draft EIR), 2010 (informal consultation), 2011 (subsequent EIR NOP and further consultation), 2012 (draft subsequent EIR), and 2013 (further consultation).

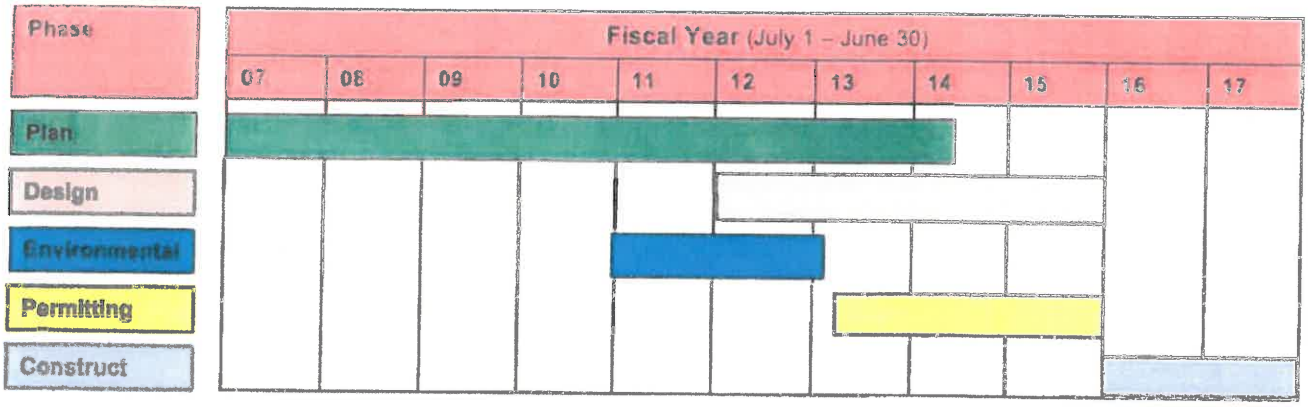
In September 2013, our permit application was prepared, consistent with the approved project environmental documents, and submitted to the SF Regional Board. In January 2014, the SF Regional Board took issue with the proposed in-kind replacement of existing concrete channels. The SF Regional Board should be considering impacts to beneficial uses; however, the channels were covered in concrete, so the proposed work would not cause a new impact. Yet, the District had to evaluate a new project design requirement over the next year, which ultimately was not adopted.

In March 2015, an agreement on the project description was reached, the permit application was revised, and resubmitted one month later in April 2015. However, as part of this agreement, the District additionally had to implement the Hale Creek Enhancement Pilot Project, to acquire the Section 401 water quality certification.

Additionally, since resource agencies cannot start permitting processes until a stable and final project description is confirmed, these regional delays resulted in over 18 months of inactivity at the USACE in reviewing our application for a Clean Water Act Section 404 permit (hereinafter "404 permit"), to until after the SF Regional Board's issues were resolved. The drafts of our other state agency permits were received in December 2015, eight months after we had received our 401 certification from the SF Regional Board. However, due to also waiting for USFWS's biological opinion, we could not complete our federal permitting and begin construction until December 2016.

This project highlights when state permitting delays can setback processing of projects federal permit applications. It also displays the delays from when a regional permitting authority exercises its authority late in the permitting phase and compels an applicant to evaluate new design requirements and implement a previously unplanned restoration project, after years of close coordination when such a request could have been made.

4. **San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project**[16]




Project Overview

The San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project is sponsored by the San Francisquito Creek Joint Powers Authority (hereinafter "JPA"), in which the District is a member agency. The project is proceeding in two phases, for which the above table is for the portion between San Francisco Bay and Highway 101.[17]

The first phase would complete construction of setback levees and floodwalls from San Francisco Bay to Highway 101, to provide 100-year flood protection and ecosystem benefits with local and state funding. This project would improve channel capacity for creek flows that are intensified by the influence of bay tides, including protection against projected sea level rise. Further, it also would reduce local fluvial flood risks in the Project area during storm events, provide the capacity needed for future upstream improvements, increase and improve ecological habitat, and provide for improved recreational opportunities.

The estimated project construction cost for the first phase reach is about $42 million. The current funding available for the project construction is approximately $50 million, with $37.5 million from the District, another $8 million from California Department of Water Resources, and the remainder contributed in smaller amounts from several partners and sources, including San Mateo County, East Palo Alto, Menlo Park, and a Prop 84 Grant.

The estimated construction cost for the second phase is about $92 million. The JPA, in partnership with the USACE, is preparing a feasibility study report for this phase, which would remedy channel constrictions and modify bridges at several intersections, and includes upstream detention, under-ground bypass channels, and floodwalls.

Permitting Issues

We mentioned in the previous section on the Permanente Creek project that in 2011, we raised District concerns to the SF Regional Board about their timing for engaging on

[16] See Appendix D for an Aerial Map on page 24 and Consultation History on page 25.
[17] The second phase is for the reach upstream of Highway 101.

projects. Like that project, the San Francisquito JPA here also did not receive timely input for the project reach between San Francisco Bay and Highway 101.

In March 2013, the JPA submitted its application for a 401 certification permit to the SF Regional Board, but it was deemed incomplete and required a year's worth of meetings for the JPA to prepare and resubmit its application in February 2014, which the SF Regional Board denied without prejudice. This denial resulted in having to redesign the project, and less than a month, we received notice from the USACE they were deferring review of the 404 permit application until the issues were resolved at the regional level.

Over another 14 months, after the JPA worked on these issues through more meetings with numerous parties, redesigning the project, and compiling the requested pieces of information, the SF Regional Board issued a conditional 401 Certification in April 2015. Within the following10 months after receiving the Conditional 401 certification, the other various permitting authorities all issued their permits, and the project was allowed to proceed to construction.

## III. Conclusion

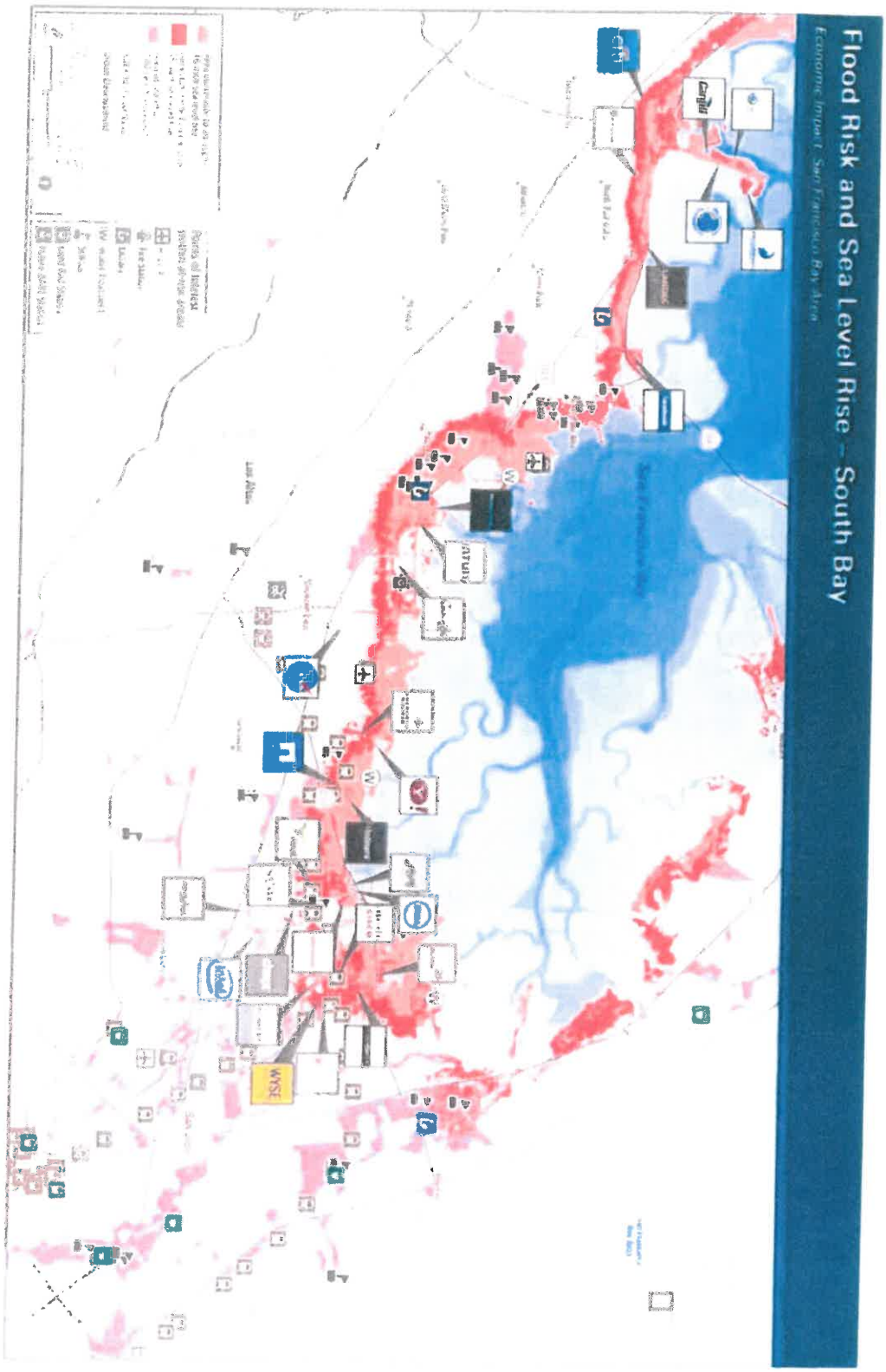
The District's commitment to the environment was enshrined in 2001 when our enabling legislation was amended to certify our purposes included the enhancement, protection, and restoration of natural resources, streams, and riparian corridors. Since 2008, the District has purposively and intentionally labored to achieve carbon neutrality by 2020, and we actively coordinate with other Santa Clara partners to reduce the county's carbon footprint through wetlands restoration, habitat conservation, and supporting expansion of trails and open space.

In summary, we request the Commission's final report to make the following recommendations:

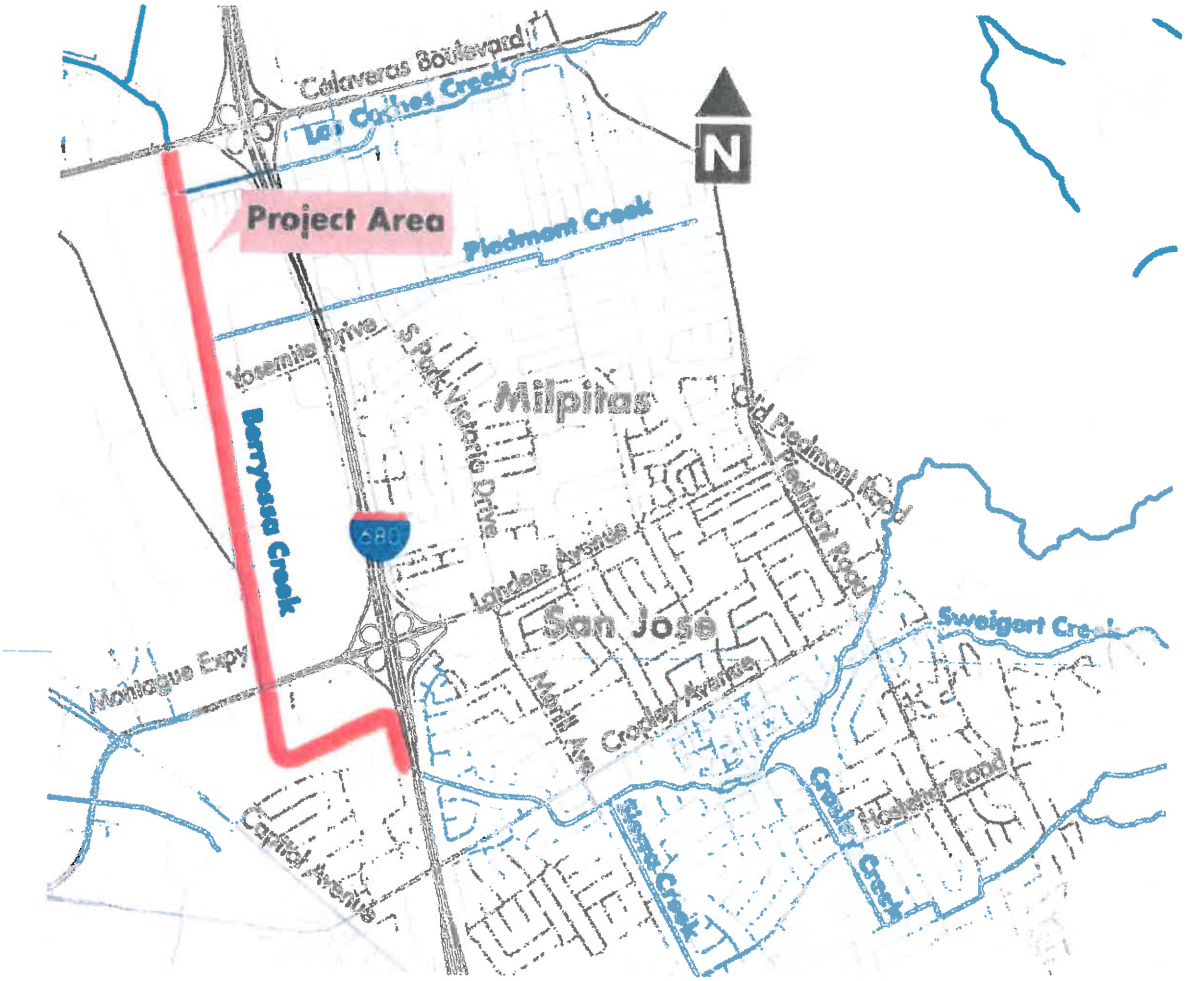
1. For permitting agencies to provide finer detailed written procedures and standards for permit applications, as well as establish review timelines, to reduce the current unpredictability.
2. For public agencies that meet specific qualifications to be allowed to use financial assurance mechanisms other than endowments for long-term compensatory mitigation sites.
3. For greater funding to permitting agencies to increase their staffing levels and eliminate the application backlog.
4. For permitting agencies to engage in environmental review processes in a timely manner, to minimize the risk of project redesigns towards the end of a project's permitting phase.

To close, we thank the Commission for organizing and holding this hearing to explore how permitting issues affect public infrastructure projects. As evident in the project timelines above, planning and implementing projects take several years, and as evidenced by the consultation histories below, we frequently engage with staff at permitting authorities for their guidance. While we have explained further our permitting concerns here, across the state of California, special districts and public infrastructure agencies are faced with similar inabilities to efficiently work with permitting authorities to obtain permits in a timely and predictable manner. Redress of these challenges is necessary to ensure that critical California infrastructure projects are granted permits and may proceed to construction.

## Appendix A: South San Francisco Bay Shoreline Study



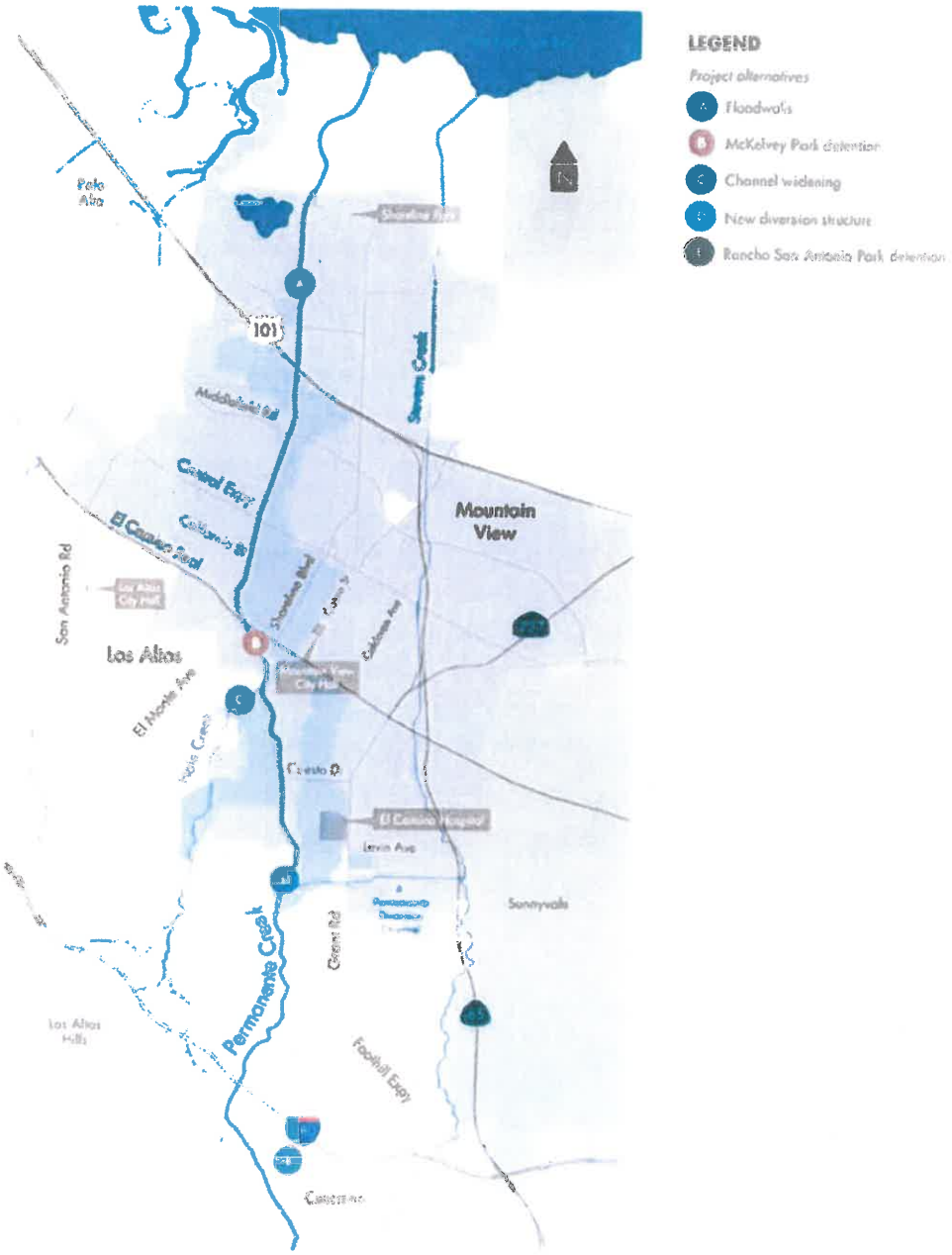
## Appendix B: Upper Berryessa Creek Flood Risk Management Project



## Appendix C: Permanente Creek Flood Protection Project

# Permanente Creek flood protection project

The Permanente Creek Flood Protection Project extends 10.6 miles through the cities of Mountain View and Los Altos.



## Permanente Creek Project Consultation History

*(Federal actions shown in grey-shaded rows)*

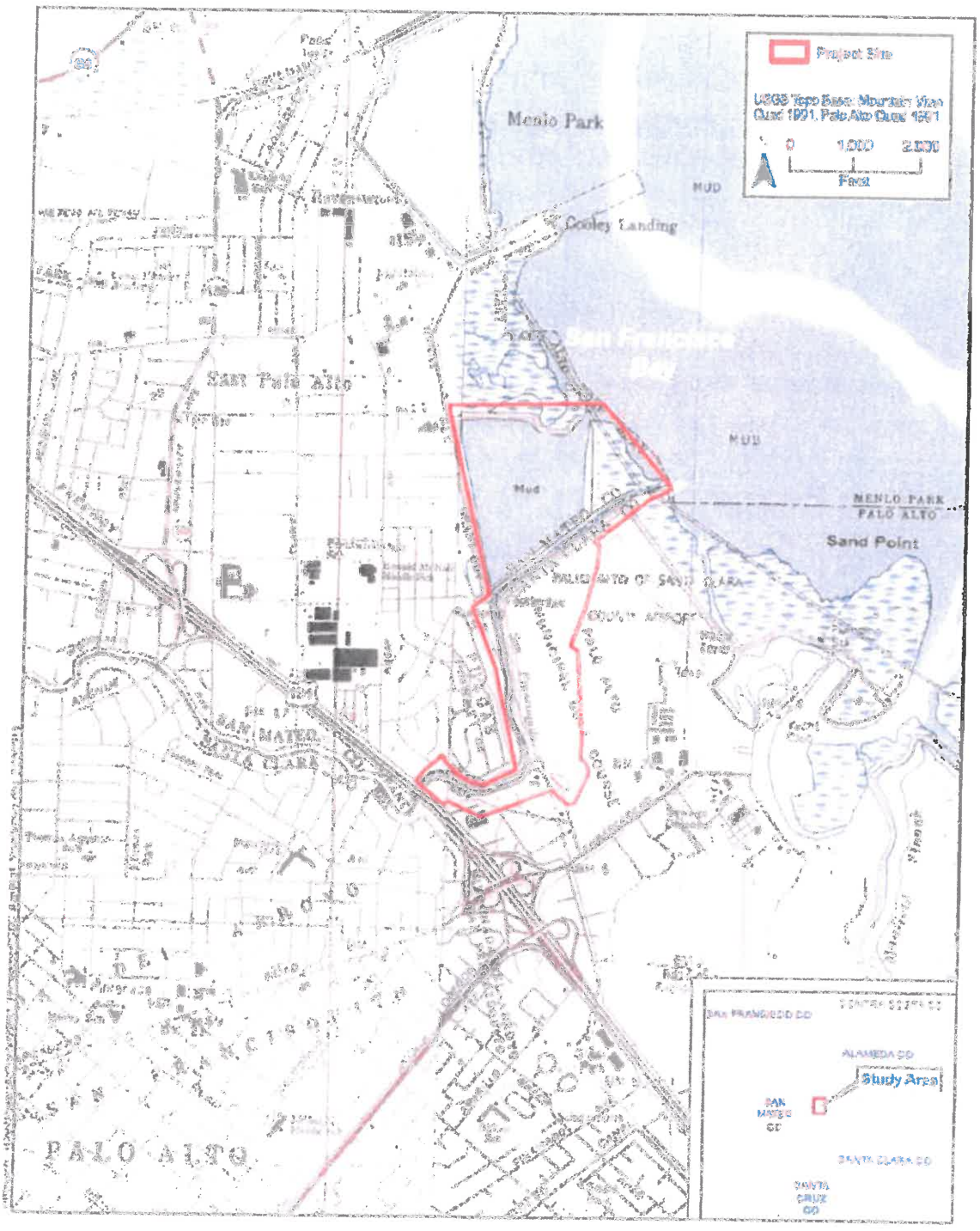
| Date | Consultation | |
|---|---|---|
| Aug 26, 2004 | Meeting with CDFW, Regional Water Board, and Corps to review conceptual elements and obtain agency input. | |
| Jan 2005 | Site visit with CDFW, Regional Water Board, and EPA to inspect conceptual element locations. | |
| Jul 19, 2006 | Early consultation meeting with CDFW, Regional Water Board, EPA, USFWS, and Corps. | ◀ |
| May 21, 2007 | Regional Water Board submitted comments on the NOP for the Project EIR. | |
| Oct 26, 2009 | Site visit to provide project overview. | |
| Nov 12, 2009 | Comments on the Project's Draft Environmental Impact Report – District responded via formal letter dated June 2, 2010. | ◀ |
| Mar 30, 2010 | Conference call with CDFW and Regional Water Board to discuss wetland and riparian impact mitigation, fish entrapment concerns, and CEQA and permitting requirements. | |
| Apr 1, 2010 | Regional Water Board provided guidance on SWPPP applicability to project. | |
| Jul 27, 2010 | Regional Water Board provided guidance on permitting project as a whole consistent with Corps approach. | |
| May 26, 2011 | District provided status update on project at Regional Water Board request. | |
| Jun 30, 2011 | District released the NOP for the Subsequent EIR. | |
| Jul 6, 2011 | Site visit with CDFW and Regional Water Board staff. | |
| Jul 7, 2011 | District response to CDFW and Regional Water Board request for information about flood walls downstream of US-101. | |
| Jul 11, 2011 | Regional Water Board submitted comments on the Notice of Preparation for the Project's Subsequent Environmental Impact Report – It is the District's practice to respond to comments on the NOP within the body of EIR. The Draft EIR was released in July 2012. | |
| Sep 29, 2011 | District staff called Ms. Beth to discuss legal requirements for comments on EIRs and the role CEQA documents serve in the permitting process. | |
| Oct 13, 2011 | District requested informal consultation with CDFW and Regional Water Board on Permanente Restoration Project. | |
| Apr 19, 2012 | Regional Water Board provided guidance on the use of artificial turf – The District accepted Regional Water Board's guidance without comment; the Project was changed accordingly to use natural grass instead of proposed artificial turf. | ◁ |
| Aug 6, 2012 | Regional Water Board submitted comments on the Project's Draft Subsequent EIR. | |

| Date | Consultation | |
|---|---|---|
| Oct 22, 2012 | Conference call with Regional Water Board staff. | |
| Nov 7, 2012 | District formally responded to Regional Water Board comments on the Draft Subsequent EIR. | |
| Jan 15, 2013 | Regional Water Board provided guidance on definition of riparian – District acknowledged Regional Water Board's guidance. | |
| Jan 24, 2013 | Regional Water Board provided guidance on mitigation, impact analysis, and alternatives analysis – District agendized project discussion including Regional Water Board concerns for the next available US Army Corps Interagency Meeting. | |
| Apr 10, 2013 | U.S. Army Corps Interagency Meeting – District prepared, and meeting attendees approved, meeting notes. | |
| Sep 23, 2013 | JARPA package submitted to agencies. | |
| Oct 23, 2013 | CDFW submits incomplete notification letter. | |
| Dec 9, 2013 | U.S. Army Corps deems application complete. | |
| Dec 22, 2013 | Technical assistance meeting with U.S. Army Corps and NMFS. | |
| Jan 6, 2014 | Letter from Mr. Wolfe regarding Regional Water Board concerns. Regional Water Board claims project is not Least Environmentally Damaging Practicable Alternative (LEDPA). | STOP |
| Jan 8, 2014 | Meeting with Mr. Wolfe and Ms. Whyte to discuss project planning project and SF Regional Board concerns. | |
| Jan 28, 2014 | District letter to Regional Water Board responding to concerns raised during 1/6/14 letter and 1/8/14 meeting. | |
| Jan 29, 2014 | NMFS informal concurrence of no effect to Permanente, Hale, and Stevens Creek fisheries. | |
| Feb 5, 2014 | District presentation of full alternative development process, Regional Water Board presented a new concept for replacement of concrete channels in Permanente and Hale Creeks. | |
| Mar 3, 2014 | District met with Regional Water Board in Santa Rosa to view and discuss in-situ example of Regional Water Board alternative concept. | |
| Mar 11, 2014 | Regional Water Board project site visit with District staff. | |
| Apr 9, 2014 | District met with Regional Water Board to discuss remaining environmental concerns and opportunities. Regional Water Board alternative evaluated further. | |
| Apr 14, 2014 | District contacted Shin-Roei Lee to discuss Regional Water Board preferred permitting approach. District willing to consider independent pilot study of Hale Creek to explore feasibility of earthen-bottom channel. | |
| Apr 17, 2014 | District contacted Shin-Roei Lee, Maggie Beth, and Dyan Whyte to discuss Regional Water Board permitting concerns. Key point was separation of Hale Creek improvements from Permanente Creek project while earthen- | |

| Date | Consultation | |
|---|---|---|
| | bottom channel feasibility researched. | |
| May 2, 2014 | Email communication from Shin-Roei Lee to Melanie Richardson rejecting revised certification approach and revisiting Regional Water Board alternative feasibility, LEDPA, and mitigation requirements. | |
| Jun 6, 2014 | Letter from Norma Camacho to Bruce Wolfe responding to 5/2/14 email and adequacy of alternatives analysis, restoration feasibility, and legal mitigation requirements. | |
| Jul 2, 2014 | Letter from Bruce Wolfe to Melanie Richardson specifying LEDPA and mitigation requirements. | |
| Aug 19, 2014 | District submits revised Section 404(b)(1) Alternatives Evaluation report including analysis of Regional Water Board alternative. | |
| Sep 18, 2014 | Regional Water Board letter notifying District application is deemed incomplete. Regional Water Board maintains position that project is not LEDPA. | |
| Oct 27, 2014 | District submits response to CDFW comments on notification. | |
| Oct 31, 2014 | Coordination meeting with Regional Water Board staff in Stanford. Permanente project discussed. | |
| Dec 16, 2014 | Letter from Norma Camacho to Bruce Wolfe responding to alternatives analysis comments raised in 9/18/14 letter. | |
| Dec 18, 2014 | CDFW incomplete notification requesting additional information about tree removal along concrete channels. | |
| Jan 15, 2015 | Coordination meeting with Regional Water Board staff in Oakland. Permanente project discussed. | |
| Feb 18, 2015 | Email communication from Keith Lichten reasserting that Regional Water Board cannot certify the project as LEDPA and revisiting soft-bottom, vegetated channel in Hale Creek. | |
| Mar 3, 2015 | Meeting with Ms. Whyte, Mr. Lichten, Ms. Riley, and Ms. Glendening to discuss possibility of earthen-bottom channel pilot. | |
| Mar 11, 2015 | Regional Water Board and District concurrence reached on project description. | ◁ |
| Apr 7, 2015 | Permit applications resubmitted with revised project description. | ◁ |
| Apr 14, 2015 | Regional Water Board submits administrative draft certification for District review. | |
| May 13, 2015 | CDFW deems application complete. | ◁ |
| Aug 31, 2015 | Revised JARPA submitted to Corps, RWQCB, CDFW. | |
| Aug 31, 2015 | Revised BA submitted to Corps. | |
| Sep 22, 2015 | Corps sends letter to USFWS to initiate formal consultation. | |
| Oct 14, 2015 | CDFW provides Draft Streambed Alteration Agreement. | |

| Date | Consultation | |
|---|---|---|
| Oct 27, 2015 | USFWS submits request for additional information on BA. | |
| Nov 6, 2015 | RWQCB posts public notice for Section 401 Clean Water Certification starting 21 day public review period. | |
| Dec 8, 2015 | RWQCB issues certification. | ◁ |
| May 19, 2016 | USFWS issues biological opinion. | ◁ |
| May 24, 2016 | District submits comments on Water Quality Certification and Streambed Alteration Agreement to reflect changes required by biological opinion. | |
| Jun 7, 2016 | Corps issues Nationwide Permits 14, 33, and 43. | ◁ |
| Jun 22, 2016 | RWQCB indicates they will be preparing an amendment to the Water Quality Certification. | |
| Jul 1, 2016 | RWQCB claims low impact development features required for embankment. | |
| Aug 1, 2016 | RWQCB issues draft amended Water Quality Certification. | |
| Aug 10, 2016 | CDFW issues final Streambed Alteration Agreement. | ◁ |
| Oct 26, 2016 | District responds with comment on draft amended Water Quality Certification. | |
| Oct 27, 2016 | District submits revised Mitigation and Monitoring Plan for review and approval by RWQCB and CDFW. | |
| Nov 4, 2016 | RWQCB comments on Dewatering Plan, Post-Construction Stormwater Management Plan, Operations and Maintenance Manual, and embankment design details. | |
| Nov 7, 2016 | District responds to RWQCB comments on Dewatering Plan, Post-Construction Stormwater Management Plan, Operations and Maintenance Manual, and embankment design details. | |
| Dec 7, 2016 | RWQCB comments on Mitigation and Monitoring Plan. | |

## Appendix D: San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project



## San Francisquito Creek Project Consultation History

*(Federal actions shown in grey-shaded rows)*

| Date | Consultation | |
|---|---|---|
| Mar 2013 | Submittal of applications to CDFW, SFRWQCB, BCDC, USACE, USFWS | ◁ |
| Mar 27, 2013 | Project overview / discussion with agencies (USFWS, CDFW, SFRWQCB) | |
| Mar 29, 2013 | SFRWQCB deems application incomplete | |
| Apr 10, 2013 | CDFW deems application incomplete | |
| Aug 1, 2013 | Additional information provided to CDFW | |
| Aug 28, 2013 | CDFW deems application is still incomplete | |
| Sep 4, 2013 | E-mail from Margarete Beth deeming application complete and requesting additional information | |
| Oct 9, 2013 | Letter from Shin-Roei Lee to JPA clarifying status of application | |
| Oct 28, 2013 | Email from Bill Springer to Margarete Beth updating Water Diversion Plan | |
| Nov 7, 2013 | Meeting between JPA and SFRWQCB regarding planning process and other Regional Board issues | |
| Feb 11, 2014 | Meeting with JPA, City of Palo Alto, SCVWD and SFRWQCB regarding project alternatives and hydrology | |
| Feb 12, 2014 | Revised 404 application sent to USACE | ◁ |
| Feb 13, 2014 | Revised application sent to CDFW | ◁ |
| Feb 26, 2014 | Revised application sent to BCDC | ◁ |
| Feb 27, 2014 | Denial without prejudice from SFRWQCB | |
| Mar 6, 2014 | E-mail from Ian Liffmann to Len Materman explaining delay in 404 application processing as SFRWQCB issues are resolved | |
| Mar 13, 2014 | JPA comments of Regional Board denial to all agencies | |
| Mar 19, 2014 | Meeting between JPA and SFRWQCB discussing process to complete application and receive certification | |
| Apr 1, 2014 | Formal Request for Reconsideration of Regional Board denial | |
| May 7, 2014 | Letter from Len Materman to Bruce Wolfe following up on 3/19/14 meeting and providing technical information requested | |
| May 20, 2014 | Questions from SFRWQCB to JPA for 5/21/14 meeting | |
| May 21, 2014 | Meeting at SFRWQCB discussing project hydrology and impacts to Faber Tract (SFRWQCB, USACE, USFWS, BCDC, JPA, Palo Alto, SCVWD, Don Edwards Refuge) | |

| Date | Consultation | |
|---|---|---|
| May 29, 2014 | E-mail to SFRWQCB (and other agencies) providing additional technical information and following up on 5/21/14 meeting | |
| Jun 12, 2014 | Meeting between JPA and SFRWQCB staff discussing project hydrology | |
| Jul 1, 2014 | Meeting at SFRWQCB discussing project hydrology and path forward for approval (SFRWQCB, USACE, USFWS, CDFW, BCDC, NMFS, JPA, SCVWD, Senator Hill's office, Assemblyman Gordon's office) | |
| Jul 16, 2014 | Management level conference discussing remaining issues needed for certification (SFRWQCB, JPA, SCVWD, Palo Alto, East Palo Alto, Senator Hill's office, Assemblyman Gordon's office) | |
| Jul 24, 2014 | Letter from Bruce Wolfe to Len Materman outlining information needed for complete application | |
| Jul 31, 2014 | Re-submittal of application to SFRWQCB | ◁ |
| Aug 13, 2014 | Discussion of application at SFRWQCB Board meeting | |
| Aug 29, 2014 | SFRWQCB deems July 2014 application incomplete | |
| Sep 29, 2014 | CDFW deems February 2014 application incomplete | |
| Oct 2, 2014 | Re-submittal of application to USACE including amended BO | ◁ |
| Oct 9, 2014 | Teleconference between JPA, Don Edwards Refuge, and USFWS regarding mitigation for RR and SMHM | |
| Oct 10, 2014 | JPA response to incomplete letter and additional information | |
| Oct 15, 2014 | On-site meeting discussing fisheries issues (JPA, SCVWD, NMFS, USACE, CDFW) | |
| Oct 17, 2014 | Revised MMP, O&M manual, and Water Diversion Plan provided to agencies | |
| Oct 22, 2014 | On-site meeting discussing Faber Tract, wetland impacts, and Ridgway Rail (JPA, SCVWD, USFWS, Don Edwards Refuge, SFRWQCB, USACE, CDFW) | |
| Oct 24, 2014 | E-mail from Margarete Beth to Kevin Murray requesting additional information | |
| Oct 31, 2014 | SFRWQCB Special Board meeting discussion project at Stanford University | |
| Nov 3, 2014 | Letter from NMFS to USACE requesting additional information to complete Section 7 consultation | |
| Nov 7, 2014 | Letter from JPA to Bruce Wolfe summarizing 10/31/14 meeting and requesting specific actions of SFRWQCB | |
| Dec 2, 2015 | Letter from USFWS to USACE requesting additional information to complete Section 7 consultation | |
| Dec 18, 2014 | Public Notice published by USACE | |
| Jan 15, 2015 | Re-submittal of application to CDFW | ◁ |

| Date | Consultation | |
|---|---|---|
| Jan 16, 2015 | Letter from SFRWQCB to USACE commenting on Public Notice | |
| Feb 2, 2015 | SFRWQCB provides Draft Certification to JPA | |
| Feb 12, 2015 | Meeting at SFRWQCB with JPA and SCVWD to discuss issues with Draft Certification | |
| Mar 2, 2015 | 404(b)(1) alternatives analysis sent to USACE | |
| Mar 20, 2015 | JPA response and proposed changes to Draft Certification | |
| Apr 7, 2015 | SFRWQCB issues Conditional 401 Certification | |
| May 7, 2015 | JPA requests changes in Conditional 401 Certification | |
| June 2, 2015 | SFRWQCB provides response to JPA request | |
| Nov 3, 2015 | Revised application submitted to BCDC | |
| Dec 3, 2015 | Additional information requested by BCDC | |
| Dec 15, 2015 | Meeting with BCDC staff of information request | |
| Dec 28, 2015 | CDFW provides draft SAA | |
| Dec 30, 2015 | NMFS provides Biological Opinion | |
| Jan 8, 2016 | Revised application submitted to BCDC | |
| Jan 15, 2016 | JPA provides comments on draft SAA to CDFW | |
| Jan 15, 2016 | USFWS provides Biological Opinion | |
| Feb 2, 2016 | Revised 404(b)(1) alternatives analysis sent to USACE | |
| Feb 9, 2016 | CDFW provides final SAA | |
| Feb 12, 2016 | BCDC issues Staff Recommendation for the project | |
| Feb 18, 2016 | BCDC approves and issues Major Permit | |
| Feb 23, 2016 | USACE issues 401 permit | |