



State Water Resources Control Board

April 3, 2025

Mr. Anthony Emmert
United Water Conservation District
1701 N. Lombard Street, Suite 200
Oxnard, CA 93030
Sent via Email: tonye@unitedwater.org

**Freeman Diversion Facility Renovation Project
Ventura County
Santa Clara River**

DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION FOR FREEMAN DIVERSION FACILITY RENOVATION PROJECT

Dear Mr. Emmert:

On April 9, 2024, United Water Conservation District (United) submitted to the State Water Resources Control Board (State Water Board) Executive Director a request for water quality certification (certification) pursuant to section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) for the Freeman Diversion Facility Renovation Project (Project). As discussed later in this letter, your April 9, 2024 request for certification for the Project is denied without prejudice.

As background, after review of a certification application and other relevant information, the State Water Board must either: (1) issue an appropriately conditioned certification; or (2) deny certification. (Cal. Code Regs., tit. 23, § 3859.) The State Water Board may issue certification if the State Water Board determines that an activity will comply with applicable water quality standards and other appropriate requirements of state law. The State Water Board may deny a certification application if the activity will not comply with water quality standards or other appropriate requirements, or if compliance with water quality standards and other appropriate requirements is not determined, but the application suffers from some procedural inadequacy (e.g., failure to meet California Environmental Quality Act (CEQA) requirements). (Cal. Code Regs., tit. 23, § 3837, subd. (b)(1) & (2).) The State Water Board may also deny a certification application if the State Water Board has requested supplemental information and the federal period for certification will expire before the State Water Board has time to receive and properly review the supplemental information. (Cal. Code Regs., tit. 23, § 3836, subd. (b).)

Additionally, under federal regulations, the certifying authority may grant certification, grant certification with conditions, deny certification, or expressly waive certification.

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

(40 C.F.R. § 121.7, subd. (a).) A denial of certification should include a statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements, including but not limited to a description of any missing water quality-related information if the denial is based on insufficient information. (40 C.F.R. § 121.7, subd. (e)(3).)

Project Description

United is proposing the Project to implement various measures at the existing Freeman Diversion facility that will allow volitional fish passage above the Freeman Diversion. Freeman Diversion is located on the Santa Clara River approximately 8 miles northeast of Oxnard, California. Updates to Freeman Diversion will include construction of an in-channel hardened ramp, resurfacing the downstream face of the diversion structure, construction of a new diversion intake and headworks, replacement and expansion of the sediment management systems, replacement of the fish screen system, and updates to the flow operations at the diversion. The in-channel hardened ramp will improve fish passage for steelhead and lamprey in the Santa Clara River.

Under its existing water rights (Application IDs A012092A and A026434, and Water Rights Permits 011181 and 018908), United is currently authorized to divert up to 375 cubic feet per second (cfs). However, per United's April 9, 2024 application, United cannot always divert the amount allowed under its water rights due to various limitations, including periods of low flow (primarily caused by drought), the need to meet instream flow requirements, excessively high levels of total suspended solids during high flow events, and limited recharge capacity during high groundwater conditions (a rare occurrence during extremely wet years). As part of the Project, United's proposed facility updates will allow for an instantaneous maximum diversion of up to 750 cfs. Accordingly, United will apply for a new water right to increase the diversion rate, allowing for the capture of more water during peak storm flows.

Water Quality Certification Action

After review of the Project certification application and the supporting documentation submitted by United, the State Water Board has determined that the application suffers from a procedural inadequacy and does not provide sufficient information to assess the Project's potential impacts on water quality. As further noted below, there may be operational changes to the Project associated with a court order related to an ongoing court case¹ regarding United's diversion.

Potential Project Changes. In an email dated January 8, 2025, and on March 27, 2025, in a discussion with State Water Board staff, United stated that a future court order might require changes to components of the Project, potentially impacting its operations and the Project description. Any changes to the Project description would, in turn, affect potential water quality impacts and protections considered as part of a certification action.

CEQA. United is the lead agency for the Project for purposes of CEQA compliance, but it has not completed the CEQA process and has not yet issued a draft CEQA document

¹ *Wishtoyo Foundation et al. v. United Water Conservation District (C.D. Cal. No: LA CV 22-08657-DOC)*.

for public review and comment. As a responsible agency, the State Water Board will rely on the environmental document prepared by United when making its own determination as to whether and with what conditions to grant the certification. (Cal. Code Regs., tit. 14, § 15096.)

Unless an exemption applies, CEQA documentation is required as part of the certification process and can inform the State Water Board's determination of the water quality impacts of an activity and any conditions of certification necessary to ensure compliance with water quality standards. CEQA requires the lead agency (in this case, United) to evaluate the Project's potential impacts to environmental resources and identify any feasible mitigation measures or alternatives to reduce Project impacts to less than significant levels. CEQA documentation must analyze and evaluate the Project's impacts to all relevant resources, including aquatic biological resources, listed species, and water quality. Without adequate information, including an analysis of water quality impacts, a description of mitigation measures to protect water quality and the beneficial uses of the Santa Clara River, and a compensatory mitigation plan to offset any unavoidable adverse impacts to aquatic resources, the State Water Board is unable to issue a certification for the Project.

Through communications with United and State Water Board staff on October 7, 2024, December 8, 2024, and March 27, 2025, United stated that its CEQA timeline would be subject to a court order, which is anticipated following the conclusion of a court hearing in April 2025. United expects to release a public draft CEQA document 120 days after the issuance of the court order. After public review and comment on the draft CEQA document, United will need to prepare and certify a final CEQA document upon which the State Water Board could then rely in taking action on United's application for water quality certification.

CEQA must be completed prior to issuance of a water quality certification, unless waiting until completion of the CEQA review process would pose a substantial risk of waiver. (Wat. Code, § 13160, subd. (b)(2).). Given United has yet to release a draft CEQA document for the Project, United's CEQA timeline does not allow for the completion of the CEQA process prior to the State Water Board's deadline to act on United's request for certification of the Project, which is April 9, 2025. The State Water Board needs sufficient time to receive and review the information being developed as part of the United's CEQA process, especially information relevant to Project-related impacts and mitigation measures associated with the protection of water quality and beneficial uses.

For the foregoing reasons, United is hereby notified that its April 9, 2024 request for certification for the Project is denied without prejudice, effective on the date of this letter.

The State Water Board encourages United to submit a new certification request once it has confirmed there will not be substantive changes to the Project resulting from the court order and it has reached a stage in its CEQA process that will allow the State Water Board sufficient time to receive and review the Project's CEQA documentation well before the deadline to act on United's future certification request. In general, State Water Board staff support efforts to improve fish passage conditions at dams throughout the state and look forward to working with United on the Project in the future.

Mr. Anthony Emmert

April 3, 2025

If you have questions regarding this letter, please contact James Noss, Project Manager, by email to: James.Noss@waterboards.ca.gov or phone call to: (916) 319-9943. Written correspondence or inquiries should be mailed to:

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Sincerely,



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