WATER RESOURCES AGENCY

M E M O R A N D U M

Monterey County

DATE: July 22, 2016

TO: Monterey County Water Resources Agency Board of Directors

FROM: David E. Chardavoyne, General Manager

SUBJECT: **Regular Board of Directors Meeting Agenda – July 25, 2016**
Action Item 9D – DRAFT Response Letter to Central Coast Regional Water Quality Control Board

The Agenda packet for the Regular Board of Directors Meeting scheduled for July 25, 2016 was published on Tuesday, July 19, 2016. One of the Action Items ***(9D: Consider reviewing the Regional Water Quality Control Board's Draft 401 Water Quality Certification for the Salinas River Stream Maintenance Program; providing direction to Staff; and, authorizing the General Manager to prepare and submit Public Review Comments)*** made reference to a draft letter (attached) that would be forthcoming prior to the July 25, 2016 Regular Board of Directors' meeting.

The attached letter will be posted on the Agency's website; sent to members of the public currently on the Board packet distribution list; and, made available at the meeting on July 25, 2016.

Please contact me if you have any questions or concerns.

July 21, 2016

Via Electronic and U.S. Mail
Jon.Rohrbough@waterboards.ca.gov

Mr. Jon Rohrbough
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401

Dear Mr. Rohrbough:

Re: Comments on the Draft Clean Water Act Section 401 Water Quality Certification for the 2016-2025 Salinas River Stream Maintenance Program, No. 32716WQ02

The Monterey County Water Resources Agency (MCWRA) is the project applicant as well as the administrator for the Salinas River Stream Maintenance Program (Program). This Program was designed using an iterative and collaborative process developed in 2013-2014 that resulted in permits for and implementation of a Demonstration Project in two River Management Units near Chualar and Gonzales. RWQCB staff worked closely with partner organizations, landowners, and other regulatory agencies over the last two years to further develop the planning process and to assess and model river conditions, thereby ensuring maximum benefits from the Program.

MCWRA has reviewed the Program's draft 401 Certification during the current public review period. Unfortunately, due to timing constraints MCWRA was not able to discuss some of these proposed conditions with staff during the last few months as they were not yet drafted. In addition, MCWRA was not included in the Interested Parties distribution for the draft 401 Water Quality Certification Public Review Period. We suggest internal processes be updated to ensure that a project applicant is given the same review period as the public, at a minimum.

We appreciate the Board considering some modifications as outlined below in order to make this a successful Program.

Special Conditions:

1. A1: The draft Certification is set to expire on Aug. 31, 2025 which is in the middle of the Program's maintenance season (June 1 to November 15). This would add challenges to implementing a successful year. The MCWRA proposes to modify the expiration date to Nov. 15, 2025 in order to align it with the end of the maintenance season.

2. B2: The definition of the main channel appears to include a much wider area than typical when referring to a river's main channel. A main channel should be defined as the active channel which is the area of the channel that can pass a frequent storm event. The broader definition being used

currently by the RWQCB appears to include the main or active channel and adjacent floodplains which may carry flows during an event as large as a 25-year flood event. The Ordinary High Water Mark (OHWM) was defined through the permitting process in accordance to the Army Corps of Engineers' definition. MCWRA proposes that the OHWM be used as the definition for the main channel so that there is consistency and a clear understanding of where the main channel is located based on technical evidence (flows, vegetation, soils and banks).

3. C7: Requiring removed sediment to be placed outside of the main channel, as that term is currently used by RWQCB leads to some discrepancies with some storage sites approved under the Demonstration Project Certification (32714WQ03) no longer approved. MCWRA proposes that the main channel definition be redefined as stated above or that the OHWM be used as an indicator of where sediment needs to be placed (above the OHWM).

4. E2: The timing of any adaptive management proposals being due by May 15th will be a challenge as the rainy season ends in April and documenting significant geomorphic changes and any additional necessary analysis for re-aligning secondary channels would take longer than a couple of weeks. MCWRA understands that analyzing geomorphic changes in the river, especially in the low-flow channel is important when it relates to the location and effectiveness of secondary channels. MCWRA proposes to align the timing with the submittal of the Annual Work Plan as that is the time when the future work season is reviewed and proposals are made. May 15th aligns closely with the Annual Report (vs. the Annual Work Plan) and this document looks at the past maintenance season and what was done and may not have the full picture of what happened during winter flows.

5. E3: The proposed maintenance season begins June 1st of each year with herbicide treatment and then mechanical work can begin as early as August 15th. Due to this timing, and other resource agencies having required at least 30 days to review any proposed work for the coming season, the MCWRA would likely submit up to two Annual Work Plans in a calendar year. The first would include herbicide treatment if any was proposed for June 1st. The second would be for mechanical work associated with Arundo removal as well as maintenance area work. Allowing for 30 days for RWQCB staff to review the Work Plans would result in the first plan being due May 1st, if any work was proposed and the second plan being due July 15th. The Condition can stay as written, requiring a Work Plan by August 1st of each year, but MCWRA wanted to clarify the likely approach to this submittal.

6. G4: Successful Arundo eradication is very beneficial to the watershed, but also incredibly time consuming and difficult. The maintenance area design process encouraged Arundo removal by placing maintenance areas in or near large infestations when feasible. This proposed Certification offers no credit for Arundo removal within these maintenance areas and yet the successful eradication of the Arundo is required. That offers little incentive for the landowners and differs from the Demonstration Certification where compensatory mitigation credit was given at half the value for Arundo treated within a secondary channel. This item was not discussed in the numerous after action meetings or Permitting Committee meetings. It seems to be in conflict with the incentives of moving secondary channel in Arundo-infested areas and they are still responsible for the successful eradication. MCWRA proposes that this same compensatory mitigation credit be given for this larger project.

7. G8b: Arundo eradiation is very challenging and the measurement of performance criteria can be difficult as well. Therefore, MCWRA proposes that this condition be revised to say that stands within Arundo removal areas shall be reduced by 95% five years after initial removal.

8. G10: The difference between temporary and permanent impacts and required mitigation versus restoration is confusing and appears to require double the effort with both restoration and mitigation required. If "permanent" impacts are restored at the end of the permit term then mitigation would not be appropriate in addition to that restoration. MCWRA proposes that if an impact is deemed "permanent" then compensatory mitigation is required. When classifying an impact as "temporary" then restoration would be required.

9. H2b: The Salinas River is a naturally braided system with a highly mobile sandy bed, and geomorphic changes due to natural fluvial processes are expected to occur in and possibly adjacent to the active channel over the life of the permit. However, because they are purposefully located on 2-5 year floodplain terraces above the active channel, secondary channels proposed in this Program are not expected to be affected by annual, low-flow events. MCWRA therefore recommends that this condition apply only to proposed maintenance areas where adaptive management is needed, and not in maintenance areas where no changes to management are warranted. If adaptive management of a maintenance area is needed, then the MCWRA would inspect the maintenance area, the adjacent low-flow channel and the upstream and downstream tie-ins of the specified maintenance area, and propose management changes for that area in the Adaptive Management Plan.

10. I2a: The effectiveness monitoring proposed in the permit application included collecting topographic surveys of 10% of secondary channels in order to account for major changes in topography and to better understand sediment dynamics within those areas. It would not be an appropriate use of this data to calibrate the hydraulic model nor would they help us understand the impacts of the maintenance areas. The model used to develop the Program design has been calibrated based on past events and flood extents, and annual work documentation quantifies the

impacts of the maintenance areas. MCWRA proposes that this item remove the reference to calibration of the hydraulic model and impacts of maintenance areas.

11. I2c: The Program was designed for flood risk reduction and data was developed up front to quantify the flood risk reduction based on a variety of proposed activities. Unfortunately, duplicating actual flood risk reduction in a modeled simulation is not possible due to the variety of storm events that could occur and the different way they behave in the system. The model used to develop the Program design provides description of the changes in channel structure that can be assessed against predicted flood risk reduction. There is no practical way to monitor flood risk reduction in the field and therefore, MCWRA proposes that this component of the Long-Term Effectiveness Plan be eliminated.

12. I2d: MCWRA will be collecting habitat and vegetation data annually that will provide the foundation for biological monitoring. Increasing channel complexity is more of a geomorphic description that is related to a biological function but would be better addressed under condition I2b: Design Verification Monitoring. MCWRA suggests that bullet item to be moved accordingly. Reductions in the flow velocity in the low-flow channel are not measurable as each storm event behaves differently and velocities are not collected uniformly in the river channel. Conditions I2a: Effectiveness monitoring will inform parties as to velocity changes due to depositional or scour environments within the secondary channels. Therefore, MCWRA suggests this bullet be removed.

13. J1&2: The MCWRA has recognized the need for a long-term Salinas River Management Program and has been proposing to begin that effort formally in 2021. This kind of plan would be a collaborative effort involving many stakeholders and regulatory agencies. Because much of the Salinas River in Monterey County is privately owned, landowners would need to be willing participants. MCWRA cannot guarantee that participation or the success of developing a long-term plan. The work occurring through the short-term Program would be the foundation for such efforts and provides valuable technical information as well as develops partnerships and processes to make a more successful long-term Management Program. This long-term Management Program is still in its infancy and the specific objectives have not yet been determined although there have been discussions that the long-term Management Program Area would be expanded to include the lagoon. The MCWRA is facing some challenges that could affect the approach and schedule to accomplishing such goals. These are outlined below:

    - A long-term plan must be a collaborative effort. Multiple regulatory agencies as well as various stakeholders will be participating and approving what is acceptable. The RWQCB does not have the sole authority for this nor can they drive the timeline for other agencies to participate and perform their duties.

- MCWRA's adopted FY 16-17 budget does not include this task. Since there was no indication that advance work on the long-term program would be required in this fiscal year, funds were not sought or identified for work on the long-term program. With no revenue stream is identified for this effort means a commitment to this requirement is beyond MCWRA's ability at this time.

- This condition requires responsibilities of the MCWRA that are not in the Agency Act, such as long-term Arundo control. Therefore, the General Manager does not have the authority to agree to the condition as written.

- A Groundwater Sustainability Agency (GSA), as a result of the adopted Sustainable Groundwater Management Act (SGMA), will be implemented by June 2017. This new GSA could be MCWRA, another entity, or some combination of those. This would affect MCWRA's ability and/or authorization to perform this task.

The purpose of this 401 Certification is to confirm that the Project protects beneficial uses and meets water quality objectives and establishes conditions to project beneficial uses and mitigate unavoidable impacts. Technical and monitoring program reports required by the RWQCB should be related to compliance with a water quality certification under California Water Code section 13267. This condition does none of those things and MCWRA believes it is inappropriate for the RWQCB to attempt to direct MCWRA activities in this manner. Therefore, MCWRA recommends that this condition be removed.

* * * * *

These recommended changes complement the permit application submitted and we believe would also be protective of beneficial uses of State waters. We appreciate your assistance in working through this process and look forward to hearing from you soon.

Sincerely,