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## State Water Resources Control Board

September 16, 2024

Jerry Brown  
Sites Project Authority  
122 Old Highway 99 West  
Maxwell, CA 95955  
Sent via Email: [jbrown@sitesproject.org](mailto:jbrown@sitesproject.org)

**Sites Reservoir Project  
Colusa, Glenn, Tehama, and Yolo Counties  
Funks Creek and Reservoir, Stone Corral Creek, Antelope Creek, Grapevine  
Creek, and Sacramento River**

### **DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION FOR SITES RESERVOIR PROJECT**

Dear Jerry Brown:

On March 1, 2024, Sites Project Authority (Authority) 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 Sites Reservoir Project (Project). On April 2, 2024, the State Water Board posted a notice that the Authority's certification request is pending before the State Water Board. On April 8, 2024, the United States Army Corps of Engineers (USACE) established the reasonable period of time for action on the Project certification request as March 1, 2025.

Under federal law, certification or waiver is required for any federal license or permit that authorizes any activity which may result in any discharge from a point source into waters of the United States. (33 U.S.C. § 1341; 40 CFR § 121.2.) Implementation of the Project will require a permit from the USACE pursuant to CWA section 404. (33 U.S.C. § 1344.) On March 1, 2024, simultaneous with the Authority's request for certification, the Authority filed an application with USACE for an individual permit for the Project (USACE Permit ID No. SPK-2001-00055) under CWA section 404.

On April 16, 2024, USACE sent a letter to the Authority requesting additional information by May 16, 2024, to continue processing the permit request for the Project. USACE staff noted that the Authority's March 1, 2024 CWA section 404 application did not include: (1) documentation demonstrating compliance with the federal Endangered Species Act; (2) documentation demonstrating compliance with the National Historic Preservation Act; (3) a written request for CWA section 408 permission from USACE; (4) alternatives information sufficient to show compliance with the United States

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

Environmental Protection Agency's CWA section 404(b)(1) *Guidelines for Specification of Disposal Sites for Dredged or Fill Material* (40 CFR § 230); and (5) a detailed compensatory mitigation plan. USACE staff also noted that should the project description change (e.g., additional impacts to waters of the United States), a new USACE [public notice](#) or agency notification may be required.<sup>1</sup> On May 17, 2024, USACE informed the Authority that the request for a 404 permit for the Project was administratively withdrawn after USACE did not receive the requested information. On July 10, 2024, USACE staff informed State Water Board staff that the Project's 404 application was administratively withdrawn.

### **Regulatory Authority**

According to the final 2023 *Clean Water Act Section 401 Water Quality Certification Rule* (Fed. Reg. 66558-66666 (September 27, 2023) [amending 40 C.F.R. Parts 121, 122, 124]) that went into effect on November 27, 2023 ([2023 Rule](#)),<sup>2</sup> "if the request for certification or Federal license or permit application was withdrawn, then the certifying authority is no longer responsible for acting on the request for certification because the pre-requisite "request" is absent." The 2023 Rule also states, "[n]othing in section 401, nor this final rule, prohibits a project proponent from re-applying for certification if a certifying authority denies its initial request."

### **Project Description**

The Authority proposes to build a new water supply project in rural, unincorporated areas of Glenn and Colusa Counties, approximately 10 miles west of the community of Maxwell. The Project would create a new 1.5 million acre-feet surface water reservoir (Sites Reservoir) that would divert water from the Sacramento River and impound two of its tributaries (Funks Creek and Stone Corral Creek; HUC 8: 18020104). The Project would use existing infrastructure to divert water from the Sacramento River at Red Bluff and Hamilton City (Red Bluff Pumping Plant and Glenn-Colusa Irrigation District Main Canal Pumping Plant, respectively) to the new Sites Reservoir. New and existing facilities would transfer water into and out of the reservoir, with ultimate release back to the Sacramento River system via existing canals and a new pipeline located near the town of Dunnigan. Water released from Sites Reservoir would be used in northern and southern California for multiple purposes, including irrigation, domestic consumption, and fish and wildlife. Project-related infrastructure would be located in Glenn, Colusa, Tehama, and Yolo Counties. Project activities include: geotechnical investigations; construction of two dams, seven saddle dams, and two saddle dikes; development of two recreation areas; road construction and improvements; and construction of pumping facilities and pipelines.

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<sup>1</sup> USACE currently has an active public notice for the Project posted on its website. Available at: <https://www.spk.usace.army.mil/Media/Regulatory-Public-Notices/Article/3708862/spk-2001-00055-public-notice-of-permit-application-sites-reservoir-project-colu/>. Accessed on August 15, 2024.

<sup>2</sup> The 2023 Rule is available at: <https://www.epa.gov/cwa-401/final-2023-cwa-section-401-water-quality-certification-improvement-rule.pdf>. Accessed on August 15, 2024.

To comply with the California Environmental Quality Act and National Environmental Policy Act, the Authority adopted a final Environmental Impact Report/Environmental Impact Statement and Mitigation Monitoring and Reporting Program on November 17, 2023.

The Project will involve the diversion and use of surface water from the Sacramento River, Stone Corral Creek, and Funks Creek and will require a water right approval from the State Water Board. Consideration of the water right application for the Project is part of a [separate Board proceeding](#) that is underway.<sup>3</sup> The Chief Deputy Director who oversees the Division of Water Rights and staff of the Water Quality Certification Section have been separated from Board staff participating in the water right hearing and are subject to the prohibition against ex parte communications about the water right proceeding with any member of the hearing team, the hearing officer, or State Water Board members. The prohibition on ex parte communications also extends to the attorneys at the Office of Chief Counsel assigned to advise the Chief Deputy Director and staff of the Water Quality Certification Section about the Authority's application for a certification. Project operations (e.g., diversion quantity and timing) will be subject to the terms and conditions of any water right permit issued for the Project along with all applicable laws, regulations, biological opinions, incidental take permits, and court orders.

#### **Water Quality Certification Action**

Based on the May 17, 2024 USACE letter to the Authority stating its CWA section 404 application (USACE Permit ID No. SPK-2001-00055) had been administratively withdrawn, the State Water Board finds that the Authority's application suffers from a procedural inadequacy consistent with California Code of Regulations, title 23, section 3837, subdivision (b)(2), and that compliance with water quality standards and other appropriate requirements has not yet been determined. Therefore, the Authority is hereby notified that the Authority's March 1, 2024 request for certification for the Project is denied without prejudice, effective the date of this letter.

While denial may not be strictly necessary pursuant to the 2023 Rule, which states, "if the request for certification or Federal license or permit application was withdrawn, then the certifying authority is no longer responsible for acting on the request for certification because the pre-requisite 'request' is absent," because the State Water Board issued a public notice on April 2, 2024, which was also posted on the State Water Board website, it is appropriate to deny this specific application for certification without prejudice to ensure that the Authority resolves the issues identified by USACE and that the State Water Board is able to determine within the applicable reasonable period of time for taking certification action whether the Project can be implemented in accordance with applicable water quality standards and other appropriate requirements. Additionally,

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<sup>3</sup> The June 5, 2024 Amended Notice of Public Hearing and Pre-Hearing Conference for the Project's State Water Board Water Right Hearing proceedings is available at: [https://www.waterboards.ca.gov/water\\_issues/programs/administrative\\_hearings\\_office/docs/2024/2024-06-05-amended-notice-of-public-hearing.pdf](https://www.waterboards.ca.gov/water_issues/programs/administrative_hearings_office/docs/2024/2024-06-05-amended-notice-of-public-hearing.pdf). Accessed August 15, 2024

denial without prejudice will aid clarity regarding the current status of the Authority's certification application, given that USACE's administrative withdrawal of the Authority's permit request notes USACE "will consider completing [its] decision without having to restart the permit process" if the Authority promptly submits the missing information.

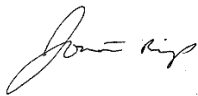
State Water Board staff appreciates the Authority's previous and current efforts to convene meetings on a monthly basis to discuss Project scope and construction permitting and requests the Authority continues those meetings. State Water Board staff will continue to review plans and materials, and work with USACE and the Authority towards the goal of expeditiously acting on the request for certification for this Project once a subsequent certification application is received. The State Water Board encourages the Authority to submit an application for certification once the Authority has provided USACE with information necessary for a complete CWA section 404 application (e.g., documentation demonstrating compliance with the federal Endangered Species Act and National Historic Preservation Act). Additionally, State Water Board staff are available to review additional and revised certification application materials and discuss with the Authority the [requirements for a complete certification application](#).<sup>4</sup>

Following transmittal of this letter, State Water Board staff will post this letter on the [State Water Board Project webpage](#)<sup>5</sup> and remove the previously posted public notice for the Project.

If you have questions regarding this letter, please contact Division of Water Rights staff by email to: [WR401program@waterboards.ca.gov](mailto:WR401program@waterboards.ca.gov). Written correspondence or inquiries should be mailed to:

State Water Resources Control Board  
Division of Water Rights – Water Quality Certification Program  
Attn: Derek Wadsworth  
P.O. Box 2000  
Sacramento, CA 95812-2000

Sincerely,



Jonathan Bishop  
Chief Deputy Director

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<sup>4</sup> This links ([https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/wrap/wqc\\_reviewcheck.pdf](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrap/wqc_reviewcheck.pdf)) to an optional certification application review checklist that may be helpful to assess whether a certification application includes the necessary contents. Accessed August 15, 2024.

<sup>5</sup> [https://www.waterboards.ca.gov/waterrights/water\\_issues/programs/water\\_quality\\_cert/sites.html](https://www.waterboards.ca.gov/waterrights/water_issues/programs/water_quality_cert/sites.html). Accessed August 15, 2024.

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ebc: Interested Parties List