



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

July 22, 2016

Ms. Lisa Van Atta
Assistant Regional Administrator
National Marine Fisheries Service
California Coastal Office
777 Sonoma Avenue, Room 325
Santa Rosa, CA 95404

SUBJECT: Designation of Non-Federal Representative under Section 7 of the Federal Endangered Species Act and Section 305(b)(2) of the Magnuson-Stevens Act

Dear Ms. Van Atta:

I am writing to confirm that the Environmental Protection Agency, Region 9 (EPA) has designated the California State Water Resources Control Board (SWRCB) as our non-federal representative pursuant to 50 CFR Section 402.08 for purposes of initiating the consultation process and preparing a biological assessment, if necessary, under Section 7 of the federal Endangered Species Act (ESA) for certain projects funded under the California Drinking Water State Revolving Fund (CA DWSRF) program and the California Clean Water State Revolving Fund (CA CWSRF) program. In addition, I am confirming that EPA has designated SWRCB as the non-federal representative pursuant to 50 CFR Section 600.920(c) for purposes of initiating the consultation process with the National Marine Fisheries Service (NMFS) under Section 305(b)(2) of the Magnuson-Stevens Act (MSA) for projects funded under the CA DWSRF and CA CWSRF programs. These designations apply to State Revolving Fund projects supported with funds directly made available by federal capitalization grants, called federally-assisted projects, unless EPA notifies your agency that these designations do not apply for a particular federally-assisted SRF project.

The CA CWSRF and CA DWSRF programs are administered by the State under Title VI of the federal Clean Water Act and Title XII of the Safe Drinking Water Act. The loan funds are capitalized by federal grants. Federally assisted projects must comply with a number of federal legal requirements, including ESA and the MSA. Please note that, in some cases, the SWRCB may be assisted in its role as EPA's non-federal representative by the SRF loan recipient or a professional environmental consultant.

Responsibilities of Non-federal ESA Representative for California CWSRF and DWSRF Projects

The roles and responsibilities for EPA and the SWRCB pursuant to the designation of SWRCB as the non-federal representative for conducting informal consultations are included in a letter from EPA to Darrin Polhemus Deputy Director of the Division of Financial Assistance SWRCB, dated July 22, 2016 (a copy of which is attached). EPA will continue to be ultimately responsible for compliance with the

Section 7 requirements of the ESA. The State requires, through loan contract provisions for federally-assisted SRF projects, that the loan recipients evaluate potential effects to listed species and designated critical habitat and to implement measures determined necessary or appropriate during the ESA Section 7 consultation process to avoid adverse effects to listed species (including incidental take) or adverse modification of designated or proposed critical habitat. Failure to implement such measures or steps may result in SWRCB curtailment of financing, interest penalties, requirements of corrective action or other enforcement action as deemed necessary. Should SWRCB fail to properly enforce the implementation of such measures, EPA may take appropriate steps, including corrective action authorized by federal regulations, which may involve the withholding of SRF payments.

Designation of Non-federal Representative for Essential Fish Habitat Consultations

Under Section 305(b)(2) of the MSA, federal agencies are required to consult with NMFS if a federal activity or action may adversely affect “essential fish habitat” (EFH) as defined by NMFS under that Act. EPA’s federal action of funding and overseeing the CA CWSRF and CA DWSRF programs requires appropriate compliance with MSA Section 305(b)(2).

EPA is by this letter notifying NMFS that it has designated SWRCB as the non-federal representative to conduct any required EFH consultations, as provided for in 50 CFR Section 600.920(c). Under the terms of that regulation, EPA will continue to be ultimately responsible for compliance with the consultation requirements of the MSA. The roles and responsibilities of EPA and SWRCB as to MSA consultations are outlined in the attached letter from EPA to SWRCB.

If you have any questions regarding these designations, please contact Doug Eberhardt, Infrastructure Section Manager, EPA Region 9, at (415) 972-3420. You may also contact Juanita Licata at (415) 972-3450 or Josh Amaris at (415) 972-3597.

Sincerely,



Mike Montgomery
Assistant Director, Water Division

Enclosure

cc:

Mr. Darrin Polhemus
Deputy Director
Division of Financial Assistance
California State Water Resources Control Board
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