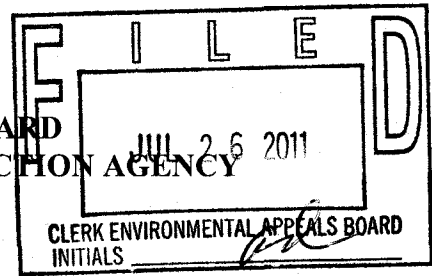


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



In re:)
)
Buena Vista Rancheria)
Wastewater Treatment Plant) NPDES Appeal Nos. 10-05, 10-06, 10-07 & 10-13
)
NPDES Permit No. CA 0049675)
)

ORDER GRANTING REGION'S MOTION FOR EXTENSION OF TIME TO RESPOND TO PETITIONERS' MOTIONS TO STAY ISSUANCE OF NOTICE TO PROCEED

Mr. Glen Villa, Jr. (NPDES Appeal No. 10-05), the County of Amador (NPDES Appeal No. 10-06), Friends of Amador County (NPDES Appeal No. 10-07), and the Ione Band of Miwok Indians (NPDES Appeal No. 10-13) (collectively "Petitioners") each petitioned the Environmental Appeals Board ("Board") to review the National Pollution Discharge Elimination System ("NPDES") permit that Region 9 ("Region") of the U.S. Environmental Protection Agency ("EPA") issued under the Clean Water Act ("CWA"), 33 U.S.C. § 1342, to the Buena Vista Rancheria Wastewater Treatment Plant on June 25, 2010.¹

On July 5, 2011, the Region notified the Board and the parties to these appeals of developments related to the proposed project.² The Region informed the Board of its intention to

¹ The regulatory provisions contained in 40 C.F.R. parts 122, 123, and 124 implement the NPDES program. 40 C.F.R. § 122.1 (describing purpose and scope of regulations). While part 124 contains procedures for processing permit applications and conducting Board review of NPDES permit decisions, part 122 covers basic EPA permitting requirements for the NPDES program. *See id.*

² When federal laws other than the CWA are applicable to the issuance of an NPDES permit, EPA must follow those laws' procedures. 40 C.F.R. § 122.49. In this instance, the Region determined that pursuant to the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470 to 470x-6, and its implementing regulations codified at 36 C.F.R. part 800, the proposed
(continued...)

issue a Notice to Proceed (“NTP”) with a construction segment of the proposed project, based on the Buena Vista Rancheria of Me-Wuk Indians’ (“Buena Vista”) submission of, and the Region’s subsequent approval of, findings from the fieldwork phase of the Archaeological Testing Program that satisfy section IV.C of the Memorandum of Agreement.³ See Region’s Letter Regarding Buena Vista Rancheria Wasterwater Treatment Plant, NPDES Appeal Nos. 10-05 - 10-07 & 10-13 at 2-3 & n.2 (July 5, 2011) (“Region’s Letter”). The Region explained that it believes “it is appropriate to issue the NTP expeditiously” because Buena Vista has satisfied the conditions under section IV.C of the Memorandum of Agreement, and because the proposed project requires financing from a high-yield bond market that is volatile and at risk of closing at any time. Region’s Letter at 2-3. The Region informed the Board of the Region’s intention to issue an NTP to Buena Vista no sooner than twenty-one days from the date of the Region’s letter. *Id.* at 3. In addition to updating the Board regarding the NTP, the Region also brought to the Board’s attention ongoing federal court litigation between the County of Amador and the U.S.

²(...continued)

project was an “undertaking” as defined in 36 C.F.R. § 800.16(y), with the potential to effect historic properties. As a result of the consultation process required under the NHPA § 106, 16 U.S.C. § 470f, referred to as a “section 106 consultation,” the Region entered into a Memorandum of Agreement with the Army Corps of Engineers, the California State Historic Preservation Officer, and the Buena Vista Rancheria of Me-Wuk Indians that governs how the undertaking will be implemented and resolves adverse effects on historic properties identified during the section 106 consultation. Section IV of the Memorandum of Agreement pertains to Notices to Proceed with Construction, and states that “EPA may issue Notices to Proceed (NTP) under any of the conditions listed below,” including Section IV.C, discussed herein. Memorandum of Agreement Among the U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the California State Historic Preservation Officer, and the Buena Vista Rancheria of Me-Wuk Indians Regarding the Buena Vista Rancheria of Me-Wuk Indians Gaming and Entertainment Facility Project § IV.C, at 3-4 (effective June 1, 2010) (A.R. 1349-50) (“Memorandum of Agreement”).

³ See *supra* note 2.

Department of the Interior (“DOI”) regarding the DOI Secretary’s approval through inaction of an amendment to the gaming compact between Buena Vista and the State of California. *Id.*

In response to the Region’s letter, Petitioners Friends of Amador County,⁴ County of Amador, and Ione Band of Miwok Indians filed motions requesting that the Board stay the Region’s issuance of the NTP. *See* Friends of Amador County Letter (July 20, 2011); Motion Requesting Environmental Appeals Board to Stay EPA’s Issuance of Notice to Proceed (July 15, 2011); Ione Band of Miwok Indians’ Motion to Stay Issuance of Proposed Notice to Proceed (July 20, 2011). Subsequently, the Region moved for an extension of time to file a response to Petitioners’ motions until August 19, 2011. *See* EPA Region IX Motion for Extension of Time to File Response to Petitioners’ Motions to Stay Issuance of Notice to Proceed (July 21, 2011) (“Region’s Motion”). In support of its motion, the Region avers that the basis for its request is the absence of relevant staff working on the response to the Petitioners’ motions. Region’s Motion at 1. The Region states that in light of Petitioners’ motions to stay the issuance of the NTP and the Region’s request for an extension of time to respond to those motions, the Region intends to issue the NTP no earlier than twenty-one days after filing its response to Petitioners’ motions. Region’s Motion at 2. The Region further states that counsel for Petitioners Friends of Amador County, County of Amador, and Ione Band of Miwok Indians do not oppose the

⁴ Friends of Amador County initially sent a letter to the Board and to all parties on July 8, 2011, informing the Board of another ongoing federal lawsuit that Friends of Amador County filed against the DOI, and stating that Friends of Amador County hoped the Board would consider the information in the letter “before making a decision to issue or not issue the permit in question or the requested NTP.” Friends of Amador County Letter at 2 & Ex. 1 (July 8, 2011). In a subsequent letter, Friends of Amador County affirmed that it joins both the County of Amador and the Ione Band of Miwok Indians in their request for a stay of the Region’s issuance of the NTP. Friends of Amador County Letter (July 20, 2011).

Region's motion for an extension of time, and that the Region had not yet received a response to an email sent to petitioner Glen Villa Jr. *Id.*

On July 22, 2011, Buena Vista, which until now has not participated in these appeals, filed two motions requesting that Buena Vista be granted leave to intervene and opposing Petitioners' motions to stay the issuance of the NTP. *See Buena Vista Rancheria of Me-Wuk Indians' Motion for Leave to Intervene and Oppose Motions to Stay Issuance of Notice to Proceed (July 22, 2011); Buena Vista Rancheria of Me-Wuk Indians' Opposition to the Motions to Stay Issuance of Notice to Proceed (July 22, 2011).* The Board takes Buena Vista's motion to intervene under advisement. Buena Vista shall contact the parties to these appeals and file a supplemental statement no later than Friday, July 29, 2011, indicating whether the parties oppose or do not oppose Buena Vista's motion to intervene.

Upon consideration of the Petitioners' and the Region's above-referenced motions, the Board hereby grants Region 9's motion for an extension of time to file a response to the Petitioners' motions to stay the issuance of the NTP. The Region shall file its response no later than Monday, August 15, 2011.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Date:

July 26, 2011

By:

Rafael A. Steen for Anna L. Wolgast
Anna L. Wolgast
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Granting Region's Motion for Extension of Time to Respond to Petitioners' Motions to Stay Issuance of Notice to Proceed in the matter of Buena Vista Rancheria Wastewater Treatment Plant, NPDES Appeal Nos. 10-05, 10-06, 10-07 & 10-13, were sent to the following persons in the manner indicated:

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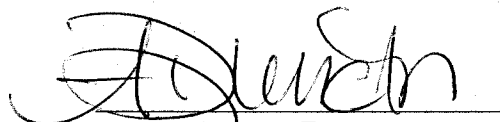
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Dated: JUL 26 2017



Arnette Duncan
Secretary