

ATTACHMENT 7

**Salinas River 2016-2025 Stream Maintenance Program
PUBLIC COMMENT LETTERS**

Comment Letters Received

1. Steve Shimek. The Otter Project. March 11, 2016.



The Otter Project

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Mr. Phil Hammer
Mr. Jonathan Rohrbough
Central Coast Regional Water Quality Control Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA. 93401-7906

March 11, 2016

Re: 401 Certification for Salinas River Channel Maintenance Project

Dear Mr. Hammer and Mr. Rohrbough,

You recently received an application for 401 certification of the Salinas River Channel Maintenance Project and this letter represents our comment on that application.

While we can support the specific application, for the specific work contained within the application, we do not believe that without the addition of specific and restrictive design considerations the application can serve as a model for future permits or even for adaptive management within this permit term (unless TNC is required to stay involved for this permit term).

Everyone who has been involved in the history and development of this project understands that there are unwritten expectations that accompany this permit application. Because of the very nature of this application, adaptive management will be required during the 5-year permit term and there is language in the permit application to guide work beyond what is initially proposed. Looking further into the future, there is the often stated presumption that this permit will become the model for future permit applications. Unfortunately, the application gives few clues as to how work areas will be determined, how wide areas can be cleared, and the width and location of vegetated buffers between irrigated lands and work areas. A project design framework is lacking and without it, this single project must stand alone and cannot be the model for future projects or even adaptive management changes.

The specific application before you was created by a highly qualified team at The Nature Conservancy. The TNC team substituted their value system for a written framework and the result is a project we can support. But what happens when TNC is no longer involved? Because of the lack of specific project design considerations, there is no guarantee – especially given the past history of Salinas River channel maintenance -- the project will be protective of water quality or the environment.

We request that, unless a design framework and criteria are created, publicly reviewed, and incorporated into the permit, The Regional Board should add a permit restriction that TNC must

stay intimately involved with the project during this permit term. Without TNC's involvement, there is no real framework to guide adaptive management of the work area.

Our fears are exemplified by a specific example. At a presentation of the Channel Maintenance Project before the CCRWQCB we commented that there should be a requirement for a vegetated buffer between channel maintenance work areas and developed lands (most often farm fields in this instance). We commented that the Basin Plan generally requires vegetated buffers and that while we preferred wider buffer areas, the Basin Plan seems to suggest a minimum of 30-feet. My comment was immediately dismissed by a speaker from Grower-Shipper as being "too restrictive." But in my opinion, a proper permit *should* contain restrictions. I then provided the project design team with the following information and suggestion:

Hi Abby [Abby Hart of TNC],

I'm sorry you were not at the channel maintenance presentation at the RWQCB meeting in Salinas. This was all covered there.

There is a great deal of scientific literature, including some very recent, suggesting that vegetated buffers both improve "food safety" by reducing the spread of pathogens and improve water quality by breaking down harmful chemicals (both fertilizers and pesticides). My somewhat cynical quotation mark around "food safety" is because I believe water quality is a food safety concern as well as pathogens.

As far as "30-foot", frankly I'd like to see more. But, I know of very little research that actually prescribes buffer widths. It is my understanding that there is some research that after 30-50 foot there is diminishing benefit.

A 30-foot buffer is stated in the Central Coast Basin Plan. And, as you know, the Basin Plan is the basis for regulation. The language is certainly not perfect but appears on page V-14 of the 2011 Basin Plan:

"4. A filter strip of appropriate width, and consisting of undisturbed soil and riparian vegetation or its equivalent, shall be maintained, wherever possible, between significant land disturbance activities and watercourses, lakes, bays, estuaries, marshes, and other water bodies. For construction activities, minimum width of the filter strip shall be thirty feet, wherever possible as measured along the ground surface to the highest anticipated water line."

And finally the newly released Food Safety Modernization Act guidance from the FDA suggests (and this is from FDA's ppt presentation to the industry, not from the actual Final Rule):

"Codified provision (developed in consultation with USDA's NRCS and the U.S. Fish and Wildlife Services):

- Regulation does not authorize "taking" of endangered or threatened species; or require measures to destroy animal habitat or exclude animals from outdoor growing areas"

If TNC and the growers would like to argue that agriculture is not a “significant land disturbance activity” we’ll be tied up in court forever.

So in summary, I think that:

- 1) Vegetated buffers enhance food safety
- 2) Vegetated buffers enhance water quality
- 3) The Basin Plan requires a filter strip of “undisturbed soil and riparian vegetation” (“shall” language) and the only actual width referred to is a: “minimum width of the filter strip shall be thirty feet...”
- 4) FSMA does not require destruction of habitat.

Except for FSMA, these are the points I made before the Regional Board. Board staff indicated to me that requiring a 30-foot buffer was not a problem. The only person who argued against it was Abby Taylor-Silva who seemed to say that she wanted more flexibility than a prescription. I’m sorry, but I cannot agree to the ambiguity that comes with more flexibility.

It seems like it would be most efficient to essentially mimic the Basin Plan language such as: “A filter strip of thirty feet, and consisting of undisturbed soil and riparian vegetation or its equivalent, shall be maintained, wherever possible, between land disturbance activities and the project areas as measured along the ground surface to the highest anticipated water line.”

Any questions, please call. I anticipate you will forward this email to a bunch of people. So anyone who would like to chat or discuss my constructive ideas can certainly contact me directly. I would also be interested in any contradictory research.

Again, I want to be supportive of channel maintenance in its proposed form. I need to see a requirement for a buffer of “undisturbed soil and riparian vegetation...”

Steve”

I hope you can understand how we feel that our modest request for a 30-foot buffer was not written into the permit application. We hope the Regional Board will require protective language similar to what we are suggesting.

Why does it matter?

- Without a proper framework or statement of design considerations, in the worst case, we could end up with vast areas being cleared to bare sand as occurred in the last permit cycle.



- The Salinas River channel is progressively becoming more and more constrained:



Salinas River upstream of Gonzales Bridge in 1989. Arrows mark edge of channel.



Identical view of Salinas River at Gonzales in 2012. Arrows mark edge of 1989 channel.

Soon, there will be no space for channel maintenance – with proper buffers -- to occur and there will be pressure to approve clearing of the entire channel width. In our view, clearing of the entire width would not be protective of water quality or the environment.

In summary: While we can support the specific application, for the specific work contained within the application, we do not believe that without the addition of specific and restrictive design considerations the application can serve as a model for future permits or even for adaptive management within this permit term (unless TNC is required to stay involved for this permit term).

Thank you for your consideration of our comments.

Sincerely,

Steve Shimek
Executive Director
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