

Central Valley Regional Water Quality Control Board
17/18 February 2022 Board Meeting

Response to Written Comments on
Tentative Waste Discharge Requirements for
JEN CA Placer Ranch, LLC
Placer Ranch Project
Placer County

At a public hearing scheduled for 17/18 February 2022, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) will consider the adoption of Waste Discharge Requirements for JEN CA Placer Ranch, LLC Placer Ranch Project. This document contains responses to written comments received from interested persons in response to the tentative Waste Discharge Requirements (Tentative Order). Written comments from interested persons were required to be received by the Central Valley Water Board by 25 October 2021 in order to receive full consideration. Comments were received prior to the deadline from the following persons:

1. Larissa Berry (Defend Granite Bay) (received 25 October 2021)
2. Michael Garibedian (Placer County Tomorrow) (received 6 October 2021 & 25 October 2021)
3. Leslie Warren (Alliance for Environmental Leadership) (received 25 October 2021)
4. Cheryl Berkema (Placer County Resident) (received 25 October 2021)
5. Jack Sanchez (Save Auburn Ravine Salmon and Steelhead) (received 25 October 2021)

Significant written comments from the above interested persons are summarized by topic below, followed by the response of Central Valley Water Board staff.

A. ANTIDegradation AND NO NET LOSS POLICY COMMENTS

A-1 COMMENT:

The Placer Ranch Project does not comply with Executive Order W-59-93 (No Net Loss Policy).

RESPONSE:

Section XI.G of the Tentative Order includes a discussion of the project's impacts and compliance with the State Water Resources Control Board's Resolution No. 68-16, "Statement Of Policy With Respect To Maintaining High Quality Of Waters In California" ("Antidegradation Policy") and Executive Order W-59-93 ("No Net Loss Policy").

The No Net Loss Policy establishes a California Wetlands Conservation Policy including an objective to ensure no overall net loss of and a long term net gain in the quantity, quality, and permanence of wetland acreage and values in California (“No Net Loss Policy”). The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards are committed to increasing the quantity, quality, and diversity of wetlands that qualify as waters of the state.

The Antidegradation Policy requires that the quality of existing high-quality water be maintained unless any change will be consistent with the maximum benefit to the people of the state, will not unreasonably affect present or anticipated future beneficial uses of such water, and will not result in water quality less than that prescribed in water quality control plans or policies. The Antidegradation Policy further requires best practicable treatment or control (BPTC) of the discharge necessary to assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state will be maintained.

Filling wetlands and other waters causes partial or complete loss of the beneficial uses provided by those waters. To reconcile such losses with the State’s No Net Loss and Antidegradation Policies, the Tentative Order requires adherence to the requirements in the mitigation monitoring and reporting program, including compensatory mitigation for impacts that cannot be feasibly avoided or minimized; implementation of the approved compensatory mitigation plan; and other requirements to minimize the potential effects of construction on water quality and resources. Regarding compensatory mitigation, the Tentative Order requires aquatic resource impacts be mitigated at a 1.5:1 ratio of restored/created to affected resources by purchasing credits through the Western Placer County In-Lieu Fee Program or a similar program. The Western Placer County In-Lieu Fee Program provides for establishment, restoration, and preservation of sites within the Placer County Conservation Program’s interconnected preserve system. The Program will enhance the efficiency of mitigation efforts undertaken in Placer County and enable the acquisition of larger and more strategic reserve properties, subject to robust performance standards and preserved in perpetuity, than would be possible if mitigation were done on a property-by-property basis. These measures ensure impacts are mitigated through avoidance and minimization and that unavoidable loss of beneficial uses is offset with appropriate compensatory mitigation. Compliance with the Tentative Order’s requirements for meeting water quality objectives, implementing best management practices, and 1.5:1 compensatory mitigation constitute BPTC for the discharge. To the extent there is degradation from Project discharges despite avoidance, minimization, and compensatory mitigation measures, such degradation is necessary to accommodate important economic and social development in the area, such as increased employment as documented in the lead agency environmental review documents and supporting materials, and is consistent with the maximum benefit

to the people of the state. Accordingly, the Tentative Order requirements are consistent with the provisions of the No Net Loss and Antidegradation Policies.

B. AQUATIC RESOURCE DELINEATION COMMENTS

B-1 COMMENT:

Wetland delineation is inadequate.

RESPONSE:

Central Valley Water Board staff do not concur. Pursuant to Section IV.A of the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Procedures), an application for a water quality certification or waste discharge requirements for dredged or fill material discharges must include a copy of any aquatic resource delineation report verified by the Corps and a delineation of any waters that are not delineated in an aquatic resource delineation report. Prior to approving a project, the permitting authority shall rely on any final aquatic resource report verified by the [U.S. Army Corps of Engineers] to determine boundaries of waters of the U.S." (Procedures, Section IV.B.2.) "For all other wetland area delineations, the permitting authority shall review and approve delineations that are performed using the methods described in section III." (Procedures, Section IV.B.2.) Any wetland areas not delineated in a final aquatic resource report verified by the Corps shall be performed using the methods within the U.S. Army Corps of Engineers (USACE) Wetlands Delineation Manual (Environmental Laboratory, 1987) and regional supplements. (Procedures, Section III.)

Wetland delineations were conducted for the Placer Ranch Project property per the USACE Wetlands Delineation Manual (Environmental Laboratory, 1987) and the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (USACE, 2006). All wetlands and waters within the Project area were mapped, verified, and determined to be waters of the State or federally jurisdictional waters. Feature boundaries were mapped with sub-meter accurate GPS and checked via paired soil data set analysis. This is the industry standard process for mapping wetlands and waters.

C. AVOIDANCE AND MINIMIZATION COMMENTS

C-1 COMMENT:

The Project will destroy precious wetlands, vernal pools, and migratory bird habitats.

RESPONSE:

The Project will permanently impact a total of 38.22 acres of aquatic resources consisting of wetlands, vernal pools, seasonal marsh, seasonal wetlands, and stream

channel. It is the Central Valley Water Board's responsibility to address, modify, and prevent to the best extent possible the overall loss of wetlands. The Tentative Order requires compensatory mitigation for authorized impacts through the purchase of Wetland, Vernal Pool, and Riverine/Riparian Aquatic Resource Credits at a ratio of 1.5:1 from the Western Placer County In-Lieu Fee Program. Fees paid into the Western Placer In-Lieu Fee program will fund mitigation projects that will result in establishment, reestablishment, rehabilitation, and preservation of aquatic resources of Placer County, including wetlands, riverine systems, vernal pools, and other aquatic resources. The Program's intent is to enable the acquisition of larger and more strategic reserve properties than would be possible if mitigation was done on a property-by-property basis. More information about the Program's operation can be found in the Western Placer County In-Lieu Fee Program Enabling Instrument.

D. CEQA COMMENTS

D-1 COMMENT:

The EIR is inadequate as it did not analyze cumulative impacts for the area that incorporated multiple projects, including storm water runoff and groundwater recharge; consider the effects of the Placer Parkway infrastructure; or fully evaluate environmental impacts from the Project.

RESPONSE:

Central Valley Water Board staff do not concur. The Central Valley Water Board is a responsible agency under CEQA (Public Resources Code, section 21069) and in making its determinations and findings, must presume that the Lead Agency's certified environmental document comports with the requirements of CEQA and is valid. (Public Resources Code, section 21167.3; California Code of Regulations, title 14, section 15231.) "After an initial EIR is certified, there is a strong presumption against additional environmental review." (San Diego Navy Broadway Complex Coalition v. City of San Diego (2010) 185 Cal. App. 4th 924, 934.) Challenges to the adequacy of the EIR are insufficient—an agency may not require subsequent or supplemental review unless one of the triggering events under Public Resources Code section 21166 occurs. (See also California Code of Regulations, title 14, sections 15062, 15063.)

On 10 December 2019, the Placer County Board of Supervisors, as Lead Agency, certified the Final Environmental Impact Report (FEIR) for the Project and filed a Notice of Determination (NOD) on 12 December 2019. Central Valley Water Board staff reviewed and considered the FEIR and determined that the environmental documentation prepared by the Placer County Board of Supervisors addresses the Project's impacts within the scope of the Central Valley Water Board's jurisdiction and that no additional environmental review is required. (Public Resources Code, section

21166; California Code of Regulations, title 14, section 15096, subdivision (f), 15162, 15163.) Further, the FEIR evaluated cumulative impacts, including potential impacts from the proposed Placer Parkway project.

E. MITIGATION COMMENTS

E-1 COMMENT:

The project is proposing to purchase in-lieu fee credits through the Placer County Conservation Plan (PCCP). The PCCP is impermissible because it does not provide ecosystem level protection as required for California Natural Community Conservation Plans and the proposed mitigation is inadequate.

RESPONSE:

Central Valley Water Board staff do not concur. The PCCP has been developed through interagency collaboration under guidance through the California Natural Community Conservation Planning Act and serves as a Natural Community Conservation Plan. The purchase of in-lieu fee credits through the Western Placer County In-Lieu Fee Program allows the county to accumulate a bank of funds to be used for future preservation, conservation, and restoration projects within the PCCP preserve plan area. The projects proposed by the PCCP In-Lieu Fee Program are reviewed by an interagency review team—comprising federal, state, and local agencies—to determine if the proposed project provides restoration, rehabilitation, protection, and preservation of valuable water resources within the plan area, creating a net growth in improved quality water features. For more information regarding the [PCCP](http://www.placerconservation.com), please visit (<http://www.placerconservation.com>).

Section IV.B.5 of the Procedures requires that a minimum of one-to-one ratio is required to compensate for wetland or stream losses when compensatory mitigation is required. Additionally, any required compensatory mitigation is generally required to be located within the same watershed as the impact site. The Placer Ranch Project is mitigating through the Western Placer County In-Lieu Fee Program at a 1.5 to 1 ratio and therefore complies with the Procedures' requirements.

Additionally, see response to comment on no Net Loss Policy in Section A-1.

F. 401 WQC / PROCESS COMMENTS

F-1 COMMENT:

Interested persons were not given adequate notice to comment on the application for the Project.

RESPONSE:

Central Valley Water Board staff do not concur. Adequate public notice of the pending application for a Clean Water Action section 401 water quality certification was provided pursuant to California Code of Regulations, title 23, section 3858, subdivision (a). Notice of the pending application was posted on the Central Valley Water Board website for public comment: 6 November 2020 through 27 November 2020. Pursuant to Water Code section 13167.5, the Tentative Order was issued for public comment from 25 September 2021 through 25 October 2021, with the public notice posted on the Central Valley Water Board website and sent via email to known interested persons.

F-2 COMMENT:

Interested persons should receive training on process.

RESPONSE:

The Central Valley Water Board's Notice of Public Hearing provided information to interested persons on how to participate in the hearing for this matter, including providing a link to applicable adjudicatory regulations. The State Water Resources Control Board has guidance and training resources on its webpage regarding the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, including implementation guidance dated 21 April 2020 and a video [recording of a 7 May 2020 public training webinar](https://www.waterboards.ca.gov/water_issues/programs/cwa401/) (https://www.waterboards.ca.gov/water_issues/programs/cwa401/).

G. STORM WATER COMMENTS

G-1 COMMENT:

Runoff from this Project will negatively impact Endangered Steelhead and Threatened Chinook Salmon in Auburn Ravine and the Sacramento River. In particular, asphalt runoff is known to contaminate and kill fish.

RESPONSE:

The Permittee is required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002), as amended, for discharges to surface waters comprised of storm water associated with construction activity, including, but not limited to, demolition,

clearing, grading, excavation, and other land disturbance activities of one or more acres, or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres. The permit requires implementation of Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT), including erosion and sediment controls, to reduce or eliminate pollutants in storm water runoff. The permit also requires compliance with all applicable water quality standards.

Additionally, Placer County (County) is an enrollee under the State Water Resources Control Board's National Pollutant Discharge Elimination (NPDES) General Permit for Waste Discharge Requirements (WDRs) for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), Water Quality Order 2013-001-DWQ (NPDES No. CAS000004), as amended (Small MS4 General Permit). The County is required to implement a Post Construction Storm Water Management Program, which regulates all projects within the County's MS4 jurisdiction area that create and/or replace 5,000 square feet or more of impervious surface (Regulated Project).

Under the Small MS4 General Permit, the County is required to implement measures for site design, source control, runoff reduction, storm water treatment and baseline hydromodification management, and hydromodification management for Regulated Projects. Runoff reduction, storm water treatment, and baseline hydromodification management are implemented through low impact development (LID) standards. Under the LID standards, the County is required to: (1) evaluate Regulated Projects to meet the goals of capturing and treating runoff and assure these goals are incorporated into the Regulated Project's design; (2) require storm water facilities designed to evapotranspire, infiltrate, harvest/use, and biotreat storm water meet either a volumetric, or flow-base criteria specified in the Small MS4 General Permit; and (3) incorporate site design measures based on the objective of achieving infiltration, evapotranspiration and/or harvest/reuse of the 85th percentile 24-hour storm runoff event. In addition, the County is required to implement hydromodification management procedures for Regulated Projects that create and/or replace one acre or more of impervious surface with a hydromodification standard that requires post-project runoff not exceed estimated pre-project flow rate for the 2-year, 24-hour storm.

The County has adopted storm water quality design standards to reduce water pollution generated by urban runoff and comply with the Small MS4 General Permit requirements. These design standards are detailed in the [West Placer Storm Water Quality Design Manual \(revised May 2018\)](#). This manual is available on-line at the Placer County website (<https://www.placer.ca.gov/DocumentCenter/View/1610/West-Placer-Storm-Water-Quality-Design-Manual-PDF>). Rough Grading Plans are submitted

separately from and may be accepted prior to Improvement Plans. The plans detail preliminary grading of a site and include plans for erosion and/or sedimentation control.

Additionally, a site-specific Storm Water Pollution Prevention Plan (SWPPP) shall be submitted concurrently with the Improvement and /or Grading Plans. The requirements of the SWPPP include ensuring that all pollutants and their sources, including sources of sediment associated with construction, construction site erosion and all other activities associated with construction activity are controlled.

G-2 COMMENT:

Storm water runoff from Placer Ranch should be prevented from going into Pleasant Grove and Orchard Creeks, both major tributaries of Auburn Ravine, negatively impacting Auburn Ravine fishes. Stormwater must be managed to prevent degradation of Auburn Ravine, Pleasant Grove and Orchard Creeks.

RESPONSE:

See Response to COMMENT G-1 related to storm water permitting requirements.

G-3 COMMENT:

Water quality will be impacted by soil erosion and construction runoff.

RESPONSE:

The Tentative Order requires that BMPs, including erosion and sedimentation control measures, are employed to prevent sediment from entering offsite aquatic features, prevent spills during equipment operation/maintenance, and prevent soil erosion. Erosion and sediment controls such as silt fence and/or bio-friendly fiber rolls will be deployed prior to the initiation of construction activities. At the end of each construction season, vegetation will be reestablished in disturbed areas by hydroseeding with a native seed mix. Erosion and sediment controls will be left in place until soils have been compacted or until vegetation is reestablished. Additionally, a Storm Water Pollution Prevention Plan will be prepared by a qualified storm water consultant prior to construction. Construction activities will follow standard engineering practices that reduce impacts to water quality, including offsite waters of the state adjacent to the Project. Furthermore, the Permittee shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002), as amended, for discharges to surface waters comprised of storm water associated with construction activity, including, but not limited to, demolition, clearing, grading, excavation, and other land disturbance activities of one or more acres, or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres.

H. WATER QUALITY IMPACT COMMENTS

H-1 COMMENT:

The Project will fill wetland headwaters, impacting downstream water quality.

RESPONSE:

The Tentative Order includes BMPs and monitoring requirements that will protect water quality and beneficial uses from construction activities. The Tentative Order includes monitoring for turbidity, visible pollutants and pH. Water Quality protection from increased storm water runoff is regulated under other permits as detailed in the Response to Comment F-1.