
Lahontan Regional Water Quality Control Board

March 10, 2015

WDID No. 6B361409003
401 WQC

Annsley Ignatius, Deputy Director
San Bernardino County Flood Control District
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San Bernardino, CA 92415
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**BOARD ORDER NO. R6V-2015-0008, FOR CLEAN WATER ACT SECTION 401
WATER QUALITY CERTIFICATION, ROUTINE MAINTENANCE OF VARIOUS
FLOOD CONTROL FACILITIES IN SAN BERNARDINO COUNTY,
WDID NO. 6B361409003**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received project information from the San Bernardino County Flood Control District (Applicant) and an application filing fee to complete an application for Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) for Routine Maintenance of Various Flood Control Facilities (Project). This Order for WQC is based upon the information provided in the application and subsequent correspondence received in support of the application.

Any person aggrieved by this action of the Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with California Water Code (CWC), section 13320, and California Code of Regulations (CCR), title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the internet at http://www.waterboards.ca.gov/public_notices/petitions/water_quality, or will be provided upon request.

PROJECT DESCRIPTION

This WQC is based upon the information provided by the Applicant. The Applicant has identified 11 flood control facilities within San Bernardino County that require maintenance on a regular basis. The proposed maintenance activities at each of these facilities are the same and their effects on water quality are similar. Therefore, Water Board staff has determined that it is appropriate to issue one WQC that covers maintenance for all 11 facilities. General Project details are summarized in the table below. Site-specific facility details are summarized in Enclosure 1.

Table of Project Information:

WDID Number	6B361409003						
Applicant	San Bernardino County Flood Control District						
Agent	Annsley Ignatius, Deputy Director						
Project Name	Routine Maintenance of Various Flood Control Facilities						
Project Purpose and Description	The Project is to perform routine maintenance activities to maintain capacity and flood control function of 11 facilities throughout the portion of San Bernardino County within the Lahontan region. Those routine maintenance activities that have the potential to discharge dredged or fill material to or excavate in a water of the State include: backfill channel side-slopes; excavation of channel bottoms; culvert clearing; trash and debris removal; and vegetation management. The Applicant is requesting authorization to perform these activities on an as-needed basis.						
Project Type	Bank and Channel Modification, Canal Maintenance						
Project Address or other Locating Information	Various, see Enclosure 1						
Latitude/Longitude	Various, see Enclosure 1						
Hydrologic Unit(s)	Mojave Hydrologic Unit 628.00, Upper Mojave Hydrologic Area 628.20, Middle Mojave Hydrologic Area 628.30, Lower Mojave Hydrologic Area 628.50, Baker Hydrologic Area 628.80						
Project Area	165 acres (total)						
Receiving Water(s) Name	Various ephemeral streams, see Enclosure 1						
Water Body Type(s)	Minor surface waters						
Designated Beneficial Uses	Various, see Enclosure 1						
Potential Water Quality Impacts to Waters of the United States (WOUS)	Hydrogeomorphic changes in the flow regime on the Project site may result in downstream erosion, sedimentation, and/or siltation.						
Project Impacts (Fill/Excavation) to WOUS	Water Body (all streambed)	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	Desert Knolls Wash	No permanent impacts			3.5	2,000	300
	El Evado Channel		4.6	7,500	1,500		
	Hesperia East Channel		10	4,600	2,400		
	Mojave Drive Channel		21.5	9,000	3,000		
	Oro Grande Wash		20	3,100	300		
	Arrowhead Channel		2.3	2,000	300		
	Southwest Barstow Channel		12.5	9,000	100		
	Waterman Road Channel		15.2	3,000	400		
	Yermo Flood Channel		58.3	30,000	600		
	Baker Levee		12	2,500	200		
	East Baker Channel		3	1,500	500		
	Total		0	0	0	162.9	74,200

Table of Project Information:

Federal Permit(s)	The Applicant has applied for coverage under a U.S. Army Corps of Engineers (USACE) Nationwide Permit 3, Maintenance, and Nationwide Permit 31, Maintenance of Existing Flood Control Facilities, pursuant to section 404 of the CWA.
Non-Compensatory Mitigation	During construction, the Applicant will follow Best Management Practices (BMPs) including construction storm water controls designed to minimize the short-term degradation of water quality. Where present, wetland and riparian vegetation will be mowed or removed by hand crews in such a manner as to be able to reestablish the next growing season.
Compensatory Mitigation	None
Application Fees ¹	\$90,000 (74,200 linear feet of discharge x \$13.50 per linear foot)
Fees Received	\$90,000
Estimated Annual Active Discharge Fee ²	\$600 (an annual active discharge fee will be assessed each fiscal year or portion of a fiscal year during which discharges occur until the Water Board issues a Notice of Completion of Discharges Letter to the Applicant)

¹Dredge and fill application fees shall not exceed \$90,000 for Fill and Excavation operations.

²The actual Annual Active Discharge Fee will be calculated using the fee schedule in effect at the time the annual fee is assessed per California Code of Regulations, title 23, section 2200(a)(3).

CEQA COMPLIANCE

The Water Board finds that the Project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to CCR, title 14, section 15031, Existing Facilities, for the maintenance of and minor alteration to existing facilities with negligible to no expansion of use. The Water Board will file a Notice of Exemption with the State Clearinghouse concurrently with this Order.

SECTION 401 WATER QUALITY CERTIFICATION**Authority**

CWA, section 401 (33 United State Code [USC], paragraph 1341), requires that any applicant for a CWA, section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to WOUS, shall provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. No section 404 permit may be granted (or valid) until such certification is obtained. The Applicant submitted a complete application and the fees required for WQC under section 401 of the CWA for the Project. The USACE will regulate the Project under Nationwide Permit 3, Maintenance, and Nationwide Permit 31, Maintenance of Existing Flood Control Facilities, pursuant to section 404 of the CWA. CCR, title 23, section 3831(e) grants the Executive Officer the authority to grant or deny WQC for projects in accordance with CWA section 401. The proposed Project qualifies for such WQC.

Standard Conditions

Pursuant to CCR, title 23, section 3860, the following standard conditions are requirements of this certification:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC, section 13330 and CCR, title 23, section 3867.
2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was filed pursuant to CCR, title 23, section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action must be conditioned upon total payment of the full fee required under CCR, title 23, section 3833, unless otherwise stated in writing by the certifying agency.
4. Neither Project construction activities nor operation of the Project may cause a violation of the *Water Quality Control Plan for the Lahontan Region* (Basin Plan), may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the CWC.
5. The Project must be constructed and operated in accordance with the Project described in the application for WQC that was submitted to the Water Board. Deviation from the Project description constitutes a violation of the conditions upon which the certification was granted. Any significant changes to this Project that would have a significant or material effect on the findings, conclusions, or conditions of this certification, including Project operation, must be submitted to the Executive Officer for prior review and written approval.
6. This WQC is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this WQC and civil or criminal liability.
7. The Water Board may add to or modify the conditions of this certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the CWC or section 303 of the CWA, or as appropriate to coordinate the operations of this Project with other projects where coordination of operations is reasonably necessary to achieve water quality standards or to protect the beneficial uses of water. Notwithstanding any more specific conditions in this certification, the Project must be constructed and operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the CWC or section 303 of the CWA.
8. This certification does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under the California Endangered Species Act (Fish and Wildlife Code, section 2050 et seq.) or the federal Endangered Species Act (16 USC, section 1531 et seq.). If a "take" will result from any act

authorized under this certification, the Applicant must obtain authorization for the take prior to construction or operation of the Project. The Applicant is responsible for meeting all requirements of the applicable Endangered Species Act for the Project authorized under this certification.

Additional Conditions

Pursuant to CCR, title 23, section 3859, subdivision (a), the following additional conditions are required with this certification:

1. This Order authorizes the Applicant to perform the specific routine maintenance activities (backfill of existing channel side-slopes, excavation of channel bottoms to maintain capacity, culvert clearing, trash and debris removal, and vegetation management) on an as-needed basis for the flood control facilities identified in Enclosure 1. **This Order for WQC will remain valid until the USACE 2012 Nationwide permits expire on March 18, 2017, or through an extended period beyond the expiration date that is authorized in writing by the USACE.**
2. This Order does not authorize emergency repair activities. The Applicant is required to apply for separate authorization to perform emergency repairs should that be necessary.
3. The Applicant must provide a minimum 48 hour email notification to Water Board staff prior to implementing maintenance under this authorization. The notification must include the following: WDID No. 6B361409003; facility name/location; and dates of planned work activities. Please email this notification to Jan Zimmerman, Engineering Geologist, at jan.zimmerman@waterboards.ca.gov.
4. To document the annual maintenance activities performed, the Applicant must submit an **Annual Report** to the Water Board no later than **April 1st of each through the year 2017.** The Annual Report should include the following, at minimum: a summary of the types of maintenance activities performed, including the date(s) those activities were performed and the facilities where those activities occurred; a summary of the activities related to construction storm water controls and the BMPs used, if any; and a summary of any activities that deviated from those described in the original application and supporting documents. For excavation activities include the volume of material removed from each of the facilities, the volume of that material used to backfill side slopes, and the volume of any excess material removed from the site for stockpiling.
5. All excess sediment excavated from the site that is not used to backfill side slopes or for other repairs onsite will be removed from the site and stockpiled in an upland location. Designated stockpile locations include the local County operated road yard, sand and gravel operation yard, and/or local landfill. BMPs will be used, as needed, to temporarily stabilize the stockpiled soils until such time that they are reused and permanently stabilized.

6. Maintenance performed under this Order is authorized only during dry weather conditions. Should inclement weather occur, all work within the channel must stop and all equipment and materials must be removed to upland areas.
7. No debris, cement, concrete (or wash water there from), oil, or petroleum products must be allowed to enter into or be placed where it may be washed from the Project site by rainfall or runoff into surface waters. When operations are completed, any excess material and/or soil must be removed from the Project work area and any areas adjacent to the work area where such material may be transported into surface waters.
8. An emergency spill kit must be at the Project site at all times during Project construction.
9. Construction vehicles and equipment must be monitored for leaks and proper BMPs must be implemented should leaks be detected or the vehicles/equipment must be removed from service, if necessary, to protect water quality.
10. The Applicant must permit Water Board staff or their authorized representative(s) upon presentation of credentials:
 - a. Entry onto Project premises, including all areas on which fill, excavation or mitigation is located or in which records are kept;
 - b. Access to copy any record required to be kept under the terms and conditions of this WQC;
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this WQC; and
 - d. Sampling of any discharge or surface water covered by this WQC.
11. The Applicant must maintain at the Project site a copy of this Order and a copy of the complete WQC application provided to the Water Board so as to be available at all times to site operating personnel and agencies.
12. The Applicant is responsible for informing any contractors of the specific conditions contained in this WQC Order.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation will be subject to any remedies, penalties, processes or sanctions, as provided for under state law. For purposes of CWA, section 401(d), the applicability of any state law authorizing remedies, penalties, processes or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this WQC.

2. In response to a suspected violation of any condition of this certification, the State Water Board or the Water Board may require the holder of any permit or license subject to this WQC to furnish, under penalty of perjury, any technical or monitoring report that the State Water Board or Water Board deems appropriate, provided that the burden, including costs, of the reports must be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
3. In response to any violation of the conditions of this certification, the Water Board may add to or modify the conditions of this certification, as appropriate, to ensure compliance.

Section 401 Water Quality Certification Requirements Granted

I hereby issue this Order certifying that any discharge from the referenced Project will comply with the applicable provisions of CWA, sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of state law. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this WQC. A copy of State Water Board Order No. 2003-0017-DWQ is enclosed for your reference (Enclosure 2).

Except insofar as may be modified by any preceding conditions, all WQC actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicant's Project description and the terms specified in this WQC Order, and (b) compliance with all applicable requirements of the Basin Plan.

We look forward to working with you in your efforts to protect water quality. If you have questions, please contact Jan Zimmerman, Engineering Geologist, at (760) 241-7376 jan.zimmerman@waterboards.ca.gov, or Patrice Copeland, Senior Engineering Geologist, at (760) 241-7404 patrice.copeland@waterboards.ca.gov. Please use the WDID referenced in the subject line of this WQC for future correspondence regarding this Project.

Patty Z. Kouyoumdjian

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Enclosure: (1) List of San Bernardino County Facilities Covered
(2) SWRCB Order No. 2003-0017-DWQ

cc: Erma Hurse, San Bernardino County (Erma.Hurse@dpw.sbcounty.gov)
Mindy Davis, San Bernardino County (mindy.davis@dpw.sbcounty.gov)
Nidham Al-Rayes, San Bernardino County (nalrayes@dpw.sbcounty.gov)
Shannon Pankratz, USACE (shannon.l.pankratz@usace.army.mil)
Becky Jones, Dept. of Fish and Wildlife (rebecca.jones@wildlife.ca.gov)
Heather Weiche, Dept. of Fish and Wildlife (heather.weiche@wildlife.ca.gov)
SWRCB, Division of Water Quality (stateboard401@waterboards.ca.gov)
USEPA Wetlands Regulatory Office, Region 9 (R9-WTR8-Mailbox@epa.gov)

List of San Bernardino County Facilities Covered – Board Order No. R6V-2015-0008

Facility Name	Latitude/Longitude	Facility Locating Information	Excavation locations within Facility
Mojave Hydrologic Unit 628.00			
Upper Mojave Hydrologic Area 628.20			
Minor surface waters, beneficial uses: MUN, AGR, GWR, POW, REC-1, REC-2, WARM, COLD, WILD			
Desert Knolls Wash	35.538807, -117.272725 (center) 34.538989, -117.269859 (upstream) 34.538745, -117.276824 (downstream)	2,000 linear feet of channel (trapezoidal with sections of concrete and grouted rip-rap) located south of State Route 18, between Quantico Road and 1,650 feet downstream of Apple Valley Road, Apple Valley	150 feet of channel upstream and downstream of Apple Valley Road; excavation of up to 2-feet in depth for a total of 300 cubic yards of sediment per event
El Evado Channel	34.549476, -117.340439 (center) 34.543058, -117.346731 (upstream) 34.556892, -117.345205 (downstream)	7,500 linear feet of earthen trapezoidal channel located west of Village Drive and east of El Evado Road, between Hopland Street and Rancho Road, Victorville	150 feet of channel upstream and downstream of each of the following road crossings: El Evado Road, Clovis Street, and Rancho Road; excavation of up to 2-feet in depth for a total of 500 cubic yards of sediment per event at each crossing
Hesperia East Channel	34.397875, -117.261779 (center) 34.399231, -117.262759 (upstream) 34.400280, -117.249525 (downstream)	4,600 linear feet of earthen trapezoidal channel located south of Danbury Avenue between Peach Avenue and Arrowhead Lake Road, Hesperia	150 feet of channel upstream and downstream of each of the following road crossings: Peach Avenue, Arcadia Avenue, Temecula Avenue, and Lassen Avenue; excavation of up to 3-feet in depth for a total of 600 cubic yards of sediment per event at each crossing
Mojave Drive Channel	34.531380, -117.315348 (center) 34.524380, -117.321683 (upstream) 34.543311, -117.318974 (downstream)	9,000 linear feet of earthen trapezoidal channel located west of Interstate 15 between Roy Rogers Drive and Puesta Del Sol, Victorville	150 feet of channel upstream and downstream of each of the following road crossings: Condor Road, Mojave Drive, Calgo Lane, Tawney Ridge Lane, Eto Camino Road, and Puesta Del Sol Drive; excavation of up to 3-feet in depth for a total of 600 cubic yards of sediment per event at each crossing

List of San Bernardino County Facilities Covered – Board Order No. R6V-2015-0008

Facility Name	Latitude/Longitude	Facility Locating Information	Excavation locations within Facility
Oro Grande Wash	34.515961, -117.300421 (center) 34.509298, -117.307878 (upstream) 34.535472, -117.296430 (downstream)	3,100 linear feet of earthen trapezoidal channel with embankments, rip-rap, revetment, vertical concrete channels and reinforced concrete boxes; segment 1 is located 700 feet upstream of Hughes Road to Seneca Road; and segment 2 is located 450 feet upstream of Center Street to 150 feet north of Lacy Street, Victorville	150 feet of channel upstream of Center Street; excavation of up to 3-feet in depth for a total of 300 cubic yards of sediment per event
Middle Mojave Hydrologic Area 628.30			
Minor surface waters, beneficial uses: MUN, AGR, GWR, POW, REC-1, REC-2, WARM, COLD, WILD			
Arrowhead Channel	34.910806, -117.030779 (center) 34.913925, -117.030599 (upstream) 34.908871, -117.029978 (downstream)	2,000 linear feet of earthen trapezoidal channel located west of North 1 st Avenue and between old State Highway 58 and the Mojave River, Barstow	150 feet of channel upstream and downstream of Old State Highway 58; excavation of up to 3-feet in depth for a total of 300 cubic yards of sediment per event
Southwest Barstow Channel	34.893318, -117.049880 (center) 34.895274, -117.050551 (upstream) 34.889765, -117.037000 (downstream)	9,000 linear feet of earthen trapezoidal channel located north of Interstate 15 between Avenue C and the railroad right-of-way, Barstow	150 feet of channel upstream of the Mojave River; excavation of up to 2-feet in depth for a total of 100 cubic yards of sediment per event
Waterman Road Channel	34.904931, -117.062682 (center) 34.902155, -117.061660 (downstream) 34.909831, -117.062221 (upstream)	3,000 linear feet of earthen trapezoidal channel located between Old State Highway 58 and the Mojave River, Barstow	200 feet of channel upstream and downstream of Old State Highway 58; excavation of up to 2-feet in depth for a total of 400 cubic yards of sediment per event
Lower Mojave Hydrologic Area 628.50			
Minor surface waters, beneficial uses: MUN, AGR, GWR, REC-1, REC-2, WARM, COLD, WILD			
Yermo Channel	34.910867, -116.832626 (center) 34.910867, -116.792352 (downstream) 34.912590, -116.886765 (upstream)	30,000 linear feet of earthen trapezoidal channel located between Ghost Town Road and Yucca Road, Yermo	150 feet upstream and downstream of Calico Road; excavation of up to 3-feet in depth for a total of 600 cubic yards of sediment per event

List of San Bernardino County Facilities Covered – Board Order No. R6V-2015-0008

Facility Name	Latitude/Longitude	Facility Locating Information	Excavation locations within Facility
Baker Hydrologic Area 628.80			
Minor surface waters, beneficial uses: MUN, AGR, GWR, REC-1, REC-2, WARM, COLD, WILD			
Baker Levee	35.271691, -116.079012 (center) 35.264295, -116.072015 (upstream) 35.271069, -116.079864 (downstream)	2,500 linear feet of levee and earthen channel bottom located between Baker Boulevard and Well Road, north of Interstate 15 and west of State Highway 127, Baker, San Bernardino County	250 feet of channel and levee upstream of East Baker Channel; excavation of up to 2-feet in depth for a total of 200 cubic yards of sediment per event
East Baker Channel	35.268269, -116.074688 (center) 35.267104, -116.072568 (upstream) 35.268217, -116.077385 (downstream)	1,500 linear feet of earthen trapezoidal channel between Baker Boulevard and Baker Levee, Baker	400 feet of channel downstream of Baker Boulevard; excavation of up to 5-feet in depth for a total of 500 cubic yards per event

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ORDER NO. 2003 - 0017 - DWQ

STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR DREDGED OR FILL DISCHARGES THAT HAVE RECEIVED STATE WATER QUALITY CERTIFICATION (GENERAL WDRs)

The State Water Resources Control Board (SWRCB) finds that:

1. Discharges eligible for coverage under these General WDRs are discharges of dredged or fill material that have received State Water Quality Certification (Certification) pursuant to federal Clean Water Act (CWA) section 401.
2. Discharges of dredged or fill material are commonly associated with port development, stream channelization, utility crossing land development, transportation water resource, and flood control projects. Other activities, such as land clearing, may also involve discharges of dredged or fill materials (e.g., soil) into waters of the United States.
3. CWA section 404 establishes a permit program under which the U.S. Army Corps of Engineers (ACOE) regulates the discharge of dredged or fill material into waters of the United States.
4. CWA section 401 requires every applicant for a federal permit or license for an activity that may result in a discharge of pollutants to a water of the United States (including permits under section 404) to obtain Certification that the proposed activity will comply with State water quality standards. In California, Certifications are issued by the Regional Water Quality Control Boards (RWQCB) or for multi-Region discharges, the SWRCB, in accordance with the requirements of California Code of Regulations (CCR) section 3830 et seq. The SWRCB's water quality regulations do not authorize the SWRCB or RWQCBs to waive certification, and therefore, these General WDRs do not apply to any discharge authorized by federal license or permit that was issued based on a determination by the issuing agency that certification has been waived. Certifications are issued by the RWQCB or SWRCB before the ACOE may issue CWA section 404 permits. Any conditions set forth in a Certification become conditions of the federal permit or license if and when it is ultimately issued.
5. Article 4, of Chapter 4 of Division 7 of the California Water Code (CWC), commencing with section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State,¹ file a report of waste discharge (ROWD). Pursuant to Article 4, the RWQCBs are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC section 13269. These General WDRs fulfill the requirements of Article 4 for proposed dredge or fill discharges to waters of the United States that are regulated under the State's CWA section 401 authority.

¹ "Waters of the State" as defined in CWC Section 13050(e)

6. These General WDRs require compliance with all conditions of Certification orders to ensure that water quality standards are met.
7. The U.S. Supreme Court decision of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (the *SWANCC* decision) called into question the extent to which certain “isolated” waters are subject to federal jurisdiction. The SWRCB believes that a Certification is a valid and enforceable order of the SWRCB or RWQCBs irrespective of whether the water body in question is subsequently determined not to be federally jurisdictional. Nonetheless, it is the intent of the SWRCB that all Certification conditions be incorporated into these General WDRs and enforceable hereunder even if the federal permit is subsequently deemed invalid because the water is not deemed subject to federal jurisdiction.
8. The beneficial uses for the waters of the State include, but are not limited to, domestic and municipal supply, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources.
9. Projects covered by these General WDRs shall be assessed a fee pursuant to Title 23, CCR section 3833.
10. These General WDRs are exempt from the California Environmental Quality Act (CEQA) because (a) they are not a “project” within the meaning of CEQA, since a “project” results in a direct or indirect physical change in the environment (Title 14, CCR section 15378); and (b) the term “project” does not mean each separate governmental approval (Title 14, CCR section 15378(c)). These WDRs do not authorize any specific project. They recognize that dredge and fill discharges that need a federal license or permit must be regulated under CWA section 401 Certification, pursuant to CWA section 401 and Title 23, CCR section 3855, et seq. Certification and issuance of waste discharge requirements are overlapping regulatory processes, which are both administered by the SWRCB and RWQCBs. Each project subject to Certification requires independent compliance with CEQA and is regulated through the Certification process in the context of its specific characteristics. Any effects on the environment will therefore be as a result of the certification process, not from these General WDRs. (Title 14, CCR section 15061(b)(3)).
11. Potential dischargers and other known interested parties have been notified of the intent to adopt these General WDRs by public hearing notice.
12. All comments pertaining to the proposed discharges have been heard and considered at the November 4, 2003 SWRCB Workshop Session.
13. The RWQCBs retain discretion to impose individual or General WDRs or waivers of WDRs in lieu of these General WDRs whenever they deem it appropriate. Furthermore, these General WDRs are not intended to supersede any existing WDRs or waivers of WDRs issued by a RWQCB.

IT IS HEREBY ORDERED that WDRs are issued to all persons proposing to discharge dredged or fill material to waters of the United States where such discharge is also subject to the water quality certification requirements of CWA section 401 of the federal Clean Water Act (Title 33 United States Code section 1341), and such certification has been issued by the applicable RWQCB or the SWRCB, unless the applicable RWQCB notifies the applicant that its discharge will be regulated through WDRs or waivers of WDRs issued by the RWQCB. In order to meet the provisions contained in Division 7 of CWC and regulations adopted thereunder, dischargers shall comply with the following:

1. Dischargers shall implement all the terms and conditions of the applicable CWA section 401 Certification issued for the discharge. This provision shall apply irrespective of whether the federal license or permit for which the Certification was obtained is subsequently deemed invalid because the water body subject to the discharge has been deemed outside of federal jurisdiction.
2. Dischargers are prohibited from discharging dredged or fill material to waters of the United States without first obtaining Certification from the applicable RWQCB or SWRCB.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 19, 2003.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.



Debbie Irvin
Clerk to the Board