

DEPARTMENT OF WATER RESOURCES

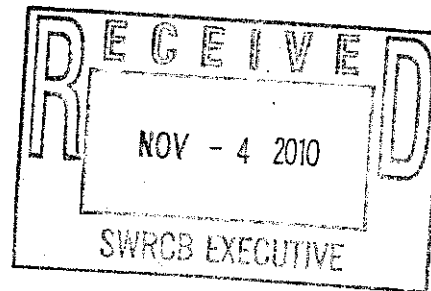
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11/16/10 Bd Mtg. Item 5
CGP Reopener
Deadline: 11/5/10 by 12 noon



November 4, 2010

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Re: Comments on CGP Reopener - Modifications to Order No. 2009-0009-DWQ –
Construction General Permit

Dear Ms. Townsend:

The California Department of Water Resources (DWR), on behalf of the Central Valley Flood Protection Board (CVFPB) and itself, hereby provide these comments and proposed revisions for consideration by the State Water Resources Control Board ("Board"), for modification to the Construction General Permit. These comments and proposed revisions have been closely coordinated with the U.S. Army Corps of Engineers (USACE) and the Sacramento Area Flood Control Agency (SAFCA), both of which will be submitting separate comments.

Federal Flood Project Framework

DWR, CVFPB, USACE and local agencies, such as SAFCA, are cooperatively involved in critical public safety infrastructure improvements to the Federal Flood Control System within the Central Valley. In addition, USACE is involved with a number of other civil works and military works construction activities. Federal flood projects are the subject of detailed feasibility and environmental studies and authorization by the U.S. Congress and the California Legislature. Project cooperation agreements are executed by these three parties that allocate responsibilities among the parties. Under Federal law and the project cooperation agreements, the non-federal interests (CVFPB, DWR and local agencies such as SAFCA) acquire all the lands, easements, and rights of way needed for the project. The CVFPB and/or a local flood agency then certifies it has acquired all of the necessary property rights and formally, in writing, gives permission to USACE for construction of the project. The USACE procures the construction contractor and oversees construction. The nonfederal interests have no control over the USACE's contractor.

Flood Project Challenges Arising from the Current Board Order

The current language of the Board Order No. 2009-0009-DWQ requires the property owner to electronically file the Notice of Intent ("NOI") with the Board for coverage under the CGP. The Board order requires that the signatory to the NOI be able to control the construction activities in their entirety. While the non-federal interests typically own the property rights, usually an easement, for the construction of the project, they have

Janine Townsend

Page 2

absolutely no control over the USACE's construction activity. The USACE believes that the current Board order creates potential violations of the Federal Anti-Deficiency Act, which prohibits Federal agencies and officers from binding the federal government to responsibilities beyond the current federal fiscal year.

Joint Proposal for Modifications to the Board Order.

The three agencies jointly propose the following modification to the Board's Order: In Appendix 5 - Glossary page 5 add to the definition of Legally Responsible Person as follows:

"However, when a federal agency is a Legally Responsible Person, or has written permission from a Legally Responsible Person to enter and/or construct a project, then a contractor to the federal agency shall be a Legally Responsible Person when it contractually assumes all NPDES permit compliance responsibilities including signing and certifying all required NPDES permit documents."

We believe that this proposal addresses the challenges that are identified above and properly allocates responsibility for compliance to the USACE and its contractor. The Board will have definite entities from which it can expect and enforce compliance. Thank you for consideration of our proposal. If you have any questions I can be reached at (916) 653-4829 or wtabor@water.ca.gov.

Sincerely,



Ward A. Tabor
Assistant Chief Counsel

cc:

Members, Central Valley Flood Protection Board

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