

Lahontan Regional Water Quality Control Board

August 9, 2013

WDID No. 6B361206003
401 WQC

Gary Martin, Director of Engineering
Mojave Water Agency
13846 Conference Center Drive
Apple Valley, CA 92307
Email: gmartin@mojavewater.org

ORDER R6V-2013-0071 FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION, MOJAVE RIVER RECHARGE PROJECT, SAN BERNARDINO COUNTY, WDID NO. 6B361206003

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received project information from the Mojave Water Agency (Applicant) and an application filing fee to complete an application for Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) for the Mojave River Recharge Project (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

Project details, as presented in the application and subsequent correspondence, are summarized in the following table.

Table of Project Information:

WDID Number	6B361206003
Applicant	Gary Martin, Director of Engineering Mojave Water Agency 13846 Conference Center Drive Apple Valley, CA 92307

Table of Project Information:

Agent	Wesley Salter, RBF Consulting Email: wsalter@rbf.com						
Project Name	Mojave River Recharge Project						
Project Purpose and Description	The purpose of this Project is to create recharge facilities within the active channel of the Mojave River. The recharge facilities would consist of in-line, in-channel basins separated by 2- to 3-foot high berms constructed from in-channel sediments. Maintenance is required following Storm events to maintain berm integrity. The Applicant is seeking Project authorization for a period of 10 years.						
Project Type	Other Dredge/Fill Site						
Project Address or other Locating Information	The Project is located within the Mojave River, north of Juniper Road and south of Poppy road in the cities of Hesperia and Apple Valley, San Bernardino County						
Latitude/Longitude	Latitude: 34.410105 Longitude: -117.235130 (center)						
Hydrologic Unit(s)	Mojave Hydrologic Unit 628.00; Upper Mojave Hydrologic Area 628.20						
Project Area	479.46 acres						
Receiving Water(s) Name	Mojave River						
Water Body Type(s)	Perennial stream						
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, WARM, COLD, WILD, WQE, FLD						
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 sedimentation, siltation, and/or erosion of stream channel.						
Project Impacts (Fill) to WOUS	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Stream</i>	292	18,000	0	0	0	0
Federal Permit(s)	The Applicant has applied for coverage under a U.S. Army Corps of Engineers (USACOE) Individual Permit (SPL-2012-00464-BEM) pursuant to section 404 of the CWA. The Individual Permit will have a term of 10 years from the date of issuance.						
Non-Compensatory Mitigation	During construction, the Applicant will follow Best Management Practices (BMPs) including construction stormwater controls designed to minimize the short-term degradation of water quality. The Applicant must implement a Storm Contingency Plan and a Spill Prevention and Control Plan throughout the life of the Project. At the end of the Project, the Mojave River channel will be allowed to re-establish natural drainage and vegetation conditions.						

Table of Project Information:

Compensatory Mitigation	None required
Applicable Fees	\$ 59,000 (\$944 base fee + [\$4,059 x 292 acres of permanent and temporary impact]; fees calculated based on area of impact) ¹
Fees Received	\$ 59,000

¹ Dredge and fill fee operations shall not exceed \$59,000, pursuant to California Code of Regulations, title 23, section 2200.

CEQA COMPLIANCE

The Applicant prepared a Project Environmental Impact Report (EIR) for the Water Supply Reliability and Groundwater Replenishment Program, which includes the components of the Project. The EIR was prepared pursuant to the California Environmental Quality Act (CEQA Public Resources Code 21000, et seq.) and circulated under State Clearinghouse No. 2005041103. The EIR was certified on January 31, 2006, following public review. Minor modifications were addressed in subsequent EIR addendums adopted on November 24, 2008, and on January 21, 2010.

The Water Board, acting as a CEQA Responsible Agency in compliance with the California Code of Regulations (CCR), title 14, section 15096, has considered the EIR and subsequent addendums prepared by the Applicant with respect to water quality. Based on our review of these documents, we find that potential water quality impact resulting from Project construction would be less than significant.

SECTION 401 WATER QUALITY CERTIFICATION**Authority**

CWA, section 401 (33 U.S.C., 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 USACOE will regulate the Project under an Individual Permit (SPL-2012-00464-BEM) pursuant to section 404 of the CWA.

CCR, title 23, section 3831(e) grants the Water Board 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 Water Code, 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 Porter-Cologne Water Quality Control Act 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 Porter-Cologne Water Quality Control Act 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 Game 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. Work within the channel is authorized only during dry weather conditions. As such, the Applicant shall prepare and implement a site-specific **Storm Contingency Plan** to ensure that should inclement weather occur, all work within the Mojave River channel is halted and all equipment and materials are removed to predetermined staging areas outside of the floodplain. The Applicant must implement the Storm Contingency Plan throughout the life of the Project. A copy of the plan must be maintained onsite so as to be available at all times to site operating personnel and agencies.
2. No debris, cement, concrete (or wash water there from), oil, or petroleum products are allowed to enter into or be placed where it may be discharged directly to or washed into surface waters from rainfall or runoff. As such, the Applicant shall prepare and implement a site-specific **Spill Prevention and Control Plan** that clearly identifies potential spill or source areas (including vehicles and equipment), specific measures to stop the source of a spill, BMPs to contain and clean up the spill, disposal methods of contaminated materials, and personnel training to prevent and control future spills. In addition, the plan should include material handling procedures, storage requirements, outline actions necessary to reduce spill potential and impacts on stormwater quality, identify the locations of onsite spill response equipment, and include procedures and step-by-step instructions for spill response personnel. The Applicant must implement the Spill Prevention and Control Plan throughout the life of the Project. A copy of the plan must be maintained onsite so as to be available at all times to site operating personnel and agencies.

3. 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.
4. 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.
5. 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 an 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 WQC," 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.

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 jzimmerman@waterboards.ca.gov, or Patrice Copeland, Senior Engineering Geologist, at (760) 241-7404 pcopeland@waterboards.ca.gov. Please use the WDID referenced in the subject line of this WQC for future correspondence regarding this Project.



Chuck Curtis, P.E.
Acting Executive Officer

Enclosure: SWRCB Order No. 2003-0017-DWQ

cc: Brianne McGuffie, U.S. Army Corps of Engineers
(via email, brianne.e.mcguffie@usace.army.mil)
Rebecca Jones, California Department of Fish & Wildlife
(via email, jdfgpalm@roadrunner.com)
Paul Amato, Wetlands Regulatory Office (WTR-8), USEPA, Region 9
(via email, Amato.Paul@epamail.epa.gov)
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