

APPENDIX C

East Bay Regional Park District

**Routine Maintenance Activities
Alameda and Contra Costa Counties**

**Response to Comments and
Staff-Initiated Revisions**

Appendix C

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO BAY REGION

Item 5. E. - East Bay Regional Park District, Routine Maintenance Activities, Alameda and Contra Costa Counties – Adoption of Waste Discharge Requirements and Water Quality Certification

Response to Comments and Staff-Initiated Revisions

East Bay Regional Park District (EBRPD) Comments – June 17, 2011

EBRPD Comment 1:

***Finding 10.** The Army Corps of Engineers' (File No. 2003-28902S) has determined that the proposed activities associated with the Discharger's routine maintenance activities appear to be covered under the U.S. Army Corps of Engineers Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California (NLAA) consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (dated November 16, 2006). Federally listed species that occur on land managed by the Discharger are listed in Attachment E to this Order. Any proposed projects that do not fit the NLAA will require a separate Section 7 authorization before work may be performed on those sites.*

EBRPD Comment: We suggest that the last sentence be modified to more clearly define the potential role of USFWS. The last sentence says that any project that does not fit the NLAA will require separate Section 7 authorization before work can occur. Authorization from USFWS may not always be through Section 7 consultation as the District may receive authorization in the form of a Section 10 consultation, technical assistance letter, or separate NLAA consultation. We suggest that the text should be revised to the following: **“Any proposed projects that do not fit the NLAA will require a separate USFWS authorization before work may be performed on those sites.”**

Response to EBRPD Comment 1

The comment corrects an error in the original wording of the tentative order (TO). The text has been revised as requested by EBRPD to read as follows:

Any proposed projects that do not fit the NLAA will require a separate ~~Section 7~~ USFWS authorization before work may be performed on those sites.

EBRPD Comment 2:

Provision E.7. *Under this Order, routine maintenance activities will not be conducted in perennial or intermittent streams known to contain anadromous fish. For intermittent streams and tributaries that discharge to perennial streams with anadromous fish, where the presence of anadromous fish is unknown and there are no complete barriers to fish passage, the Discharger shall conduct surveys prior to any activity to determine the presence of any anadromous fish.*

EBRPD Comment: We suggest revising the above text to “**Under this Order, routine maintenance activities conducted in perennial or intermittent streams known to contain anadromous fish need to comply with the U.S. Army Corps of Engineers Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California (NLAA) consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (dated November 16, 2006). Federally listed species that occur on land managed by the Discharger are listed in Attachment E to this Order. Any proposed projects that do not fit the NLAA will require a separate NOAA - NMFS authorization before work may be performed on those sites.**”

Response to EBRPD Comment 2

The language proposed in the comment is consistent with the intent of the original wording of the TO, which was intended to minimize impacts to anadromous fish habitat during maintenance activities. The text has been revised as requested by EBPRD to read as follows:

~~Under this Order, routine maintenance activities will not be conducted in perennial or intermittent streams known to contain anadromous fish. For intermittent streams and tributaries that discharge to perennial streams with anadromous fish, where the presence of anadromous fish is unknown and there are no complete barriers to fish passage, the Discharger shall conduct surveys prior to any activity to determine the presence of any anadromous fish.~~ conducted in perennial or intermittent streams known to contain anadromous fish need to comply with the U.S. Army Corps of Engineers Proposed Procedures for Permitting Projects that will Not Adversely Affect Selected Listed Species in California (NLAA) consultation with USFWS and NMFS (dated November 16, 2006). Federally listed species that occur on land managed by the Discharger are listed in Attachment E to this Order. Any proposed projects that do not fit the NLAA will require a separate NOAA - NMFS authorization before work may be performed on those sites.

EBRPD Comment 3:

Provision E.9. *The Discharger shall halt work activities if fish, amphibians or other aquatic organisms exhibit stress or are found dead within 1,000 feet of work activity or discharge authorized by this Order. The Discharger shall immediately assign a qualified biologist to investigate the cause of the problem, to define an acceptable corrective action plan, and to determine if the cause is related to maintenance activities. The Discharger shall immediately report all incidents involving dead or stressed aquatic organisms to Regional Water Board staff.*

EBRPD Comment: Please remove the reference to other aquatic organisms in provision E.9. Throughout the year and especially during summer dry conditions macro-invertebrates are often observed to be stressed and/or found dead in many of EBRPD’s waterbodies. These observations appear to be due to natural environmental conditions such as high temperatures,

decreasing flow, low water levels, and rapidly fluctuating dissolved oxygen which cause stress and mortality and have no relation to EBRPD maintenance activities or disturbance.

We also would like to add language that clarifies that the observation of dead fish and amphibians would only halt work and require reporting to the Water Board if they are observed in relation to maintenance activities.

We suggest revising the above text to **“The Discharger shall immediately halt work activities and report the incident to Regional Board staff if fish or amphibians are found dead or stressed within 1,000 ft downstream of work activity and their impairment appears to be associated with routine project-related activities. The Discharger shall immediately assign a qualified biologist to investigate the cause of the problem, define an acceptable corrective action plan, and determine if the cause is related to maintenance activities.”**

Response to EBRPD Comment 3.

Water Board staff concur with the request that the notification requirement should only be triggered by the discovery of dead or stressed fish or amphibians, since the monitoring of all potentially impacted macro-invertebrates would be infeasible. Maintenance work does not need to be halted while EBRPD evaluates potential links between impacted fish or amphibians and the nearby maintenance work, but the Water Board should be provided with reports of all dead or stressed fish or amphibians in the proximity of routine maintenance work, and be given an opportunity to review the biologist’s report of the incident. This requirement will give Water Board staff the opportunity to determine whether or not we concur with the conclusions of the incident report prepared by the Discharger’s qualified biologist. The text of Provision E.9 has been revised as follows:

The Discharger shall ~~halt work activities if~~ immediately report all dead or stressed fish or amphibians that are found or other aquatic organisms exhibit stress or are found dead within 1,000 feet of work activity or discharge authorized by this Order. The Discharger shall immediately assign a qualified biologist to investigate the cause of the problem, to define an acceptable corrective action plan, and to determine if the cause is related to maintenance activities. Work shall be halted if the investigation determines that the problem was caused by work activity or discharge authorized by this Order. A copy of the qualified biologist’s investigation report shall be submitted to the Regional Water Board within 30 days of the discovery of dead or stressed fish or amphibians within 1,000 feet of work activity or discharge authorized by this Order. The Discharger shall immediately report all incidents involving dead or stressed aquatic organisms to Regional Water Board staff.

EBRPD Comment 4.

Provision E.27. *No equipment shall operate in standing or flowing water. Work may be performed in the stream channel if no water is flowing or if flow has been diverted in accordance with provisions E.23 and E.26 above.*

EBRPD Comment: The provision above appears to conflict with the dewatering provisions in E.23 and Attachment B. The District will need to place pumps and hoses into the channel in order to implement instream diversions for dewatering activities. We suggest changing the language to read **“Only dewatering equipment shall operate in standing or flowing water.”**

Response to EBRPD Comment 4.

Water Board staff concur with the requested change. Provision E.27 has been revised as follows:

No Only dewatering equipment shall operate in standing or flowing water. Work may be performed in the stream channel if no water is flowing or if flow has been diverted in accordance with provisions E.23 and E.26 above.

EBRPD Comment 5.

Provision E.45. *Routine maintenance activities shall occur only when there is no surface flow or the channel has been dewatered during the construction period of April 15 to October 31 of any year, or until the immediate project area receives the first significant rainfall (defined as 0.5 inches of rain in a 24-hour period), whichever comes first. Routine maintenance activities shall occur beginning June 15 for streams that are tributary to streams that support anadromy. Routine maintenance activities started before October 15 shall be at least 50 percent complete by October 15 of any year, and shall be completed by October 31 or until the first significant rainfall as described above.*

EBRPD Comment: During a typical year, most maintenance repairs on EBRPD lands can not begin until after August 1 because of sensitive species restrictions. After August 1, we complete the largest and most complex projects that if not repaired, pose the greatest threat to water quality. Near the end of the dry season between October 15 and 31, we are regularly starting and finishing small culvert, levee, and bank repairs that take 1-3 days from start to finish. We would like an exemption to conduct these small projects between October 15 and October 31 if no rain is forecast greater than 20% chance and the project can be completed before a rain event.

In order to clarify restrictions between October 15 and October 31, please revise the language to the following:

“Routine maintenance activities started after October 15 shall only be started if no rain is forecast greater than 20% chance and the project can be completed before a rain event.”

We would also like to see language that allows work to be conducted under dry site conditions after the first significant rainfall. If a rain event of 0.5 in. occurs in late September or early October, it is possible that by the second week of October dry site conditions may again be present and maintenance activities could be conducted with no impacts to water quality. Please remove the phrase **“or until the immediate project area receives the first significant rainfall (defined as 0.5 inches of rain in a 24-hour period), whichever comes first.”**

Response to EBRPD Comment 5.

Water Board staff concur with the requested change, since the need to avoid impacts to sensitive species limits some maintenance projects to the period between August 1 and October 31. In addition, many maintenance projects are small enough to be completed between the first significant rain of the season and the next forecast significant rain event. Provision E.45 has been revised as follows:

Routine maintenance activities shall occur only when there is no surface flow or the channel has been dewatered during the construction period of April 15 to October 31 of any year., or until the immediate project area receives the first significant rainfall (defined as 0.5 inches of rain in a 24-hour period), whichever comes first. Routine maintenance

activities shall occur beginning June 15 for streams that are tributary to streams that support anadromy. Routine maintenance activities started ~~before~~ after October 15 shall only be started if no rain is forecast with greater than 20 percent chance of precipitation and the project can be completed before the next forecast rain event ~~be at least 50 percent~~ complete by October 15 of any year, and shall be completed by October 31 or until the first significant rainfall as described above.

EBRPD Comment 6.

Attachment A - A.2. *Planting of riparian vegetation by hand or with rubber-tired backhoe along gravel bars and banks of EBRPD lakes and banks of their tributaries, is subject to the following conditions: (a) equipment shall not be operated in standing or flowing water; (b) trenches shall be excavated, planted and backfilled on the same day; (c) fueling shall not take place in the stream channels, on lake beds, nor within 100 feet of open water; and (d) access shall be by existing access ramps only.*

EBRPD Comment: We request adding an exemption for fueling within 100ft of open water in the case of levee repairs where moving the equipment will cause more damage to the levee. We suggest revising the language as follows “**(c) fueling shall not take place in the stream channels, on lake beds, nor within 100 feet of open water except on levee repairs where moving heavy equipment will cause further damage to the levee and create additional soil erosion potential.**”

Response to EBRPD Comment 6.

Water Board staff concur with the requested change. Subparagraph A.2 in Attachment A has been revised as follows:

Planting of riparian vegetation by hand or with rubber-tired backhoe along gravel bars and banks of EBRPD lakes and banks of their tributaries, is subject to the following conditions: (a) equipment shall not be operated in standing or flowing water; (b) trenches shall be excavated, planted and backfilled on the same day; (c) fueling shall not take place in the stream channels, on lake beds, nor within 100 feet of open water, except on levee repairs where moving heavy equipment will cause further damage to the levee and create additional soil erosion potential; and (d) access shall be by existing access ramps only.

EBRPD Comment 7.

Attachment B - A.9. *The District will avoid use of equipment in waterways, streams, ponds, and lakes as much as possible, and will only use equipment in waterways, streams, ponds, and lakes after receiving the approval of the Executive Officer of the Water Board for such work.*

EBRPD Comment: We request adding the word “**earth moving**” in front of equipment in the above text.

Response to EBRPD Comment 7.

Water Board staff concur with the requested change. Subparagraph A.9 in Attachment A has been revised as follows:

The District will avoid use of earth moving equipment in waterways, streams, ponds, and lakes as much as possible, and will only use equipment in waterways, streams, ponds, and

lakes after receiving the approval of the Executive Officer of the Regional Water Board for such work.

EBRPD Comment 8.

Attachment B - A.16. *At the work site, fueling of equipment and vehicles will only occur in upland areas and at a minimum of 100 feet from open water.*

EBRPD Comment: See comment Attachment A - A.2 above. **“At the work site, fueling of equipment and vehicles will only occur in upland areas and at a minimum of 100 feet from open water except on levee repairs where moving heavy equipment will cause further damage to the levee and create additional soil erosion potential.”**

Response to EBRPD Comment 8.

Water Board staff concur with the requested change. Subparagraph A.16 in Attachment B has been revised as follows:

At the work site, fueling of equipment and vehicles will only occur in upland areas and at a minimum of 100 feet from open water, except on levee repairs where moving heavy equipment will cause further damage to the levee and create additional soil erosion potential.

EBRPD Comment 9.

Attachment B - A.18. *No equipment shall be operated in areas of flowing or standing water; no fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where an accidental discharge to waters of the State may occur; construction materials and heavy equipment must be stored outside of the active flow of the creek.*

EBRPD Comment: See comment on provision E.27 above. We suggest changing the language to read **“Only dewatering equipment shall operate in standing or flowing water.”**

Response to EBRPD Comment 9.

Water Board staff concur with the requested change. Subparagraph A.18 in Attachment B has been revised as follows:

~~No~~ Only dewatering equipment shall be operated in areas of flowing or standing water; no fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where an accidental discharge to waters of the State may occur; construction materials and heavy equipment must be stored outside of the active flow of the creek.

Regional Water Board Staff-Initiated Revisions

Staff-Initiated Revision 1: Finding 5

The TO did not mention that this Order will replace a previous order for routine maintenance projects that was issued to EBRPD in 2004. To correct this omission, Finding 5 has been revised as follows:

The issuance of Waste Discharge Requirements (WDRs) and Water Quality Certification (WQC) serves to govern the Discharger's various maintenance activities for the purpose of alleviating local flood damage problems, protecting fish and wildlife, and addressing public safety concerns in an environmentally responsible manner. In 2004, the Regional Water Board issued WDRs and WQC (Order No. R2-2004-0057) to the Discharger for regional maintenance activities. This Order updates the 2004 WDRs and WQC for consistency with the current Water Quality Control Plan for the San Francisco Bay Basin, consistency with current Regional Water Board reporting requirements, and consistency with other WDRs and WQC that have been issued by the Regional Water Board for multi-year maintenance programs.

Staff-Initiated Revision 2: Provision E.20

Restrictions on the upland disposal of dredged sediment in Provision E.20 of the TO were overly prescriptive. Provision E.20 has been revised as follows:

The Discharger shall ultimately dispose of dewatered material at an appropriate upland sediment disposal site ~~a permitted landfill, approved upland sediment disposal site,~~ or at an approved reuse site in accordance with applicable State and federal regulations, including applicable provisions of this Order

Staff-Initiated Revision 3: New Provision E.53

Water Board staff had not included a provision that explicitly stated that this order supersedes Order No. R2-2004-0057. New Provision E. 53 corrects this oversight.

Rescission of Previous Orders. The WDRs prescribed by this Order supersede those prescribed by this Regional Water Board's Order No. R2-2004-0057 for the Discharger. Order No. R2-2004-0057 is hereby rescinded, except for enforcement purposes.

Staff-Initiated Revision 4: Attachment B, Subparagraph D.1

The description of bio-engineered creek structures was modified to clarify the acceptable materials for use in constructing vortex weirs.

The District shall use bio-engineering such as planting riparian woody vegetation, willow wattles and mattresses, log crib-walls, log and stump deflectors, or vortex weirs constructed of rocks or logs to stabilize banks and reduce erosion. The District may request the use of more hardened bank stabilization techniques, if the use of bio-engineered techniques is considered infeasible at a project site. But more hardened bank armoring shall not be implemented without the approval of the Executive Officer of the Regional Water Board.