

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 01-090

WASTE DISCHARGE REQUIREMENTS AND WATER QUALITY CERTIFICATION FOR:

**SANTA CLARA VALLEY WATER DISTRICT, 2001 SEDIMENT REMOVAL PROJECT,
SANTA CLARA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Board, finds that:

1. **Application:** The Santa Clara Valley Water District (hereinafter Discharger) has applied to conduct sediment removal activities (dredging) at sixteen sites in thirteen creeks in Santa Clara County. The Discharger has applied for Water Quality Certification under Section 401 of the Clean Water Act for activities at the sixteen sites. The purpose of the activities is to alleviate potential local flooding problems and to meet the requirements of the Federal Emergency Management Agency (FEMA) for flood protection.
2. **Project:** The Discharger's 2001 Sediment Removal Project (Project) consists of sediment removal and disposal activities at sixteen sites in six earth lined channels, four concrete lined channels, five combined earth/concrete lined channels and one debris basin. Approximately 90,280 cubic yards of sediment would be removed from these sixteen sites, temporarily impacting approximately 2.13 acres of tidal wetlands and 2.14 acres of non-tidal riparian wetlands. Table 1 lists the names of the sites, locations, type of channel, approximate amounts of sediment to be removed, and the acreage of estimated wetlands that will be impacted. The Discharger would dispose of the sediment at a permitted landfill or otherwise at a site approved in advance by the Executive Officer of the Board.

All sediment removal activities included in the Discharger's application were submitted with a California Environmental Quality Act (CEQA) Initial Study/Mitigated Negative Declaration for review.

3. The Discharger may temporarily stockpile excavated sediment prior to disposal or reuse at a site approved in advance by the Executive Officer. The excavated sediment may be stockpiled on-site so that it can be loaded into trucks for off-site disposal within three (3) working days. The excavated sediment may also be temporarily stockpiled at an off-site location approved in advance by the Executive Officer.

TABLE 1
2001 Sediment Removal Project Sites

Site No.	Creek	Location	Type of Channel	Approximate Sediment Volume (cubic yards)	Approximate Wetland Impacts (acres)
1	Adobe	At Highway 101	Concrete/Tidal	1,000	0.01T
2	Berryessa	Milpitas Blvd. to Calaveras	Earth/Tidal	5,900	0.27T
3	Berryessa	Cropley to Sierra Creek Confluence	Earth-Concrete /Non-Tidal	2,400	0.00
4	Berryessa	Upstream & downstream of Piedmont	Earth-Concrete /Non-Tidal	1,300	0.03
5	Calabazas	Downstream Highway 101	Earth/Tidal & Non-tidal	30,000	0.27T & 1.44N
6	Calera	Upstream UPRR to Milipitas	Concrete /Non-Tidal	600	0.17
7	Calera	Upstream Escuela Parkway	Earth/Non-Tidal	230	0.05
8	Canoas	Guadalupe confluence to Cottle Road	Earth-Concrete /Non-Tidal	1,900	0.15
9	Coyote	Upstream of Lower Penitencia confluence	Earth/Tidal	150	0.00
10	Flint Debris Basin (Adjacent Flint Ck)	Upstream Mt Pleasant Road	Earth/Non-Tidal	30,000	0.00
11	Guadalupe	Upstream Tasman to Montague	Earth/Tidal	10,000	1.58T
12	Los Coches	Downstream I-680 to Dempsey	Earth-Concrete /Non-Tidal	1,800	0.01
13	Matadero	Highway 101 to Louis	Earth-Concrete /Non-Tidal	4,000	0.13
14	Randol	Upstream Bret Harte Ave.	Concrete/Non-Tidal	50	0.00
15	Ross Creek	Upstream Cherry	Concrete/Non-Tidal	100	0.00
16	Sierra	Downstream Mauna Kea	Earth/Non-Tidal	850	0.16
Total				90,280	2.13T & 2.14N

T = Tidal; N = Non-tidal

4. A discharge of water (effluent) could result from the handling and placement of dredged sediment at an off-site temporary stockpile site (if used). Any effluent discharged during sediment placement and temporary storage is referred to as "decant water." This Order regulates effluent discharged as a result of dredged sediment placement and temporary storage.
5. The Project sites are in the following Creeks: Adobe, Berryessa, Calabazas, Calera, Canoas, Coyote, Guadalupe, Los Coches, Matadero, Randol, Ross, Sierra and the Flint Debris Basin (adjacent to Flint Creek). Beneficial uses of the Creeks and tributaries as set forth in the Basin Plan include:
 - a. Navigation
 - b. Water Contact Recreation
 - c. Ocean Commercial and Sport Fishing
 - d. Warm Fresh Water Habitat
 - e. Preservation of Areas of Special Biological Significance
 - f. Wildlife Habitat
 - g. Marine Habitat
 - h. Fish Migration
 - i. Preservation of Rare and Endangered Species
 - j. Cold Fresh Water Habitat
 - k. Non-Contact Water Recreation
 - l. Fish Spawning
6. The Discharger has prepared a comprehensive draft Stream Maintenance Program (SMP) for a multi-year permit that will address its District-wide sediment removal and bank stabilization requirements for that period. The Discharger has submitted a permit application for the SMP to the Board. The Board's consideration of the SMP permit application and its accompanying Environmental Impact Report (EIR) will not be completed in time to allow stream maintenance to proceed in 2001. As such, the Discharger has made a separate application for the work proposed for 2001 and is requesting separate authorization to conduct dredging at the Project's sixteen sediment removal sites identified herein prior to or after the 2001-02 rainy season.
7. To protect the water quality at and in the vicinity of the Project's sites, to adequately address disposal of dredged material, to meet the objectives of the California Wetland Conservation Policy, to alleviate local flooding problems, and to address public safety concerns in an environmentally responsible way, the Board has determined to regulate the proposed activities by issuance of Waste Discharge Requirements (WDR) and Water Quality Certification.
8. The Board, on June 21, 1995, adopted, in accordance with Section 13244 et. seq. of the California Water Code, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). The State Water Resources Control Board and the Office of Administrative Law approved this updated and consolidated revised Basin Plan on July 20, 1995, and

November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. This order is in compliance with the Basin Plan.

9. The Basin Plan Wetland Fill Policy establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when a project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, wherever possible, as the project. The Policy further establishes that wetland disturbances should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered. The Discharger has submitted documentation to show that appropriate effort was made to avoid and then to minimize wetland disturbance, as required by the Basin Plan. The Board concurs with this finding.
10. The wetlands to be impacted are Waters of the State and of the United States. Wetland impacts total approximately 2.13 acres of tidal wetlands and 2.14 acres of non-tidal wetland as outlined in Table 1, and are primarily temporary removal of wetland vegetation concurrent with sediment removal.
11. The Discharger has submitted a wetland mitigation and monitoring plan as a part of its application, to offset the Project's loss of beneficial uses of waters of the State. This plan includes a proposal to restore 1.86 acres of tidal wetlands at the 300-acre Cargill Salt Pond A-4 tidal wetland mitigation site and to create 1.98 acres of non-tidal wetlands in part at the Los Capitancillos non-tidal wetland mitigation site and in part at the Coyote Creek Parkway non-tidal wetland mitigation site in San Jose. In 1997 and 1998, work was completed in identical areas for the Discharger's sediment removal projects at Berryessa Creek, Milpitas Blvd. to Calaveras Blvd. and Sierra Creek downstream of Mauna Kea. The Discharger has previously committed to mitigation for wetland impacts in these same reaches of these two creeks. The Discharger is not proposing any repeat mitigation for the 0.27 acres of tidal wetland impacts at Berryessa Creek nor for the 0.16 acres of non-tidal impacts at Sierra Creek. Based on the schedules for implementation of restoration at the Cargill Salt Pond A-4 tidal mitigation site and the Los Capitancillos and the Coyote Creek Parkway non-tidal wetland sites, mitigation for wetland impacts may not be fully achieved for at least seven to nine years from the time this Order is adopted. Completion of mitigation construction at all sites is scheduled to take place within two to four years from the time this Order is adopted. Vegetation is expected to mature to a compensatory level within five years following construction.
12. The Discharger has submitted a Sediment Characterization Plan (Final) dated June 2001. The purpose of the Sediment Characterization Plan is to determine the suitability for disposal of the sediment, identification of specific contaminants and their concentrations in the exposed channel bottoms, and to determine whether the self-monitoring program should be expanded to include additional water quality constituents. The Sediment Characterization Plan may be amended with the written approval of the Executive Officer.

13. The Discharger has submitted a Self-Monitoring Program Water Quality Sampling Plan (Plan) dated April 2001. The purpose of the Plan is to identify sampling and analysis procedures, quality assurance/quality control protocols, and record keeping and reporting procedures to be followed to document compliance with the requirements of this Order. The Plan will also include an "Information and Data Collection Monitoring" section whereby water quality data collected during the 2001 project will be used to guide future sediment removal projects and the SMP. The Plan may be amended with the written approval of the Executive Officer.
14. The Discharger has submitted a Best Management Practices (BMP) Manual dated April 2001. The BMP Manual identifies practices to be implemented by the Discharger that will minimize impacts to the beneficial uses of waters of the State during the course of the Project, and includes BMPs to minimize impacts to portions of the channels that will not be dredged. The BMP Manual also includes details on how wet sediment will be transported without discharge should there still be flow when dredging is begun. The BMP Manual may be amended with the written approval of the Executive Officer.
15. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document for such projects. On July 3, 2001, the Discharger adopted a mitigated Negative Declaration for the Project's sixteen sites, and the Regional Board considered this Negative Declaration. This Order includes mitigation measures that will mitigate or avoid any potential impacts to water quality.
16. Pursuant to Title 23, California Code of Regulations Section 3857 and 3859, the Board is issuing WDRs and Water Quality Certification for the Project.
17. The Regional Board has notified the Discharger and interested parties of its intent to issue WDRs and Water Quality Certification for the Project.
18. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that the Santa Clara Valley Water District, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

A. Discharge Prohibitions

1. The direct discharge of wastes (including excavated sediment) from active dredging sites to surface waters or surface water drainage courses is prohibited.
2. Excavated sediment shall remain within designated disposal areas at all times. The designated disposal areas are: (a) an off-site temporary or permanent location approved in

advance by the Executive Officer, (b) on-site for three working days if the moisture content of the stockpiled sediments does not exceed 32 percent, or (c) a permitted landfill.

3. The dredge and disposal activities subject to these requirements shall not cause a nuisance as defined in Section 13050(m) of the California Water Code.
4. The discharge of decant water from any on-site temporary sediment stockpile or storage areas to surface waters or surface water drainage courses outside of the active dredging site is prohibited. The discharge of decant water from any off-site temporary sediment stockpile or storage areas to surface waters or surface water drainage courses is prohibited except where BMPs are adopted to comply with effluent and receiving water limitations.
5. Groundwater shall not be degraded as a result of the Project.

B. Provisions

1. The Discharger shall comply with all the Prohibitions, Effluent and Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The following standard conditions apply to this Order:
 - (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and Section 3867 of Title 23 of the California Code of Regulations (23 CCR).
 - (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR Subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
 - (c) Certification is conditioned upon total payment of any fee required under 23 CCR and owed by the Discharger. The required fee has been received.
3. The Discharger shall implement and comply with the final BMP Manual, Sediment Characterization Plan and the Self Monitoring Program Water Quality Sampling Plan during the entirety of the project.
4. The Discharger shall implement BMPs to prevent pollutants from draining into waters of the State, including the discharge of pollutants from temporary sediment stockpile sites and during transport of dredged sediment from active dredging sites to storage sites.

5. The Discharger will divert any flow at the site (hereinafter diverted flow) around the active dredging site in a non-erosive manner using a pipe, or other BMP measure such that the flow does not flow across the active dredging site.
6. The Discharger shall halt work activities if dead or dying fish or fish exhibiting stress are observed within 1,000 feet of work activity or discharge. The Discharger shall immediately consult with Board and Department of Fish and Game staff to determine the cause of the problem, and define an acceptable corrective action plan, if the cause is related to sediment removal activities.
7. During the course of the project, the Discharger shall file with the Board an annual self-monitoring report in accordance with the Self Monitoring Program Water Quality Sampling Plan as approved by the Executive Officer.
8. All plans and reports pursuant to these Provisions shall be prepared under the supervision of a suitable professional registered in the State of California.
9. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 27, Division 2, Subdivision 1, Chapter 2 of the California Code of Regulations shall be conducted in accordance with applicable state and federal regulations.
10. The Discharger shall remove and relocate any wastes that are discharged at any sites in violation of this Order.
11. The Discharger shall file with the Board a report of any material change or proposed change in the character, location, or quantity of this waste discharge. For the purpose of these requirements, this includes any proposed change in the boundaries of the designed disposal areas.
12. A delineation of existing jurisdictional Waters of the State and United States at any temporary sediment disposal site verified by the Corps shall be conducted prior to the construction of an impoundment at the site and submitted to the Executive Officer prior to the disposal of sediment at the site(s). A delineation of existing jurisdictional Waters of the State and the United States at the mitigation site(s), verified by the Corps, shall be conducted prior to the start of construction at the mitigation site(s). The proposed mitigation plan shall be amended to address any impacts to existing wetlands at the site(s).
13. The Discharger shall ultimately dispose of dewatered dredged material at a permitted landfill, upland sediment disposal site permitted by the Board, or otherwise at a site approved in advance by the Executive Officer.
14. The Discharger shall maintain a copy of this Order at the Project's sites so as to be available at all times to site operating personnel.

15. The Discharger is considered to have full responsibility for correcting any and all problems, which arise in the event of a Project failure, including a failure to meet the conditions of this Order, that result in an unauthorized release of waste or wastewater.
16. The Discharger shall permit the Board or its authorized representative, upon presentation of credentials:
 - a. Entry on to the premises on which sediment removal activities are planned or underway, wastes are located, or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Access to inspect any treatment equipment, monitoring equipment or monitoring method required by this Order.
 - d. Access to sample any discharge or surface water covered by this Order.
17. Pending appropriate regulatory review and approval, the Discharger shall implement the Santa Clara Valley Water District Urgent Sediment Removal Project Compensatory Wetlands Mitigation and Monitoring Plan, dated June 8, 1998, as revised, and the Santa Clara Valley Water District Coyote Creek Parkway Wetland Mitigation Site Mitigation Monitoring Plan dated May 2001. The plans shall be revised as needed to include the following:
 - a. An additional 1.86 acres of tidal wetlands at the Cargill Pond A-4 Wetland Mitigation Site, an additional 0.14 acre of non-tidal wetlands at the Los Capitancillos Wetland Mitigation site, and 1.84 acres of non-tidal wetlands at the Coyote Creek Parkway Wetland Mitigation site as compensation for new impacts to 1.86 acres of tidal wetlands and 1.98 acres of non-tidal wetlands resulting from the Project. The mitigation amounts between the Los Capitancillos and the Coyote Creek Parkway sites may be adjusted depending on the actual acres created at the Los Capitancillos site.
 - b. The mitigation commitment for the Project will be included in the calculations performed in the Discharger's Multi-Year Stream Maintenance Program EIR for the purposes of determining what amount of mitigation for any cumulative loss of wetlands is necessary over the long-term.

This provision does not release the Discharger from fulfilling all permitting, and CEQA review requirements for the proposed compensatory mitigation sites. In the event that approval for a proposed compensatory mitigation site is denied, or a site is rescinded for any reason, an alternative mitigation proposal will be submitted to the Executive Officer no later than 30 days following denial or rescission.
18. Any substantive changes to either of the aforementioned Mitigation and Monitoring Plans must be approved in writing by the Executive Officer.

19. A mitigation construction plan and schedule, acceptable to the Executive Officer, shall be submitted 30 days prior to start of construction at the mitigation sites. The construction plan shall show specific mitigation locations and design details.
20. If the wetland mitigation sites have not developed in accordance with the performance criteria established in the mitigation plan by year 5 after completion of construction, the Discharger shall prepare a revised mitigation plan acceptable to the Executive Officer.
21. The Discharger shall submit mitigation monitoring reports by July 1 of each year for a minimum of 10 years, or until the mitigation success criteria have been achieved, from the completion of construction at the mitigation site(s) and before a notice of mitigation completion has been submitted to the Executive Officer. The notice of mitigation completion shall include a plan, acceptable to the Executive Officer, for long-term maintenance and management, acceptable to the Executive Officer, of the mitigation sites. After submittal of the acceptable notice of mitigation completion, submittal of annual mitigation monitoring reports is no longer required.
22. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state or local laws, regulations or rules of other programs and agencies nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
23. The Discharger shall obtain all the necessary approvals and/or permits for the Project from applicable government agencies and shall submit them to the Board prior to the start of dredging.
24. The Board may reconsider the terms of this Order based on continued concerns with mitigation requirements and the need for long-term planning for channel maintenance.
25. The Discharger shall submit the last Annual Report summarizing the results for 2001 of the Instream Wetland Vegetation Regrowth Study by July 1, 2002, unless Regional Board staff determines that the June 26, 2001, Report is sufficient to conclude the Study.

C. Effluent Limitations

Wastewater (decant water and/or runoff water) discharged at any off-site sediment stockpile site(s) to storm drains or waters of the State shall not exceed the following limits of quality at any time:

- i) pH: 6.5 – 8.5
- i) Settleable matter: 1.0 ml/l/hr
- ii) Dissolved sulfide: 0.1 mg/l

D. Receiving Water Limitations

1. The Project's activities shall not cause:
 - a. Floating, suspended or deposited macroscopic particulate matter or foam in waters of the State at any place more than 100 feet from the point of discharge of diverted flow.
 - b. Alteration of apparent color beyond present natural background levels in waters of the State at any place more than 100 feet from the point of discharge of diverted flow.
 - c. Visible floating, suspended, or deposited oil or other products of petroleum origin in waters of the State at any place more than 100 feet from the point of discharge of diverted flow.
 - d. The diverted flow shall not cause waters of the State to exceed the following water quality limits at 100 feet downstream from the point of discharge of diverted flow at the non-tidal sites, and at diverted water/work area outfall sampling locations for tidal sites, as defined under the receiving water limitations in the Discharger's Self Monitoring Program Water Quality Sampling Plan:
 - i) Dissolved Oxygen: 5.0 mg/l minimum. When natural factors cause lesser concentrations, then this discharge shall not cause further reduction in the concentration of dissolved oxygen.
 - ii) pH: A variation of natural ambient pH by more than 0.5 pH units.
 - iii) Toxic or other deleterious substances: None shall be present in concentrations or quantities which may cause deleterious effects on aquatic biota, wildlife or waterfowl, or which render any of these unfit for human consumption either at levels created in the receiving waters or as a result of biological concentrations.
2. Turbidity of the waters of the State, as measured in NTUs, 100 feet downstream from the point of discharge of diverted flow at the non-tidal sites, and at diverted water/work area outfall sampling locations for tidal sites, as defined under the receiving water limitations in the Discharger's Self Monitoring Program Water Quality Sampling Plan, shall not increase above background levels by more than the following:

Receiving Waters Background

< 50 units

≥ 50 units

Incremental Increase

5 NTUs

10% of background, maximum

I, Loretta Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 18, 2001.



Loretta Barsamian
Executive Officer



California Regional Water Quality Control Board

San Francisco Bay Region



Gray Davis
Governor

Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov>
1515 Clay Street, Suite 1400, Oakland, California 94612
Phone (510) 622-2300 • FAX (510) 622-2460

Certified Mail No. 70993220000146714522
Return Receipt Requested

Date: **JUL 26 2001**
File Nos. 2188.07(PFA)

Mr. Jason Christie
Unit Supervisor
Environmental Resources Management
Santa Clara Valley Water District
5750 Almaden Expressway
San Jose, CA 95118

**Subject: Waste Discharge Requirements for the Santa Clara Valley Water District 2001
Sediment Removal Project, Santa Clara County**

Dear Mr. Christie:

Enclosed please find a copy of Order No. 01-090, which was adopted by the Board on July 18, 2001.

Please contact Paul Amato of my staff at (510) 622-2429, or via email to pa@rb2.swrcb.ca.gov if you have any questions on this matter.

Sincerely,

Dale C. Bowyer
Section Leader
South East Bay Watershed

Enclosure: Order 01-090
cc (with enclosure):

Bruce Wolfe, RWQCB
Paul Amato, RWQCB
Luisa Valiala, USEPA
Mark Littlefield, USFWS
Mara Eagen, NMFS
Molly Martindale, USACE -- Regulatory Branch
Marcia Grefsrud, CDFG
Keith Anderson, Streams for Tomorrow

California Environmental Protection Agency



Recycled Paper