

APPENDIX B

East Bay Regional Park District

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

Comments on Tentative Order



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June 17, 2011

Brian Wines
SF Bay Regional Water Quality Control Board
South Bay Watershed Division
1515 Clay Street, Suite 1400
Oakland, CA 94612

TENTATIVE ORDER COMMENTS

Re: East Bay Regional Park District’s Comments on Order R2-2011-XXX for Regional Routine Maintenance Activities in Alameda and Contra Costa County

Thank you for the opportunity to comment on the San Francisco Regional Water Quality Control Board’s (Water Board) proposed Waste Discharge Order and Water Quality Certification (Order) for the East Bay Regional Park District’s (EBRPD) routine maintenance activities in Alameda and Contra Costa County. These comments are intended to provide some suggested alterations to help clarify the intent and expectations of the permit. The letter is organized with the specific text from the tentative order in italics with the EBRPD’s comments and suggested revisions below.

DRAFT Comments

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:

Board of Directors

Beverly Lane President Ward 6	Carol Severin Vice-President Ward 3	John Sutter Treasurer Ward 2	Ayn Wieskamp Secretary Ward 5	Whitney Dotson Ward 1	Doug Siden Ward 4	Ted Radke Ward 7	Robert E. Doyle General Manager
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“Any proposed projects that do not fit the NLAA will require a separate USFWS authorization before work may be performed on those sites.”

E. Provisions

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.”**

E. Provisions

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.”**

E. Provisions

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.”**

E. Provisions

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 1st because of sensitive species restrictions. After August 1st, 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 15th and 31st, 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 15th and October 31st 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 15th and October 31st, 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.”**

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.”**

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.

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.”**

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.”**

If you have any questions, please contact me at (510)544-2346 or nfujita@ebparks.org.

Sincerely,



Neal Fujita
Stewardship Manager