

**California Regional Water Quality Control Board  
Santa Ana Region**

**February 29, 2008**

**ITEM:** \* 9

**SUBJECT:** Order No. R8-2008-0015, Fairfield Holland Road, LP, Riverside County Plot Plan No. 22338

**SUMMARY**

The matter before the Board is to consider adoption of Order No. R8-2008-0015, authorizing the discharge of fill to waters of the State that have been determined to be outside of the U.S. Army Corps of Engineers' jurisdiction and not subject to regulation under Clean Water Act Section 404 (non-federal waters). In the event a later determination is made finding that the discharge is subject to Corps' jurisdiction, this Order will also serve as a CWA Section 401 Water Quality Standards Certification.

**BACKGROUND**

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (State Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, section 3830 *et seq.* Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification."

Due to recent decisions by the Supreme Court that increasingly have limited the authority of the Corps to regulate discharges of dredge and fill to waters of the U.S., some project proponents find that their proposed discharges of dredge or fill to surface waters of the State are no longer subject to the Corps' jurisdiction. As a result, these projects are not subject to a CWA Section 404 permit from the Corps and do not require a Certification. In the absence of the need to obtain a Certification, the State Board has

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asserted the State's authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act.

On May 4, 2004, the State Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ). Numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On April 5, 2007, Regional Board staff received a report of waste discharge (Report) from Fairfield Holland Road, LP. In the Report, Fairfield Holland Road, LP proposes to discharge fill to a total of 0.22 acre of waters of the State. The waters of the State are located on a 15.03-acre property bounded by the existing Holland and Antelope Roads and the proposed Albion and Hanover Lanes in the Sun City/Menifee Valley area of Riverside County (33.6720 degrees N/-117.1694 degrees W). Additional impacts to 0.034 acre of waters of the State are proposed off-site as part of roadway improvements and the construction of a storm drain outfall to an earthen flood control channel.

The discharges will occur as part of the development of Riverside County Plot Plan No. 22338 (PP 22338). The project consists of the construction of a 230-dwelling unit apartment complex consisting of eleven 3-story buildings and a dedicated easement for the later construction of an overpass for Holland Road over Antelope Road and the nearby Interstate Highway 215. Full-street improvements are proposed for Albion Lane and a half-street improvement is proposed for Hanover Lane. An off-site storm drain line will be constructed within the unimproved Albion Lane right-of-way and discharge into the earthen flood control channel located approximately 1,200-feet east of the project site.

The waters proposed for fill on the property are two ephemeral drainages and two pools. The first drainage lies along Antelope Road and is an excavated roadside drainage ditch. The second drainage lies in the opposite, eastern end of the project along the future Hanover Lane right-of-way and is a shallow riparian drainage feature. The drainages total 0.49 acre and contain wetlands. The wetlands are supported by a combination of nuisance flow and increased storm water runoff from adjacent urban development to the south of the project site.

The pools, totaling 0.045 acre, are located in a small wooded area of the project site, consisting of non-native pine trees and grasses. The pools support the growth of a non-native wetland plant species called curly dock (*rumex crispus*) and also meet criteria to be considered wetlands. Curly dock is a facultative plant, with a roughly equal probability of being found in wetlands as in adjacent uplands.

The property is located in a flat portion of the Paloma Valley. Storm water runoff from the majority of the project site drains to the northeast, with runoff sheet-flowing off-site to an easterly earthen channel that conveys flows to Salt Creek and then Canyon Lake. Storm water runoff from the western edge of the property flows into the roadside ditch, then north, where the ditch abruptly ends at northwest corner of the project site. Here, the runoff floods over Antelope Road into a channel alongside Interstate 215 and then north to Salt Creek. The property overlies the Menifee Groundwater Management Zone. In a letter dated August 3, 2006, the U.S. Army Corps of Engineers (Corps) determined that all of the surface waters on the property were not subject to their jurisdiction under

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CWA Section 404. The Corps letter does not comment on the off-site storm drain or its outfall structure to the earthen channel.

On January 25, 2008, following a storm event the previous day, Board staff visited the project site. Board staff did not observe water in either the western roadside ditch or the pools. In contrast, Board staff observed water ponding in the eastern drainage. Aquatic insects and zooplankton were observed in the water column and riparian vegetation and wetland plants were growing in and along the drainage.

As a result of Board staff review of the report of waste discharge and the January 25, 2008 site visit, Regional Board staff has identified non-water contact recreation (REC-2), wildlife habitat (WILD), and groundwater recharge (GWR) as existing or potential beneficial uses for the eastern drainage. Board staff was unable to identify meaningful beneficial uses for the roadside drainage ditch or the adjacent pools. Although these features convey or pond water, there is no indication that the hydrologic conditions are sufficient to support meaningful beneficial uses within the waters.

Board staff has determined that the discharge to the eastern drainage on the project site would affect the drainage's beneficial uses. The discharge of fill would directly affect 0.22 acre of the drainage and also indirectly affect 0.034 acre of the off-site portion of the drainage. Indirect impacts would occur as the result of diverting surface water runoff away from the off-site portions of the drainage into the proposed storm drain system. A total of 0.254 acre of waters of the state will be impacted by the proposed discharge. Board staff has determined that the Board cannot authorize the discharge in accordance with Order No. 2004-0004-DWQ because the discharge exceeds the impact thresholds of that Order. Consequently, the discharge will need to be authorized by individual waste discharge requirements.

Board staff has determined that the wetlands on the project site are 'accidental' and that the State "no-net-loss" policy should not apply. Groundwater is in excess of 100-feet below ground level and does not support the wetlands. Land use patterns indicate that increased storm water runoff from Antelope Road and irregular contouring within the roadside ditch has contributed to the formation of the wetlands in the ditch. The pools are in close proximity to the roadside ditch and topographic conditions indicate that they receive flow when the ditch overflows. Board staff regards the pools as an hydrologic extension of the ditch due to this relationship.

The wetlands in the east drainage have also been created unintentionally as the result of human activities. The flow from the drainage has been obstructed by grading on the northern properties, which include the Mount San Jacinto Community College Menifee Campus and the Albion Lane right-of-way, which currently contains a sewer line. The topographic obstruction created by these past projects causes nuisance flow discharges and increased storm water runoff from residential development to the south to pool on the project site and the adjacent property. Water leaves the depression when the area overflows, sheet-flowing over an agricultural field to the earthen channel to the east.

Fairfield Holland Road, LP proposes to mitigate impacts to beneficial uses as the result of the proposed discharges of fill to the eastern drainage by paying an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.508 acres of invasive plant species in the San Jacinto Watershed.

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Other discharges that will occur as part of the development of PP22338 are construction and post-construction (urban) discharges of storm water runoff. Both discharges are addressed by State Board Water Quality Order No. 99-08-DWQ, "General Permit for Discharges Associated with Construction Activity" (Order No. 99-08-DWQ) and Regional Board Order No. R8-2002-0011, NPDES Permit No. CAS618033, commonly known as the Riverside County Urban Storm Water Runoff Permit, and subsequent renewals. A Storm Water Pollution Prevention Plan (SWPPP) will be developed and a final Water Quality Management Plan (WQMP) has been approved by the County. Typical construction best management practices (BMPs) will be employed to remove pollutants in storm water runoff. Site plans, provided as part of the Report, indicate that two extended detention basins will be used to remove pollutants in discharges from the project and to address storm drainage infrastructure deficiencies. Additional BMPs are identified in the SWPPP and final WQMP.

Pursuant to CEQA, the County of Riverside prepared a Negative Declaration (ND) and adopted it on January 8, 2008. A Notice of Determination was filed on January 30, 2008. The County's ND erroneously indicates that there are no waters of the State on the project site and does not indicate impacts to beneficial uses as the result of discharges of fill. The County's ND also presents *non sequitur* reasoning regarding the water quality impacts of storm drainage infrastructure and urban storm water runoff. The ND identifies mitigation necessary in these areas of the analysis, but asserts that there are no impacts, or that the impacts are not significant, to trigger the need for the mitigation.

**RECOMMENDATION**

Board staff recommends that the Board adopt Order No. R8-2008-0015.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District  
California Department of Fish and Game  
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office  
State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit

California Regional Water Quality Control Board  
Santa Ana Region

Order No. R8-2008-0015

Waste Discharge Requirements

for

Fairfield Holland Road, LP  
Riverside County Plot Plan No. 22338

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), finds that:

1. Fairfield Holland Road, LP (hereinafter, discharger) proposes to discharge fill to 0.22 acre of waters of the State as part of the development of residential Plot Plan No. 22338 (PP 22338), in the Sun City/Menifee Valley area of Riverside County.
2. PP 22338 is for construction of a 230-dwelling unit apartment complex consisting of eleven 3-story buildings and a dedicated easement for the later construction of an overpass for Holland Road over Antelope Road and the nearby State Highway 215. Half-street improvements are proposed for Hanover Lane on the project's east side and full-street improvements are proposed for Albion Lane on the north. PP 22338 is located on 15.03 acres northeast of the intersection of Antelope and Holland Roads within Section 2 of Township 6 South, Range 3 West, as shown on the U.S. Geological Service *Romoland, California* quadrangle (33.6720 degrees N/-117.1694 degrees W).
3. In a letter dated August 3, 2006, the U.S. Army Corps of Engineers (Corps) determined that the drainages on the property were not subject to their jurisdiction under CWA Section 404. The Board commonly regulates discharges of dredge or fill to waters of the State through the issuance of Clean Water Act (CWA) Section 401 Water Quality Standards Certifications (Certifications) where the discharge is also subject to regulation by the Corps. These Certifications are accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification. This occurs when the receiving water is both a water of the State as defined by the California Water Code and a water of the U.S. under CWA Section 404. In the absence of an applicable federal permit or license, the Board regulates the proposed discharge to waters of the State through the issuance of Waste Discharge Requirements, or a waiver thereof.
4. The affected water of the State consists of an isolated ephemeral drainage and an earthen channel. The overall site drains, partly via sheet flow, to Salt Creek and then to Canyon Lake. The drainage overlies the Menifee Groundwater Management Zone.

5. Based on the applicant's biological assessment and a site visit by Board staff on January 25, 2008, beneficial uses of the drainage that may be impacted by the proposed discharge of fill are:
  - a. Wildlife Habitat (WILD);
  - b. Warm Freshwater Habitat (WARM); and
  - c. Groundwater Recharge (GWR).
6. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on the beneficial uses of waters of the State.
7. This Order regulates the discharge of fill material to waters of the State that are not within the Corps' CWA Section 404 jurisdiction (non-federal). The discharger submitted a ROWD on April 5, 2007.
8. The discharger has committed to mitigate direct impacts to waters of the State by paying an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.508 acre of invasive plant species in the San Jacinto River watershed.
9. Pursuant to CEQA, the County of Riverside adopted a Negative Declaration (ND) for the proposed TM 34092 on January 30, 2008.
10. As a Responsible Agency under CEQA, the Board is required to consider the Lead Agency's environmental documents and make findings on the significant impacts within its jurisdiction to approve. (Public Resources Code, Section 21002.1(d); California Code of Regulations, Title 14, Section 15096(g), (h).) The Board has considered the County's ND and there are no un-mitigated significant impacts on water quality as a result of the proposed project.
11. The Board has considered anti-degradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.
12. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.
13. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

**IT IS HEREBY ORDERED** that the discharger, 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 SPECIFICATIONS:**

1. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.
2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.
3. The groundwater in the vicinity of the project shall not be degraded as a result of the project activities or placement of fill for the project.
4. The discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

**B. DISCHARGE PROHIBITIONS:**

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. Discharges of wastes or pollutants to surface waters, unless otherwise regulated by a separate National Pollutant Discharge Elimination System (NPDES) permit, are prohibited.

**C. PROVISIONS:**

1. The discharger shall compensate for permanent impacts to beneficial uses by paying an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.508 acre of invasive plant species in the San Jacinto River watershed. The fee payment shall include a minimum of six years of follow-on maintenance. Evidence of the payment shall be provided to the Executive Officer by April 29, 2008.
2. The discharge of fill to waters of the State is prohibited until the evidence of payment of the in-lieu fee is received by the Executive Officer.

3. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.
4. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.
5. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order, or a combination thereof.
6. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
7. The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.
8. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.
9. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, state, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
10. This Order does not convey any property rights of any sort, or any exclusive privilege.
11. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.
12. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Board.
13. This Order will serve as a Clean Water Act Section 401 Water Quality Standards Certification in the event that one is required by any federal agency, except as noted below. Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- 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 Water Code and Article 6 (commencing with Section 3867) of this Chapter.
  - 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 Subsection §3855(b) of this Chapter 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 this Chapter and owed by the applicant.
14. The Board and other authorized representatives shall be allowed:
- a. Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
  - b. Access to copy any records that are kept under the requirements of this Order;
  - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
  - d. To photograph, sample and monitor for the purpose of assuring compliance with this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on February 29, 2008.

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Gerard J. Thibeault  
Executive Officer