

California Regional Water Quality Control Board
Santa Ana Region
3737 Main Street, Suite 500
Riverside, CA 92501-3348

July 10, 2009

STAFF REPORT

ITEM: *10

SUBJECT: Order No. R8-2009-0048, Amending Order No. R8-2008-0016, ARI Chaney, LLC, Fairway Business Park, City of Lake Elsinore

DISCUSSION:

On April 18, 2008, the Regional Board adopted Order No. R8-2008-0016, waste discharge requirements authorizing ARI Chaney, LLC to discharge fill to waters of the State as part of the construction of an industrial park in the City of Lake Elsinore. The waters of the State are not subject to the jurisdiction of the U.S. Army Corps of Engineers ("Corps") under Clean Water Act Section 404. As a result, the discharge could not be authorized with a Clean Water Act Section 401 Water Quality Standards Certification ("Certification") and concurrent authorization under State Water Resources Control Board ("State Board") Water Quality Order No. 2003-0017-DWQ ("Order No. 2003-0017-DWQ"), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification," which requires compliance with all conditions of the applicable Certification.

In addition, the proposed discharge exceeds the numeric impact thresholds of 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"). Therefore, individual waste discharge requirements were necessary to authorize the discharge.

The discharge would occur to four seasonal pools that total 0.35 acre and to a 0.61-acre wetland. The wetland was formed as the result of nuisance flow discharges from a roadway and fire-fighting equipment test discharges by the local fire department. The seasonal pools were found to support versatile fairy shrimp (*Branchinecta lindahli*), a common prey species that is not endangered or threatened under Federal or State endangered species regulations.

The discharger committed to mitigate the direct impacts of the proposed fill by paying an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.5 acre of invasive plant species in the Santa Ana River Watershed and by creating 0.35 acre of seasonal pools capable of supporting versatile fairy shrimp. Order No. R8-2008-0016 includes provisions that the in-lieu fee be paid by June 18, 2008 and that the seasonal pool(s) be constructed within 180-days of the Executive Officer's approval of the site(s).

On May 7, 2008, shortly after the Regional Board adopted Order No. R8-2008-0016, Regional Board staff received a request by ICF Jones and Stokes, on behalf of the discharger, for an amendment to Regional Board Order No. R8-2008-0016. The discharger requested that Order No. R8-2008-0016 be amended to change the compliance deadline for submittal of the in-lieu fee from a firm date to a "soft" deadline of "prior to grading of the site." The discharger's representative indicated that the start of construction would be substantially delayed and more uncertain due to economic conditions in the credit and real estate markets. The discharger declined an offer by Regional Board staff to recommend that the Regional Board rescind Order No. R8-2008-0016 and has yet to start construction on the project.

Board staff believes that the discharger's request to change the deadline is reasonable. However, the use of a soft deadline requires the use of more staff resources to monitor compliance. Consequently Regional Board staff has proposed, and the discharger has accepted, a hybrid approach that incorporates both "soft" and firm deadlines.

The following shows the proposed changes to the Order. Additions are bold and underlined. Deletions are shown in strike-out.

Modify Provision 1 of Order No. R8-2008-0016 as follows:

1. The discharger shall compensate for permanent impacts to beneficial uses of the ponded area by paying an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.5 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 ~~June 18, 2008~~ **July 10, 2011 or at least 30 days prior to the start of grading activities at the project site, whichever occurs first.**

RECOMMENDATION:

Adopt Order No. R8-2009-0048 as presented.

COMMENTS SOLICITED:

Comments were solicited from the following persons and agencies:

U.S. Fish and Wildlife Service – Sally Brown
State Water Resources Control Board, Office of the Chief Counsel – David Rice
State Water Resources Control Board, Division of Water Quality – Bill Orme
State Department of Fish and Game – Jeff Brandt

California Regional Water Quality Control Board
Santa Ana Region

ORDER NO. R8-2009-0048

Amending Order No. R8-2008-0016
Waste Discharge Requirements

for

ARI Chaney, LLC
Fairway Business Park
City of Lake Elsinore

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

1. On April 18, 2008, the Board adopted Order No. R8-2008-0016, authorizing ARI Chaney, LLC to discharge fill to waters of the State as part of construction of an industrial park in the City of Lake Elsinore. This Order authorizes the discharge of fill to four seasonal pools that total 0.35 acre and to a 0.61-acre wetland. The wetland was formed as the result of nuisance flow discharges from a roadway and fire-fighting equipment test discharges by the local fire department. The seasonal pools were found to support versatile fairy shrimp (*Branchinecta lindahli*), a common prey species that is not endangered or threatened under Federal or State endangered species regulations.
2. Order No. R8-2008-0016 requires that the discharger mitigate the direct impacts of the proposed fill by paying an in-lieu fee to the Santa Ana Watershed Association for the eradication of 0.5 acre of invasive plant species in the Santa Ana River Watershed and by creating 0.35 acre of seasonal pools capable of supporting versatile fairy shrimp. Order No. R8-2008-0016 includes provisions that the in-lieu fee be paid by June 18, 2008 and that the seasonal pool(s) be constructed within 180-days of the Executive Officer's approval of the site(s).
3. On May 7, 2008, ICF Jones and Stokes, on behalf of the discharger, requested that the deadline for the submittal of evidence of payment for the in-lieu fee be amended to require that evidence of compliance would be submitted to the Executive Officer prior to the start of grading on the site.
4. The discharger requested the amendment as the result of significant delays in construction due to economic conditions in the credit and real estate markets.

5. The discharger has declined to have Order No. R8-2008-0016 rescinded and to date has not begun construction.
6. Pursuant to the California Environmental Quality Act (CEQA), the City of Lake Elsinore adopted a Negative Declaration (ND) for Fairway Business Park on November 27, 2007. The Board has considered the City's ND and there are no un-mitigated significant impacts on water quality as a result of the proposed project.
7. The Board has notified the discharger and other interested agencies and persons of its intent to amend waste discharge requirements for the discharge and has provided them with an opportunity to submit their written views and recommendations.
8. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.
9. Except as indicated below, all other conditions and requirements of Order No. R8-2008-0016 remain in effect, as adopted on April 18, 2008.

IT IS HEREBY ORDERED that Provision No. 1 of Order No. R8-2008-0016 is deleted and replaced with the following:

1. The discharger shall compensate for permanent impacts to beneficial uses of the ponded area by paying an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.5 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 July 10, 2011 or at least 30 days prior to the start of grading activities at the project site, whichever occurs first.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the forgoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on July 10, 2009.

Gerard J. Thibeault
Executive Officer