

State of California  
California Regional Water Quality Control Board  
Santa Ana Region

June 10, 2016

STAFF REPORT

**ITEM:** \*9

**SUBJECT:** ARI Chaney LLC, Fairway Business Park, City of Lake Elsinore, Riverside County, Order No. R8-2016-0047

**DISCUSSION:**

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."

Because of Supreme Court decisions that have limited the authority of the Corps to regulate discharges of dredge and fill to waters of the U.S., certain proposed discharges of dredge or fill to surface waters of the State are no longer subject to the Corps' jurisdiction (non-federal). 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 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-D004-

0WQ). Numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On October 5, 2015, Regional Board staff received an application for Certification from ARI Chaney, LLC. In the application, ARI Chaney, LLC proposes to discharge fill to a total of 0.49 acre waters of the State, which consists of 0.04 acre waters of the U.S. and 0.40 acre non-federal waters of the State as part of the construction of a storm drain outfall to the Lake Elsinore Outlet Channel, and temporary impacts to 0.05 acre waters of the U.S. The waters of the State are located on an 18-acre property bounded by Chaney Street, the Lake Elsinore Outlet Channel, the 3rd Street Channel, and an existing business park bisected by Birch Street (33 deg. 40.96 min. N/-117 deg. 20.27 min. W). Due to the proposed discharge of fill to non-federal waters of the State, Regional Board staff has accepted the application for Certification as a Report of Waste Discharge pursuant to CWC Section 13260. This Order will also serve as a 401 Water Quality Certification for the discharge of fill to the waters of the United States as part of the project.

The discharges will occur as part of the development of Fairway Business Park. The project consists of the construction of 20 buildings totaling 279,445 square feet of light industrial use, to be constructed in three phases. The project includes the construction of two storm drain inlets in Birch Street connecting to a proposed outfall in Temescal Creek, Reach 6, which will result in 0.04 acre of permanent fill and 0.05 acre of temporary fill to waters of the U.S. This Order will serve as the Clean Water Act Section 401 Certification for the discharges of fill to waters of the U.S. proposed as part of the outfall construction. Temescal Creek, Reach 6 has designated beneficial uses (existing or potential) that include: groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), and wildlife habitat (WILD).

The non-federal waters proposed for fill on the property consist of a seasonally ponded depression that does not have a surface water connection to Temescal Creek Reach 6. The seasonally ponded depression is 0.40 acre in size and will be completely filled in by project activities. Board staff has identified groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), and wildlife habitat (WILD) as existing or potential beneficial uses for the ponded area.

Board staff has determined that the discharge of fill to the ponded area and Temescal Creek, Reach 6 has the potential to impact the waters' beneficial uses. Board staff determined that the Board cannot authorize the discharge in accordance with Order No. 2004-0004-DWQ because the discharge of fill would result in a total of 0.44 acre of permanent impacts, which exceeds the Order's 0.2 acre impact threshold. Consequently, the discharge must be considered for separate authorization under individual waste discharge requirements. The proposed Order is intended to satisfy this requirement.

ARI Chaney, LLC proposes to mitigate impacts to beneficial uses as the result of the proposed discharges of fill to the ponded area and Temescal Creek, Reach 6 through the purchase of 0.66 acre of enhancement mitigation credit at a Regional Board approved mitigation bank or in-lieu-fee program.

Pursuant to CEQA, the City of Lake Elsinore prepared a Mitigated Negative Declaration (MND) and adopted it on November 27, 2007. The City's ND has been considered in the preparation of Order No. R8-2016-0047.

**RECOMMENDATION:**

Adopt Order No. R8-2016-0047, as presented.

**Comments were solicited from the following:**

Rod Oshita, ARI Chaney, LLC (roshita@fairwaypartners.net)

Shelah Riggs, Dudek (sriggs@dudek.com)

James Mace, U. S. Army Corps of Engineers, Los Angeles Office  
(James.E.Mace@usace.army.mil)

Jeff Brandt, CA Department of Fish and Wildlife (jeff.brandt@wildlife.ca.gov)

Jason A. Brush, U.S. EPA (Brush.Jason@epa.gov)

Karin Cleary-Rose, U.S. Fish and Wildlife Service (karin\_cleary-rose@fws.gov)

Bill Orme, State Water Resources Control Board, 401 Water Quality Certification and Wetlands  
Program (Bill.Orme@waterboards.ca.gov)

David Rice, State Water Resources Control Board, Office of the Chief Counsel  
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State of California  
California Regional Water Quality Control Board  
Santa Ana Region

Order No. R8-2016-0047

Waste Discharge Requirements  
for  
ARI Chaney LLC  
Fairway Business Park  
City of Lake Elsinore, Riverside County

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

1. ARI Chaney LLC (hereinafter, discharger) proposes to construct the Fairway Business Park, an industrial development project, in the City of Lake Elsinore. The construction will result in the discharge of fill to 0.49 acre of waters of the State. The discharge will affect a total of 0.49 acre of waters. Permanent impacts will occur to 0.04 acre of waters of the State that are also waters of the United States (U.S.), and 0.40 acre of waters that are waters of the State. Temporary impacts will occur to 0.05 acre of waters of the State and United States.
2. The Fairway Business Park project entails the construction of 20 buildings, totaling 279,445 square feet of light industrial use. The project includes the construction of two (2) storm drain inlets along Birch Street that will discharge to a proposed outfall to be located in the Lake Elsinore Outlet Channel. Fairway Business Park will be located at the end of Birch Street and bounded by the 3rd Street Channel, the Lake Elsinore Outlet Channel, and Chaney Street within Section 31 and an unsectioned portion of Townships 5 and 6 South, Range 4 West, as shown on the U.S. Geological Service Lake Elsinore, California quadrangle (33°40.96' N/-117°20.27' W).
3. Discharges of dredge and fill to waters of the U.S. require coverage under a permit issued by the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act. The issuance of a federal permit necessitates consideration of the issuance of a Clean Water Act (CWA) Section 401 Water Quality Standards Certification (Certification) by the Regional Board.
4. The waters of the U. S. onsite consist of Temescal Creek, Reach 6. Temescal Creek, Reach 6 has designated beneficial uses (existing or potential) that include:
  - a) Groundwater Recharge (GWR);
  - b) Water Contact Recreation (REC1);
  - c) Non-Contact Water Recreation (REC2);
  - d) Warm Freshwater Habitat (WARM); and,
  - e) Wildlife Habitat (WILD).

5. The waters of the State onsite consist of a seasonally ponded depression without a surface water connection to Temescal Creek. Existing or potential beneficial uses of this seasonally ponded depression include:
  - a) Groundwater Recharge (GWR);
  - b) Water Contact Recreation (REC1);
  - c) Non-Contact Water Recreation (REC2);
  - d) Warm Freshwater Habitat (WARM); and,
  - e) Wildlife Habitat (WILD).
  
6. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on the beneficial uses of waters of the State. On October 5, 2015, the discharger submitted an application for water quality standards certification under Section 401 of the Clean Water Act. This application serves as a Report of Waste Discharge under the California Water Code. The application described discharges of fill to the waters of the State and waters of the United States. This Order regulates the discharge of fill material to waters of the State and United States.
  
7. This Order will serve as a Clean Water Act Section 401 Water Quality Standards Certification for federal permitting by the U.S. Army Corps of Engineers (USACE) under Nationwide Permit Number 7 (Outfall Structures and Maintenance) for the discharge of fill to waters of the United States.
  
8. The discharger will mitigate 0.44 acre permanent impacts at a 1.5 to 1 ratio through the purchase of 0.66 acre of enhancement mitigation credit at a Regional Board approved mitigation bank or in-lieu-fee program.
  
9. Pursuant to CEQA, the City of Lake Elsinore (City) approved a Mitigated Negative Declaration (MND) for Fairway Business Park on November 27, 2007. The City's MND was considered in the preparation of this Order.
  
10. As a Responsible Agency under CEQA, the Regional 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 City's MND identified potentially significant impacts, unless mitigated, to biological resources as the result of discharges of fill to waters, and to water quality as the result of pollutants contained in the storm water runoff from the project. To address these impacts, General Provision C.1. of this Order requires the discharger to offset the potential adverse beneficial use impacts of the project through the purchase of mitigation credits from a Regional Board Approved Mitigation Bank or In-Lieu-Fee Program at a 1.5 to 1 ratio for enhancement of waters of the State and United States in the Santa Ana River Watershed. Pollutants in storm water runoff from the project site will be removed through implementation of site design best management practices. The Regional Board finds that the potentially significant effects of the discharge of fill to waters of the State are reduced to a less-than-significant level as the result of implementation of the project in accordance with these provisions.

11. The Regional Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.
12. The Regional 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 Regional 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 the placement of native fill and inert materials, as defined in Section 20230, Division 2, Title 27 of the California Code of Regulations. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.
5. All first flush<sup>1</sup> and dry-weather runoff flows shall be treated by passing through and directed to a retention basin or appropriate BMPs in compliance with the Riverside County MS4 Permit.

**B. DISCHARGE PROHIBITIONS:**

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes into channels, surface waters, or any place where they would contact or be eventually transported to surface waters, including flood plains, is prohibited.

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<sup>1</sup> The volume of runoff produced from the 85th percentile 24-hour runoff event, based on historical records.

2. The discharge of 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 to surface waters of wastes or pollutants that are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, is prohibited.
5. During the grading and filling operation, there shall be no onsite fueling, lubrication, changing of oil or other equipment fluids and their filters, or any other maintenance or storage of construction equipment within, or next to, drainage areas or other surface runoff conveyances.

**C. PROVISIONS:**

1. The discharger shall purchase 0.66 acre of enhancement mitigation credit from a Regional Board Approved mitigation bank or in-lieu-fee program. The credit shall be used for restoration and enhancement of waters of the State and United States within the Santa Ana River Watershed.
2. Discharges of fill to waters of the State of California are prohibited until a copy of the receipt of the transfer of funds to a Regional Board approved mitigation bank or in-lieu-fee program for the purchase of 0.66 acres of restoration and enhancement credits has been provided to the Regional Board.
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 construction 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 (CWC) 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 Regional 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 Regional Board.
13. This Order will serve as a Clean Water Act Section 401 Water Quality Standards Certification for the impacts to waters of the United States that are authorized under Nationwide Permit Number 7 (Outfall Structures and Associated Intake Structures). This Order for Water Quality Certification will remain valid until the USACE 2012 Nationwide permit expires on March 18, 2017, or through an extended period beyond the expiration date that is authorized in writing by the USACE. 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 Regional 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, Kurt V. Berchtold, 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 June 10, 2016.

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Kurt V. Berchtold  
Executive Officer