California Regional Water Quality Control Board
Santa Ana Region

April 15, 2005

ITEM: 11.

SUBJECT: Order No. R8-2005-0055, Orange County Transportation Authority (OCTA), Lewis Channel Modification Associated with the State Route-22/West Orange County Connection (SR-22/WOCC) Project, Orange County

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2005-0055, 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).

OCTA proposes to modify approximately 13 miles of State Route 22 (SR-22) in Central Orange County. The project extends from Valley View Street in the cities of Westminster and Garden Grove east to Tustin Avenue in the City of Orange. The proposed project includes widening SR-22 through the construction of a new high occupancy vehicle lane in both directions and constructing auxiliary lanes at various locations in both directions along SR-22. The Lewis Storm Channel is a fully concrete-lined channel with vertical sides, aligned along the north side of the proposed widening for the SR-22/WOCC Project from Wintersburg Channel to The City Drive. The project will require conversion of approximately 5,707 linear feet of the existing 6,462 linear-foot channel to a reinforced box culvert in order to accommodate the widening of SR-22. Lewis Channel is not considered a water of the United States. However, Lewis Channel is a water of the State. OCTA is seeking authorization to discharge fill to Lewis Channel, a water of the State.

REGULATORY 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 (SWRCB) 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."

In the absence of the need to obtain a Certification, the SWRCB has asserted its 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 Water Resources Control 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.

PROJECT DESCRIPTION

The SR-22/WOCC Project as a whole involves discharges of dredge or fill to Wintersburg Channel, Santiago Creek, Lewis Channel, and the Santa Ana River. Since Wintersburg Channel, Santiago Creek, and the Santa Ana River are waters of the U.S. subject to federal Clean Water Act (CWA) Section 404 Permits administered by the Corps of Engineers, OCTA submitted the requisite application for CWA Section 401 Certification to the Regional Board on November 7, 2003. Discharges of dredge or fill to Wintersburg Channel, Santiago Creek, and the Santa Ana River were authorized with the issuance of a Certification by the Executive Officer on April 20, 2004 and coverage under Order No. 2003-0017-DWQ.

During the course of review for the Certification of the SR-22/WOCC Project, Regional Board staff noted that OCTA's agent had identified Lewis Channel as a non-federal water subject to fill. The manner and extent of the discharge was not discussed. Although Regional Board staff had informed OCTA's agent prior to the issuance of the Certification that the unspecified discharge of dredge or fill to Lewis Channel was subject to regulation under the Water Code, Board staff did not revisit the matter until OCTA requested an amendment to the April 20, 2004 Certification on December 21, 2004. Regional Board staff then brought the matter to the attention of OCTA directly. During a preliminary meeting with OCTA and their representatives on February 10, 2005, Regional Board staff was provided the opportunity to review the manner and extent of the proposed discharge. Regional Board staff determined that the proposed modification of Lewis Channel exceeds the thresholds of Order No. 2004-0004-DWQ, and that authorizing the modification would require that the Regional Board issue individual waste discharge requirements. Consequently, OCTA submitted a Report of Waste Discharge for the discharge of dredge or fill to Lewis Channel on February 18, 2005.

Staff review of materials provided at the February 10, 2005 meeting and the ROWD indicates that there is evidence of limited recreational and wildlife use of the Lewis Channel. Wildlife beneficial uses are associated with the use of nuisance flows in Lewis Channel by urban-tolerant wildlife. To address beneficial use impacts, OCTA will

provide 0.06 acres of off-site removal of the invasive species *Arundo* donax through payment of in-lieu fees into an approved mitigation bank.

The Federal Highway Administration, as the lead National Environmental Policy Act (NEPA) agency, and the California Department of Transportation, as the lead California Environmental Quality Act (CEQA) agency, adopted the Final Environmental Impact Statement/Environmental Impact Report (State Clearinghouse Number 98064001) for the project on March 12, 2003 and March 26, 2003, respectively. Subsequently, the CEQA Notice of Determination was adopted on April 17, 2003, and the NEPA Record of Decision on August 19, 2003. The approved Final EIS/EIR addressed improvements to Lewis Storm Channel described herein.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2005-0055.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District
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. R8-2005-0055

Waste Discharge Requirements

for

Orange County Transportation Authority (OCTA)
Lewis Channel Modifications Associated with the State Route-22/West Orange County Connection (SR-22/WOCC) Project, Orange County

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

1. OCTA (hereinafter, discharger) proposes to improve approximately 13 miles of State Route 22 (SR-22) in Central Orange County that extends from Valley View Street in the cities of Westminster and Garden Grove east to Tustin Avenue in the City of Orange. The proposed project involves widening SR-22 through the construction of a new high occupancy vehicle lane in both directions and constructing auxiliary lanes at various locations in both directions along SR-22 within the project limits.

2. The SR-22/WOCC Project involves the modification of 5,707 linear feet of Lewis Channel along the north side of SR-22 between Harbor Boulevard and The City Drive. The affected portion of Lewis Channel is a fully concrete-lined channel with vertical side-walls. The proposed modification will fully enclose Lewis Channel within an underground, reinforced box culvert to accommodate the widening of SR-22. The proposed modification will result in the discharge of dredge or fill to a water of the State, however, Lewis Channel is not considered a water of the U.S. subject to the U.S. Army Corps of Engineers Clean Water Act Section 404 permits and no Clean Water Act Section 401 Certification need be issued.

3. The SR-22/WOCC Project as a whole involves discharges of dredge or fill to Wintersburg Channel, Santiago Creek, and the Santa Ana River as the result of the widening of SR-22 at respective crossings. All of these discharges are subject to the U.S. Army Corps of Engineers Clean Water Act Section 404 permits and have been authorized by the Regional Board in a Clean Water Act Section 401 Water Quality Standards Certification (Certification) issued by the Executive Officer on April 20, 2004, and as amended on March 1, 2005. The April 20, 2004 Certification does not authorize discharges of dredge or fill to the Lewis Channel.

4. The discharger has proposed to mitigate for impacts to the Lewis Channel to compensate for the loss of 0.13 acres of waters of the State through payment of

in-lieu fees into a mitigation bank that will equate to 0.06 acres of removal of *Arundo donax*. Regional Board staff will coordinate with OCTA to identify an appropriate location for the proposed mitigation as near to the area of impact as feasible. The proposed Order requires the discharger to proceed with the proposed mitigation.

5. The Federal Highway Administration, as the lead National Environmental Policy Act (NEPA) agency, and the California Department of Transportation, as the lead California Environmental Quality Act (CEQA) agency, adopted the Final Environmental Impact Statement/Environmental Impact Report (State Clearinghouse Number 98064001) for the SR-22/WOCC Project on March 12, 2003 and March 26, 2003, respectively. Subsequently, the CEQA Notice of Determination was adopted on April 17, 2003, and the NEPA Record of Decision on August 19, 2003.

6. By virtue of being tributary to Wintersburg Channel discharging to coastal waters, the Water Quality Control Plan for Santa Ana River Basin (1995) attributes the following beneficial uses for the concrete-lined Lewis Channel:

   a. Wildlife habitat (WILD)
   b. Water-Contact Recreation (REC-1)
   c. Non-Contact Water Recreation (REC-2)
   d. Commercial and Sportfishing (COMM)
   e. Marine Habitat (MAR)

7. Construction and post-construction storm water discharges from the SR-22/WOCC Project have the potential to adversely impact the beneficial uses of coastal waters by affecting the quality of discharges from Lewis Channel and Wintersburg Channel. Those impacts are addressed by waste discharge requirements issued to the Department of Transportation by the State Water Resources Control Board in Order No. 99-06 DWQ.

8. The discharger submitted an application for WDRs on February 18, 2005. This Order regulates the discharge of fill material to waters of the State to address project-related impacts to beneficial uses.

9. The Regional Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.

10. 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.

11. The Board, through publication of a public notice, solicited 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 associated with the discharge requested herein for the Lewis Storm Channel shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27.

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 to surface waters of wastes or pollutants that are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, is prohibited.

C. PROVISIONS:

1. The discharger shall mitigate for impacts to Lewis Storm Channel, a non-federal waters of the State, through payment of in-lieu fees into a designated mitigation

bank as near to the area of impact as feasible and within the Santa Ana Region, equating to 0.06 acre of removal of *Arundo donax*.

2. 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.

3. 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.

4. 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 Clean Water Act 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. This Order does not convey any property rights of any sort, or any exclusive privilege.

10. 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.

11. 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.

12. 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, 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 April 15, 2005.

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Gerard J. Thibeault
Executive Officer