California Regional Water Quality Control Board
Santa Ana Region

May 27, 2005

ITEM: 10.

SUBJECT: DRAFT Order No. R8-2005-0080, California Department of Transportation, District 8 (Caltrans), Chino Creek Bridge Replacement Project on State Route 83 (SR-83), San Bernardino County

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2005-0080, authorizing the discharge of fill to waters of the State that does not require a U.S. Army Corps of Engineers (Corps) Clean Water Act Section 404 Permit (404 Permit). Caltrans proposes to replace Chino Creek Bridge (Bridge No. 54-426), servicing SR-83 (a.k.a. Euclid Avenue), and widen Chino Creek in the immediate vicinity. The Chino Creek Bridge is located approximately 0.9 miles north of the SR-71/SR-83 junction, in San Bernardino County and within the Prado Basin. Historically, the Chino Creek Bridge has experienced scouring problems and, as a result, has been classified as Scour Critical according to Caltrans standards. Failure to correct the scouring could result in serious foundation problems and endanger the slope paving of the existing bridge. Although Chino Creek is considered Waters of the U.S., the Corps has asserted its right to exercise discretion in issuing 404 Permits on lands owned by the Corps. The Corps has declined to issue a 404 Permit for the Chino Creek Bridge replacement. Therefore, the Regional Board cannot authorize the proposed discharges of dredge and fill through a Certification based on a 404 Permit.

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. Order No. 2004-0004-DWQ cannot be applied because the Corps has not deemed Chino Creek outside of Federal Jurisdiction and the proposed discharges exceed the thresholds of the Order. Thus, consideration of proposed Order No. R8-2005-0080 is necessary.

PROJECT DESCRIPTION

The Chino Creek Bridge project will replace the existing bridge with a longer bridge and widen the channel to reduce future scouring. The existing bridge is 31.1 meters (102 feet) long and 12.4 meters (40.7 feet) wide. The proposed bridge would be 44.0 meters (144 feet) long and 14.25 meters (46.8 feet) wide, and would be elevated by 0.28 meters (0.92 feet). The new bridge would be skewed an additional 12 degrees to parallel the existing upstream channel and minimize scouring. No new traffic lanes would be added, however, a 3.0-meter (10-foot) shoulder would be constructed on both sides of the bridge. The proposed project involves the discharge of dredge and fill, which includes the new pier and rock slope protection for the new bridge.

The widening of the stream channel would result in a 0.10-acre net gain of open water (waters of the U.S.). In addition, the existing bridge piers, covering 184.5m^2 (0.046 acres), would be removed and replaced with smaller piers, covering 118.7m^2 (0.03 acres). This would result in an additional net gain of 65.8m^2 (0.016 acres) of open water. Permanent impacts to riparian waters of the U.S. equal 0.035 acres and temporary impacts to riparian/wetland vegetation equal 0.23 acres. Approximately 48 linear feet of the stream channel would be impacted due to the placement of rock slope protection at the bridge abutments.

The Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) assigns the following beneficial uses to Chino Creek Reach 1: Water Contact Recreation (REC-1);Non-contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE). To address beneficial use impacts, Caltrans will fund the restoration of 1.0 acre of off-site riparian habitat within Prado Basin. In addition, all temporarily impacted areas on site will be re-vegetated with native wetland and riparian plant species and all non-native, invasive castor bean plants removed. A five-foot buffer containing native upland vegetation will be planted along the roadside to aid in treating road run-off. Caltrans has proposed that the onsite restoration would be maintained and monitored for five years, or until the resource agencies deem it successful. The Riverside-Corona Resource Conservation District would perform the off-site restoration work and provide annual reports to the resource agencies.

The affected reach of Chino creek, Reach 1, is a natural perennial stream surrounded by a willow riparian forest dominated by black willow (*Salix gooddingii)* and red willow (*Salix laevigata*). The proposed project is surrounded by critical habitat designated by the United States Fish and Wildlife Service (FWS) for the federally and state listed endangered least Bell's vireo. Consequently, Caltrans is required to seek an incidental take permit from FWS pursuant to Section 7 of the Endangered Species Act. An incidental take permit was issued to Caltrans on January 16, 2005, authorizing take[1] for the species. A portion of the proposed mitigation will also satisfy FWS requirements.

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 Mitigated Negative Declaration/Finding of No Significant Impact (ND/FONSI) for the project on March 29, 2005 and March 21, 2005, respectively (State Clearinghouse Number 2005011016). Subsequently, the CEQA Notice of Determination was adopted on April 4, 2005. The approved Final ND/FONSI addressed the impacts associated with the Chino Creek Bridge Replacement Project.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2005-0080.

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. Fish and Wildlife Service
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office
State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit

[1] "Take" is defined in the Endangered Species Act (ESA) as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any threatened or endangered species. Harm may include significant habitat modification where it actually kills or injures a listed species through impairment of essential behavior (e.g., nesting or reproduction).

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2005-0080

Waste Discharge Requirements

for

California Department of Transportation, District 8
Chino Creek Bridge Replacement Project on State Route 83 (SR-83), San Bernardino County

TENTATIVE

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

1. The California Department of Transportation, District 8 ("Caltrans", also, "discharger") proposes to replace Chino Creek Bridge (Bridge No. 54-426) and widen Chino Creek in the vicinity of the Bridge to avoid future scouring. The Chino Creek Bridge is located on SR-83 (-Euclid Avenue) at Reach 1 of Chino Creek within the Prado Basin, approximately 0.9 miles north of the SR-71/SR-83 junction, in San Bernardino County. U.S. Geological Survey locators are Prado Dam 7.5' Quadrangle, Section 6, Township 3 South, Range 7 West. The proposed project involves removing the existing bridge and replacing it with one that is longer by 6.5 meters on each side, and wider by 1.8 meters.

2. The Chino Creek Bridge Project involves the modification of 48 linear feet of natural perennial streambed through the widening of Chino Creek and placement of rock slope protection at the bridge abutments. The widening of the Creek would result in a 0.10-acre net gain of open water (waters of the U.S.). In addition, the existing bridge piers would be removed and replaced with smaller piers, resulting in an additional net gain of 65.8m^2 (0.016 acres) of ~~Waters~~ waters of the U.S. Permanent impacts to riparian waters of the U.S. equal 0.035 acres and temporary impacts to riparian/wetland waters of the U.S. equal 0.23 acres. Although Chino Creek is considered "Waters of the United States," the Army Corps of Engineers (Corps) has declined to issue a Nationwide Clean Water Act (CWA) Section 404 Permit to Caltrans for the project because it is located on Corps owned land. Therefore, a CWA Section 401water quality certification will not be issued for this project on the basis of a 404 Permit.

3. The discharger has proposed to mitigate for impacts to Chino Creek to compensate for the loss of 0.265 acres of riparian waters of the U.S. Caltrans will fund the off site restoration of 1.0 acre of riparian habitat within Prado Basin. The Riverside-Corona Resource Conservation District will perform the work and provide annual reports to the resource agencies. In addition, all temporarily

impacted areas on site would be re-vegetated with native wetland and riparian plant species appropriate for the site and all invasive castor bean plants in the project area will be removed. A five-foot buffer containing native upland vegetation would be planted along the roadside to aid in treating road storm water run-off. Caltrans has proposed that the onsite restoration be maintained and monitored for five years or until the resource agencies deem it successful. This Order requires the discharger to proceed with the proposed mitigation as amended below.

4. 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 Mitigated Negative Declaration (MND) and Finding of No Significant Impact (FONSI) for the project on March 29, 2005 and March 21, 2005, respectively. Subsequently, the CEQA Notice of Determination was adopted on April 4, 2005. The approved Final MND/FONSI addressed the impacts associated with the Chino Creek Bridge Replacement Project.

5. The Water Quality Control Plan for Santa Ana River Basin (1995) attributes the following beneficial uses to Reach 1 of Chino Creek:

   a. Wildlife habitat (WILD)
   b. Water-Contact Recreation (REC-1)
   c. Non-Contact Water Recreation (REC-2)
   d. Warm Freshwater Habitat (WARM)
   e. Rare, Threatened or Endangered Species (RARE)

6. Construction and post-construction storm water discharges from the Chino Creek Project have the potential to adversely impact the beneficial uses of waters by affecting the quality of discharges from SR-83. 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.

7. On March 24, 2005, the discharger submitted an application for waste discharge requirements for the proposed discharges of dredge and fill. This Order regulates the discharge of dredge and fill material to waters of the State to address project-related impacts to beneficial uses.

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

9. 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.

10. 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 Chino Creek Bridge replacement 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 Chino Creek, a federal water of the U.S., through funding the off site restoration of 1.0 acre of riparian habitat within

Prado Basin through the Riverside-Corona Resource Conservation District. The discharger shall provide proof of the funding within 60 days of the commencement of construction and document the implementation of the restoration effort for a period of 5 years or until determined to be successful by a qualified habitat restoration professional. The discharger shall re-vegetated the affected onsite waters of the U.S. with appropriate native wetland and riparian plant species and remove all invasive castor bean plants within the project area. Follow-on maintenance of the re-vegetated area shall occur for a period of 5 years or until the effort has been determined to be successful by a qualified restoration professional.

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 May 27, 2005.

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Gerard J. Thibeault
Executive Officer