California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2005-0048

Waste Discharge Requirements

for

SunCal Companies
McSweeny Farms Residential Development, City of Hemet

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

1. SunCal Companies (hereinafter, discharger) proposes to develop the McSweeny Farms Specific Plan, a residential development project in the City of Hemet that includes up to 1,640 dwelling units on approximately 673 acres. The site is located within Sections 26, 27, 34, and 35, Township 5 South, Range 1 West, shown on the U.S. Geological Service *Hemet, California* quadrangle.

2. Within the Mc Sweeney Farms residential development are ephemeral drainages consisting of 4.54 acres (22,785 linear feet) of waters of the U.S. and 0.41 acres (3,535 linear feet) of isolated waters of the State that are considered outside of federal jurisdiction (non-federal). Permanent impacts to Corps jurisdictional waters total 0.31 acre (10,090 linear feet), temporary impacts to Corps jurisdictional waters total 0.64 acre (6,000 linear feet), and total impacts to non-federal waters of the State total 0.17 acre (3,205 linear feet).

3. On January 9, 2001 the United States Supreme Court issued a decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) 121 S.Ct. 675 (*SWANCC*) that held that the language of the Clean Water Act (CWA) cannot be interpreted as conferring authority for the federal government to regulate "isolated, intrastate, and non-navigable waters" merely because migratory birds may frequent them. The Court emphasized the states' responsibility for regulating such waters. Consequently, those isolated ephemeral drainages within the Mc Sweeny Farms residential development are waters of the State but are considered outside the jurisdiction of the U.S. Army Corps of Engineers.

4. Impacts to waters of the U.S., found within the Mc Sweeny Farms residential development 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 February 10, 2005. This Certification requires

compliance with waste discharge requirements specified in 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."

5. The isolated waters consist of a spring along Gibbel Road at the northeast corner of the project, one man-made pool in the north-central portion of the project, three ephemeral drainages, and one riparian ephemeral drainage. The discharger proposes to completely fill the three ephemeral drainages and partially fill the riparian drainage through residential development and the extension and/or replacement of an existing culvert. The fill will affect 600 linear feet of the riparian ephemeral drainage. The discharger is not proposing to fill the spring or the man-made pool.

6. The discharger has committed to mitigate direct impacts to waters of the U.S by purchasing 1.0 acres of mitigation credit to be applied towards the creation of southern willow scrub habitat near Lee Lake within Temescal Wash. The work will be carried out under agreements with the Riverside-Corona Resource Conservation District. The purchase of 1.0 acres of habitat has been required as a condition in the February 10, 2005 Certification of the McSweeny Farms residential development. The proposed Order authorizes the proposed discharges of fill to non-federal waters of the State and requires certain measures to preserve and restore the avoided non-federal waters of the State in perpetuity.

7. In compliance with the California Environmental Quality Act, an Environmental Impact Report was prepared for McSweeny Farms Specific Plan and certified by the City of Hemet on November 10, 2003. The waste discharge requirements proposed herein address the fill of 3,205 linear feet of isolated ephemeral drainages on site.

8. The Water Quality Control Plan for Santa Ana River Basin (1995) does not designate beneficial uses for any of the isolated surface waters on the project site. Based on Regional Board staff assessment of the site and the applicant's biological assessment, beneficial uses that are existing or attainable for the spring and man-made pool include:

   a. Water Contact Recreation (REC-1)
   b. Non-Contact Water Recreation (REC-2)
   c. Warm Freshwater Habitat (WARM)
   d. Wildlife habitat (WILD)
   e. Spawning, reproduction, and development (SPWN)
   f. Groundwater recharge (GWR)

   Beneficial uses that are existing or attainable for the isolated riparian drainage include:

   a. Water Contact Recreation (REC-1)

b. Non-contact Water Recreation (REC-2)
c. Wildlife habitat (WILD)
d. Groundwater recharge (GWR)

9. The isolated non-riparian drainages do not contain flows in sufficient quantities or duration to support any beneficial uses. The proposed discharge of fill does have the potential to affect downstream receiving waters, however, the activity is sufficiently regulated under the Statewide General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 99-08-DWQ). Therefore, no additional waste discharge requirements are necessary for the discharge of fill to the isolated non-riparian drainages.

10. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on beneficial uses of waters of the State.

11. This Order regulates the discharge of fill material to waters of the State that are not considered under Corps CWA Section 404 jurisdiction (non-federal). The discharger submitted an application for Certification on October 18, 2004 that described discharges of fill to non-federal waters of the State. The application has been accepted as a Report of Waste Discharge for discharges of fill to non-federal waters of the State.

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

13. 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.

14. 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 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 place conservation easements, or other appropriate legal instruments, on the avoided spring, pool, and isolated riparian ephemeral drainage for the purpose of preserving their beneficial uses in perpetuity. By May 4, 2005, the discharger shall submit a plan to the Executive Officer providing for the preservation of these waters and shall execute the plan upon Executive Officer approval and prior to any grading activities. Copies of executed legal instruments shall be provided to the Executive Officer within 30-days of the commencement of grading.

2. The discharger shall incorporate landscape design elements into potential access locations to the avoided spring and pool, such as educational signage, fencing, obstructive vegetation, or combination thereof, for the purpose of discouraging unauthorized entry by visitors or domestic animals and consequent degradation of the waters.

3. The discharger shall restore the avoided portion of the non-federal, riparian, ephemeral drainage. Restoration efforts shall include remediation of compacted soils due to the existing informal trail/track system and shall avoid impacting native woody vegetation.

4. The discharger shall not modify the existing drainage areas of the spring and pool, except for grading associated with the development of housing pads and related roadways.

5. 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, including trash and debris, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

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

13. 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.

14. 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.

15. 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 March 4, 2005.

Gerard J. Thibeault
Executive Officer