California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2005-0051

Waste Discharge Requirements

for

Wasson Canyon Investments, L.P.
Tract 31792, City of Lake Elsinore

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

1. Wasson Canyon Investments, L.P. (hereinafter, discharger) proposes to develop Tract 31792 in the City of Lake Elsinore by building approximately 191 dwelling units on 61.4 acres (59.4 acres on-site and 2.0 acres off-site) located in Sections 29 and 32, Township 5 South, Range 4 West, shown on the U.S. Geological Service *Lake Elsinore, California* quadrangle.

2. Within Tract 31792 are ephemeral drainages consisting of 0.08 acre (1,719 linear feet) of waters of the U.S. and a total of 0.39 acres of isolated seasonal ponds that are considered outside of federal jurisdiction (non-federal waters).

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, six seasonal ponds on Tract 31792 are waters of the State but are considered by the U.S. Army Corps of Engineers to be outside federal jurisdiction.

4. Impacts to waters of the U.S. found on Tract 31792 are subject to the U.S. Army Corps of Engineers Clean Water Act Section 404 permit andare expected to be authorized by the Regional Board in a Clean Water Act Section 401 Water Quality Standards Certification (Certification) issued by the Executive Officer. The Certification will require 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 discharger has committed to mitigate direct impacts to waters of the U.S through purchase into an *Arundo donax* removal mitigation fund. The discharger has committed to mitigate direct impacts to non-federal waters of the State by creating 0.39 acre of seasonal ponds off-site within the City of Lake Elsinore, Tentative Tract 25475, located east of Interstate 15 Freeway, north of Railroad Canyon Reservoir, and south of Highway 74. Tract 25475 can be found on the U.S. Geological Survey (USGS) 7.5-minute Lake Elsinore, California Quadrangle, in Section 33, T. 5 S., R. 4 W. and Section 28, T. 5 S., R. 4 W. The site is located east of the proposed Tract 31792 development and is within a conservation area identified by the Western Riverside County Multi-Species Habitat Conservation Plan (MSHCP).

6. In compliance with the California Environmental Quality Act, a Mitigated Negative Declaration was prepared for Tract 31792 and certified by the City of Lake Elsinore on September 27, 2004. The waste discharge requirements proposed herein address the fill of six seasonal ponds, consisting of a total of 0.39 acres, on Tract 31792. The proposed Order requires the discharger to proceed with the proposed mitigation.

7. The Water Quality Control Plan for Santa Ana River Basin (1995) does not specifically designate beneficial uses for any of the isolated surface waters on the project site. Based on Regional Board staff assessment of the site, the requirements of State Board Resolution No. 88-63, and the applicant's biological assessments, beneficial uses that are existing or attainable for the pools 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)

8. This Order regulates the discharge of fill material to waters of the State. The discharger submitted an application for CWA section 401 Water Quality Standards Certification on December 9, 2004 that describes the proposed fill to non-federal waters of the State. The application has been accepted as a Report of Waste Discharge.

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

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

11. 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.

12. 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, except as authorized by this Order, 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. By June 4, 2005 and prior to grading activities, the discharger shall submit an mitigation and monitoring plan acceptable to the Executive Officer, for the purpose of creating a minimum of 0.39 acres of seasonal pools at Tentative Tract 25475 in the City of Lake Elsinore, that replace the affected beneficial uses of the pools on Tract 31792. The discharger shall fully implement the plan upon approval by the Executive Officer.

2. The discharger shall place conservation easements, or other appropriate legal instruments, upon the created seasonal pools at Tract 25475, for the purpose of preserving their beneficial uses in perpetuity. The discharger shall provide a plan for preserving the created seasonal pools to the Executive Officer by May 4, 2005 and shall execute the plan prior to commencing grading activities at Tract 25475.

3. The discharger shall maintain a copy of this Order at Tract 31792 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 site any waste or fill material found to contain substances that may have a deleterious effect on water quality, such as metals, petroleum products, or pesticides, 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 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. 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