California Regional Water Quality Control Board
Santa Ana Region

November 30, 2007

ITEM: 8

SUBJECT: Order No. R8-2007-0084, Inland Empire Utilities Agency, RP-4 Pressure Zones 1158 & 1270 Recycled Water Project, Rancho Cucamonga, San Bernardino County

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2007-0084, 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).

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 conjunction 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." As a consequence, Certifications have been used to regulate discharges of dredge and fill material to waters of the State.

Due to recent decisions by the Supreme Court that increasingly have limited the authority of the Corps to regulate discharges of dredge and fill to waters of the U.S., some projects discharge dredge or fill to waters of the State that are 'non-federal'

waters. 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. 2004-0004-DWQ). However, numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On October 26, 2007, Regional Board staff received a report of waste discharge (Report) from the Inland Empire Utilities Agency (IEUA). In the Report, IEUA proposes to discharge fill to 0.13-acre of waters of the State. The waters of the State are located north of Sixth Street and west of Etiwanda Avenue in the City of Rancho Cucamonga in San Bernardino County (Section 17 of Township 1 South, Range 6 West, San Bernardino Meridian as shown on the Guasti Quadrangle, 7.5 Minute Series Topographic Map).

The affected waters are riparian resources within an un-named storm water detention basin on the site of the Etiwanda Generating Station. The basin is tributary to Cucamonga Creek via a storm drain system in Sixth Street. A total of 140 linear feet of waters of the State will be excavated for a trench to install a 48-inch recycled water pipeline. The work site will not exceed 40 feet in width. The excavation will remove riparian vegetation and impact wildlife habitat.

The discharge will occur as part of the installation of a system to provide recycled water from IEUA's Regional Plant No. 4 to existing storage reservoirs that will be used to distribute recycled water to customers in IEUA's 1158 Pressure Zone service area. The overall proposed project is the construction and installation of recycled water pipeline, expansion of the 1158 Pressure Zone and 1270 Pressure Zone Pump Stations, and the rehabilitation and conversion of two existing 5.5 million gallon (MG) storage reservoirs. The 1158 Zone pipeline will begin at the 1158 Zone pump station; then the pipeline will traverse the southern RP4 site boundary to the western RP4 site boundary, where the pipeline will then head north to 6th Street; the pipeline will then head west on 6th Street to an existing 40 foot easement that heads north to the proposed recycled water storage reservoirs. The total pipeline length is approximately 4,400 feet.

Based on review of the report of waste discharge, Regional Board staff has identified existing or potential beneficial uses along the IEUA easement on the Etiwanda Generating Station site. The Water Quality Control Plan for the Santa Ana River Basin (1995) does not specifically designate beneficial uses for the drainage on the project site. Based on the applicant's biological assessment, beneficial uses (Table 3-1, Cucamonga Creek Reach 1 - Confluence with Mill Creek to 23rd Street in Upland) that

are existing or attainable for the detention basin and Cucamonga Creek drainage include:

a. Groundwater recharge (GWR)
b. Water Contact Recreation (REC1)
c. Non-contact Water Recreation (REC2)
d. Limited Warm Freshwater Habitat (LWRM)
e. Wildlife Habitat (WILD)

Regional Board staff has determined that the discharges to the non-federal waters of the State would affect beneficial uses of the receiving drainage. However, the Regional Board could not authorize the proposed discharges in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order. Consequently, the proposed discharge would need to be authorized using individual waste discharge requirements.

The discharger has committed to mitigate temporary direct impacts to waters of the State by returning the area impacted by the pipeline installation within the detention basin to its current condition, including replanting mulefat to replace the almost uniform stand of this riparian plant. The area disturbed by installing the pipeline, 0.13 acre, will be restored to its existing condition. Order No. R8-2007-0084 includes contingency requirements for alternate compensatory mitigation in the event that drought, vandalism, or other uncontrollable factors render the replanting effort ineffective. The alternate mitigation is set at three times the original impact area in order to assure that the discharger proceeds in good faith with the proposed mitigation and to compensate for time-related impacts to beneficial uses, such as extended displacement of wildlife.

The only other discharge that will occur as part of the development of the recycled water pipeline is discharges of construction storm water runoff. This discharge is addressed by State Board Water Quality Order No. 99-08-DWQ, "General Permit for Discharges Associated with Construction Activity" (Order No. 99-08-DWQ). A Storm Water Pollution Prevention Plan (SWPPP) will be developed prior to ground disturbance and the appropriate Notice of Intent will be filed with the State Water Board. Typical construction best management practices (BMPs) will be implemented to control the discharge of pollutants in storm water runoff.

Pursuant to CEQA, the Inland Empire Utilities Agency prepared a Negative Declaration (ND) and adopted it on August 16, 2007. A Notice of Determination was filed on August 17, 2007.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2007-0084.

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. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office
- State Water Resources Control Board, Division of Water Quality, Water Quality Certification Unit

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

Order No. R8-2007-0084

Waste Discharge Requirements
for
Inland Empire Utilities Agency
RP-4 Pressure Zones 1158 & 1270 Recycled Water Project
Rancho Cucamonga, San Bernardino County

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

1. Inland Empire Utilities Agency (hereinafter, discharger) proposes to discharge fill to a 0.13 acre area of riparian habitat in an ephemeral detention basin, as part of the installation of a recycled water pipeline. The pipeline will deliver recycled water from the discharger's Regional Plant No. 4 (RP-4) to storage tanks on property located north of Sixth Street in the City of Rancho Cucamonga, San Bernardino County.

2. The RP-4 Pressure Zones 1158 & 1270 Recycled Water Project includes the following facilities to facilitate delivery of recycled water to local customers: retrofit of two pump stations, Zone 1158 and Zone 1270 Pump Stations; the rehabilitation of two storage reservoirs located north of Sixth Street and west of Etiwanda, just northwest of the RP-4 site; the installation of 600 lineal feet of recycled water pipeline within the RP-4 site to Etiwanda Avenue for delivery of recycled water to the 1270 Zone Pump Station; and the installation of 4,400 lineal feet of recycled water pipeline from the 1158 Zone Pump Station northwest to the storage reservoirs. The proposed discharge of fill due to pipeline installation is located within Section 17 of Township 1 South, Range 6 West, San Bernardino Meridian as shown on the Guasti Quadrangle, 7.5 Minute Series Topographic Map (34.08673 degrees North/-117.53114 degrees West).

3. In a letter dated August 14, 2007 to the U.S. Army Corps of Engineers (Corps), IEUA representatives asserted that the Corps does not have jurisdiction over the isolated waters (detention basin) affected by the placement of the pipeline. The Corps did not respond or assert its regulatory jurisdiction over the area where the pipeline will be installed across the detention basin.

4. The Board commonly regulates discharges of dredge or fill to waters of the State through the issuance of Clean Water Act (CWA) Section 401 Water Quality Standard Certifications (Certifications) where the discharge is also subject to regulation by the Corps. This occurs when both the definitions of waters of the State and waters of the U.S. under CWA Section 404 overlap. In the absence of

an applicable federal permit or license, the Board may regulate the proposed discharge through the issuance of Waste Discharge Requirements or a waiver thereof.

5. The affected water of the State consists of an ephemeral detention basin with riparian vegetation. The detention basin outlets to the City of Rancho Cucamonga storm drainage system and ultimately to San Sevaine channel. The Water Quality Control Plan for the Santa Ana River Basin (1995) does not specifically designate beneficial uses for the drainage on the project site. Based on the applicant's biological assessment and Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) Table 3-1 for Cucamonga Creek Reach 1 - Confluence with Mill Creek to 23rd Street in Upland, beneficial uses that are existing or attainable for the detention basin and Cucamonga Creek drainage include:

   a. Groundwater recharge (GWR)
   b. Water Contact Recreation (REC1) (access may be restricted)
   c. Non-contact Water Recreation (REC2)
   d. Limited Warm Freshwater Habitat (LWRM)
   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.

7. 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 a Report of Waste Discharge on October 26, 2007.

8. The discharger has committed to mitigate temporary direct impacts to waters of the State by returning the area impacted by the pipeline installation within the detention basin to its previous condition, including replanting mulefat to replace the almost uniform stand of this riparian plant within the basin. The area disturbed by installing the pipeline, 0.13 acre, will be restored to its existing condition.

9. Pursuant the California Environmental Quality Act (CEQA), the Inland Empire Utilities agency adopted a Negative Declaration (ND) for the proposed project on August 16, 2007.

10. As a Responsible Agency under CEQA, the 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 Agency's environmental document identified potentially significant impacts (unless mitigated) to biological resources as a result of discharges of fill to waters and to water quality as the result of pollutants in storm water runoff from the project. General Provision C.1. of this Order requires the discharger to compensate for impacts to the beneficial uses of the non-federal waters of the State through re-vegetation of the disturbed area within the detention basin. The Board finds that the significant effects of the discharge of fill to non-federal waters, as a result of installing the pipeline in support of the proposed project, as authorized by this Order, are reduced to a less-than-significant level.

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 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 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 or inert fill material (sand/gravel) shall be only with the prior approval of the Executive Officer.

B. DISCHARGE PROHIBITIONS

1. Except as authorized in this Order, 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 water is prohibited.

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

C. PROVISIONS

1. The discharger shall compensate for temporary impacts to beneficial uses by re-vegetating the excavated area. Initial re-vegetation work shall begin not later than October 30, 2008 if the pipeline installation is completed prior to that date. If the pipeline is installed afterwards, the re-vegetation effort shall begin not later than the following October 30th. After five years, vegetation in the excavated area must achieve a comparable density, diversity, and vertical structure as the impacted area prior to the excavation. If comparable density, diversity, and vertical structure cannot be achieved after the five-year period due to uncontrollable factors, the discharger shall pay an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.39 acres of invasive plant species in and/or adjacent to waters of the State.

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 pipeline alignment 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 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.

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 or re-issuance of this Order to change the name of the discharger.

11. This Order will serve as a Clean Water Act Section 401 Water Quality Standards Certification in the event that one is required by any federal agency. 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.

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 November 30, 2007.

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Gerard J. Thibeault
Executive Officer