

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2004-0023

ADOPTION OF THE MITIGATED NEGATIVE DECLARATION COVERING
STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR DREDGED OR
FILL DISCHARGES TO WATERS DEEMED BY THE U.S. ARMY CORPS OF ENGINEERS
TO BE OUTSIDE OF FEDERAL JURISDICTION (GENERAL WDRs)

WHEREAS:

1. The State Water Resources Control Board (SWRCB) has served as the lead agency for the preparation of the Mitigated Negative Declaration (Attachment) prepared for the General WDRs.
2. SWRCB has circulated the draft Mitigated Negative Declaration for public review and comment.
3. SWRCB responded to the comments received and prepared a final Mitigated Negative Declaration.
4. SWRCB finds that the final Mitigated Negative Declaration has been completed in compliance with the California Environmental Quality Act.
5. SWRCB has reviewed and considered the information within the final Mitigated Negative Declaration, and this document reflects the independent judgement of SWRCB.

THEREFORE BE IT RESOLVED THAT SWRCB:

Adopts the final Mitigated Negative Declaration.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 4, 2004.


Debbie Irvin
Clerk to the Board

**MITIGATED NEGATIVE DECLARATION
WATER QUALITY ORDER NO. 2004-0023-DWQ**

**STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR
DREDGED OR FILL DISCHARGES TO WATERS DEEMED BY THE
U.S. ARMY CORPS OF ENGINEERS TO BE OUTSIDE OF
FEDERAL JURISDICTION (GENERAL WDRs)**

Project Location:

These General WDRs would be applicable throughout the State of California.

Project Description:

The project is the adoption of statewide General WDRs for dredged or fill discharges to water bodies that have been deemed not subject to federal jurisdiction and that meet discharge size limitations set in these General WDRs.

California has largely relied upon its authority under section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to California waters. That section requires an applicant to obtain “certification” from California that the project will comply with State water quality standards before any federal license or permit may be issued. The permits subject to section 401 include permits for the discharge of dredged or fill materials (section 404 permits) issued by the U.S. Army Corps of Engineers (ACOE). Given the regulatory process employed under section 401, waste discharge requirements under the Porter-Cologne Water Quality Control Act were typically waived for projects that required certification.

The certification process under section 401 only applies to those waters subject to the reach of CWA. CWA applies to “navigable waters,” which are defined in CWA as “waters of the United States.” The term “waters of the United States” is defined expansively in 33 Code of Federal Regulations, part 328. In 2001, the U.S. Supreme Court issued a decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*), which held that certain “isolated” waters are not subject to CWA jurisdiction merely because they are frequented by migratory birds that cross state lines. The full implications of *SWANCC* are yet to be determined in federal courts, but as a result of this decision, many discharges that previously would have needed a section 404 permit, now no longer need one. From January 1, 2002 to June 30, 2003, the ACOE disclaimed jurisdiction over 102 water bodies comprising 347 acres. These water bodies include 219 acres of wetland and 60 acres of riparian land. (These figures are minimums because of incomplete reporting of disclaimed areas.) The prospect of issuing waste discharge requirements for discharges to each of the now non-federal water bodies, especially in a time of budgetary contraction, is daunting. Many of the discharges that were traditionally subject to certification requirements involved small-scale discharges with few or no permanent impacts. It is the intent of these General WDRs to regulate a subset of the discharges that have been determined to fall outside of federal jurisdiction, particularly

discharges over small areas or along short lengths and that involve a small volume of dredged material.

These dredged or fill discharges must meet the following size criteria to be eligible for coverage under these General WDRs:

1. Excavation and fill activities must not discharge to an area greater than two-tenths (0.2) an acre of waters of the state; and
2. Linear excavation and fill activities affecting drainage features and shorelines, e.g. bank stabilization, revetment, and channelization, must not discharge to more than 400 linear feet of waters of the state; and
3. Dredging activities must not dredge more than 50 cubic yards within waters of the state.

Each Regional Water Quality Control Board (RWQCB) will have the authority to determine the eligibility of specific discharges in its region for enrollment under the General WDRs.

Discharges that may be covered under the General WDRs include those for bridge construction (approach fill), land development, detention basins, disposal of dredged material, bank stabilization, revetment, channelization, and other similar activities. The short-term potential environmental impacts associated with these activities include noise and dust from earth-moving equipment. More permanent potential impacts include the removal of trees and other vegetation from the discharge site and their replacement with structures such as residences or flood control works. This could degrade the visual quality of a site and remove wildlife and aquatic habitat. The construction could also destroy an archeological resource.

Many of these activities will require additional permits, such as a city or county building permit or a California Department of Fish and Game streambed alteration permit. Before these permits are issued, the activity may have to go through an individual California Environmental Quality Act (CEQA) review. Some activities, however, will require no additional permits and will have no additional CEQA review.

To ensure that the discharges and their associated activities will have no significant environmental impacts, the General WDRs have several conditions. These include the requirement to prepare and implement a mitigation plan. This mitigation plan must describe how the discharger will sequentially avoid, minimize, or compensate for any impacts to waters of the state. It also must describe how any other environmental impacts will be mitigated to a less than significant level.

Some discharges have been excluded from coverage under the General WDRs because of potential significant environmental impacts. These include those that: could destabilize a channel or a streambed; could in combination with other discharges cause a significant cumulative effect on the quality of water and the beneficial use of it; would adversely affect a rare, candidate, endangered or threatened species; would significantly conflict with a U.S. Fish and Wildlife Service Habitat Conservation Plan or a California Department of Fish and Game Natural Community Conservation Plan; would significantly impact a historical or archeological

resource; and those that would cause a conflict with an existing zoning for agricultural use or a Williamson Act Contract.

The General WDRs would provide the RWQCBs with another option to regulate certain dredged or fill discharges besides the establishment of waivers or individual WDRs. Waivers may provide insufficient review of these discharges and adopting individual WDRs may be overly work intensive and inefficient.

The adoption of the General WDRs would permit discharges of dredged or fill material. These dredged or fill discharges have been evaluated in the environmental checklist section of the Initial Study.

Findings:

In accordance with State Water Resources Control Board's (SWRCB's) policies regarding the implementation of CEQA, SWRCB has conducted an Initial Study to determine whether the following project may have a significant adverse effect on the environment. On the basis of this study, SWRCB finds that the project may adversely affect small areas of water bodies that have been deemed not subject to federal jurisdiction. To mitigate this effect, the dischargers will be required to develop and implement mitigation plans. These mitigation plans must describe how the dischargers will sequentially avoid, minimize, or compensate for any impacts to waters of the state. They also must describe how any other environmental impacts will be mitigated to a less than significant level. Because the adverse effects will be mitigated as proposed, the project does not require the preparation of an environmental impact report.

The [Initial Study and Environmental Checklist](#) that provides the basis and reasons for this determination are attached and hereby made a part of this document.

Preparer:

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original signed by

May 14, 2004

Stan Martinson, Chief
Division of Water Quality

Date