

Central Valley Regional Water Quality Control Board

14 September 2018

Mr. Christopher Penza, Project Manager
Chevron Environmental Management Company
1546 China Grade Loop, L14
Bakersfield, CA 93308-9700

CLEAN WATER ACT SECTION 401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY; KERN RIVER RIVERBANK SITE 3 EMERGENCY REPAIR (WDID #5C15CR00100); COUNTY OF KERN

This Order responds to the 31 August 2018 notification from the United States Army Corps of Engineers (USACE) of the intent of Chevron Environmental Management Company (Applicant) to obtain authorization under the USACE Regional General Permit Number 8 of the Kern River Riverbank Site 3 Emergency Repair Project (Project), permanently impacting 0.103 acres of waters of the United States and the state of California. The Applicant has requested a Water Quality Certification of the subject Project.

This Order serves as certification of the subject Project permitted by the United States Army Corps of Engineers' Regional General Permit Number 8 under Section 401 of the Clean Water Act, and a Waste Discharge Requirement under the Porter-Cologne Water Quality Control Act and State Water Board Order 2003-0017-DWQ.

WATER QUALITY CERTIFICATION STANDARD CONDITIONS:

1. This Order serves as a Water Quality Certification (Certification) action that is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and Section 3867 of the California Code of Regulations.
2. This Certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to Section 3855(b) of the California Code of Regulations, and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial Certification action shall be conditioned upon total payment of the full fee required under Section 3860(c) of the California Code of Regulations.
4. This Certification is no longer valid if the Project (as described) is modified, or coverage under Section 404 of the Clean Water Act has expired.

5. All reports, notices, or other documents required by this Certification or requested by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) shall be signed by a person described below or by a duly authorized representative of that person.
 - (a) For a corporation: by a responsible corporate officer such as: 1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; 2) any other person who performs similar policy or decision-making functions for the corporation; or 3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - (b) For a partnership or sole proprietorship: by a general partner or the proprietor.
 - (c) For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

6. Any person signing a document under Standard Condition number 5 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

TECHNICAL CERTIFICATION CONDITIONS:

In addition to the above standard conditions, the Applicant shall satisfy the following:

1. The Applicant shall notify the Central Valley Water Board in advance of the start of any work within waters of the United States.
2. Except for activities permitted by the United States Army Corps of Engineers under Section 404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. The Applicant shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed Project shall be adequately informed and trained regarding the conditions of this Certification.
4. The Applicant shall perform surface water sampling¹:
 - a) when performing any in-water work, including during water diversion activities;
 - b) in the event that Project activities result in any materials reaching surface waters; or
 - c) when any activities result in the creation of a visible plume in surface waters.

¹ Sampling is not required in wetlands, where the entire wetland is being permanently filled; provided there is no outflow connecting the wetland to surface waters.

The sampling requirements in Table 1 shall be conducted upstream out of the influence of the Project, and approximately 300 feet downstream of the work area. The sampling frequency may be modified for certain projects with written approval from Central Valley Water Board staff.

Table 1:

Parameter	Unit	Type of Sample	Minimum Sampling Frequency	Required Analytical Test Method
Turbidity	NTU	Grab	Every 4 hours during in-water work	(1, 2)
pH	Standard Units	Grab	Every 4 hours during in-water work	(1, 2)

⁽¹⁾ Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136; where no methods are specified for a given pollutant, the method shall be approved by Central Valley Water Board staff.

⁽²⁾ A hand-held field meter may be used, provided the meter utilizes a USEPA-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. A calibration and maintenance log for each meter used for monitoring shall be maintained onsite.

A surface water monitoring report shall be submitted within two weeks of initiation of in-water activity, and every two weeks thereafter. In reporting the sampling data, the Applicant shall arrange the data in tabular form so that the sampling locations, date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly whether the Project complies with Certification requirements. The report shall include surface water sampling results, visual observations, and identification of the turbidity increase in the receiving water applicable to the natural turbidity conditions specified in the turbidity criteria below.

If no sampling is required, the Applicant shall submit a written statement stating, "No sampling was required" within two weeks of initiation of in-water construction, and every two weeks thereafter.

5. The Applicant shall conduct soil analysis of the unidentified material that has been exposed within the riverbank to determine whether it is hazardous and whether its composition poses a potential threat to water quality. The results of the soil analysis shall be submitted to the Central Valley Water Board within **two weeks** of the Applicant receiving the laboratory results.
6. The Project is located within the jurisdiction of the Central Valley Water Board. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the *Water Quality Control Plan for the Tulare Lake Basin*, Third Edition, revised May 2018 (Basin Plan). The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies. Turbidity limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:

- a) Activities shall not cause turbidity increases in surface water to exceed:
- i. where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases exceeding 1 NTU;
 - ii. where natural turbidity is between 5 and 50 NTUs, increases exceeding 20 percent;
 - iii. where natural turbidity is between 50 and 100 NTUs, increases exceeding 10 NTUs;
 - iv. where natural turbidity is greater than 100 NTUs, increases exceeding 10 percent.

Appropriate averaging periods may be applied, provided that beneficial uses will be fully protected. Averaging periods may only be used with prior permission of the Central Valley Water Board Executive Officer.

- b) Activities shall not cause the pH in surface waters to be depressed below 6.5 nor raised above 8.3.
7. The Applicant shall notify the Central Valley Water Board within 48 hours if the above criteria for turbidity, pH, or other water quality objectives are exceeded.
 8. Activities shall not cause visible oil, grease, or foam in the receiving water.
 9. Refueling of equipment within the floodplain or within 300 feet of the waterway is prohibited. If critical equipment must be refueled within 300 feet of the waterway, spill prevention and countermeasures must be implemented to avoid spills. Refueling areas shall be provided with secondary containment including drip pans and/or placement of absorbent material. No hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related potentially hazardous substances should be stored within a floodplain or within 300 feet of a waterway. The Applicant must perform frequent inspections of construction equipment prior to utilizing it near surface waters to ensure leaks from the equipment are not occurring and are not a threat to water quality.
 10. The Applicant shall develop and maintain onsite a project-specific Spill Prevention, Containment and Cleanup Plan outlining the practices to prevent, minimize, and/or clean up potential spills during construction of the Project. The Plan must detail the Project elements, construction equipment types and location, access and staging, and construction sequence.
 11. The discharge of petroleum products, any construction materials, hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, raw cement, concrete, asphalt, paint, coating material, drilling fluids, or other construction-related potentially hazardous substances to surface water and/or soil is prohibited. In the event of a prohibited discharge, the Applicant shall notify the Central Valley Water Board Contact within 24-hours of the discharge.
 12. Silt fencing, straw wattles, or other effective management practices must be used along the construction zone to minimize soil or sediment along the embankments from migrating into the waters of the United States through the entire duration of the Project.

13. The use of netting material (e.g., monofilament-based erosion blankets) that could trap aquatic dependent wildlife is prohibited within the Project area.
14. All areas disturbed by Project activities shall be protected from washout and erosion.
15. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.
16. All materials resulting from the Project shall be removed from the site and disposed of properly.
17. The Applicant shall comply with all United States Fish and Wildlife Service requirements.
18. The Conditions in this Certification are based on the information in the attached "Project Information Sheet" and the notification package. If the actual project, as described in the attached Project Information Sheet and notification package, is modified or changed, this Certification is no longer valid until amended by the Central Valley Water Board.
19. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. The applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with this Certification.
 - (a) If the Applicant or a duly authorized representative of the Project fails or refuses to furnish technical or monitoring reports, as required under this Certification, or falsifies any information provided in the monitoring reports, the applicant is subject to civil liability, for each day of violation, and/or criminal liability.
 - (b) In response to a suspected violation of any condition of this Certification, the Central Valley Water Board may require the Applicant to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley Water Board deems appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 - (c) The Applicant shall allow the staff of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the Project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the Project.

NOTIFICATIONS AND REPORTS:

20. The Applicant shall provide a Notice of Completion (NOC) no later than 30 days after the Project completion. The NOC shall demonstrate that the Project has been carried out in accordance with the Project description in the Certification and in any approved amendments. The NOC shall include a map of the Project location(s), including final boundaries of any on-site restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation.

21. The Applicant shall submit all notifications, submissions, materials, data, correspondence, and reports in a searchable Portable Document Format (PDF). Documents less than 50 MB must be emailed to: centralvalleyfresno@waterboards.ca.gov. In the subject line of the email, include the Central Valley Water Board Contact, Project name, and WDID number as shown in the subject line above. Documents that are 50 MB or larger must be transferred to a disk and mailed to the Central Valley Water Board Contact.

CENTRAL VALLEY WATER BOARD CONTACT:

Debra Mahnke, Water Resource Control Engineer
Central Valley Regional Water Quality Control Board
1685 E Street
Fresno, CA 93706
debra.mahnke@waterboards.ca.gov
(559) 445-6281

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Status of CEQA Compliance: The Central Valley Water Board has determined that the Project is exempt from review under CEQA pursuant to California Code of Regulations, title 14, section 15061. Specifically, the issuance of this Order and the activities described herein meet the exemption criteria under California Code of Regulations, title 14, section(s) 15330. Minor actions to prevent, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous waste or hazardous substances.

Additionally, the Central Valley Water Board concludes that no California Code of Regulations, title 14, section exceptions to the CEQA exemption apply to the activities approved by this Order.

The Central Valley Water Board will file a Notice of Exemption with the State Clearinghouse within five (5) working days from the issuance of this Order. (Cal. Code Regs., tit. 14, § 15062.)

WATER QUALITY CERTIFICATION:

I hereby issue an Order certifying that the proposed discharge from the Chevron Environmental Management Company, Kern River Riverbank Site 3 Emergency Repair (WDID 5C15CR00100) will comply with the applicable provisions of Section 301 ("Effluent Limitations"), Section 302 ("Water Quality Related Effluent Limitations"), Section 303 ("Water Quality Standards and Implementation Plans"), Section 306 ("National Standards of Performance"), and Section 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. Through this Order, this discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)".

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in compliance with the conditions of this Certification, the Chevron Environmental Management Company's notification package, and the attached Project Information Sheet; and b) compliance with all applicable requirements of the *Water Quality Control Plan for the Tulare Lake Basin*, Third Edition, revised May 2018.

Any person aggrieved by this action may petition the State Water Resources Control Board to review the action in accordance with California Water Code § 13320 and California Code of Regulations, title 23, § 2050 and following. The State Water Resources Control Board must receive the petition by 5:00 p.m., 30 days after the date of this action, except that if the thirtieth day following the date of this action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Resources Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.


for Patrick Pulupa
Executive Officer

Enclosure: Project Information Sheet

Attachment: Project Maps

cc: Distribution List, see Page 8

DISTRIBUTION LIST

cc: (w/ enclosure):

Sam Ziegler (Electronic Copy Only)
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CWA Section 401 WQC Program (Electronic Copy Only)
Division of Water Quality
State Water Resources Control Board
Stateboard401@waterboards.ca.gov

Mr. Jerome Summerlin (Electronic Copy Only)
Padre Associates, Inc.
jsummerlin@padreinc.com

PROJECT INFORMATION SHEET

Notification Date: 31 August 2018

Applicant: Mr. Christopher Penza, Project Manager
Chevron Environmental Management Company
1546 China Grade Loop, L14
Bakersfield, CA 93308-9700
(661) 392-2371
cpenza@chevron.com

Project Name: Kern River Riverbank Site 3 Emergency Repair Project

WDID Number: WDID #5C15CR00100

Date on Public Notice: The Central Valley Water Board will provided public notice for this amendment on 14 September 2018. Emergency conditions – including potential for discharge of hazardous material into the Kern River – warrant issuing this certification immediately with an abbreviated public notice period, as authorized under California Code of Regulations, Title 23, Section 3858.

Date Application Deemed Complete: 12 September 2018

Type of Project: Bank Stabilization

Project Location: The Project Site is located on the north bank of the Kern River approximately 5.75 miles northeast of the center of the City of Bakersfield, located within the Elwood Lease in the southwest ¼ of Section 2, Township 29S, Range 28E (Mount Diablo Base and Meridian) of the Oil Center USGS 7.5-minute quadrangle, Kern County, California.

Latitude: 35.432947°, Longitude: -118.948153°

County: Kern

Receiving Water(s) (hydrologic unit): Kern River, below Kern River Powerhouse No. 1, Tulare Lake Hydrologic Basin, South Valley Floor Hydrologic Unit #558.90, Kern Uplands HA

Water Body Type: River

Designated Beneficial Uses: The *Water Quality Control Plan for the Tulare Lake Basin*, Third Edition, revised May 2018 (Basin Plan) has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include, but are not limited to: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND); Hydropower Generation (POW); Groundwater Recharge (GWR); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Preservation of Biological Habitats of Special Significance (BIOL); Rare, Threatened, or Endangered Species (RARE); Migration of Aquatic Organisms (MIGR); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). A comprehensive and specific list of the beneficial uses applicable for the project area can be found at

http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml.

Project Description

Due to the release of water from the Lake Isabella Dam related to the Isabella Lake Dam Safety Modification Project currently underway by the USACE Civil Works Department, higher than normal river flows have caused, and continue to cause, severe erosion to a segment of the north bank of the Kern River. This riverbank segment and the land behind it has historically provided protection to former legacy oilfield assets, including nearby previously abandoned wells, protective berms, and access roads. At Site 3, what appears to be drilling mud material, likely associated with an abandoned well identified in the vicinity, has become exposed on an eroded portion of the bank that may soon fail without mitigation. Protective measures along the riverbank are urgently required to curtail further erosion at this location, including the potential loss of material into surface waters of the Kern River.

The Project consists of reinforcing the eroded area along the north bank of the Kern River where substantial erosion has occurred. The reinforcement will be completed by armoring the riverbank segment with ungrouted rock rip-rap of variable sizing to ensure proper stability and locking-in-place (from 12-inch-minus to 36-inch-minus boulders). No asphalt or concrete materials will be used. Prior to rock placement, the existing, near vertical, above-water portion of the eroded riverbank will be sloped back using an excavator at a maximum slope of 1.5:1 (horizontal:vertical). Excavation of material that appears to be drilling mud will be completed to an extent feasible above the current water level in an effort to prevent a potential threat to surface waters. This excavated material will be stockpiled a safe distance from the river bank and managed accordingly. An equivalent amount to the material removed will be replaced with clean backfill onto which the rock rip-rap will be placed.

All heavy equipment work will be positioned above or behind the waters of the United States (WOUS) boundary, which is generally delineated by the ordinary high-water mark (OHWM), but at a location that allows for the equipment to safely reach into WOUS to accomplish the riverbank reinforcement. Anticipated heavy equipment will include trucks hauling rip-rap, excavator(s), a loader, and a water truck for dust control.

The riverbank reinforcement will also include a bioengineering component by planting willow (*Salix sp.*) and mulefat (*Baccharis salicifolia*) pole cuttings on 10 to 15-foot centers on a contour located approximately two feet above the existing water line. The pole cuttings will measure at least five feet in length (stripped of leaves and side branches) and be inserted into the ground no less than two feet deep. Each planting hole will be augered into the slope, planted, and then sufficiently backfilled to eliminate air pockets around the cutting. The rock rip-rap will then carefully be placed around each pole cutting. Some damage to the pole cuttings may be expected but should not significantly affect their ability to regenerate into new, individual plants. Planting of these native riparian tree and shrub species will provide additional slope stability and will replace or enhance the riverbank's ability to support wildlife.

Proposed Mitigation to Address Concerns:

Proposed measures to be taken to avoid and minimize impacts to the aquatic environment and wildlife habitat include the following:

1. Discharges into WOUS will be minimized to the maximum extent practicable.
2. Temporary staging, access, and disposal areas will be located outside WOUS.

3. If generated, return water from an upland disposal area will not enter WOUS and will be contained within the disposal area by implementing engineering controls above or behind the top edge of bank.
4. All heavy equipment work will avoid directly entering the active channel and will work from positions above or behind the top edge of bank.
5. Vegetation impacts will be minimized to the maximum extent practicable, including using existing pathways where available, minimizing or avoiding the removal of trees, and pruning vegetation to the ground level and leaving the root crowns in place to allow for future crown sprouting.
6. Work will be performed outside of the typical bird nesting season of March 1 to September 1 to avoid disturbance of bird breeding/nesting behavior or destruction of active bird nests. If work cannot be avoided during this period, a qualified biologist will survey the Project Site to determine the presence of breeding/nesting birds and provide conservation measures to ensure that take is avoided under the rules set forth in the Migratory Bird Treaty Act.
7. A qualified biologist will survey the Project Site prior to construction and provide part-time monitoring throughout the duration of the work to ensure that special-status species, migratory or late/early nesting birds, or other sensitive resources (e.g., reptiles or amphibians) are not affected by work activities. Special focus will be paid to western pond turtle (*Actinemys marmorata*) and loggerhead shrike (*Lanius ludovicianus*), which have been observed in the Kern River riparian corridor within 1 mile of the Project Site.
8. A qualified biologist or restoration ecologist will be onsite to provide direction on correct selection and installation of willow or mulefat pole cuttings.
9. Construction Best Management Practices (BMPs) will be employed on-site prior to activities within or adjacent to WOUS to prevent degradation to on-site and off-site WOUS. BMPs will remain on-site for the duration of the Project and will be inspected on a weekly basis. BMPs may include, but are not limited to silt fencing, straw wattles, a water truck for dust control, and proper containment for fueling or maintenance at upland equipment staging areas.

Excavation/Fill Area: Approximately 0.103 acres of the Kern River will be permanently impacted by the Project by placement rock riprap and native soil. A total of approximately 225 linear feet of rock rip-rap will be placed, totaling approximately 950 cubic yards or 1,900 tons. Depending on bathymetry, the total rock required could range between 2,000 to 3,000 tons.

California Integrated Water Quality System Impact Data:
Table 2: Impacts from Fill and/or Excavation Activities

Aquatic Resource Type	Temporary			Permanent					
				Physical Loss of Area			Degradation of Ecological Condition Only		
	Acres	Cubic-yards	Linear-feet	Acres	Cubic-yards	Linear-feet	Acres	Cubic-yards	Linear-feet
River	--	--	--	0.103	1,900	225	--	--	--

United States Army Corps of Engineers Permit Type: Regional General Permit RGP-8

California Department of Fish and Wildlife Lake or Streambed Alteration Agreement:
The Applicant will be submitting notification for a California Department of Fish and Wildlife Emergency Lake and Streambed Alteration Agreement.

Possible Listed Species: Bakersfield cactus, Southwestern willow flycatcher, San Joaquin kit fox, Western pond turtle, Loggerhead shrike

Compensatory Mitigation: Onsite restoration will include planting native tree and shrub pole cuttings within the rock rip-rap to re-establish vegetation on the north bank, providing additional slope stability, wildlife habitat and other beneficial uses to the River.

Application Fee Provided: Total fees of \$1,500 have been submitted to the Central Valley Water Board as required by Section 3833(b)(3)(A) and Section 2200(a)(3) of the California Code of Regulations.

Attachment 1- Project Maps-
 Chevron Environmental Management Company
 Riverbank Site 3 Emergency Repair

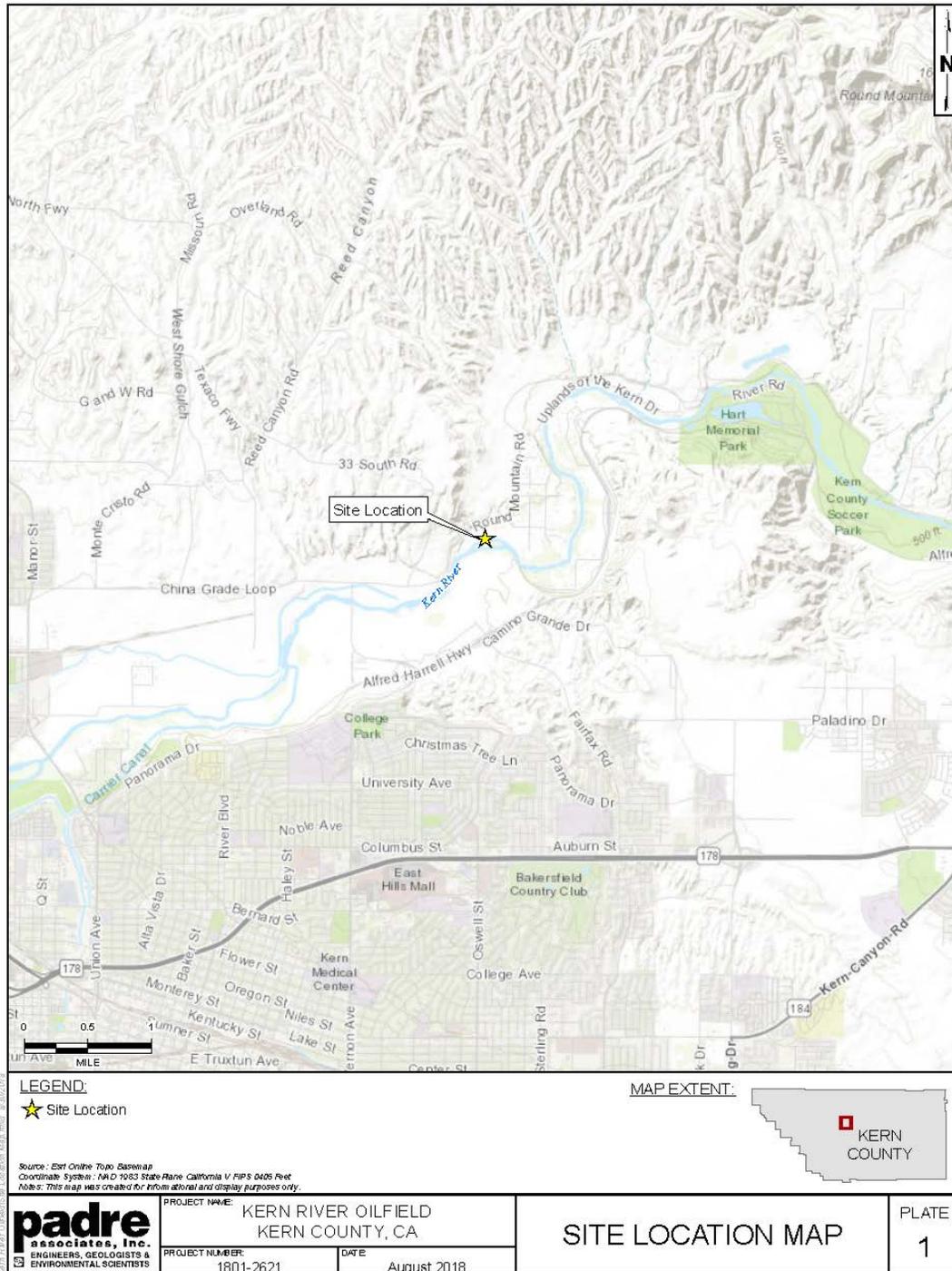


Figure 1- Location Map

Attachment 1- Project Maps-
Chevron Environmental Management Company
Riverbank Site 3 Emergency Repair



Figure 2- Shoreline Map

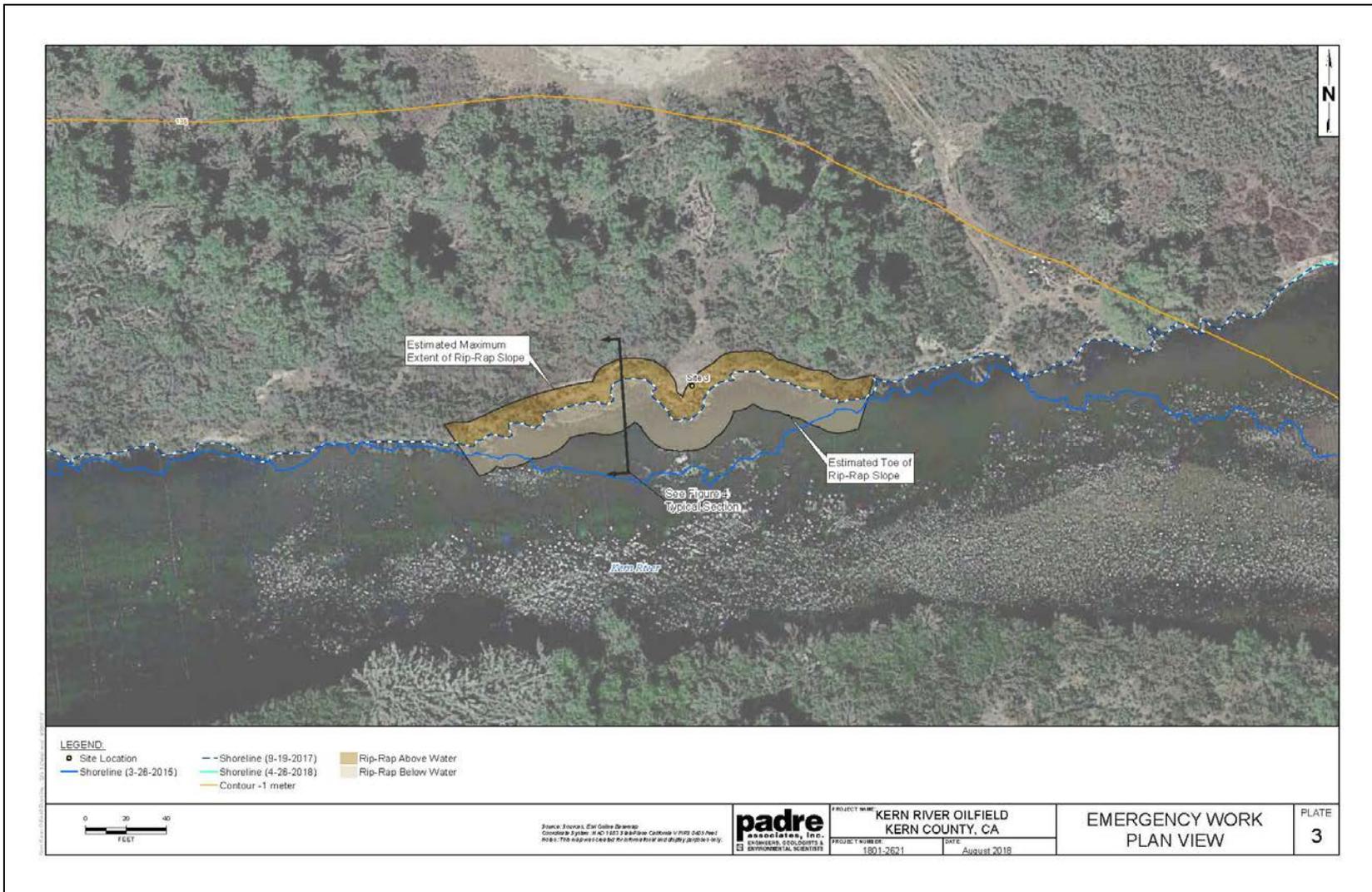
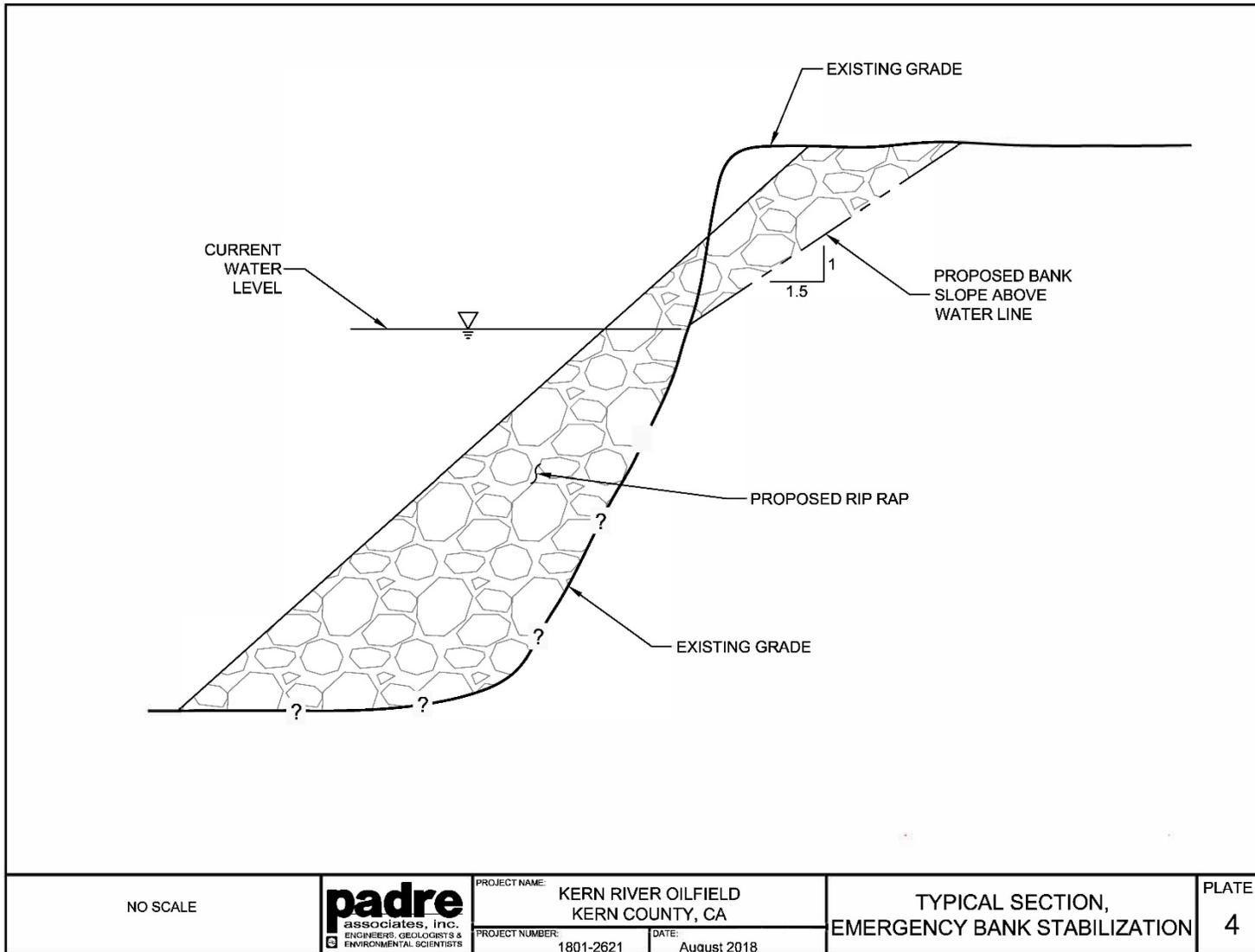


Figure 3-Plan View



NO SCALE	 <p>padre associates, inc. ENGINEERS, GEOLOGISTS & ENVIRONMENTAL SCIENTISTS</p>	PROJECT NAME: KERN RIVER OILFIELD KERN COUNTY, CA	TYPICAL SECTION, EMERGENCY BANK STABILIZATION	PLATE 4
		PROJECT NUMBER: 1801-2621	DATE: August 2018	

Figure 4-Section View

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ORDER NO. 2003 - 0017 - DWQ

STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR DREDGED OR FILL DISCHARGES THAT HAVE RECEIVED STATE WATER QUALITY CERTIFICATION (GENERAL WDRs)

The State Water Resources Control Board (SWRCB) finds that:

1. Discharges eligible for coverage under these General WDRs are discharges of dredged or fill material that have received State Water Quality Certification (Certification) pursuant to federal Clean Water Act (CWA) section 401.
2. Discharges of dredged or fill material are commonly associated with port development, stream channelization, utility crossing land development, transportation water resource, and flood control projects. Other activities, such as land clearing, may also involve discharges of dredged or fill materials (e.g., soil) into waters of the United States.
3. CWA section 404 establishes a permit program under which the U.S. Army Corps of Engineers (ACOE) regulates the discharge of dredged or fill material into waters of the United States.
4. CWA section 401 requires every applicant for a federal permit or license for an activity that may result in a discharge of pollutants to a water of the United States (including permits under section 404) to obtain Certification that the proposed activity will comply with State water quality standards. In California, Certifications are issued by the Regional Water Quality Control Boards (RWQCB) or for multi-Region discharges, the SWRCB, in accordance with the requirements of California Code of Regulations (CCR) section 3830 et seq. The SWRCB's water quality regulations do not authorize the SWRCB or RWQCBs to waive certification, and therefore, these General WDRs do not apply to any discharge authorized by federal license or permit that was issued based on a determination by the issuing agency that certification has been waived. Certifications are issued by the RWQCB or SWRCB before the ACOE may issue CWA section 404 permits. Any conditions set forth in a Certification become conditions of the federal permit or license if and when it is ultimately issued.
5. Article 4, of Chapter 4 of Division 7 of the California Water Code (CWC), commencing with section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State,¹ file a report of waste discharge (ROWD). Pursuant to Article 4, the RWQCBs are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC section 13269. These General WDRs fulfill the requirements of Article 4 for proposed dredge or fill discharges to waters of the United States that are regulated under the State's CWA section 401 authority.

¹ "Waters of the State" as defined in CWC Section 13050(e)

6. These General WDRs require compliance with all conditions of Certification orders to ensure that water quality standards are met.
7. The U.S. Supreme Court decision of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (the SWANCC decision) called into question the extent to which certain “isolated” waters are subject to federal jurisdiction. The SWRCB believes that a Certification is a valid and enforceable order of the SWRCB or RWQCBs irrespective of whether the water body in question is subsequently determined not to be federally jurisdictional. Nonetheless, it is the intent of the SWRCB that all Certification conditions be incorporated into these General WDRs and enforceable hereunder even if the federal permit is subsequently deemed invalid because the water is not deemed subject to federal jurisdiction.
8. The beneficial uses for the waters of the State include, but are not limited to, domestic and municipal supply, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources.
9. Projects covered by these General WDRs shall be assessed a fee pursuant to Title 23, CCR section 3833.
10. These General WDRs are exempt from the California Environmental Quality Act (CEQA) because (a) they are not a “project” within the meaning of CEQA, since a “project” results in a direct or indirect physical change in the environment (Title 14, CCR section 15378); and (b) the term “project” does not mean each separate governmental approval (Title 14, CCR section 15378(c)). These WDRs do not authorize any specific project. They recognize that dredge and fill discharges that need a federal license or permit must be regulated under CWA section 401 Certification, pursuant to CWA section 401 and Title 23, CCR section 3855, et seq. Certification and issuance of waste discharge requirements are overlapping regulatory processes, which are both administered by the SWRCB and RWQCBs. Each project subject to Certification requires independent compliance with CEQA and is regulated through the Certification process in the context of its specific characteristics. Any effects on the environment will therefore be as a result of the certification process, not from these General WDRs. (Title 14, CCR section 15061(b)(3)).
11. Potential dischargers and other known interested parties have been notified of the intent to adopt these General WDRs by public hearing notice.
12. All comments pertaining to the proposed discharges have been heard and considered at the November 4, 2003 SWRCB Workshop Session.
13. The RWQCBs retain discretion to impose individual or general WDRs or waivers of WDRs in lieu of these General WDRs whenever they deem it appropriate. Furthermore, these General WDRs are not intended to supersede any existing WDRs or waivers of WDRs issued by a RWQCB.

IT IS HEREBY ORDERED that WDRs are issued to all persons proposing to discharge dredged or fill material to waters of the United States where such discharge is also subject to the water quality certification requirements of CWA section 401 of the federal Clean Water Act (Title 33 United States Code section 1341), and such certification has been issued by the applicable RWQCB or the SWRCB, unless the applicable RWQCB notifies the applicant that its discharge will be regulated through WDRs or waivers of WDRs issued by the RWQCB. In order to meet the provisions contained in Division 7 of CWC and regulations adopted thereunder, dischargers shall comply with the following:

1. Dischargers shall implement all the terms and conditions of the applicable CWA section 401 Certification issued for the discharge. This provision shall apply irrespective of whether the federal license or permit for which the Certification was obtained is subsequently deemed invalid because the water body subject to the discharge has been deemed outside of federal jurisdiction.
2. Dischargers are prohibited from discharging dredged or fill material to waters of the United States without first obtaining Certification from the applicable RWQCB or SWRCB.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 19, 2003.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.


Debbie Irvin
Clerk to the Board