

Central Valley Regional Water Quality Control Board

27 April 2017

Javier Almaguer
California Department of Transportation
855 M Street, Ste. 200
Fresno, CA 93721

CLEAN WATER ACT SECTION 401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; CALIFORNIA DEPARTMENT OF TRANSPORTATION; WIDENING AND RAILING REPLACEMENT- SAND CREEK BRIDGE PROJECT (WDID #5C54CR00086), TULARE COUNTY

This Order responds to the 11 April 2017 application submitted by California Department of Transportation (Applicant) for the Water Quality Certification of the Widening and Railing Replacement- Sand Creek Bridge Project (Project), permanently impacting 0.013 acre/84 linear feet of waters of the United States and the state of California.

This Order serves as certification of the subject Project permitted by the United States Army Corps of Engineers' 2017 Nationwide Permit #14 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.

A Water Quality Certification was originally issued on 20 September 2016 as certification of the subject Project permitted by the United States Army Corps of Engineers' 2012 Nationwide Permit #14. The conditions of the original Order remain unchanged. The permanent impacts have been increased by 0.006 acres to a revised total of 0.013 acres, to include additional rock slope protection, and the temporary impacts have been reduced from 0.13 acres to 0.069 acres as a result of a design clarification. Compensatory mitigation for the Project will now include purchase of 0.026 acres of Aquatic Resource Credits from the National Fish and Wildlife Foundation Sacramento District California In-Lieu Program Kaweah/Tule River Watershed Service Area.

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 writing seven (7) days 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.

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)
Settleable Material	mL/L	Grab	Every 4 hours during in-water work	(1)
pH		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 construction, 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 Central Valley Water Board adopted a *Water Quality Control Plan for the Tulare Lake Basin*, Second Edition, revised July 2016 (Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Turbidity and settleable matter limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:

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.

- 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 settleable matter to exceed 0.1 mL/L in surface waters as measured in surface waters within 300 feet downstream of the Project.
- c) Activities shall not cause the pH in surface waters to be depressed below 6.5 nor raised above 8.3.
6. The Applicant shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, pH, or other water quality objectives are exceeded.
7. In-water work shall occur during periods of low flow and no precipitation.
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. Hydroseeding shall be performed with California native seed mix approved by the California Department of Fish and Wildlife.
18. When work in a flowing channel is unavoidable and any temporary dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream, to maintain beneficial uses of waters of the state below the dam. Construction, dewatering, and removal of temporary cofferdams shall not violate Technical Certification Condition 5 of this Certification.
19. If any temporary dam or other artificial obstruction is constructed, the temporary dam or other artificial obstruction shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel which will cause little or no siltation.
20. If the Project will involve land disturbance activities of one or more acres, or where the Project disturbs less than one acre but is part of a larger common plan of development that in total disturbs one or more acres, the Applicant shall obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities Order No. 2009-0009-DWQ for discharges to surface waters comprised of storm water associated with construction activity.
21. The Applicant shall submit a copy of the final, signed and dated Lake or Streambed Alteration Agreement to the Central Valley Water Board Contact within 14 days of issuance by the California Department of Fish and Wildlife. The Applicant shall comply with all California Department of Fish and Wildlife requirements, including those requirements described in the Lake or Streambed Alteration Agreement.
22. The Applicant shall comply with all United States Fish and Wildlife Service requirements, including those requirements.
23. The Applicant shall implement each of the mitigation measures specified in the adopted Mitigated Negative Declaration for the Project, as they pertain to biology, hydrology and water quality impacts as required by Section 21081.6 of the Public Resource Code and Section 15097 of the California Code of Regulations.
24. The Conditions in this Certification are based on the information in the attached "Project Information Sheet" and the application package. If the actual project, as described in the attached Project Information Sheet and application package, is modified or changed, this Certification is no longer valid until amended by the Central Valley Water Board.

25. 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:

26. 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.
27. 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 California Department of Transportation, as lead agency, adopted a Mitigated Negative Declaration (SCH 2014021064) dated April 2015 for the Widening and Railing Replacements at Three Bridges.

The Central Valley Water Board has reviewed and evaluated the impacts to water quality identified in the Mitigated Negative Declaration. The proposed mitigation measures discussed in the Mitigated Negative Declaration were adopted to avoid and minimize project impacts to State waters and are required by this Certification.

WATER QUALITY CERTIFICATION:

I hereby issue an Order certifying that the proposed discharge from the California Department of Transportation, Widening and Railing Replacement- Sand Creek Bridge Project (WDID #5C54CR00086) 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, California Department of Transportation's application 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*, Second Edition, revised July 2016.

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 Pamela C. Creedon
Executive Officer

Enclosure: Project Information Sheet

Attachment: Figure 1 – Project Map

DISTRIBUTION LIST

Marc Fugler (SPK-2016-00201)
United States Army Corps of Engineers
Sacramento District Headquarters
1325 J Street, Room 1350
Sacramento, CA 95814-2922

Chris Nagano
United States Fish & Wildlife Service
2800 Cottage Way, Rm. W-2605
Sacramento, CA 95825-1846

Julie Vance, Regional Manager (Electronic Copy Only)
San Joaquin Valley-Southern Sierra Region
Department of Fish and Wildlife, Region 4
R4LSA@wildlife.ca.gov

Bill Orme (Electronic Copy Only)
State Water Resources Control Board
Stateboard401@waterboards.ca.gov

Joseph Morgan (Electronic Copy Only)
United States Environmental Protection Agency
Morgan.joseph@epa.gov

PROJECT INFORMATION SHEET

Application Date: Original application submitted 29 April 2016. A new application was submitted on 11 April 2017.

Applicant: Javier Almaguer
California Department of Transportation
855 M Street, Ste. 200
Fresno, CA 93721

Applicant Representative: Lucas Knox
California Department of Transportation
855 M Street, Ste. 200
Fresno, CA 93721

Project Name: Widening and Railing Replacement- Sand Creek Bridge Project

WDID Number: WDID #5C54CR00086

Date on Public Notice: 13 May 2016

Date Application Deemed Complete: 16 May 2016 (original application), 14 April 2017 (new application)

Type of Project: Transportation

Project Location: Section 24, Township 16 South, Range 24 East, Mt. Diablo Base and Meridian. Latitude: 36.515986 °, Longitude: -119.313447 °

County: Tulare

Receiving Water(s) (hydrologic unit): Sand Creek, Tulare Lake Hydrologic Basin, South Valley Floor Hydrologic Unit #551.60, Alta HA

Water Body Type: Intermittent Creek

Designated Beneficial Uses: The *Water Quality Control Plan for the Tulare Lake Basin*, Second Edition, revised July 2016 (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: Sand Creek Bridge will undergo widening and rail replacement. All of the existing railings will be removed and replaced with standard bridge railing Type ST-20S steel

bridge rail with tubular galvanized rails. New metal beam guard rails will also be installed at the bridge approaches. The bridge will be widened to provide the standard 12' lane and 8' shoulder. This will include widening the structure by 6'5" on either side to increase the total width of the bridge to 44'. The approaching roadway will also be widened on both sides and the existing pavement on the bridge will be removed and replaced. Six new 24" diameter columns would be added, one on either side of the existing three bents. To accomplish this work, a 49' wide and 222' long construction easement would be required. An equipment staging area will be situated just south of the bridge near the existing Road 116 alignment. Also, the intersection of Road 116 with State Route 201 will be moved 50 feet to the east.

Proposed Mitigation to Address Concerns: Suitable best management practices (BMPs), such as silt fences, straw wattles, or catch basins, shall be placed below all construction activities at the edge of surface water features to intercept sediment and pollutants before it reaches the waterway. These structures shall be installed prior to any clearing or grading activities. Caltrans Standard Specification 13 (13 Water Pollution Control) will be implemented. The contractor will be required to follow these specifications and submit all applicable BMPs and plans for approval prior to conducting activities. Measures found in the Standard Specifications are included to address the following: Hazardous spills, disposal of paint, liquid, concrete and similar waste generated from construction activities, minimizing material stock piles at the job site, methods and areas for materials storage, illicit connections and illegal discharge detection and reporting, vehicle and equipment cleaning, fueling, and maintenance.

Excavation/Fill Area: Approximately 13 cubic yards of structural concrete and 118 cubic yards of rock slope protection material will be placed within 0.013 acres of river channel. Additionally, 0.069 acres of channel will be temporarily be impacted by construction activities.

Dredge Volume: None

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
Un-vegetated streambed	0.069		185	0.013	131	84			

United States Army Corps of Engineers Permit Type: Nationwide Permit #14

California Department of Fish and Wildlife Lake or Streambed Alteration Agreement: The Applicant applied for a California Department of Fish and Wildlife Streambed Alteration Agreement on 29 April 2016.

Possible Listed Species: San Joaquin Kit Fox

Status of CEQA Compliance: The California Department of Transportation, as lead agency, adopted a Mitigated Negative Declaration (SCH 2014021064) dated April 2015 for the

Widening and Railing Replacements at Three Bridges.

The Central Valley Water Board has reviewed and evaluated the impacts to water quality identified in the Mitigated Negative Declaration. The proposed mitigation measures discussed in the Mitigated Negative Declaration were adopted to avoid and minimize project impacts to State waters and are required by this Certification.

Compensatory Mitigation: California Department of Transportation will purchase of 0.026 acres of Aquatic Resource Credits from the National Fish and Wildlife Foundation Sacramento District California In-Lieu Program Kaweah/Tule River Watershed Service Area.

Application Fee Provided: Total fees of \$720 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-
Widening and Railing Replacement- Sand Creek Bridge Project
Project Impacts to Waters

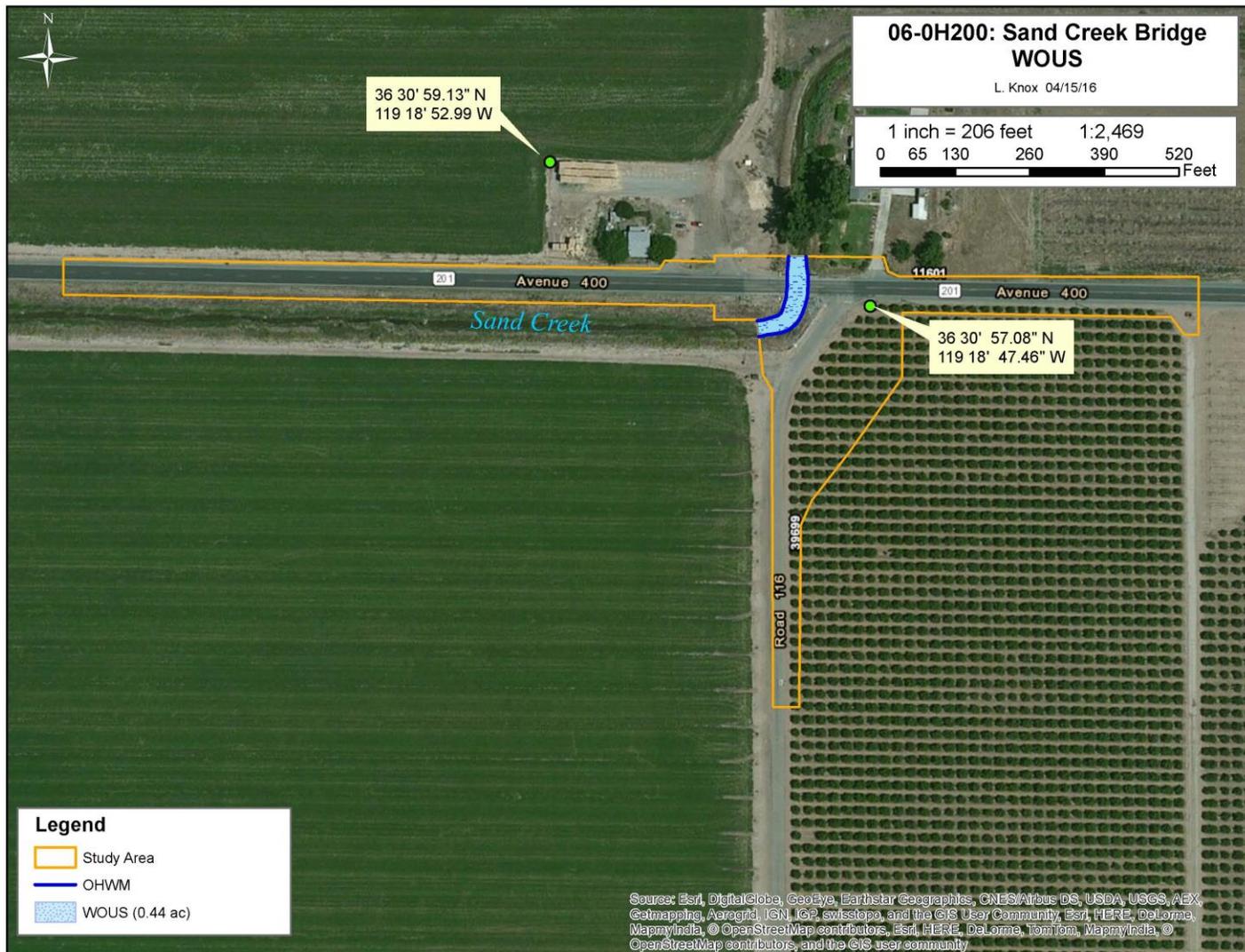


Figure 1

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