

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

Order No. R8-2019-0067

Waste Discharge Requirements  
for  
Nichols Road Partners, LLC  
Nichols Ranch Project  
City of Lake Elsinore  
Riverside County

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

1. This Order is for Waste Discharge Requirements for the Nichols Road Partners, LLC (discharger), Nichols Ranch Project (Project).

Waste Discharge Requirements (WDRs) are necessary to address impacts of dredged and fill material on the beneficial uses of waters of the State (WOTS). On May 8, 2019, the discharger submitted a Report of Waste Discharge (ROWD). An application fee of \$1,638.00 was also received on May 8, 2019. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as category A - Fill & Excavation Discharges (fee code 84) with the dredge and fill fee calculator.

On June 10, 2019, the Santa Ana Water Board deemed the ROWD complete but requested additional information about the Project. On June 14, 2019, the discharger provided that additional information. This Order regulates the discharge of fill material to WOTS.

2. The discharger proposes to construct a commercial and low-medium residential housing development in the City of Lake Elsinore. The Project is a proposal to establish the Nichols Ranch Specific Plan on a 72.5-acre site.
3. In addition to the construction of a commercial area and residential housing, the proposed Project consist of roads, recreational open space, open space, a storm drain system, drainage basins, and floodway zones.
4. The Project will also include the realignment and offsite improvements of Nichols Road. The realignment and widening of Nichols Road will occur within the Nichols Road right-of-way and along the currently existing, paved Nichols Road within predominantly developed and disturbed habitats.

5. The Project is located in the City of Lake Elsinore, in Riverside County. The Project site is located at latitude 33.7059° N and longitude -117.3515° W. The Project is found east of Interstate 15 and south of Nichols Road and west of Wood Mesa Court/El Toro Road. A map showing the Project location is found in Attachment A of this Order.
6. The Project site consists of approximately 34 acres of former mining construction and grading operations and approximately 38 acres of undeveloped land. The Project site is bisected by Stovepipe Creek, which flows from east to west across the Project site. Stovepipe Creek is an earthen drainage feature that is a tributary to Temescal Creek, Reach 5. Temescal Creek, Reach 5, has designated intermittent beneficial uses (existing or potential) that include:
  - i. Agricultural Supply (AGR)
  - ii. Groundwater Recharge (GWR)
  - iii. Water Contact Recreation (REC1)
  - iv. Non-Contact Water Recreation (REC2)
  - v. Warm Freshwater Habitat (WARM)
  - vi. Wildlife Habitat (WILD)
  - vii. Rare, Threatened, or Endangered Species (RARE)
7. A vehicular crossing and arched culvert will be constructed over Stovepipe Creek. The crossing would run a length of the channel approximately 175 feet and a width that ranges approximately 55-160 feet. The proposed Project will avoid Stovepipe Creek except for the single vehicular crossing.
8. Approximately 0.40 acre (4,840 cubic yards of fill) of permanent physical impacts and an additional 0.023 acre of permanent shading impacts will occur to WOTS from construction of the vehicular crossing and arched culvert over Stovepipe Creek. No impacts to waters of the U.S. are anticipated because construction activities will occur outside of the ordinary high-water mark but within areas of WOTS.
9. The discharger has proposed to maintain the existing drainage pattern to the maximum extent practicable. The Project proposes two drainage basins, an underground storm drain system, and streets with curb opening catch basins to convey storm water flows through the Project site and towards the proposed drainage basins. The basins function as a Best Management Practice (BMP) to remove pollutants from surface runoff.
10. The discharger will provide compensatory mitigation for the permanent physical loss of 0.40 acre to WOTS through the purchase of 0.85 acre of enhancement credits from a Santa Ana Water Board-approved mitigation bank or in-lieu fee

program within the Santa Ana River Watershed. A copy of the fully executed agreement for the purchase of mitigation credits will be provided to the Santa Ana Water Board within ten days of authorized impacts.

11. The Santa Ana Water Board has the authority to regulate the discharge of dredged and fill materials through the issuance of WDRs pursuant to California Water Code section 13263. The Santa Ana Water Board has determined that WDRs are necessary to adequately address the Project's potential impacts on the beneficial uses of WOTS.
12. California Water Code section 13263 authorizes the Santa Ana Water Board, after any necessary hearing, to prescribe requirements as to the nature of any proposed discharge with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements must implement any relevant water quality control plans that have been adopted and take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of California Water Code section 13241. In accordance with subdivision (g) of section 13263, all discharges of waste into WOTS are privileges, not rights, and the WDRs in this Order do not create a vested right to continue to discharge and are subject to rescission or modification.
13. Pursuant to California Water Code section 13267, the Santa Ana Water Board, in establishing or reviewing any water quality control plan or WDRs, or in connection with any action relating to any plan or requirement authorized by Division 7 of the California Water Code, may investigate the quality of any WOTS within its region. In conducting such an investigation, the Santa Ana Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. The WDRs contained in this Order incorporate requirements for water quality monitoring and Project reporting, which are necessary to ensure that the discharge of dredged and fill material complies with WDRs and is protective of the environment.
14. The WDRs in this Order are adopted pursuant to California Water Code sections 13263 and 13267. The WDRs set forth the requirements, prohibitions, and other conditions to implement the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) and the discharger's responsibilities for monitoring and

reporting. The discharger is responsible for ensuring compliance with the WDRs. In addition, this Order also regulates the discharge of fill material to WOTS.

15. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring that discharges not exceed maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.
16. Pursuant to the California Environmental Quality Act (CEQA), the City of Lake Elsinore, as the Lead Agency, certified an Environmental Impact Report (EIR) for the Project on June 11, 2019. The City of Lake Elsinore filed a Notice of Determination with the County of Riverside Assessor-County Clerk-Recorder on June 12, 2019. The City of Lake Elsinore's EIR identified potentially significant impacts that, after implementation of mitigation measures, were considered less than significant.
17. As a Responsible Agency under CEQA, the Santa Ana Water Board is required to consider the Lead Agency's environmental documents, adopt mitigation measures, and make findings on the significant impacts within its jurisdiction to approve (Public Resources Code, section 21002.1, subdivision (d); California Code of Regulations, title 14, section 15096, subdivisions (f), (g), (h)).

To address the potential impacts identified in the EIR, the discharger must complete the following mitigation measures: (1) purchase 0.85 acre of WOTS enhancement credits from a Santa Ana Water Board-approved mitigation bank or in-lieu fee program within the Santa Ana River Watershed; (2) obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities prior to the City of Lake Elsinore issuing a grading permit; (3) develop a site-specific Storm Water Pollution Prevention Plan to address short-term construction-related water quality issues; and (4) comply with the site-specific Water Quality Management Plans and their associated BMPs. This Order also requires the discharger to report on the implementation of mitigation to ensure that the mitigation occurs as required by this Order (California Code of Regulations, title 14, section 15097).

The Santa Ana Water Board finds that the required mitigation will reduce the potentially significant effects of the discharge of fill to WOTS to less-than-significant levels.

18. The Santa Ana Water Board has considered antidegradation pursuant to State Water Resources Control Board (State Water Board) Resolution No. 68-16 and Title 40, Code of Federal Regulations section 131.12 and finds that the discharge permitted under this Order is consistent with those provisions. State Water Board Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. Minimal water quality degradation may be allowed only if any change in water quality is consistent with the maximum benefit to the people of the State; the degradation will not unreasonably affect present and anticipated beneficial uses; and the degradation will not result in violation of any applicable water quality control plan. Discharges must meet requirements that will result in the best practicable treatment or control to avoid pollution or a condition of nuisance.

Consistent with the antidegradation policy, any degradation resulting from the discharges authorized by this Order provides the maximum benefit to the people of the State. Flood protection is critical to the safety of the public. Moreover, this Order contains WDRs to ensure present and future beneficial uses are maintained or enhanced through compensatory mitigation and monitoring requirements for authorized impacts to WOTS. The WDRs ensure that the highest level of water quality is maintained, consistent with the maximum benefit to the people of the State by prohibiting certain discharges, requiring the implementation of BMPs, and requiring the discharger to submit an annual report.

19. The Santa Ana Water Board has notified the discharger and other interested agencies and persons of its intent to prescribe WDRs for the discharge and has provided them with an opportunity for public hearing and an opportunity to submit their written views and recommendations.

**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 discharger shall comply with conditions described in and required by the State Water Board's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ, as amended by Order No. 2012-0006-DWQ; NPDES No. CAS000002) and any subsequent approvals.
5. The discharger shall comply with the local regulations associated with the Santa Ana Water Board's Municipal Stormwater Permit issued to Riverside County and co-permittees under NPDES No. CAS618033 and WDR Order No. R8-2010-0033, and subsequent iterations thereof.
6. The discharge of fill materials shall be limited to the placement of native fill and inert materials, as defined in Section 20230, Division 2, Title 27 of the California Code of Regulations. The discharge of fill material other than native soil is prohibited, unless authorized by the Santa Ana Water Board.

**B. DISCHARGE PROHIBITIONS:**

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes, into channels, surface waters, or any place where they would contact or be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate NPDES permit are prohibited.
5. During the grading and filling operation, there shall be no on-site fueling, lubrication, changing of oil or other equipment fluids and their filters, or any other maintenance or storage of construction equipment within or next to drainage areas or other surface runoff conveyances.

**C. PROVISIONS:**

1. Prior to the start of Project activities, the discharger shall purchase 0.85 acre of WOTS enhancement credits from a Santa Ana Water Board-approved mitigation bank or in-lieu fee program in the Santa Ana River watershed and shall provide verification to Santa Ana Water Board staff no later than ten (10) days after the start of Project construction activities.
2. The discharger shall maintain a copy of this Order at the Project site so that it is always available to site operating personnel. Key operating personnel shall be familiar with the Order's content.
3. The discharger shall comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code, may constitute a violation of the federal Clean Water Act 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. This Order does not convey any property rights of any sort, or any exclusive privilege.
9. This Order is not transferable to any person except after notice to and approval by the Executive Officer. The Santa Ana Water Board may require modification

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

10. 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 Santa Ana Water Board.
11. The discharger shall submit an Annual Report each year on the anniversary of this Order. Annual reporting shall continue until a *Notice of Project Complete Letter* is issued to the discharger. The contents of the Annual Report shall include:
  - a. Construction Summary: Project process and schedule, including ground disturbance, site clearing and grubbing, site construction, and implementation status of BMPs during the Active Discharge Period. If the Project has not started, the discharger shall provide an estimated start date and reasons for delay.
12. The discharger shall submit a *Commencement of Construction Report* at least seven (7) days prior to start of initial ground disturbance activities.
13. The discharger shall submit a *Request for Notice of Completion of Discharges Letter* following completion of active Project construction activities, including any required restoration and discharger-responsible mitigation. This request shall be submitted to the Santa Ana Water Board staff within thirty (30) days following completion of all Project construction activities. Upon acceptance of the request, Santa Ana Water Board staff will issue to the discharger a *Notice of Completion of Discharges Letter*, which will end the active discharge period and, if appropriate, associated annual fees.
14. The discharger shall submit a *Request for Notice of Project Complete Letter* when construction and any required post-construction monitoring is complete and no further Project activities will occur. This request shall be submitted to Santa Ana Water Board staff within thirty (30) days following completion of all Project activities. Upon approval of the request, the Santa Ana Water Board staff will issue to the discharger a *Notice of Project Complete Letter*, which will end the post discharge monitoring period and associated annual fees.
15. The discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five (5) years from the date of the sample, measurement, report, or application. Records may be maintained electronically. This period may be extended during the course of any unresolved enforcement



action or litigation regarding this discharge or when requested by the Santa Ana Water Board.

16. The Santa Ana Water 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.

17. This Order becomes effective on the date of adoption by the Santa Ana Water Board.

18. This Order will remain valid for five years from the date of this order.

I, Hope A. Smythe, 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 October 25, 2019.

Original signed by  
**HOPE A. SMYTHE**  
Executive Officer