



# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

Linda S. Adams  
Secretary for  
Environmental  
Protection

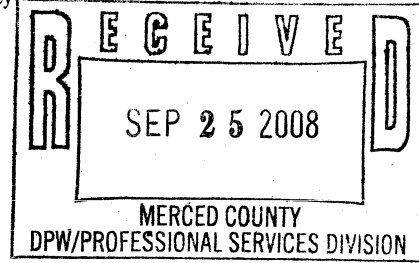
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Arnold  
Schwarzenegger  
Governor

25 September 2008

Steven E. Rough, Supervising Engineer  
Merced County Department of Public Works  
715 Martin Luther King Jr. Way  
Merced, CA 95340



## **ACTION ON REQUEST FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS ASSOCIATED WITH THE CAMPUS PARKWAY PROJECT, MERCED COUNTY**

**APPLICANT:** Merced County Department of Public Works

**PROJECT:** Refer to Attachment 1 for Project Information

**ACTION:**

- 1.  Order for Standard Certification
- 2.  Order for Technically-conditioned Certification
- 3.  Order for Denial of Certification

**WATER QUALITY CERTIFICATION STANDARD CONDITIONS:**

- 1. This certification action 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 Title 23 of the California Code of Regulations (23 CCR).
- 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 23 CCR subsection 3855(b) 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 is conditional upon total payment of the full fee required under 23 CCR Section 3833, unless otherwise stated in writing by the certifying agency.
- 4. Certification is valid for the duration of the described project. The Discharger shall notify the Regional Water Board in writing within 7 days of project completion.

**ADDITIONAL CONDITIONS (for Certification Action 2):**

In addition to the four standard conditions, the applicant shall satisfy the following:

1. A finalized Streambed Alteration Agreement must be issued by DFG before this project may proceed. A copy of the finalized Streambed Alteration Agreement shall be submitted to the Regional Water Board.


**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

Bridget Supple, Environmental Scientist  
(559) 445-5919  
bsupple@waterboards.ca.gov

**WATER QUALITY CERTIFICATION:**

I hereby issue an order certifying that the proposed discharge from the Campus Parkway project will comply with the applicable provisions of Sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water 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)," which is enclosed.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigations being completed in strict compliance with the applicant's project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Board's *Water Quality Control Plan for the Sacramento River Basin and the San Joaquin River Basin, Fourth Edition, Revised October 2007*.

  
for Pamela C. Creedon  
Executive Officer

Enclosures: Project Information  
Water Quality Order No. 2003-0017-DWQ

cc: (See next page)

Steven E. Rough  
Supervising Engineer  
Merced County Department of Public Works

- 3 -

25 September 2008

cc: Dave Smith, Chief, Wetlands Regulatory Office, U.S. Environmental Protection Agency,  
Region 9, San Francisco (email)  
Kathleen Dadey, Chief, Sacramento South Branch, Regulatory Unit, Department of the  
Army, Corps of Engineers, Sacramento  
Bill Orme, Water Quality Certification Unit Chief, Division of Water Quality, State Water  
Resources Control Board, Sacramento (email)  
W.E. Loudermilk, Regional Manager, San Joaquin Valley-Southern Sierra Region,  
California Department of Fish and Game, Fresno

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**ATTACHMENT 1  
PROJECT INFORMATION**

**Application Date:** 30 July 2008

**Applicant:** Merced County Department of Public Works

**Applicant Representatives:** Steven E. Rough, Supervising Engineer

**Project Name:** Campus Parkway

**Applicant Number:** RN #346

**Project Location:** 37°17'42" North Latitude, 120°25'27" West Longitude; Section 27 of Township 7 South, Range 14 East, MDB&M.

**Project Duration:** Phase 1: March 2009 to December 2009; Phase 2: Construction anticipated to begin in 2012; Phase 3: Insufficient funding, not yet scheduled.

**County:** Merced

**Receiving Water(s) (hydrologic unit):** Roadside ditch with potential connectivity to Bear Creek, tributary to the San Joaquin River between Sack Dam and the mouth of the Merced River; San Joaquin River Hydrologic Basin, San Joaquin Valley Floor Hydrologic Unit, Merced Hydrologic Area (# 535.80)

**Water Body Type:** Jurisdictional wetland

**Designated Beneficial Uses:** The designated beneficial uses of tributaries to the San Joaquin River between Sack Dam and the mouth of the Merced River are: municipal and domestic supply; agricultural supply; industrial process supply; water contact recreation; non-contact water recreation; warm freshwater habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; and wildlife habitat.

**Project Description:** The County proposes to construct a new four-lane expressway on the east side of Merced extending from the Mission Avenue Interchange with State Route 99 to Yosemite Avenue, a distance of approximately 4.5 miles. A wetland area will be filled near where the alignment intersects Highway 140.

**Preliminary Water  
Quality Concerns:**

Soil erosion, increased turbidity, deposition of settleable material, and transport of pollutants to Bear Creek.

**Proposed Mitigation  
To Address Concerns:**

Best Management Practices (BMPs) will be implemented during construction. Work in the roadside ditch will take place during the dry season when the waterway will be dry. All temporarily affected areas will be restored to pre-construction contours and conditions upon completion of construction activities.

**Fill/Excavation Area:**

The project will result in permanent impacts of 0.086 acres to jurisdictional wetlands.

**Dredge Volume (cy):**

None.

**U.S. Army Corps of  
Engineers Permit:**

The applicant applied for Nationwide Permit No. 14 on 26 December 2007.

**Department of Fish  
and Game Streambed  
Alteration Agreement:**

Not applicable for this phase of the project. The County is obtaining this Section 401 Water Quality Certification in order to purchase mitigation credits. When the project phasing allows, the County will apply for the Streambed Alteration Agreement.

**CEQA Compliance:**

The County prepared an Environmental Impact Report (2000121003) and filed a Notice of Determination with State Clearinghouse on 26 December 2006.

**Compensatory  
Mitigation:**

The County proposes to purchase a mitigation credit in the amount of \$16,625.00 from the North Suisun Mitigation Bank, managed by Wildlands, Inc.

**Application Fee  
Provided:**

A fee of \$500.00 was submitted on 30 July 2008, as required by 23 CCR Section 3833(b)(2)(A).

**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,<sup>1</sup> 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.

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<sup>1</sup> "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