California Regional Water Quality Control Board
Santa Ana Region

October 13, 2006

ITEM: * 9

SUBJECT: Order No. R8-2006-0076, SunCal Stetson Ranch, LLC, Stetson Ranch Residential Development Project, City of Hemet

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2006-0076, authorizing the discharge of fill to waters of the State that have been determined to be outside of the U.S. Army Corps of Engineers jurisdiction and not subject to regulation under Clean Water Act Section 404 (non-federal waters).

BACKGROUND

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (SWRCB) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, Section 3830 *et seq.* Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification." In the absence of the need to obtain a Certification, the SWRCB has asserted its authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act. On May 4, 2004, the State Water Resources Control Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge

Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ). Numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On July 14, 2006, Glenn Lukos Associates (GLA) submitted a report of waste discharge on behalf of SunCal Stetson Ranch, LLC for the proposed excavation of a 3.3-acre retention basin located at the northeast corner of South Lyon Avenue and Chambers Street in the City of Hemet. In their Report, GLA provided a delineation of waters of the U.S. that concluded that the basin was isolated from navigable waters and not subject to a federal permit from the Corps pursuant to Clean Water Act Section 404.

The retention basin was originally constructed in the late 1980's in order to retain the increased volume of storm water runoff from a 132-acre tributary area. 56-acres of that tributary area were subsequently developed into residential neighborhoods, while the remaining 76-acres were left largely undeveloped. The original design capacity of the basin was approximately 4 acre-feet, with any additional storm water runoff periodically overflowing the below-grade facility and sheet flowing southwest across the land. Due to a lack of maintenance, the capacity of the basin has been substantially reduced as sedimentation occurred and riparian vegetation developed, occupying a portion of the basin's volume. The basin lies on property owned or controlled by SunCal Stetson Ranch, LLC and the maintenance responsibility of the basin lies with this firm and not the City of Hemet.

In order to accommodate the development of the remaining 76-acre property, Stetson Ranch, the capacity of the basin must be restored. To do so, all 3.3-acres will be excavated to a depth of approximately 2-feet, including the 1.1- acre riparian area, which will be permanently impacted. Maintenance of the basin's capacity will necessitate annual mowing or vegetation removal and periodic excavation. All of the 1.1-acre riparian area meets Corps' wetland criteria. The 1.1-acre area exhibits an ordinary high water mark and is a water of the State. As indicated earlier, the isolated nature of the basin places it outside of Corps' jurisdiction (non-federal).

Upon review of the Report, Regional Board staff determined that the proposed excavation of the retention basin would affect it's beneficial uses and that the Regional Board could not authorize the proposed discharge of fill in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order.

Pursuant to CEQA, a Notice of Exemption (NOE) was prepared for the proposed discharge of fill by the City of Hemet. The NOE was filed on May 12, 2006. The City's preparation of a NOE is predicated upon a conclusion that there will be no significant impacts to beneficial uses and therefore no violation of water quality

standards. Public Resources Code Section 15300.2(c) provides that "a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Due to the presence of wetlands and their associated beneficial uses, Regional Board staff does not concur with the City's conclusion. An analysis of water quality impacts follows.

Based upon a review of the Report, including a Biological Resources Assessment provided therein, Regional Board staff has concluded that the following beneficial uses exist or potentially exist:

1) Groundwater Recharge (GWR);
2) Water Contact Recreation (REC1);
3) Non-contact Water Recreation (REC2);
4) Warm Freshwater Habitat (WARM);
5) Wildlife Habitat (WILD);
6) Rare, Threatened or Endangered Species (RARE); and
7) Spawning, Reproduction, and Development (SPWN).

Groundwater Recharge. The proposed excavation may impact the physical integrity of the basin in a manner that will result in a net reduction of its groundwater recharge capability. The use of heavy equipment in the basin could result in compaction of soils, reduced soil porosity and hydraulic conductivity. Soil compaction may also impact other beneficial uses as described below. To some extent, compacted soils are likely to be pre-existing as a consequence of the basin's original construction. The accumulation of fine sediment thereafter may have further reduced the basin's hydraulic conductivity.

Water Contact Recreation. The proposed excavation is not expected to impact water contact recreation. The excavation, per se, is not expected to eliminate surface waters or affect recreational access as it relates to the physical attributes of the basin. Regional Board staff has not been provided with evidence that this beneficial use does not pertain to this basin.

Non-contact Water Recreation. The proposed excavation may impact the aesthetic enjoyment of the basin through the elimination of trees and vegetation and impacts to riparian species. The excavation and subsequent maintenance activities will affect the diversity, age, and physical structure of the basin's vegetative community with consequences to the wildlife. Because the discharge does not propose to eliminate vegetation in the basin, the excavation and maintenance will alter the recreational experience to varying degrees (depending on the activity), but will not eliminate it. Regional Board staff has no specific information regarding particular recreational activities in or surrounding the basin.

Warm Freshwater Habitat, Wildlife Habitat, Rare, Threatened or Endangered Species, and Spawning, Reproduction, and Development. The proposed

excavation is likely to impact the biological integrity of the basin through the removal of vegetation via the initial excavation and ongoing maintenance. Riparian vegetation provides food and cover for various aquatic, terrestrial, and avian species, and affects water temperature and dissolved oxygen content. Impacts to riparian species may subsequently affect species that prey upon them. Due to the ongoing maintenance, these impacts are permanent. Soil compaction may also impact the growth of various plant species, thereby affecting the quality of wildlife habitat and other related beneficial uses. Although their occurrence is possible, no rare, threatened, or endangered species have been found in the basin. The impacts of the discharge to the Rare, Threatened, or Endangered Species beneficial use relate only to characteristics of the basin that may allow these species to inhabit the basin, not to any individuals themselves.

Discharges to the basin from the Stetson Ranch development will be mitigated according to the Riverside County Water Quality Management Plan (WQMP), pursuant to Regional Board Order No. R8-2002-0011, NPDES Permit No. CAS618033 (Order No. R8-2002-0011). A preliminary WQMP has been prepared and discharges will be treated in two extended detention basins, operated and maintained by a homeowner's association. The WQMP will be subject to further review and approval by the City of Hemet.

The California Wetlands Conservation Policy, Executive Order W-59-93, also commonly known as the State's "no-net-loss" policy, provides, in part, for "flexibility in the regulatory processes for the accidental or unintentional creation of wetlands." Regional Board staff believes that, because the wetlands that formed in the retention basin are not caused by natural hydrology and were unintended, the no-net-loss policy should not apply in formulating mitigation for impacts to beneficial uses.

In order to mitigate the potential impact to the basin's Groundwater Recharge beneficial use, the discharger has agreed to deep-rip the basin bottom upon completion of the excavation. Impacts to Non-contact Water Recreation vary depending on the activity. Regional Board staff has no basis to determine specific impacts to any particular activity and, therefore, no logical rationale to request separate compensatory mitigation for these beneficial use impacts. Impacts to the natural ecology of the basin (e.g. Warm Freshwater Habitat, Wildlife Habitat beneficial use, et al.) will be compensated through the payment of an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 1.1-acres of invasive plant species in riparian drainages in the San Jacinto Watershed. The payment of the in-lieu fee is expected also to adequately compensate for impacts to Non-water Contact Recreation beneficial uses as a result of improvements in recreational aesthetic enjoyment associated with improvements to vegetative functions and wildlife habitat.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2006-0076.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District
Department of Fish and Game
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office
State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit
City of Hemet
Santa Ana Watershed Association

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2006-0076

Waste Discharge Requirements

for

SunCal Stetson Ranch, LLC
Stetson Ranch Development
City of Hemet,
Riverside County, California

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

1. SunCal Stetson Ranch, LLC (hereinafter, discharger) proposes to excavate and maintain a 3.3-acre retention basin located at the northeast corner of South Lyon Avenue and Chambers Street in the City of Hemet. Within the basin are 1.1-acres of wetlands, with the balance consisting of uplands. The basin is located in the northeastern portion of Section 21, Township 5 South, Range 1 West, shown on the U.S. Geological Service *Hemet, California* quadrangle (33 deg. 43 min. 30 sec. N/-117 deg. 59 min. 00 sec. W).

2. The basin possesses an ordinary high water mark and meets the U.S. Army Corps of Engineers' (Corps) physical criteria as waters of the U.S. and as a wetland. However, being isolated, the basin does not meet the Corps' regulatory criteria and is not subject to their jurisdiction.

3. The basin was originally constructed in the late 1980's in order to retain the increased volume of storm water runoff from a 132-acre tributary area. 56-acres of that tributary area were subsequently developed into residential neighborhoods, while the remaining 76-acres were left largely undeveloped. Due to neglect, the basin developed riparian vegetation and became a wetland.

4. As part of the development of the remaining 76-acres into a residential development known as Stetson Ranch, the discharger is proposing to restore the hydraulic capacity of the basin by excavating the entire 3.3 acre area, including the 1.1-acres of wetlands contained therein. Subsequent routine maintenance, consisting of vegetation removal and periodic dredging, will result in permanent impacts to the beneficial uses of the wetlands.

5. The waste discharge requirements proposed herein address the discharge of fill to the isolated basin that will result from the proposed excavation.

6. The City of Hemet, acting as a Lead Agency pursuant to the California Environmental Quality Act (CEQA), has determined that the project qualifies under a Class 1 Categorical Exemption. The City prepared a Notice of Exemption on May 12, 2006. Regional Board staff has prepared an analysis of water quality impacts as part of the accompanying Staff Report in order to comply with the requirements of CEQA.

7. The discharger has conducted a biological resources assessment of the site and found no threatened or endangered species designated under State or Federal law.

8. The basin is isolated and exhibits no surface or subsurface connection with other waters of the state (i.e., receiving waters). No beneficial uses are designated for the basin within the Santa Ana River Basin Water Quality Control Plan (1995), however, upon review of the biological resources assessment, Regional Board staff has determined that the following beneficial uses are existing or potential:

   a) Groundwater Recharge (GWR);
   b) Water Contact Recreation (REC1);
   c) Non-contact Water Recreation (REC2);
   d) Warm Freshwater Habitat (WARM);
   e) Wildlife Habitat (WILD);
   f) Rare, Threatened or Endangered Species (RARE); and
   g) Spawning, Reproduction, and Development (SPWN).

9. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill of waters of the State that are outside the jurisdiction of the U.S. Army Corps of Engineers.

10. The Regional Board has considered anti-degradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.

11. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.

12. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

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 discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited except as authorized under these WDRs.

2. The discharge of floating 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 National Pollutant Elimination System (NPDES) permit, are prohibited.

C. PROVISIONS:

1. Upon completion of excavation activities, the discharger shall deep-rip the basin bottom in order to minimize soil compaction and its adverse impacts to plant species and wildlife and to promote groundwater recharge.

2. By December 13, 2006, the discharger shall pay an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 1.1-acres of invasive plant species in riparian waters of the State in the San Jacinto Watershed. Evidence of the payment shall be provided to the Executive Officer no later than January 12, 2006.

3. Discharges of fill shall not occur during the nesting season for riparian bird species.

4. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.

5. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.

6. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. This Order does not convey any property rights of any sort, or any exclusive privilege.

12. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Regional Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.

13. 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 Regional Board.

14. The Regional 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.

I, Gerard J. Thibeault, 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 13, 2006.

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Gerard J. Thibeault
Executive Officer