

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
November 14, 2007

ITEM: 8a

SUBJECT: A Conditional Waiver of Statutory Requirements to File A Report of Waste Discharge And for Adoption of Waste Discharge Requirements for Discharges to Non-Federal Waters of the State Associated with Repair and Protection Activities in Emergency Situations in the San Diego Region (Resolution No. R9-2007-0211) (Jeremy Haas)

PURPOSE: The California Water Quality Control Board, San Diego Region (Regional Board) will receive public testimony on the subject waiver, and consider adoption of Resolution No. R9-2007-0211 (Supporting Document No. 1).

PUBLIC NOTICE: A public notice that the Regional Board would consider this item was distributed on November 2, 2007 via email to the Regional Board Agenda Mailing list, and to the mailing list of interested parties for the three municipal storm water Permits in the San Diego Region. The item was also posted on the Regional Board website that same day.

DISCUSSION: Resolution No. R9-2007-0211 establishes a conditional waiver for discharges to non-federal waters of the State from dredge and fill projects during emergency repair and protection activities. Non-federal waters of the State include surface waters determined by the U.S. Army Corps of Engineers (USACE) and / or the U.S. Environmental Protection Agency to be outside of federal jurisdiction (e.g., certain vernal pools, other isolated water bodies, and certain intermittent or ephemeral streambeds that lack a significant nexus to traditionally navigable waters).

Similar discharges to federal waters are currently addressed through the USACE Clean Water Act Section 404 Regional General Permit (RGP) No. 63 Repair and Protection Activities in Emergency Situations. RGP No. 63 received a Section 401 water quality certification from the State Water Resources Control Board (State Water Board) on October 14, 2003. The conditional waiver is tentative

Resolution No. R9-2007-0211, is based upon requirements within RGP 63 and the State Water Board's section 401 water quality certification (Supporting Document No. 2).

Water Code section 13269 gives the Regional Board the authority to conditionally waive provisions of the Water Code requiring a report of waste discharge and the establishment of waste discharge requirements for a specific type of discharge where such a waiver is consistent with the Basin Plan and the public interest (Supporting Document No. 3).

KEY ISSUES:

1. The situation created by wildfires in October 2007 in the San Diego Region currently constitutes an emergency under which this conditional waiver would apply.
2. This tentative Resolution is consistent with Governor's Executive Order S-13-07, issued on October 25, 2007 (Supporting Document No. 4). That Order directs that affected boards suspend waste discharge requirements for discharges associated with certain fire-recovery activities, provided that the suspension of requirements serves the purpose of accelerating cleanup and recovery, while concurrently protecting public health and the environment. Tentative Resolution No. R9-2007-0211 expedites the removal of disaster related debris, which may be necessary to alleviate the enhanced risk of flooding and erosion associated with landscapes denuded by the fires.

LEGAL CONCERNS:

none

SUPPORTING DOCUMENTS:

1. Tentative Resolution No. R9-2007-0211
2. Regional General Permit No. 63 with State Water Board section 401 water quality certification
3. California Water Code Section 13269
4. Executive Order S-13-07

RECOMMENDATION:

It is recommended that the Board receive public testimony and adopt tentative Resolution No. R9-2007-0211.