

STATE WATER RESOURCES CONTROL BOARD

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WATER SUPPLY IMPROVEMENTS

Ms. Maria Morrison
Project Engineer
East Bay Municipal Utility District
375 Eleventh Street
Oakland, CA 94607-4240

Dear Ms. Morrison:

FOLSOM SOUTH CANAL (FSC) CONNECTION PROJECT: CALIFORNIA
ENVIRONMENTAL QUALITY ACT (CEQA) INITIAL STUDY

Thank you for the opportunity to review the January 22, 1996 Initial Study for the subject project. We are providing the following information on the jurisdiction of the State Water Resources Control Board (SWRCB) and the Central Valley Regional Water Quality Control Board (CVRWQCB) to help ensure that the Environmental Impact Report for the FSC Connection Project will address issues within our regulatory purview. We suggest that the agency matrix on page 10 of the Initial Study be amended to reflect the following:

Scope of Jurisdiction

Under the mandates outlined below, the jurisdiction of the SWRCB and the RWQCBs extends to all waters of the State and to all waters of the United States, including surface waters (e.g., streams and wetlands) and ground water. We are responsible for regulating point and nonpoint source discharges and direct and indirect impacts to beneficial uses of all waters.

Relevant Mandates

The three mandated programs most relevant to the proposed FSC Connection Project are described below.

California Porter-Cologne Water Quality Control Act (Porter-Cologne Act)

The Porter-Cologne Act establishes a comprehensive program for the protection of the beneficial uses of water. The RWQCBs have primary responsibility for individual permitting, inspection, and enforcement actions. Under the Porter-Cologne Act, the CVRWQCB has adopted a 1994 Water

Quality Control Plan that identifies: (1) the beneficial uses supported by the water bodies proposed to be impacted by this project (e.g., domestic supply, ground water recharge, wildlife habitat, endangered species habitat, several categories of aquatic habitat and recreation), and (2) the numeric and narrative water quality objectives designed to protect the beneficial uses.

Anyone proposing to discharge materials (other than to a community sewer system) that could affect water quality must file a "Report of Waste Discharge" with the appropriate RWQCB. The RWQCBs regulate discharges under the Porter-Cologne Act primarily through issuance of "Waste Discharge Requirements". If an application has been made for Federal Clean Water Act (CWA) Section 401 Certification (see below), a separate Report of Waste Discharge is not generally required.

CWA Section 401 Water Quality Certification
(401 Certification) Program

CWA Section 401 gives the SWRCB and RWQCBs the authority to regulate any proposed Federally-permitted activity which may affect water quality. Among such activities are discharges of dredged or fill material permitted by the U.S. Army Corps of Engineers (Corps) under CWA Section 404, including both individual permit and nationwide permits (NWPs), e.g., NWP 12 (Utility Crossings). Because the SWRCB has not issued blanket 401 Certification for NWPs in California, projects proposing to proceed under a NWP must request individual certification. Certification or waiver must be based on a finding that the proposed discharge will comply with water quality standards, which include beneficial uses, water quality objectives, and the State's Antidegradation Policy.

Any applicant for a CWA Section 404 permit (including a NWP that has not received blanket 401 Certification) must apply to the appropriate RWQCB for 401 Certification. The application must include: (1) a filing fee, (2) a complete project description, and (3) a copy of the application for the Federal license or permit. The RWQCBs may also require any other information needed to assess project impacts. The RWQCBs can waive 401 Certification for discharges which, as proposed, will not violate water quality standards. The authority to issue or deny 401 Certification is reserved to the SWRCB Executive Director, who considers the RWQCBs' recommendations.

MAR 4 1996

CWA Section 402 Storm Water Permit Program

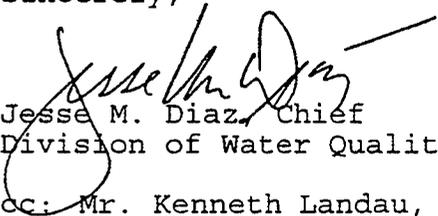
Storm water permits regulate discharges of storm water runoff during both the construction and post-construction phases of a project. Permits are required for construction activities disturbing five or more acres of land and for discharges that contribute to violations of water quality standards or are significant contributors of pollutants to receiving waters. The SWRCB has adopted a general permit to regulate storm water runoff from construction activities.

Compliance with the CEQA

Compliance with CEQA is required prior to issuance or waiver of 401 Certification; however, RWQCBs cannot require compliance with CEQA as part of an application for Section 401 Certification. This puts the SWRCB and RWQCBs in a problematic situation because the Corps may deem 401 Certification waived if the State does not act within 60 days, precluding the State's ability to regulate the discharge under the CWA. If an application is received before CEQA compliance is complete, the State's only recourse may be to deny Certification without prejudice, pending submittal of a final CEQA document. For this reason, SWRCB staff recommends that applicants not request 401 Certification until CEQA compliance is complete.

If you have any general questions relating to the programmatic issues raised in this letter, please telephone Oscar Balaguer at 916/657-1025. You may also call Bill Campbell, Chief of the Nonpoint Source Certification and Loans Unit, at 916/657-1043. For project-specific questions relating to the permitting of this project, please call Kenneth Landau, Chief, Delta Counties Unit, CVRWQCB, at 916/255-3026.

Sincerely,



Jesse M. Diaz, Chief
Division of Water Quality

cc: Mr. Kenneth Landau, Chief
Delta Counties Unit
Central Valley Regional
Water Quality Control Board
3443 Routier Road
Sacramento, CA 95827-3098