



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO CA 95814-2922

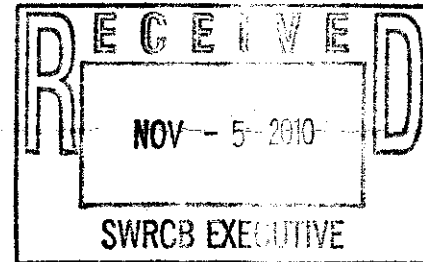
REPLY TO
ATTENTION OF

Office of Counsel

November 3, 2010

Re: Comments on CGP Reopener - Modifications to Order No. 2009-0009-DWQ – Construction General Permit

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



Dear Ms. Townsend:

This comment and proposed change have been coordinated with Ward Tabor, Assistant Chief Counsel for the California Department of Water Resources, on behalf of the Central Valley Flood Protection Board and itself, and Holly Gilchrist, Agency Counsel for the Sacramento Area Flood Control Agency. We jointly propose the following revisions to Order No. 2009-0009-DWQ for consideration by the State Water Resources Control Board ("Board"), for a modification of the order regulating the issuance of a Construction General Permit (CGP).

All three agencies are cooperatively involved in critical public safety infrastructure improvements to the Federal Flood Control System within the Central Valley. In addition, USACE is involved with a number of other civil works and military works construction activities. These projects are the subject of detailed feasibility studies and authorization by the U.S. Congress. Project Partnership Agreements (formerly Project Cooperation Agreements) are executed by these three parties that allocate responsibilities for the construction of improvements to the Flood Control System within the Central Valley. Under Federal law and the Project Partnership Agreements (PPA), the Non-Federal Sponsors (NFS) acquire all the lands, easements, and rights of way needed for the project. The USACE procures the construction contractor and oversees construction. The NFS have no control over the USACE's contractor.

The current language of the Board order requires the property owner to file the Notice of Intent ("NOI") with the Board for coverage under the CGP. The Board order requires that the signatory to the NOI be able to control the construction activities in their entirety. While the NFS typically own the property rights, usually an easement, for the construction of the project, they lack control over the USACE's construction activity. Previously, the USACE has required the contractor to sign the NOI because they are contractually required to comply with all applicable laws and regulations. The current order appears to prohibit the USACE contractor to sign the NOI.

To address this problem, the three agencies jointly propose the following modification to the Board's Order:

In Appendix 5 - Glossary page 5 add to the definition of Legally Responsible Person as follows:

"However, when a federal agency is a Legally Responsible Person, or has written permission from a Legally Responsible Person to enter and/or construct a project, then a contractor to the federal agency shall be a Legally Responsible Person when it contractually assumes all NPDES permit compliance responsibilities including signing and certifying all required NPDES permit documents."

We believe that this proposal addresses the challenge we identified above and allocates responsibility for compliance to USACE and our contractor. The Board will have clear entities from which they can expect and enforce compliance.

Thank you for considering our proposal.

Sincerely,



A. L. Faustino
District Counsel