
Central Valley Regional Water Quality Control Board

5 June 2020

Governor's Office of Planning & Research

Kevin Sheridan
San Joaquin Regional Rail Commission
949 East Channel Street
Stockton, CA 95202

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STATE CLEARINGHOUSE

COMMENTS TO REQUEST FOR REVIEW FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT, VALLEY RAIL SACRAMENTO EXTENSION PROJECT, SCH#2019090306, SACRAMENTO AND SAN JOAQUIN COUNTIES

Pursuant to the State Clearinghouse's 30 March 2020 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Draft Environmental Impact Report (DEIR)* for the Valley Rail Sacramento Extension Project, located in Sacramento and San Joaquin Counties.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

Central Valley Water Board staff recommends changing the phrase "State Water Board Section 401 Water Quality Certification" to "Clean Water Act Section 401 Water Quality Certification" for accuracy, since both the State Water Resources Control Board and the Central Valley Water Board issue Clean Water Act Section 401 Water Quality Certifications. Please note that a Clean Water Act Section 401 Water Quality Certification and/or a Waste Discharge Requirement permit is required for temporary and permanent impacts associated with disturbances from fill and excavation within waters of the state, such as, but not limited to, wetlands, vernal pools, lakes, and stream channels. The phrase "within the banks of surface waters" may be misinterpreted to mean riparian areas only.

The statement "all construction activities within the banks of surface waters would require a USACE Section 404 permit and a State Water Board Section 401 Water Quality Certification..." is used on several occasions within the DEIR. Central Valley Water Board staff recommends changing the statement to "all construction activities within federal jurisdictional waters would require a Clean Water Act Section 404 permit issued by the USACE and a Clean Water Act Section 401 Water Quality Certification issued by the State Water Resources Control Board or Regional Water Quality Control Board, and all construction activities within non-federal jurisdictional waters would require a Waste Discharge Requirement permit issued by the Regional Water Quality Control Board."

KARL E. LONGLEY SCD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

Central Valley Water Board staff recommend changing the sentence on page 3.4-118 that reads, “Wetlands and other waters of the United States that do not meet all three USACE wetland criteria could be subject to regulation by the Central Valley RWQCB under the state’s Porter-Cologne Act” to “Wetlands and other waters of the state that do not meet all three USACE wetland criteria could be subject to regulation by the Central Valley RWQCB under the state’s Porter-Cologne Act and may require a Waste Discharge Requirement permit.” Please note that wetlands and other waters of the state that do not meet all three USACE wetland criteria are not considered waters of the United States.

I. Regulatory Setting

Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State’s water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:

http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

Antidegradation Considerations

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:

https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

If you have questions regarding these comments, please contact me at (916) 464-4812 or Jordan.Hensley@waterboards.ca.gov.



Jordan Hensley
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research,
Sacramento