A scenic river with rapids and a rafting party. The river flows through a valley with rocky banks and lush green vegetation. In the background, there are brown, rocky hills under a clear blue sky. A yellow raft with two people is navigating a section of white water rapids in the middle of the river.

***Regional Water Board
Regulating Impacts to Federal
and State Waters***

February 26, 2009

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Water Board Permits

Federal

**Clean Water Act, Section 401
Water Quality Certification**

State

**Porter-Cologne Water Quality
Control Act**

(a.k.a. California Water Code)

Waste Discharge Requirements



Why the Permits???

Protection of “Beneficial Uses”

- Fisheries and other wildlife habitat
- Rare, threatened or endangered species
- Recreation
- Drinking water
- Human health
- Groundwater recharge
- Flood peak attenuation/Flood water storage
- Wetland habitat
- Water quality enhancement
- Marine habitat
- Commercial and sport fishing



State priority – No Net Loss

California Wetlands Conservation Policy – Executive Order ensuring “no overall loss” and achieving a “...long-term net gain in the quantity, quality, and permanence of wetland acreage and values....”

Senate Concurrent Resolution No. 28 - “[i]t is the intent of the legislature to preserve, protect, restore, and enhance California’s wetlands and the multiple resources which depend on them for benefit of the people of the State.”

CWC requires that the “[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas.”

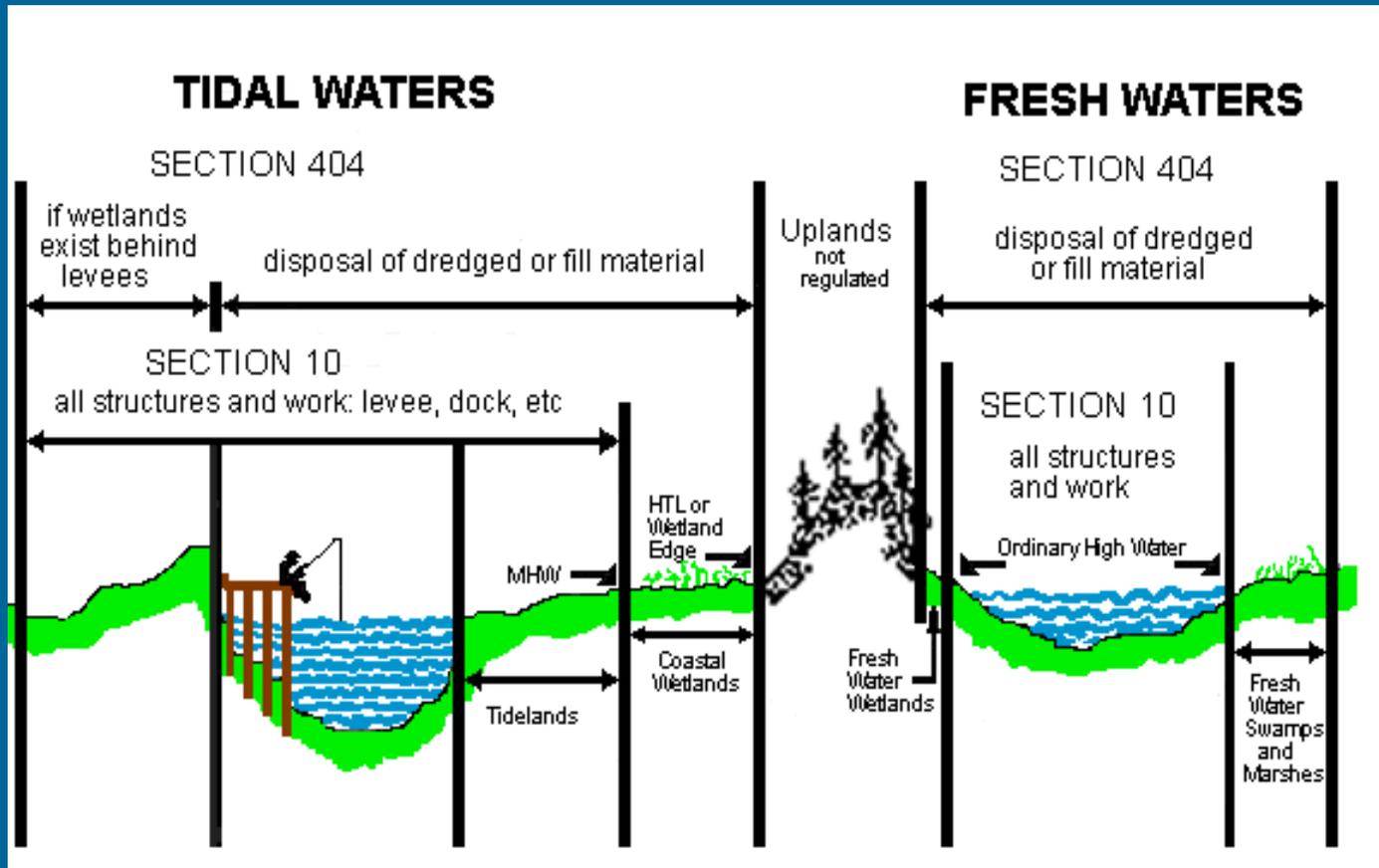




Clean Water Act Section 401

- Waters of the U.S.
- Corps requires State certification
- Protection of State Water Quality Standards
- If Standards protected, then 401 cert may be issued

Army Corps Regulatory Jurisdiction



Waters of the U.S.

Department of Fish & Game

<http://www.dfg.ca.gov/1600>

1600 Streambed Alteration Agreement

For work in any stream course

Appropriate mitigation may be required

**Projects requiring DFG Streambed
Alteration Agreement usually need
Regional Water Board authorization**

Jurisdictional Waters

- Federal waters
- State waters
- Defined in the California Water Code

“Any surface water or groundwater, including saline waters, within the boundaries of the state”



How to Identify Regulated Waters

Examine on-site drainage

Leaf line

Staining

Running water

Defined stream bank

Hydrophytic vegetation

Refer to topographical map or aerial photos

Streams

Sharp contours

Thick vegetation

Seasonal ponds



Examples of Waters of the State

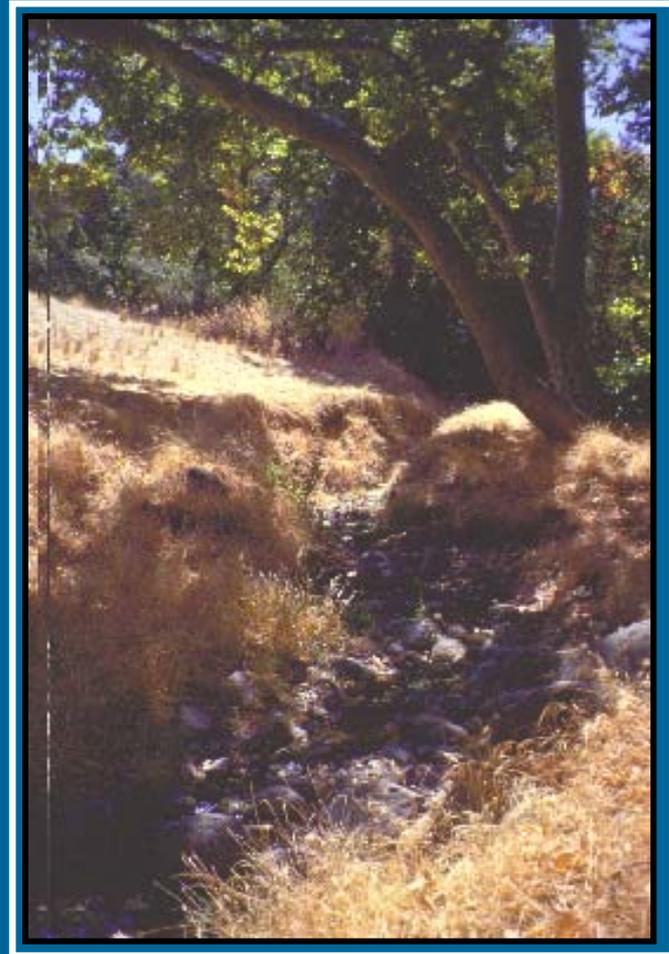


- Rivers
- Creeks (including seasonal and intermittent)
- Wetlands - seasonal, marshes and tidal
- Bays and estuaries
- Ponds, lakes and vernal pools
- Grassy swales (creek tributaries)
- Drainage Ditches (some)
- Wetland seeps

This perennial creek is a Water of the State



These seasonal creeks are also Waters of the State, whether flowing or not

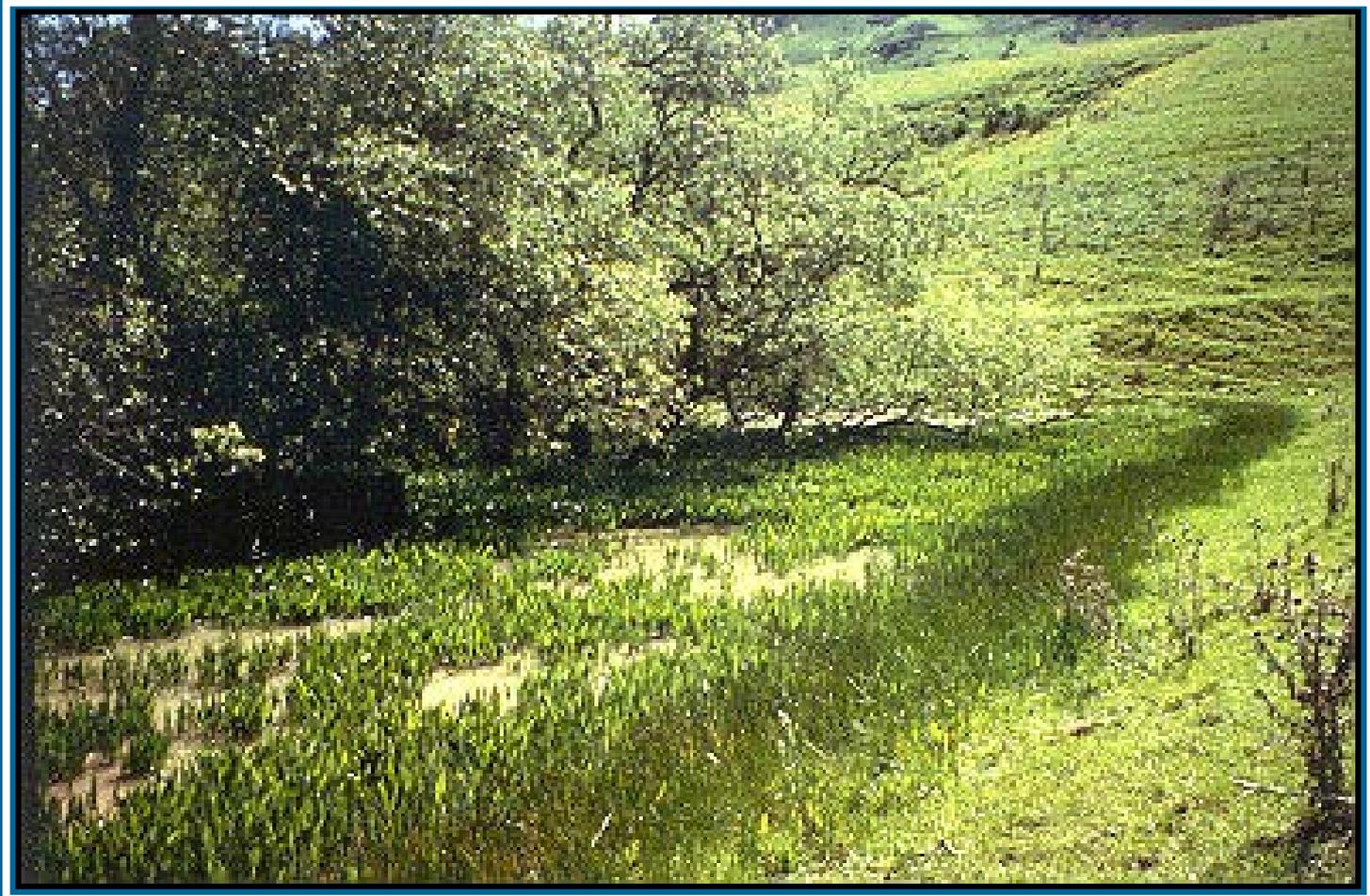


This seasonal wetland ...



Almost any surface water is a Water of the State

This ponded wetland...



This concrete-lined creek...



This vernal pool...



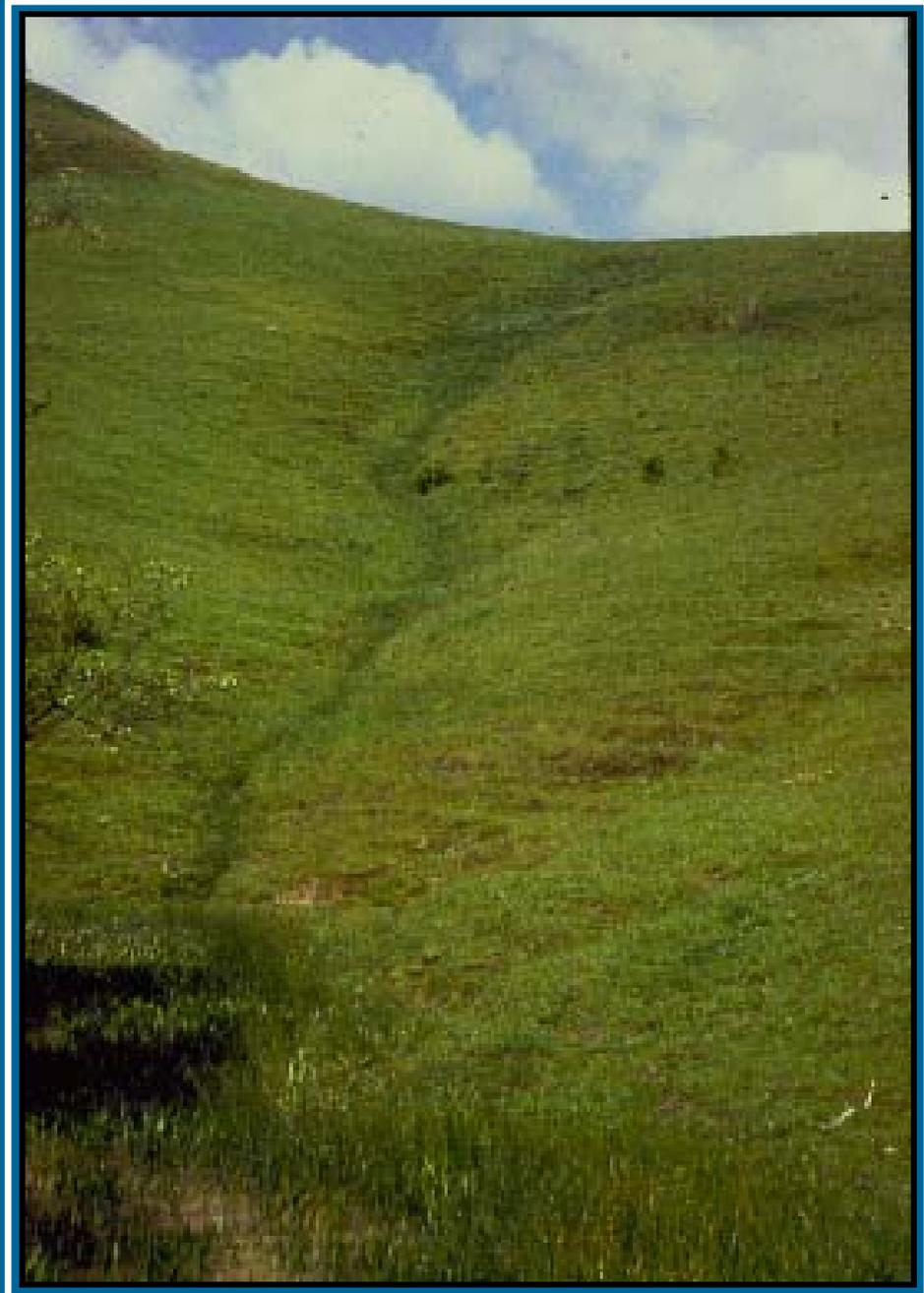
ver-nal [vúrn'l] *adjective*

1. in the spring: appearing or happening in the season of spring

...and this seep wetland.

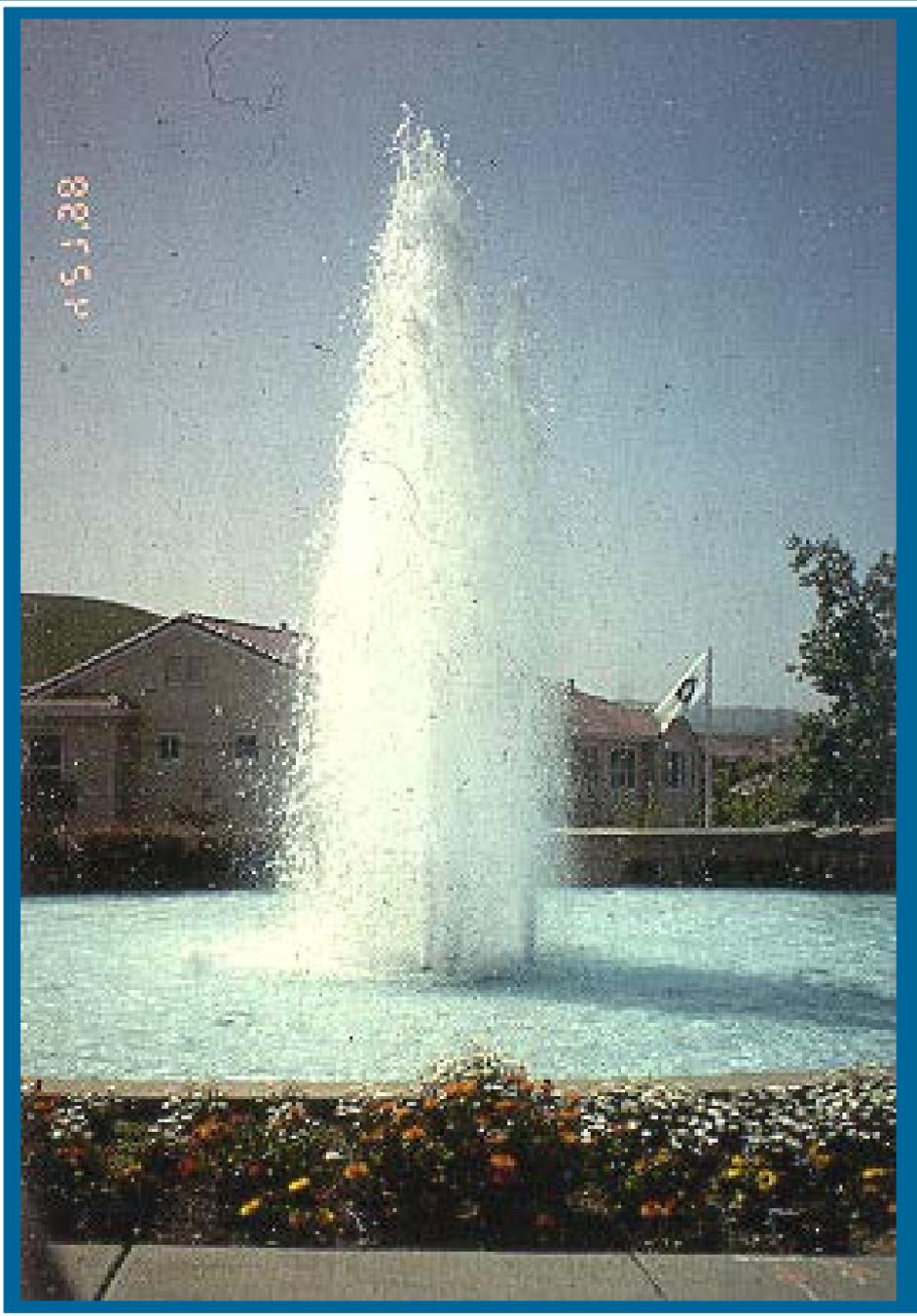


**Headwater
creeks
=
Waters of
the State**



This is not a Water of the State

**Artificial drainage
features in which no
natural runoff exists
are not covered by
state and federal
agencies.**



Water Board Permit using the California Water Code

- When no Corps permit
- Submit Report of Waste Discharge
- Waste Discharge Requirements (WDRs) adopted
- Subject to vote at Water Board meeting
- More common than WDRs:
 - Waiver of WDRs
 - Coverage under the general permit



Isolated Wetlands or other Waters

- Isolated wetlands are not waters of the United States
- State retains authority to regulate discharges of waste into any waters of the State, regardless of Corps jurisdiction
- Statewide General Permit for impacts outside corps jurisdiction < 0.20 acres or 400 linear feet
- RGP-emergency, Small Habitat, etc.



Work requiring authorization

- Projects w/ Non-Reporting NWPs
- In-stream dams
- Dewatering activities
- Outfall structures
- Riparian Restoration/Revegetation
- Culvert repair and replacement
- Bridges
- Dredging/Sediment Excavation of Stream or Drainage Channels
- Bank stabilization/Retaining walls
- Projects that change the Hydrology/Drainage



Applying for Regional Water Board Permit

- **Same Report of Waste Discharge Application for both 401 Certification and Individual Waste Discharge Requirements**
- **General SWRCB Permits Submit “Notice Of Intent” (NOI):**
http://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.shtml



Reviewing Permit Application

- Complete application
- Avoidance, Minimize, Mitigate
 - Off-site, out-of-kind mitigation must be provided at levels greater than impact
 - Temporal losses mitigated
- Protection of Water Quality Standards
 - Beneficial uses
 - Water Quality Objectives
 - Antidegradation
- Overall watershed impact
- Cumulative impacts





Important Permit Elements

- Meetings and coordination
- Project description
- Mitigation
- Revegetation
- Dewatering and flow diversion
- Storm water treatment
- Reporting
- CEQA



Follow the Project Description

- “Caltrans shall construct the project in accordance with the conditions described in the application and the findings above, and shall comply with all applicable water quality standards.”
- “Any change to the implementation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this Order must be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.”



Mitigation

- Plan early
- In kind (i.e. stream for stream, wetland for wetland)
- On site
- Off site
 - Close proximity to area of impact (Watershed)
- Banks
- Ratios (Banks 1:1, Temp 1:1-1.5:1, Perm 3:1)



Revegetation

- Required for all vegetation disturbed areas
- Submit plan with application
- Specify native plant species
- Diversity in types of plants (grasses, shrubs, trees)
- Optimum results: remove invasives, leave site better than before

Dewatering and Flow Diversions

“ Work in flowing or standing waters, unless proposes in the application and approved by the Regional Water Board is prohibited. If construction dewatering is found to be necessary, the Applicant shall use a method of water disposal other than disposal to surface waters (such as land disposal) or the Applicant shall apply for coverage under the General Construction Dewatering Permit and receive notification of coverage prior to discharge to surface waters.”



Storm Water Treatment

- We evaluate the impacts to Water Quality from all elements of a project before we issue a permit
- We require consideration of post-construction storm water treatment for areas of new pavement or impervious surface or retrofits
- L.I.D. (landscape designs vs. end of pipe controls)
- Early coordination with design, construction and environmental
- Sonoma County SUSMP vs. Caltrans PPDG



Storm Water Treatment

Example Bio-Swale Requirements

- show the area contributing to swales
- adequate residence and velocity time
- depth of flow ≤ 4 "
- proper soil and vegetation
- plan view and cross-sections
- maintenance plan



Reporting Violations

- Required in a timely manner
- Reporting is required by our 401 permits and the storm water permit
- Failure to report is a violation and may trigger enforcement such as on Confusion Hill
- BMPs proposed in application **MUST** be implemented or permit violation





Coordination

“Caltrans shall provide a copy of this Order and attachments to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. Caltrans shall be responsible for work conducted by its contractor or subcontractors ”



Coordination

- **On-site water quality permit compliance meetings**
 - With all contractors and subcontractors and Caltrans staff
 - Held at least every two weeks, particularly before storms
 - To ensure permit compliance

California Environmental Quality Act (CEQA)

- **Appropriate Use of Exemptions:**
 - Regional Water Board Liability
 - Endangered Species
- **EIR / NegDec:**
 - Impacts to waters need to be consistent with 401 application



TMDLs and Impaired Receiving Waters

- Sediment and temperature
- Impaired receiving waters:
 - Consider pollutant contribution from all projects including impacts from increased storm water runoff





Common Application Problems

- Include volume of fill calcs
- Area of impact
 - Consistent w/in application
 - Accurate for construction purposes
- Uncertainty in implementation?
 - Provide alternative scenarios that will protect water quality

Tips for Faster Permit Action

- **Internal coordination**
 - **Design, construction, environmental**
 - **Ensure that construction methods agree with environmental impact**





Permit Violations

- Spills and other unauthorized discharges
- Inadequate BMPs
- Failure to submit plans and reports
- Unauthorized change in project implementation
- Working outside the approved project timeframe
- Failure to report violations



401 Enforcement

- **Informal correspondence**
- **Notice of Violation**
- **Cease and Desist Order**
- **Administrative Civil Liability**
- **Cleanup and Abatement Order**
- **Notification to other agencies**

Things to Remember

- Authorize changes in project description
- Mitigate, revegetate
- Personnel must be familiar w/ permits, meet, and coordinate
- Permits are enforceable
- Caltrans is the permittee and responsible



NCRWQCB

Recommendations to CALTRANS

- **Internal quality control**
- **Knowledge of our requirements and concerns**
- **Single point of contact**
- **Faster issuance of permits**



Available Documents

- **Primer on Stream and River Protection – SF Bay website**
- **Rapid permit and stream protection guidance for CT projects**
- **General Permit – State Water Board website**
- **RGP5 Emergency Permits Fact Sheet**



Additional Discussion Topics

- Fee calculator (Temporary and Permanent Impacts)
- Migratory Bird Act
- Bridge maintenance
- Emergency projects
- Reduction of hardscape – alternatives to rip rap
- Suggestions from Caltrans to Regional Water Board

