

Alex Rabidoux
Solano County Water Agency
810 Vaca Valley Parkway, Suite 203
Vacaville, CA 95688

Via Email: ARabidoux@scwa2.com

May 22, 2020

CC: Justin Pascual (jpascual@scwa2.com)

RE: Compliance with the Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications

Dear Alex,

Attached please find our proposal for the above-referenced scope of work. Our scope reflects the anticipated work required to comply with the aquatic pesticide general permit adopted by the State Water Resources Control Board (SWRCB) (Order No. 2013-0002-DWQ).

Note that you can use this permit for the application of all aquatic herbicides currently registered for use in California. Note however, that the application of copper and/or acrolein may require a State Implementation Policy (SIP) Section 5.3 exception. At this time, only Maine Prairie Water District has a SIP exception.

We understand that, to the extent possible, Solano County Water Agency, Dixon Resource Conservation District, Reclamation District 2068, and Maine Prairie Water District wish to continue to act together to achieve compliance with the aforementioned permit. These entities will be permitted separately to achieve this objective.

After you review the attached scope of work, please call me or Stephen Burkholder to discuss any questions you may have. We look forward to assisting you with pesticide and water quality-related permit compliance.

Sincerely,

BLANKINSHIP & ASSOCIATES, INC.



Michael S. Blankinship, P.E.
Project Manager

Attachment: Scope of Work and Terms of Agreement

Scope of Work

Solano County Water Agency Group

Compliance with the STATEWIDE GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR RESIDUAL AQUATIC PESTICIDE DISCHARGES TO WATERS OF THE UNITED STATES FROM ALGAE AND AQUATIC WEED CONTROL APPLICATIONS

WATER QUALITY ORDER NO. 2013-0002-DWQ GENERAL PERMIT NO. CAG990005

Solano County Water Agency (SCWA), Dixon Resource Conservation District (Dixon RCD), Reclamation District 2068 (RD 2068), and Maine Prairie Water District (MPWD) [herein referred to as “Agency” or “Agencies”] apply aquatic herbicides within their jurisdictions under the State Water Resources Control Board (SWRCB) Statewide General National Pollutant Discharge Elimination System (NPDES) Permit # 2013-0002-DWQ (“permit”).

As required by the permit, the Agencies individually completed a Notice of Intent (NOI), prepared and submitted an Aquatic Pesticide Application Plan (APAP), and have received a Notice of Applicability (NOA).

All Agencies can use the permit for the application of all aquatic herbicides currently registered for use in California, including copper and acrolein. If, however, copper or acrolein will exceed their respective California Toxics Rule (CTR) maximum values, this permit may not provide coverage. Under typical application scenarios and following product label instructions, it is highly likely that CTR maximum values for these aquatic herbicides will be exceeded. Therefore, we suggest that Agencies do use acrolein or copper-containing aquatic herbicides unless they first obtain a SIP Exception.

MPWD completed a California Environmental Quality Act (CEQA) process, obtained a State Implementation Plan (SIP) exception for California Toxics Rule (CTR) exceedance, and is listed on Appendix G of the permit. Accordingly, MPWD has permit coverage for short-term or seasonal exceedances of the CTR maximum values for copper and acrolein.

It is our understanding that the Agencies would like to enter into a two-year agreement for permit compliance support through the 2020 and 2021 aquatic weed control seasons. To achieve compliance with the permit and allow for applications to be made during 2020 and 2021, Blankinship and Associates, Inc. proposes to complete the following tasks:

Task 1: Sample Collection and Analysis

Based on the Agencies’ APAPs and NOIs and historic application data, we will collect and submit surface water samples for analysis according to permit requirements. During or shortly after sample collection, we will perform necessary field chemistry analysis (pH, electrical conductivity (EC), dissolved oxygen (DO) and turbidity) and submit properly preserved and labeled samples under chain of custody procedures to a qualified analytical laboratory for chemical analysis.

We will review and quality assure the data and prepare a brief summary of results for inclusion in the annual report to the SWRCB and the Regional Water Quality Control Board (RWQCB).

Note that the permit requires one (1) sample per environmental setting (i.e., static and flowing water) per year for glyphosate. In contrast, the permit requires that six (6) applications of all other herbicides are sampled if six (6) or more applications are made in a year; if less than six (6) applications are made, all applications must be sampled. The application of sodium carbonate peroxyhydrate only requires sampling for the field parameters and not for the active ingredient.

Further note that if event and post event samples from six (6) treatments in one (1) year or spanning multiple years report the concentration of an aquatic herbicide below its water quality objective, subsequent sampling is reduced to once per year per environmental setting for that herbicide.

RD 2068 has fulfilled the requirement of sampling six (6) consecutive applications of endothall with no compliance samples showing detections of endothall above applicable receiving water limitations. Since fulfilling this requirement, annual compliance sampling has been maintained with no receiving water limitation (RWL) exceedances for endothall. Therefore, sampling requirements for endothall in RD2068 conveyances remains at one (1) sampling event in 2020.

For purposes of cost estimation, we assume that the Agencies will make glyphosate, and endothall applications in 2020 and 2021. We assume that we will sample the following during each permit reporting year: Dixon RCD: one (1) glyphosate application and one (1) imazamox application; RD 2068: one (1) glyphosate and one (1) endothall application; SCWA: two (2) glyphosate applications, one to a static water environmental setting (i.e. lake, pond, basin) and one to a flowing water environmental setting (i.e. canal, drain, ditch). Not that if additional imazamox applications are made by Dixon RCD, additional sampling may be required, as Dixon RCD has not yet qualified for reduced sampling frequency for imazamox.

MPWD has a SIP Section 5.3 exception for the use of acrolein and/or copper. We understand that MPWD does not intend to use copper or other aquatic herbicides for the control of nuisance aquatic vegetation in 2020 or 2021. As such, no sampling will be completed for MPWD.

Task 2: Field and Analytical Laboratory Data Compilation, Review, and Reporting (if necessary)

As described in the Agencies' APAP's, several time-specific reporting requirements exist in the event of non-compliance with the permit. We will perform a timely review of applicable data and documentation and inform you of a potential or an actual non-compliant circumstance, if any. If a potential or actual non-compliant circumstance arises, we will contact you as soon as possible to discuss options and reporting, if necessary.

Task 3: Herbicide Application Information Collection, Review, and Annual Report Preparation

Based on the activity from the above tasks, we will compile laboratory and field analytical data, compile observation and herbicide application data, and prepare the required tables and text for the Agencies' draft annual reports.

After the Agencies' review of the draft report and our incorporation of edits, we will submit a final annual report to the SWRCB and RWQCB on your behalf.

Task 4: New Permit Negotiation

The current iteration of the Permit became active on December 1, 2013 and was set to expire on November 30, 2018 but was administratively continued. Consequently, the 2013 Permit is still active and enforceable. SWRCB staff indicated they are considering beginning the process of drafting a new permit in mid- to late-2020. In the next year, we anticipate working closely with SWRCB staff on new permit requirements. We will negotiate with the SWRCB on behalf of the Agencies and other permittees in an attempt to achieve a fair and scientifically-based new permit. Our work will be based on our extensive collection of data, past experience, and familiarity with the existing Permit. We will advocate for a cost-effective approach to new permit compliance, as we did in 2010 through 2012 during the drafting of the current Permit.

Task 5: Enrollment in New NPDES Permit (Anticipated 2021)

Upon the issuance of the new permit, we will draft permit documentation necessary to obtain coverage and allow for continued applications to each Agency's facilities. We anticipate preparing an Aquatic Pesticide Application Plan and Notice of Intent for each Agency. After review, we will submit this documentation to the SWRCB for the public comment period and enrollment in the permit. The cost for this task is estimated at \$5,000 per agency and will be billed on a time and materials basis.

Task 6: IPM In and Around the Water Workshop

We will work with Agency staff to provide a half day workshop that focuses on Integrated Pest Management (IPM) strategies for vegetation in and around flood control and drainage conveyances. We will cover central components of IPM such as pest identification, establishment of action levels, monitoring, selection of control tools, evaluation of treatment effectiveness, and recordkeeping. Additional topics may include plant physiology, biology and ecology, herbicide formulations, adjuvants and surfactants, a review of pesticide-related terminology, signal words, environmental hazards, and equipment calibration.

Task 7: Biologist Assessment (Not included in cost estimate)

It is our understanding that in 2020 and 2021, MPWD does not intend to make applications of copper-containing algaecides and/or herbicides. Accordingly, a biological assessment of the Agencies receiving waters is not required and is not included in the scope of this proposal. To fulfill SIP Section 5.3 Exception requirements, a biological assessment will be required before the first application if, at any point MPWD in the 2020 or 2021 weed abatement seasons, MPWD does decide to utilize copper-containing herbicides and/or algaecides.

Assumptions and Limitations

This proposal has been prepared by Blankinship & Associates for SCWA's use. Unauthorized editing, duplication, or transmission of this document is strictly prohibited unless express consent is obtained from us. The above scope of work assumes the following:

- 1.) This proposal is based on the requirements of the aquatic pesticide NPDES permit ("Permit") adopted by the State Board on March 5, 2013.
- 2.) Unless other arrangements are made, each Agency is responsible for contacting us prior to an herbicide application.

- 3.) **We are not responsible for and have no liability related to the each Agency's or their contractor's use of aquatic herbicides, or failure to comply with the Permit, requirements of this proposal or other applicable laws and regulations.**
- 4.) Each Agency is responsible for prompt and accurate completion and transmittal to us of the AHAL or equivalent form every time an aquatic herbicide application is made. Complete AHAL forms must be transmitted to us no later than the 5th of the month following aquatic herbicide application(s). If completed AHAL forms are not received by the 15th of the month, we will assume that no applications were made during the previous month.
- 5.) If AHAL or equivalent documentation is not sent as indicated above, we cannot evaluate Permit compliance status and advise you regarding the need for corrective action and/or reporting, if any.
- 6.) If additional sampling other than that described above is required, a cost estimate will be prepared and authorization obtained prior to performing work.
- 7.) Each Agency is responsible for paying their annual NPDES Permit fee, estimated at \$2,200/year, to the SWRCB. This fee is not included in this scope of work.
- 8.) We are not responsible for non-compliance or violations of the Permit resulting from application or monitoring activities performed by Agencies or their weed abatement contractor that do not follow the guidance provided by the APAP or Blankinship staff.
- 9.) This proposal does not cover any penalties, fines, licenses, or certifications or their associated fees.
- 10.) Our liability to the Agencies arising from services performed shall not exceed the total compensation received by us.
- 11.) Task budgets may be moved from task to task as necessary to complete project objectives.
- 12.) Our scope is of a technical nature and we do not offer legal advice.
- 13.) This proposal is good for 30 days.

Schedule

We will commence immediately upon receiving written authorization to proceed (See Authorization Summary below) and receipt of a project retainer in the amount of \$2,000.

Cost Estimate

Task 1 through Task 6 can be provided on a Not-to-Exceed basis estimated at \$34,800 for 2020 and \$52,500 for 2021. Refer to the Table below.

Member	Sampling Events	2020 Cost Estimate Amount	2021 Cost Estimate
SCWA	2	\$13,500	\$16,200
Dixon RCD	2	\$10,700	\$15,700
MPWD	0	\$0	\$5,000 ¹
RD 2068	2	\$10,600	\$15,600
Total		\$34,800	\$52,500

¹ If MPWD wishes to re-enroll in the newly issued permit, we estimate the cost to prepare Permitting documents to be \$5,000.

If costs in addition to this are anticipated, we will notify you and will not proceed without prior authorization.

Expenses

Expenses such as travel (tolls, per diem, etc.) and outside services (analytical laboratory, etc.) are charged at cost plus 15%. Mileage charges are at Internal Revenue Service (IRS) rates. Costs for field equipment and vehicle use will be charged according to our current fee schedule.

Invoice Terms

All invoices are due upon receipt. If full payment is not received within 10 days, the amounts due Blankinship & Associates will incur a late payment charge at the rate of 10% APR starting 10 days from the date on the invoice.

We will invoice you as work progresses based on the effort we expend that month until the project is complete.

Terms of Agreement

Refer to the attached Terms of Agreement (2 pages)

Agreement

The document entitled "Solano County Water Agency Group Scope of Work" and the attached "Terms of Agreement" together shall collectively constitute the entire Agreement between Blankinship & Associates, Inc. and the Client.

Authorization Summary

Client: Solano County Water Agency Group
Scope: NPDES Aquatic Weed Permit Compliance 2020 - 2021
Proposal Date: May 22, 2020
Estimated Cost: \$87,300
Retainer Amount: \$5,000
Billing Method: Time and Materials

If this Scope of Work and Terms of Agreement are acceptable, please sign and date below, initial as indicated on both pages of the Terms of Agreement, and return the entire agreement to us. We will return a fully executed copy to you for your records.

Client
Printed Name/Title

Client
Signed Name

Date

Michael Blankinship/President
Consultant
Printed Name/Title

Consultant
Signed Name

Date

Agreed & Accepted: Client Initials _____ / Consultant Initials _____

Terms of Agreement

These terms and conditions described herein represent the entire Agreement between Blankinship and Associates, Inc., a California Corporation ("Consultant") and Client (collectively referred to as "Parties"). Any negotiations, proposals or oral agreements are integrated herein and are superseded by this Agreement. This Agreement may not be modified, assigned or altered, except in writing and signed by authorized representatives of both Parties. If any portion of this Agreement is found to be void, such portion shall be stricken and the balance of the Agreement will remain.

Scope and Standards of Work. Consultant shall perform the services outlined in the proposal referencing this Agreement. All work performed by Consultant is subject to this Agreement. Because our services are those provided by a design professional, all provisions of California Civil Code Section 2782.8 are applicable to our scope of work. If Consultant provides Client with a written change in scope of services, these services shall be done subject to this Agreement unless Client objects in writing within 5 working days after receipt. Consultant shall perform services consistent with the level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the same time the services are performed. No warranty, express or implied, is included or intended by this Agreement.

Levels of Service. Consultant offers different levels of services to suit the needs of different clients. For additional fees, a more extensive level of services will provide more detailed information. Client must determine the level of service adequate for its purposes. Client warrants that it has reviewed the referenced proposal and has determined that it does not need or want a greater level of service than that being provided.

Payments. All work performed under this Agreement shall be on a time and materials basis unless otherwise stated. The estimate of fees and the fee rate in the proposal indicates that Consultant will not incur fees and expenses in excess of the estimate without first obtaining Client's authorization. All invoices are due within 10 days of date on invoice. If Client fails to make full payment to Consultant, the amounts due Consultant will incur a late payment charge at the annual rate of 10% starting on the 10th day from the date of the invoice.

Limitation of Liability. The total cumulative liability of Consultant, its shareholders, directors, officers, employees, and agents, to Client arising from services performed or to be performed by Consultant whether in contract, indemnity, contribution, tort, or otherwise, and including attorneys' fees due under this Agreement, shall not exceed the total compensation received by Consultant under this agreement. Higher limitations can be negotiated for additional fees. Consultant has no liability or obligation to Client for:

1. Any special, consequential, incidental, punitive or penal losses or damages including, but not limited to, losses, damages or claims related to the unavailability of Client's property or facility, shutdowns or service interruptions, loss of use, profits or revenue, inventory or use charges or cost of capital or claims of Client's customers,
2. Any losses, damages or claims arising from damage to subterranean structures or utilities which are not correctly shown on plans furnished by Client to Consultant during the performance of services or which are not called to Consultant's attention by Client, or
3. For any failure or delay in performing due to circumstances beyond Consultant's control, including, but not limited to release of hazardous substances, riots, wars, fires, flood, explosion, "acts of God", adverse weather conditions, acts of government, labor disputes, delays in transportation or inability to obtain material and equipment in the open market, or
4. Payment of any of Client's defense-related costs prior to a final determination of liability or to pay any amount that exceeds Consultant's finally determined percentage of liability based upon the comparative fault of Consultant.

Client's Responsibilities. Unless otherwise agreed to, Client will:

1. Assist and cooperate with Consultant in any manner necessary and within its ability to facilitate Consultant's performance under this Agreement. The client will designate a representative who will have authority to receive information pertaining to this Agreement and who will assist as necessary in matters pertaining to the project and this Agreement,
2. Provide access to and/or obtain permission for Consultant to enter upon all property, whether or not owned by Client, as required to perform and complete the services. Client recognizes that the use of investigative equipment may unavoidably alter conditions or affect the environment at the existing Project Site(s). Consultant will operate with reasonable care to minimize damage to the Project Site(s). The cost of repairing such damage will be borne by Client, and is not included in the fee unless otherwise stated,
3. Correctly designate on plans to be furnished to Consultant, the location of all subsurface structures, such as pipes, tanks, cables and utilities on the Project Site and shall be responsible for any damage inadvertently caused by Consultant to any such structure or utility not so designated. Client warrants the accuracy of any information supplied by it to Consultant, and acknowledges that Consultant is entitled to rely upon such information without verifying its accuracy,
4. Supply to Consultant all information and documents in its possession or knowledge which are relevant to the services to be provided by Consultant. Prior to the commencement of any services by Consultant, Client shall notify Consultant of any known potential or possible health or safety hazards existing on or near the Project Site, and
5. Provide all required notifications to Governmental Agencies or the public, related to the use, existence, discharge, release, disposal, or transportation of hazardous materials or waste, fertilizers, or pesticides.

Changed Conditions. If, during the course of performance of this Agreement, conditions are discovered which were not contemplated by Consultant at the commencement of this Agreement, Consultant shall notify Client of the newly discovered conditions, and the Parties shall renegotiate in good faith a revised scope of work, and Agreement. If an amended scope or Agreement cannot be agreed upon within 30 days after notice, Consultant may terminate this agreement and Consultant will be compensated as described in "Payment on Termination".

Client Indemnification. Client shall indemnify and hold harmless Consultant, its agents, subcontractors, directors, officers and employees, from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including attorneys' fees or other loss arising from:

1. Damage to subterranean structures or utilities which are not correctly shown on plans furnished by Client to Consultant,

Agreed & Accepted: Client Initials _____ / Consultant Initials _____

2. Liability arising from or related to Hazardous Materials existing at the Project Site prior to the commencement of Consultant's services under this Agreement, unless caused by the sole negligence or willful misconduct of Consultant,
3. Reliance upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without Consultant's written consent, or
4. The negligence or willful misconduct by Client or its agents, employees, principals, consultants and any third parties.

Continuing Agreement. The indemnity obligations and the limitations of liability established under this Agreement shall survive the expiration or termination of this Agreement.

Consultant's Insurance. Consultant shall obtain and maintain: Statutory Workers' Compensation/Employers Liability coverage, Commercial General Liability coverage in policy amounts of not less than \$2,000,000, Automobile Liability coverage in policy amounts of not less than \$1,000,000, and Professional ("Errors and Omissions") Liability insurance coverage in policy amounts of not less than \$2,000,000.

Document Control. Drawings, specifications, and any other instruments of service to be provided by Consultant shall remain the property of Consultant and shall not be used by the Client on any other project or for completion of this project by others without Consultant's written authorization. Client shall not assign or otherwise transfer its rights to use the documents to any other party without Consultant's written consent. Upon termination of this agreement for any reason except Consultant's convenience or default, Client's rights to use the documents shall expire and Client shall refrain from making any further use of or reproductions of the documents and shall return to Consultant within seven days of termination all originals and copies in Client's possession or control.

Samples, and Monitoring Devices. If Consultant provides laboratory services, Consultant's subconsultant laboratory will hold project samples until the sample quality expires or until the analysis is complete, whichever is first. If directed by Consultant, Client shall take custody of all monitoring devices (lysimeters, wells, probes, or other devices installed during work by Consultant) and shall take any and all necessary steps for the proper maintenance, repair or closure of such at Client's expense.

Relationship of the Parties. Consultant shall perform services under this Agreement as an independent contractor, and its employees shall at all times be under its sole discretion and control. Consultant shall select the means, manner and method of completing services without detail, control, or direction from Client.

Use of Reports. All reports and information ("Documents") developed by Consultant are for the sole use of Client and are not intended to benefit any other person or entity. No other party other than Client may rely, and Client shall make no representations to any party that such party may rely, on Documents without Consultant's express written authorization. Neither Party shall disclose or otherwise provide reports or information except as required by government agencies.

Production of Information as Required by Law. Consultant may provide any information requested by subpoena, search warrant, or other legal process. Prior to delivery of information, Consultant will promptly notify Client.

Suspension and Delays. Client may, at any time, by 10 days written notice, suspend performance of all or any part of the services by Consultant. Consultant may terminate this Agreement if Client suspends Consultant's work for more than 60 days and be paid as described under Termination. In the event Consultant services is suspended by Client or interrupted due to delays other than delays caused by Consultant, the time for completion of the performance of the services shall be appropriately adjusted and Consultant shall be equitably compensated for the additional labor, equipment, and other charges associated with maintaining its workforce for Client's benefit during the delay or suspension, or at the option of Client, for such similar charges that are incurred by Consultant for demobilization and subsequent remobilization.

Termination for Convenience. Either Party may terminate this Agreement for convenience upon ten (10) days written notice to the other Party. Notice must be in hardcopy and delivered in a manner such that evidence of delivery can be demonstrated.

Payment on Termination. In the event of termination, other than caused by a material breach of this Agreement by Consultant, Client shall pay Consultant for the services performed prior to the termination notice date, and for any necessary services and expenses incurred in connection with the termination of the project, including but not limited to termination of subcontractor contracts and the costs of completing analysis and reports necessary to document project status at the time of termination.

Dispute Resolution. Any dispute or claim relating to or arising out of or under this agreement shall be decided by binding arbitration in accordance with the Commercial Rules and under the Administration of the American Arbitration Association. Such arbitration shall be conducted in Sacramento County, California. The Award or other determination of the arbitrator(s) shall be final and judgment thereon may be entered in any court of appropriate jurisdiction. Notwithstanding the foregoing, either party may bring a claim for injunctive relief in a court of appropriate jurisdiction.

Third Party Beneficiaries. Nothing in this agreement shall create any rights or any contractual relationship with or a cause of action in favor of a third party against either Client or Consultant.

Force Majeure. Neither party shall hold the other responsible for damages or delays in performance caused by acts of God, strikes, accidents or other events or conditions (other than financial inability) beyond the other party's reasonable control.

Certificate of Merit. The Client shall make no claim for professional negligence or breach of contract either directly or in a third-party claim, against Consultant unless the Client has first provided Consultant with a written certification executed by an independent professional currently practicing in the same discipline as Consultant and licensed in the jurisdiction where the project is located. This certification shall be executed under penalty of perjury and, at a minimum, contain the following: a) the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of an Consultant performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to Consultant not less than thirty (30) calendar days prior to the presentation of any claim or the initiation of any arbitration or judicial proceedings.