



California Regional Water Quality Control Board

Santa Ana Region



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Arnold Schwarzenegger
Governor

April 26, 2010

Nardy Khan
Department of Public Works
County of Orange
300 North Flower Street
Santa Ana, CA 92702

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE EAST GARDEN GROVE WINTERSBURG CHANNEL
(C05/C06) MAINTENANCE REPAIR PROJECT (TIDE GATES TO WARNER
AVENUE), ORANGE COUNTY (ACOE REFERENCE NO. NOT AVAILABLE)
(SARWQCB REFERENCE NO. 302009-45)**

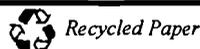
Dear Ms. Khan:

On October 27, 2009, we received an application from Bonterra Consulting, on behalf of Orange County Department of Public Works, for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for channel stabilization and repair work in East Garden Grove Wintersburg Channel (C05/C06). The project extends from the tide gates (at outer Bolsa Bay) to Warner Avenue, in the City of Huntington Beach, Orange County. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) Basin Plan and subsequent Basin Plan amendments:

Project Description: Channel improvements to a 9,568-linear foot section of the Channel, which will include:

- 1) Soil/cement mix columns sandwiched between two sheet pile walls. Sheet pile installation and soil mix column limits are from 2,100 feet downstream of Graham Street to Warner Avenue on the south levee and from Graham Street to Warner Avenue on the north levee. Upon completion of the sheet pile installation, the existing earthen channel side slopes will be excavated back to the sheet piles to provide for 100-year flow conveyance capacity within this channel reach.

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2) In order to provide additional levee protection from tidal action within the Bolsa Chica Wetland Reserve, earthen buttress and backside sheet pile toe protection components will be included on the south levee from 2,100 feet downstream of Graham Street to 4,000 feet downstream from Graham Street to the limits of the buttress. A park trail and coastal access component will be constructed along the south levee berm, along with an access ramp to provide access to the park trail.

3) Side-slope riprap revetment repairs will be made on an "as-needed" basis to provide additional protection from the tide gates to the Oil Road Bridge on the north side and from the tide gates to Bates Circle on the south side. Repairs will be conducted on the channel side slopes on an "as needed" basis to arrest and prevent channel erosion. Up to 21,000 cubic yards of 24-inch diameter riprap will be installed in necessary locations.

4) Notched retaining walls will be installed at the Warner Avenue and Graham Street bridge structures to accommodate the presence of sewers and/or other utilities.

5) Slater Bridge will be removed.

6) Temporary cofferdams will be installed to manage both tidal inundation and non-storm flows within the areas where excavation of the channel side slopes is scheduled to occur. Excavation will occur following the installation of the sheet piles.

7) The project will be implemented in 12 phases, over a 10 to 15 year period. A Maintenance and Monitoring Plan will be developed to address ongoing maintenance of painted sheet piles and cathodic protection to prolong the design life of the sheet piles. In total, implementation of the project will increase the channel's bottom area by 6.67 acres. The project will take place within Section 14 of Township 065, Range 11 West, of the U.S. Geological Survey *Seal Beach, California*, 7.5-minute topographic quadrangle map (33°42'55.9"N / -118°01'36.9"W).

Receiving water:	East Garden Grove Wintersburg Channel, a tributary of Bolsa Bay /Huntington Harbor.
Fill area:	0.28 acre of permanent impact to wetlands, 2.45 acres of permanent impact to non-wetland waters and 0.79 acre of temporary impact to streambed (9,568 linear feet total).
Dredge volume:	93,000 cubic yards.
Federal permit:	U.S. Army Corps of Engineers Section 10 of the Rivers and Harbors Act.

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Temporarily-impacted areas will be allowed to re-vegetate naturally.
- A project specific SWPPP will be developed according to State and local regulations and implemented as such throughout the duration of the project.
- Implementation of this project will increase soil-substrate channel bottom area within the affected channel segments by 6.67 acres. This area will be subject to muted tidal flows that commingle with perennial fresh waters urban runoff from the channels' drainage shed. This area will be managed to allow establishment of either wetlands and/or other aquatic habitat, through either passive recruitment or implementation of appropriate plans.

Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2009-0009, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2009-0030 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a Storm Water Pollution Prevention Plan (SWPPP). This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 2009-0009- DWQ, is required, as is development of a SWPPP, to control the discharge of pollutants from the project site.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2009-0003, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2009-0003, NPDES No. CAG 998001, at the Regional Board's website: www.waterboards.ca.gov/santaana/ .

This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein, or any conditions contained in any other permit or approval for this project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including imposition of administrative civil liability.

Orange County Department of Public Works has determined that the implementation of this project will increase soil-substrate channel bottom area within the affected channel segments by 6.67 acres. Furthermore, the applicant has proposed in other Certification applications that portions of this increased channel bottom, that are suitable for establishment of wetland, be used as mitigation for other County flood control projects. This being the case, this Certification includes conditions calling for the establishment of wetlands on not less than 0.6 acre of the 6.67 acres of soil substrate channel bottom that this project will create.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), the project is subject to a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act (CEQA), the County of Orange adopted a Mitigated Negative Declaration for this project on September 18, 2009. The Executive Officer has considered the City's Mitigated Negative Declaration in the issuance of this Certification.

This 401 Certification is contingent upon the execution of the following conditions:

1. The applicant must comply with the requirements of the Clean Water Act section 404 permits.
2. A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work.
3. County of Orange shall implement a program to prevent exotic, invasive and/or non-native plant or animal species from becoming established in areas

temporarily or permanently impacted by project activities, including staging areas.

4. Maintenance of facilities authorized by this certification shall not result in the discharge of wastes to waters for the state or of the United States. This includes cured and uncured protective coatings and primers and similar materials necessary to assure proper performance of protective coatings.
5. Materials must not be placed in a manner where they could be discharged to surface waters except as authorized by this certification. In the event that trash or debris is discharged to surface waters, the discharger must recover the material to the maximum extent practical.
6. Project-related activities must not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in the receiving waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
 - a. If natural turbidity is between 0 and 50 NTU, the maximum increase must not exceed 20% of the measured natural turbidity.
 - b. If natural turbidity is 50 to 100 NTU, the increase must not exceed 10 NTU.
 - c. If natural turbidity is greater than 100 NTU, the maximum increase must not exceed 10% of the measured natural turbidity.
7. An effective monitoring plan must be developed and implemented to document compliance with conditions 2, 3 and 6 above. Any suspected violation of these conditions must be reported to Regional Board staff in writing within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
8. Not less than 0.6 acres of the newly created 6.67 acres of soil-substrate channel bottom shall be designated and set aside for establishment of wetlands, as specified in water quality standards certifications issued to the County of Orange for maintenance projects in the Los Alamitos Channel.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law.

For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification.

Order No. 2003-0017-DWQ is available at
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Yvette Cardenas
Department of Fish and Game – Naeem Siddiqui
State Water Resources Control Board, Office of Chief Counsel – David Rice
State Water Resources Control Board, DWQ-Water Quality Certification Unit –
Bill Orme
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini
and David Smith

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