



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Acting Secretary for
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Edmund G. Brown, Jr.
Governor

July 1, 2011

Ernest Seidel
Orange County Parks
13042 Old Myford Road
Irvine, CA 92602

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR EROSION REPAIR AND BANK STABILIZATION TO
SANTIAGO CREEK AT HISTORIC ARDEN HOUSE, MODJESKA CANYON AREA
OF ORANGE COUNTY (ACOE REFERENCE NO. SPL-2011-00149-SME)
(SARWQCB PROJECT NO. 302011-16)**

Dear Mr. Seidel:

On April 11, 2011, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification"), for erosion repair and bank stabilization activities adjacent to the historic Arden House property within Mojeska Canyon, Orange County. The project consists of the reconstruction of the streambed and the southern bank of Modjeska Creek to pre-2010-11 storm season conditions. This section of the creek suffered heavy erosion from flood waters during the 2010-11 storm season. 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) and subsequent Basin Plan amendments ("Basin Plan"):

Project description:

Project activities include the reconstruction of eroded streambed and southern bank of Modjeska Creek. Specific activities include:

- Temporary diversion of creek flows around areas where creek bank stabilization activities will occur.
- Excavate up to 700 cubic yards of sediment from a 100-foot long by 30-foot wide area within Modjeska Creek, upstream of the pedestrian bridge for use as fill material for bank stabilization.
- Import and discharge approximately 700 yards of native soils from upland areas of the property into the severely eroded section of the streambank, to restore the bank to its original (pre-2010-11 storm season) line and grade.

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- Install 12-inch to 36-inch, un-grouted rip-rap over a 100-foot-long by 24-foot-wide area along the southern bank and within Santiago Creek for bank stabilization purposes.
- Discharge upland soil onto the upper two-thirds of installed rip-rap to allow for the planting of native vegetation.

The project is located in the Modjeska Canyon area of Orange County, within Section 29 of Township 5 South, Range 7 West, of the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33° 42.536' N / 117° 37.392' W).

Receiving water:	Modjeska Creek, tributary to Santiago Creek
Fill area:	0.069 acre (80 linear feet) of temporary impact and 0.050 acres (100 linear feet) of permanent impact to streambed habitat.
Dredge volume:	Approximately 700 cubic yards
Federal permit:	U.S. Army Corps of Engineers Permit No. SPL-2011-00149-SME

Onsite Water Quality Standards Mitigation Proposed:

- Appropriate native riparian plant species will be planted in the soils placed in rip-rap void spaces and soil overlays.

Offsite Water Quality Standards Mitigation Proposed:

- None

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 Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State.

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. 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 determined that the proposed project is categorically exempt from provisions of CEQA according to Guidelines Section 15301 for the maintenance of an existing facility. The proposed project is intended to maintain the hydraulic capacity of an existing storm water drainage facility. The Regional Board has independently reviewed the project and concludes that it is properly considered maintenance of an existing facility and is therefore categorically exempt pursuant to CEQA Guidelines section 15301. In addition, the Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level.

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

1. All fees payable to the State Water Resources Control Board for this project shall be paid prior to commencing of any of the activities described above.
2. The applicant shall incorporate this Certification into the project's O&M Manual. Any subsequent amendments must be maintained on site as a denoted element of the O&M Manual.
3. Vegetation removal will be scheduled outside of the avian nesting/breeding season and prior to the Southern California annual rainy season. Except in emergency situations, sediment removal shall be completed outside of the avian nesting / breeding season, which begins on March 15th and ends on September 15th.
4. Proposed water quality mitigation shall be implemented in a timely manner.
5. For a period of five (5) years, the applicant must annually conduct a California Rapid Assessment Method (CRAM) assessment, or an equivalent functional assessment, of the mitigation site, to determine the overall success of the mitigation for the impacted site(s).
6. The applicant shall submit an annual report, due on or before December 31st, to the SARWQCB for a period of five years.
 - a. The annual report shall document operations and maintenance activities conducted during the prior year that are subject to this certification.
 - b. The annual report shall document implementation and success of the water quality standards mitigation measures that have been proposed.
 - c. Results of CRAM studies or other functional assessment shall be submitted with the annual report. CRAM data shall also be reported to <http://www.cramwetlands.org> in the manner specified.

- d. If the water quality standards mitigation measures proposed have not been properly implemented and maintained, or are not meeting expected success criteria, a report to that effect shall be submitted, and corrective measures proposed. Corrective measures must be approved in consultation with SARWQCB staff and other appropriate resource agencies, and implemented upon approval.
7. SARWQCB staff and other authorized representatives shall be allowed:
 - a. Entry upon premises where routine maintenance will occur, or where records are kept under the requirements of this Certification and applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification and applicable waste discharge requirements;
 - c. To inspect any facility, equipment (including maintenance equipment), practices, or operations related to the routine maintenance of the Channel; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification and applicable waste discharge requirements.
8. This Certification is transferable only upon written notice to the Executive Officer. The notice must include written acknowledgement of this Certification, and acceptance of all Certification conditions, by the transferee's authorized representative.
9. The applicant must comply with the conditions and provisions of the Corps' Clean Water Act Section 404 permit(s).
10. 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 the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
11. All materials generated from construction activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this project, and incorporating all necessary pollution prevention Best Management Practices (BMPs) as they relate to each potential pollution source identified.
12. The project proponent shall utilize BMPs during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
13. Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.

14. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.
15. 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 the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
16. BMPs to stabilize disturbed soils must include the use of locally native plant species whenever feasible.
17. Construction de-watering discharges, including temporary stream diversions necessary for project construction 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 at www.waterboards.ca.gov/santaana/

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality standards 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 SARWQCB may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

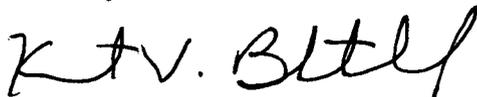
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401 (d) of the Clean 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: www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf

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

Sincerely,



Kurt V. Berchtold
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Stephen Estes
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR-8