



California Regional Water Quality Control Board

Santa Ana Region



Matthew Rodriguez
Secretary for
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Edmund G. Brown Jr.
Governor

January 5, 2012

Joe Lewis
Eastern Municipal Water District
2270 Trumble Road
PO Box 8300
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**AMENDED CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE SAN JACINTO RIVER INTEGRATED RECHARGE AND
RECOVERY PROJECT, CITY OF SAN JACINTO (ACOE REFERENCE NO.
200401197 – DPS) (SARWQCB PROJECT NO. 332007-09)**

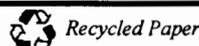
Dear Mr. Lewis:

On December 5, 2011, we received a request for amendment of Eastern Municipal Water District's (EMWD) Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the San Jacinto River Integrated Recharge and Recovery Project (ACOE Reference No. 200401197 – DPS). The previously amended Certification was issued on August 24, 2010.

The Hemet-San Jacinto Integrated Recharge and Recovery Program was initially authorized by the U.S. Army Corps of Engineers (Corps) under Individual Permit SPL-2004-1197, issued July 18, 2007 and its 401 Water Quality Certification (ACOE Reference No. 2004-1197), issued June 27, 2007.

On November 6, 2006, the U.S. Fish and Wildlife Service (Service) issued a non-jeopardy biological opinion (FWS-WRIV-4051.5) in accordance with Section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) addressing the San Jacinto Integrated Recharge and Recovery Program's construction and operation of water recharge basins within the San Jacinto River and their effects on the federally endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*; "SBKR") and its designated critical habitat.

California Environmental Protection Agency



During early phases of project construction in 2008, the incidental take limit for SBKR was exceeded and work was halted. On January 29, 2008, the Corps requested reinitiation of formal consultation pursuant to 50 CFR § 402.16. On April 20, 2010, the Service issued a second non-jeopardy biological opinion (FWS-WRIV-08B0106-10F0650). In accordance with the 2010 biological opinion, the project site was relocated upstream of the proposed project area evaluated in the 2006 biological opinion, and compensatory mitigation was increased to 186 acres.

On June 29, 2011, prior to resuming construction activities, EMWD notified the Service that there was abundant kangaroo rat sign on the recharge project site required by the Service in their 2010 biological opinion, and that the project's small mammal biologist expected the take threshold provided in the incidental take statement of the biological opinion would be exceeded. A site visit was conducted on July 12, 2011 to evaluate kangaroo rat sign on the site (burrows, runs, dust baths) and to assess the perimeter exclusion fence, which was almost completed. As a result of the more than 150 kangaroo rat burrows on site, it was evident that the project area apparently supported more SBKR than anticipated. The Service recommended reinitiation of formal consultation on July 15, 2011 and the Corps reinitiated consultation on August 12, 2011.

Under an amended U.S. Army Corps of Engineers (Corps) Individual Permit (200401197-DPS), construction of the recharge basins and associated facilities would require modifications to 15.86 acres of Waters of the U.S. (WUS) comprised of Riversidean alluvial fan sage scrub.

In summary, the recharge and recovery program is the same as permitted in 2007. At the direction of the Service, the location for the proposed 35 acres of recharge basins has been returned to the location originally certified in 2007. This measure is being taken to avoid and minimize the Project's effects on the SBKR. Compensatory mitigation has been increased, also at the direction of the Service.

A final Environmental Impact Report (EIR SCH No. 2003121068) was certified for this project in 2004. An addendum to that EIR was adopted on June 24, 2010 and a subsequent addendum was adopted on November 16, 2011. We received a copy of the Notice of Determination on December 8, 2011.

This letter responds to your request for amendment to the existing certification that the redesigned project, described in your 2011 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:

Project Description:

Construction of 35-acres of groundwater recharge basins located along the south levee of the San Jacinto River, associated pipelines, extraction and monitoring wells, and other infrastructure. The basins will be constructed by grading the River's streambed into berms to contain the water; there will be no import or export of fill material. The berms will be constructed such that they are subject to complete washout in order to prevent overtopping the levees. Water for recharge will be imported via the State Water Project.

The project includes follow-on maintenance of streambed basins and berms, including maintaining infiltration rates and the removal of vegetation that would otherwise evapotranspire the water, making it unavailable for recharge.

The project's objective is to address a final Tribal water rights settlement agreement that calls for the EMWD and the Lake Hemet Municipal Water District (LHMWD) to supply 7,500 acre feet of water annually to the Soboba Band of Luiseño Indians (Tribe) as described in the Soboba Settlement Act, Public Law 110-297, signed on July 31, 2008. The project is funded in part by a grant from the Department of Water Resources.

The project is located in an un-sectioned portion of Townships 4 and 5 South, Range 1 East, of the U.S. Geological Survey San Jacinto, California, 7.5-minute topographic quadrangle map 33° 46' 26.83" North latitude and 116° 55' 27.54" West longitude).

- Receiving water: San Jacinto River.
- Fill area: 15.86 acres of permanent impact to wetland (3,460 linear feet total).
- Dredge/Fill volume: N/A
- Federal permit: U.S. Army Corps of Engineers Individual Permit.

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

Onsite Water Quality Standards Mitigation Proposed:

- Silt fences, fiber rolls, and other erosion source control and treatment best management practices (BMPs) will be employed. Additional BMPs will be identified in the project Storm Water Pollution Prevention Plan (SWPPP).

Offsite Water Quality Standards Mitigation Proposed:

- An in-lieu fee will be paid to the Riverside County Regional Parks and Open Space District towards the eradication of 8-acres of invasive plant species in the Santa Ana River.
- 438-acres of land, within three conservation areas and including a biological buffer zone identified by the Fish and Wildlife Service in BO/ITS No. FWS-WRIV-08BO106-10F0650, will be preserved and managed in perpetuity by the Riverside Conservation Authority for the conservation of habitat for the San Bernardino Kangaroo Rat and the preservation of portions of the San Jacinto River and its floodplain.

On August 7, 2007, an in-lieu fee was paid to the Riverside County Regional Parks and Open Space District towards the eradication of 8-acres of invasive plant species in the Santa Ana River watershed.

Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project affects an area that is more than 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, is required.

De-watering discharges from the proposed project 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 Minimis*) Threat to Water Quality. For more information, please review Order No. R8-2009-0003 at www.waterboards.ca.gov/santaana

You have applied for an amended individual 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 CEQA, the Eastern Municipal Water District certified an Environmental Impact Report on August 9, 2004. An addendum to that EIR was adopted on June 24, 2010, and again on November 16, 2011 and a copy of the Notice of Determination was received by this office on December 8, 2011.

In the issuance of this Certification, the Executive Officer has considered those sections of the District's Environmental Impact Report and its Addendum that relate to water quality. Based on the mitigation proposed and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. The Regional Board independently finds that changes or alterations have been required or incorporated into the project that 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) Eastern Municipal Water District shall provide evidence of the preservation and permanent management of the proposed 438-acre conservation areas to the Executive Officer not later than January 2, 2013.
- 2) 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.
- 3) The applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.
- 4) A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work as a denoted element of any project SWPPP or WQMP.

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.

Although we anticipate no further regulatory involvement, 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, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation 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.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

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.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf

Mr. Joe Lewis

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January 5, 2012

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 – Jim Mace
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ-Water Quality Certification Unit –
Nancy Dagle
California Department of Fish and Game, Ontario Office – Jeff Brandt
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Tim
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