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GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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## Santa Ana Regional Water Quality Control Board

September 28, 2012

Adam Gale  
Anchor QEA L.P.  
26300 La Alameda, Suite 240  
Mission Viejo, CA 92691

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR THE NEWPORT MARINA PROJECT, CITY OF NEWPORT  
BEACH, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. SPL-2012-  
00246-JDG; SARWQCB PROJECT NO. 302012-17)**

Dear Mr. Gale:

On April 9, 2012, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Anchor QEA L.P. on behalf of Ron and Allyson Presta (Newport Marina) for the Newport Marina maintenance dredging project.

This letter responds to your request for certification that the proposed project, described in your application, 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:**

Newport Marina is located within the City of Newport Beach at 2888 Bayshore Drive, and contains a 640-foot boat dock used for recreational activities. The project consists of dredging approximately 6,000 cubic yards of accumulated sediment from the marina, with an additional 4,000 cubic yards of allowed over-dredging (based on a 1 foot overdepth allowance). Dredging will restore the marina to authorized depths of -7 feet Mean Lower Low Water (MLLW). Dredging will be performed using a clamshell dredge. Dredged sediment will be disposed of at the U.S. Environmental Protection Agency's Ocean Dredged Materials Disposal Site La-3 (LA-3).

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

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The work will take place within Section 27 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach* quadrangle map (33° 36.54.3' N/ -117° 54.23.13' W).

Receiving water:	Lower Newport Bay
Fill area:	1.4 acres of temporary impact to marine environment
Dredge/Fill volume:	10,000 cubic yards
Federal permit:	Rivers and Harbors Act Section 10

The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- No onsite mitigation proposed

Offsite Water Quality Standards Mitigation Proposed:

- Transplantation of impacted eelgrass (about 80 square feet) to a mitigation site southwest of Little Balboa Island in Lower Newport Bay

### **Findings:**

The project is located in a portion of Lower Newport Bay where patches of eelgrass are found in intertidal and shallow subtidal habitats. An eelgrass survey conducted on April 1, 2012, found six small patches totaling 7.5 square meters (80 square feet) of eelgrass within the dredge footprint. Newport Marina has proposed to remove these eelgrass patches prior to dredging and transplant them at the mitigation site being established for the joint City and County Linda Isle/Harbor Island dredging project (SARWQCB Project No. 302012-18, certified July 23, 2012). The National Marine Fisheries Service (NMFS) has concurred with this mitigation plan.

Natural background turbidity in Lower Newport Bay is below 50 Nephelometric Turbidity Units (NTUs) except during storm events. For waters with natural turbidity less than 50 NTU, the Basin Plan specifies a water quality objective for turbidity as a maximum increase not to exceed 20% as a result of controllable water quality factors. To implement this objective, this certification specifies numeric limits at a specific distance from the dredging site for turbidity.

One threatened and/or endangered species, the California least tern (*Sterna antillarum browni*) occurs in the project area. The project is scheduled to occur outside the least tern nesting season.

Pursuant to the California Environmental Quality Act ("CEQA"), the City of Newport Beach and the Regional Board have independently determined that the proposed project is categorically exempt from provisions of CEQA under Guidelines Section 15304 (g) Minor Alterations to Land – "Maintenance dredging where the spoil is

deposited in a spoil area authorized by all applicable state and federal regulatory agencies." The U.S. EPA approved disposal of dredged sediments from this project at the LA-3 site on March 24, 2010.

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

1. Caulerpa: Newport Marina must conduct at least one survey for the invasive algae *Caulerpa taxifolia* 30 to 90 days prior to project initiation. If *Caulerpa taxifolia* is discovered, Newport Marina must not begin dredging. Newport Marina must notify Regional Board staff, the California Department of Fish and Game (CDFG) (William Paznokas: 858-467-4218, ([wpaznokas@dfg.ca.gov](mailto:wpaznokas@dfg.ca.gov)) and/or the National Marine Fisheries Service (NMFS) (Eric Chavez: 562-980-4064, [Eric.Chavez@noaa.gov](mailto:Eric.Chavez@noaa.gov)) within 24-hours of discovery. Newport Marina may begin dredging after implementing management measures specified by the CDFG and/or NMFS.
2. Eelgrass: Newport Marina must conduct eelgrass surveys within two months prior to the commencement of dredging. Mitigation for identified eelgrass losses must be performed in accordance with Newport Marina's eelgrass mitigation plan, dated August 21, 2012.
3. Best Management Practices:
  - a. A continuous, floating silt curtain shall be deployed to isolate the area under active dredging and protect adjacent eelgrass habitat.
  - b. All materials generated from dredging activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources associated with the project, and incorporating all necessary pollution prevention BMPs for each potential pollution source identified.
4. Construction Wastes: 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, metal fabrication wastes including dusts, filings, cuttings, and slags, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.
5. Receiving Water Limitations: Newport Marina must comply with the following applicable narrative and/or numeric objectives:
  - a. Narrative Objectives for Physical Characteristics: Wastes associated with the dredging operation shall not violate Basin Plan narrative objectives for color, floatables, and oil and grease

- i. Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affects beneficial uses.
  - ii. Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.
  - iii. Waste discharges shall not result in deposition of oil, grease, wax, or other materials in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.
- b. Numeric Limits for Physical/Chemical Characteristics: Newport Marina must comply with the numeric receiving water limitations specified in Table 1. The turbidity limits in Table 1 are based on recent data collected in Lower Newport Bay. If these turbidity values are exceeded for more than one day, then dredging operations shall be halted or modified to include BMPs to reduce turbidity and increase transmissivity to meet the receiving water limitations. The turbidity limit will not apply during storm runoff events.

**Table 1: Numeric Receiving Water Limitations**

Parameter	Receiving Water Limitation
Turbidity	47 NTU
pH	7 < pH < 8.6; < 0.2 unit change from ambient
Dissolved Oxygen	> 5 mg/L

6. **Monitoring:** Newport Marina must implement a monitoring program to ensure compliance with the receiving water limitations specified above in Condition No. 5. Minimum requirements of the monitoring plan are listed in Table 2. Data shall be collected from two locations at a distance of no more than 300 feet from the active dredge site, and at three depths in the water column: 1 foot below the surface, mid-depth, and 1-foot above the bottom. Compliance will be determined by the mid-column measurement.

**Table 2: Minimum Monitoring Program**

Locations	Monitored Analytes	Frequency
Two locations no more than 300 feet from the dredge site; one on a line perpendicular to the shore, and another downcurrent of the site	Turbidity Dissolved Oxygen pH	Daily during the first week, weekly thereafter

7. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.

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.

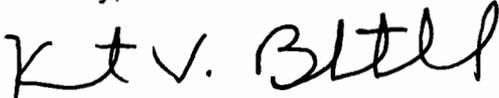
This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related 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:

[www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo\\_2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf)

If you have any questions please contact Doug Shibberu at (951) 782-7959, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold  
Executive Officer  
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):

- 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. Army Corps of Engineers, Los Angeles Office – James Green
- U. S. Fish and Wildlife Service – Jon Avery
- California Department of Fish and Game – Loni Adams
- City of Newport Beach – Chris Miller