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SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

April 11, 2012

Dennis Saylor
San Bernardino Associated
Governments (SANBAG)
1170 W. Third St., 2nd floor
San Bernardino, CA 92410-1715

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE PALM AVENUE GRADE SEPARATION PROJECT,
COUNTY OF SAN BERNARDINO, CALIFORNIA (ACOE REFERENCE NO. NOT
AVAILABLE) (SARWQCB PROJECT NO. 362011-20)**

Dear Mr. Saylor:

On September 19, 2011, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from San Bernardino Associated Governments proposing a project to construct a bridge structure, approach embankments and associated road improvements to separate the grade of Palm Avenue and Burlington Northern Santa Fe Railway (BNSF) tracks. The project is located between I-215 and Cajon Wash, approximately 3.6 miles southeast of the interchange of I-15 and I-215 freeways, along the southern border of the City of San Bernardino and an unincorporated area of San Bernardino 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: Construct a roadway overhead above the railroad tracks using a horizontal alignment that meanders approximately 300 feet northwest of the current Palm Avenue/BNSF at-grade crossing and 337 feet northwest of the existing intersection at Palm Avenue and Cajon Boulevard. Cut-and-fill slopes outside the roadway prism will generally be sloped at a ratio of 2 to 1 to reduce the potential impact that the Project footprint will have on existing properties and utilities. The work will take place within Sections 11 and 12 of Township 1 North, Range 5 West, of the U.S. Geological

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

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Survey *San Bernardino North* quadrangle map (34° 11' 13.48" N/ -117° 21' 49.73" W).

Receiving water: Cajon Creek

Fill area: 0.098 acres of permanent impact to streambed habitat (1647.6 linear feet), and 0.021 acres of temporary impact to streambed habitat (311.6 linear feet)

Dredge/Fill volume: 39.2 cubic yards

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 14

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:

- Standard water quality related best management practices (BMPs) will be employed during construction activities.
- After construction is complete, drainage features in temporary construction areas will be recontoured to existing contours, and revegetated according to site revegetation plan requirements.
- A Storm Water Pollution Prevention Plan (SWPPP) will be developed and implemented consistent with the requirements of the SWRCB General Permit for Stormwater Discharges Associated with construction activity.
- A revegetation and rehabilitation plan will be developed to identify appropriate recontouring and revegetation of temporarily disturbed areas and site drainage features. The revegetation plan will include native species designed for long-term erosion protection and habitat restoration.

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 BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2010-0036 (NPDES Permit No. CAS618036), commonly known as the San Bernardino County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2010-0036 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, including the preparation of a SWPPP.

A Notice of Exemption for the Project was filed on July 18, 2011 by the City of San Bernardino, finding that the project is exempt from the provisions of CEQA, citing CEQA Guidelines Section 15282(g). This Section exempts, "Any railroad grade separation project which eliminates an existing grade crossing or which reconstructs an existing grade separation as set forth in Section 21080.13 of the Public Resources Code". The Board has independently determined and finds that the project will not have a significant effect on water quality.

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

- 1) The applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 2) Proposed onsite mitigation shall be timely implemented. Revegetation plans and schedules shall be provided to this office prior to discharge of fill to, or to the dredging or excavation of material from, waters of the state. Revegetation plans and schedules shall be revised if so directed by the Executive Officer.
- 3) 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 BMPs as they relate to each potential pollution source identified.
- 4) 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.
- 5) 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.
- 6) 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.
- 7) 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.

- 8) 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.
- 9) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 10) 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/
- 11) Applicant shall ensure that all fees associated with this project shall be paid to each respective agency prior to conducting any on-site construction activities.

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.

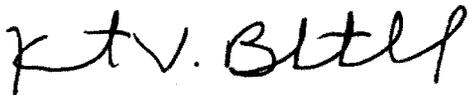
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean 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/wqo2003-0017.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
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):

CH2M Hill – Matt Gordon
U. S. Army Corps of Engineers, Los Angeles Office- Mark Durham
State Water Resources Control Board, OCC- David Rice
State Water Resources Control Board, DWQ -Water Quality Certification Unit
California Department of Fish and Game - Joanna Gibson
U.S. EPA- Supervisor of the Wetlands Regulatory Office WTR- 8

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