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Santa Ana Regional Water Quality Control Board

April 16, 2014

Pritesh Pithia
Kinder Morgan Energy Partners, L.P.
1100 Town & Country Road
Orange, CA 92868

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE SWARTHOUT CANYON CALNEV PIPELINE EXPOSURE
PREVENTION PROJECT, COUNTY OF SAN BERNARDINO, CALIFORNIA (ACOE
REFERENCE NO. SPL-2013-00205-BLR) (SARWQCB PROJECT NO. 362013-03)**

Dear Mr. Pithia,

On March 12, 2013, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Kinder Morgan Energy Partners for a project to undertake long-term exposure prevention over the alignment of the existing, parallel 8-inch and 14-inch diameter refined petroleum product pipelines known as the Calnev pipeline system. A revised application was subsequently submitted on November 22, 2013, following some design changes. The purpose of the project is to protect an area of pipeline that has been exposed by erosion. The project entails over-excavating the exposed pipeline and placing concrete revetments over the pipe at the location of the erosion. The applicant has submitted a filing fee of \$1,391.00, which satisfies the fee requirement for the project for consideration of a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the most current iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3). 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: The project will repair erosion damage around the Calnev pipeline system's Mile Post (MP) 20. Washout repair work was completed at this location in 2008. At that time, articulated concrete revetment mats (Submar mats) were placed over the pipeline. Since that time, subsequent storm flows have caused the pipeline to again become exposed at this location. The current Project will extend the concrete revetment mat to the edge of the current floodplain and into

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the bank, to remediate the area where the pipeline was recently exposed and to prevent future washouts and exposures. An unpaved, temporary access road will be constructed from Swarthout Canyon Road into the streambed to the exposure location. All repairs at this location will occur within the existing streambed.

The work will take place within Section 11 of Township 2 North, Range 6 West, of the U.S. Geological Survey *Cajon* quadrangle map (34° 16' 42.15" N/ -117° 28' 29.87" W).

Receiving waters: Lone Pine Creek and Cajon Creek, the present or potential beneficial uses of which include: municipal and domestic supply (MUN), ground water recharge (GWR), primary contact recreation and non-contact recreation (REC1 and REC2), cold freshwater habitat (COLD) and wildlife habitat (WILD).

Fill area:

Permanent impact to Streambed Habitat	0.07 acre	127 linear feet
Temporary impact to Streambed Habitat	0.04 acre	145 linear feet
Permanent impact to Riparian Habitat	0.05 acre	397 linear feet
Temporary impact to Riparian Habitat	0.25 acre	1,104 linear feet

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 12

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.

Offsite Water Quality Standards Mitigation Proposed:

- Project implementation would result in unavoidable permanent losses of 0.071 acre of non-wetland Waters of the U.S. and State and temporary impacts to approximately 0.041 acre of non-wetland Waters of the U.S. and State. The applicant will provide funds toward off-site enhancement of 0.40 non-wetland, un-

vegetated, or vegetated Waters of the U.S. and State to compensate for the temporary and permanent losses associated with this Project. In April 7, 2014 correspondence to Regional Board staff, the applicant states that a suitable payment will be submitted to the Inland Empire Resource Conservation District for this purpose. Evidence of this payment will be provided to the Board prior to commencing construction activities.

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 Wildlife 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.

Regional Board staff has determined that the proposed Project meets the criteria for categorical exemptions, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15300.2, and qualifies for a Class 1 exemption pursuant to CEQA Guidelines Section 15301 (Existing Facilities). Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Acting on behalf of the Santa Ana Regional Water Quality Control Board, Kinder Morgan Energy Partners, L.P., will file a Notice of Exemption for the project with the Clerk of the County of San Bernardino.

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) 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.
- 3) 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.
- 4) 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.

- 5) 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.
- 6) 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.
- 7) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 8) 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/
- 9) 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.
- 10) By July 8, 2014, the applicant shall submit an engineering analysis of the potential for flows in Lone Pine Canyon creek to further erode the stream bed or stream banks at or downstream of the project site and expose the applicant's pipeline(s). This analysis shall take into consideration recent hydrologic events that caused the pipeline to become exposed, and the likelihood that similar events will occur in the future. If this analysis concludes that stream bank erosion that will cause exposure of the applicant's pipelines is foreseeable, by July 8, 2014, the applicant shall report the measures that it intends to take to prevent or minimize this erosion, and a schedule for implementing these erosion prevention measures. If erosion prevention measures are necessary, these measures shall be implemented, completed and finished in such a way as to not affect wildlife habitat along the creek and to blend into, and be of texture and coloration that is visually compatible with, the area surrounding the project site. If erosion control measures are necessary, they shall be implemented concurrently with this project.

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

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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):

POWER Engineers, Inc., Court Morgan; court.morgan@powereng.org
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 Wildlife – Joanna Gibson
U.S. EPA- Supervisor of the Wetlands Regulatory Office WTR- 8