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MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

August 31, 2015

Mr. Kirk Gilligan
U.S. Fish and Wildlife Service
P.O. Box 815
Seal Beach, CA 90740

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE SEAL BEACH NAVAL WEAPONS RESERVE (NWR)-
THIN-LAYER SALT MARSH SEDIMENT AUGMENTATION PILOT PROJECT, CITY
OF SEAL BEACH, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO.
Not Available) (SARWQCB PROJECT NO. 302015-13)**

Kirk_Gilligan@fws.gov

Dear Mr. Gilligan:

On April 27, 2015, we received an application from the U.S. Fish and Wildlife Service (USFWS) (Applicant) for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to implement a pilot study that will develop and refine a sea-level rise adaptation tool in order to aid coastal salt marshes to keep pace with sea-level rise. The Applicant has also submitted a filing fee of \$1,097.00, which satisfies the Project fee requirement for consideration of 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) in effect when the application was submitted.

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 USFWS will implement a Project to evaluate the effectiveness of thin-layer sediment augmentation in order to address the adverse effects of sea-level rise and subsidence on coastal salt marsh habitat, which supports the endangered Light-Footed Ridgeway's Rail. The Project involves four stages:

1) Application of up to 13,500 cubic yards of clean dredge material (sediment) of appropriate grain-size over 10 acres (an additional approximately four acres is included within the Project site to serve as a 50-foot-wide vegetated buffer between the augmentation site and adjacent tidal channels) within the Seal Beach NWR.

2) Monitoring and evaluation of the sediment application process.

3) Pre- and post-sediment application monitoring and monitoring of a control site to evaluate the effectiveness of the thin-layer sediment augmentation in achieving the Project objectives, as well as to evaluate the overall physical and ecological responses of the marsh ecosystem to the action.

4) Dissemination of the monitoring data, augmentation techniques, and lessons learned to agencies and land managers interested in pursuing this sea-level rise adaptation strategy.

Clean dredge material will be applied at a fairly uniform depth of 8 to 10 inches (20.32 to 25.4 centimeters [cm]) to 10 acres of low salt marsh habitat on the Seal Beach NWR.

The work will take place within southwest portion of the Los Alamitos Rancho (33 ° 44' 08.35" N, -118 ° 04' 45.05" W).

Receiving water:

Anaheim Bay, Santa Ana River, and Lower Santa Ana River, which have existing or potential beneficial uses, including: contact recreation (REC1), non-contact recreation (REC2), wildlife habitat (WILD), municipal and domestic supply (MUN), groundwater recharge (GWR), preservation of biological habitats of special significance (BIO), marine habitat (MAR), and rare, threatened, or endangered species (RARE).

Fill area:

Temporary Impact to Wetland Habitat	~14 acres	linear feet not available
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Dredge/Fill volume: Not Available

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No 27

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:

- None

Should the proposed Project impact State- or federally-listed endangered species or their habitat, implementation of the measures the USFWS (Applicant) has identified, or those established through consultation with the California Department of Fish and Wildlife, should ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR or Negative Declaration prepared by the lead agency in determining whether to approve a project. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the Mitigated Negative Declaration (MND) prepared for the proposed Project and filed by the State Coastal Conservancy on November 4, 2014) (State Clearinghouse Number 2014061016), listing the California Coastal Conservancy as the Lead CEQA Agency. The Regional Board also considered information provided subsequently in the Applicant's application in approving this Certification. More specifically, the Regional Board has considered those sections of the MND relating to water quality. Based on the mitigation proposed in the MND, 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. Thus, the Regional Board independently 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) 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 Project scope of work, 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 from the Project site.
- 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 401 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.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all 401 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 certify 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.

Mr. Kirk Gilligan
U.S. Fish and Wildlife Service
RWQCB #: 302015-13 CIWQS #: 816250

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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 marc.brown@waterboards.ca.gov, or Wanda Cross at (951) 782-4468 or wanda.cross@waterboards.ca.gov.

Sincerely,



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

cc (via electronic mail):

U.S. Army Corps of Engineers, Los Angeles Office - Stephen Estes
State Water Resources Control Board, OCC - David Rice
CA Department of Fish and Wildlife - Russell Barabe - rbarabe@dfg.ca.gov
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme