



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

June 23, 2009

Nardy Khan
Department of Public Works
County of Orange
300 North Flower Street
Santa Ana, CA 92702

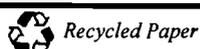
CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE REPLACEMENT OF STORM DRAIN CULVERT BENEATH MODJESKA CANYON ROAD, ORANGE COUNTY (ACOE REFERENCE NO. NOT AVAILABLE)

Dear Ms. Khan:

On May 21, 2009, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by Bonterra Consulting, for the replacement of a storm drain culvert beneath Modjeska Canyon Road in unincorporated Orange 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) and subsequent Basin Plan amendments:

Project Description: Replacement of a 36-inch corrugated metal pipe culvert beneath Modjeska Canyon Road. The culvert will be replaced by a 6-foot wide, 3.5-foot high, reinforced concrete box culvert. The proposed culvert will increase the capacity to convey debris-laden storm water runoff beneath the road from 55 cubic-feet per second ("cfs") to 525 cfs. Existing rip-rap, located at the culvert's inlet and outlet will be replaced by 24-inch rip-rap for a distance of approximately 8-feet downstream, and 3-feet upstream of the new culvert. The roadway will be re-paved upon replacement of the culvert; the roadway will not be widened and there are no other drainage improvements proposed. The work site is located within Section 19 of Township 4 South, Range 8

California Environmental Protection Agency



West, of the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33 deg. 42 min. 43 sec. N/ -117 deg. 38 min. 26 sec. W).

Receiving water: Modjeska Canyon Creek, tributary to Santiago Creek.
Fill area: 0.002 acres of rip-rap lined channel (40 linear feet).
Dredge volume: Not applicable.
Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 25.

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. R8-2009-0030, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2009-0030 requires that you substantially comply with the requirements of the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), Orange County Public Works and the Regional Board has determined that the proposed project is categorically exempt from provisions of CEQA according to Guidelines Section 15302 for the replacement of existing structures on the same site having substantially the same purpose and capacity. The Regional Board has determined that the proposed project is also categorically exempt from provisions of CEQA according to Guidelines Section 15301 for the minor alteration of an existing structure, not expanding existing uses. The proposed project involves the replacement of an existing culvert with another with greater hydraulic capacity in order to reduce the incidence of flow across the roadway. However, this change in the culvert's hydraulics does not substantially alter the purpose, capacity, or use of the roadway.

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

- 1) The applicant must comply with the requirements of the Clean Water Act section 404 permits.
- 2) If waste rock is generated as part of the project and disposed of on-site, the waste rock must be buried beneath the proposed rip-rap, within the County right-of-way.
- 3) The proposed rip-rap must consist of natural stone.
- 4) Best management practices used to stabilize disturbed soils against erosion must include, but are not limited to, seeding the area with an appropriate mix of native vegetation.

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. 200-0017-DWQ is available at:

www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Mark Durham
Department of Fish and Game – Erinn Wilson
State Water Resources Control Board, Office of Chief Counsel – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8