



California Regional Water Quality Control Board

Santa Ana Region



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Secretary for
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Arnold Schwarzenegger
Governor

January 21, 2009

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

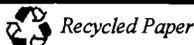
CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE FULLERTON CREEK CHANNEL (AO3) REPAIR AND STABILIZATION PROJECT, ORANGE COUNTY (ACOE REFERENCE NO. SPL – 2008 – 01094)

Dear Ms. Khan:

On September 5, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for channel stabilization and repair work in Fullerton Creek Channel A03 in the City of Fullerton, 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: Reconstruction of a total of 525 linear feet of the bed or bank of Fullerton Creek at four separate locations in the City of Fullerton. One location is at the northeast corner of the intersection of State College and Yorba Linda Boulevards and the remaining three are near one another in Acacia Park along Old River Lane. The embankments will be excavated, reshaped, and armored with ungrouted rip-rap. Where necessary, non-native ornamental trees will be removed. The work will take place within Section 25 of Township 4 South, Range 11 West, of the U.S. Geological Survey *Anaheim, California*, 7.5-minute topographic quadrangle map (33 deg. 53 min. 08.52 sec. N/ -117 deg. 53 min. 37 sec. W).

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Receiving water: Fullerton Creek Channel.

Fill area: 0.12 acre of permanent and 0.11 acre of temporary impact to streambed (395 linear feet total).

Dredge volume: Approximately 2,750 cubic yards.

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 3.

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:

- Pollutants in the Channel flows will be removed using flocculent-impregnated fiber wattles and hydrocarbon booms.
- Additional Best Management Practices ("BMPs") will be specified in the project Storm Water Pollution Prevention Plan ("SWPPP").
- Temporarily-impacted areas will be allowed to re-vegetate naturally.

Offsite Water Quality Standards Mitigation Proposed:

- 0.11 acre of invasive riparian plant species (*Arundo donax*) will be eradicated in the Orange County Santa Ana River mitigation area. The eradication work will occur concurrently with other eradication efforts, totaling 1.0 acre, to meet existing and planned permit obligations for similar repair projects in Buena Park Storm Channel and Greenville-Banning Channel¹.

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. R8-2002-0010, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2002-0010 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, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

¹ The Greenville-Banning Channel project was issued a Certification on June 10, 2008 and the Buena Park Channel project was issued Certification on September 24, 2008.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2003-0061, 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. R8-2003-0061 at: www.waterboards.ca.gov/santaana/pdf/03-61.pdf.

The affected reach of Fullerton Creek Channel was originally constructed in 1940 with a channel slope of 0.004 supported by four grade control structures. Flows within the Channel are regulated by the Fullerton Dam and the Channel has the capacity to contain flow generated by the 100-year storm event. However, a combination of soil conditions and design flow velocities (9.75 feet per second) have resulted in the channel erosion requiring repair with the proposed project. The County has no future plans to hard-armor the Channel reach.

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 adopted a Mitigated Negative Declaration on August 22, 2008. Pursuant to California Code of Regulations, Title 14, Section 15096, subdivision (f), the Regional Board must consider the environmental effects of the project as shown in the associated negative declaration prior to reaching a decision on the project. The Regional Board has considered the County's Mitigated Negative Declaration in the issuance of this Certification and finds that changes or alterations have been required, or incorporated into the proposed 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 Clean Water Act section 404 permits.
- 2) BMPs, used to stabilize excavated areas, must utilize native plant species to the maximum extent practicable.
- 3) The applicant must eradicate 0.11 acres of invasive plant species in the Lower Santa Ana River Watershed as proposed. The eradication effort must occur according to the July 9, 2008 Mitigation Plan and include a minimum of 6-years of follow-on maintenance. The initial eradication work must start within 12-months of the start of the proposed project. Certification that the eradication effort is being completed solely in satisfaction of State and Federal permits, licenses, or authorizations for the Fullerton Creek Channel repairs and stabilization, must be submitted to the Executive Officer not later than April 30, 2009.

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

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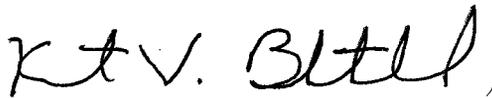
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conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

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

Sincerely,



for GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Yvette Cardenas
Department of Fish and Game – Naeem Siddiqui
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. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini
and David Smith

APF:401/certifications/fullerton ch repairs 302008-22

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