



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

July 22, 2009

Mark McCune
Union Pacific Railroad Company
1400 Douglas Street (STOP 0910)
Omaha, NE 68179-0910

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE UNION PACIFIC RAILROAD COMPANY TRACK
IMPROVEMENT PROJECT, CITY OF ONTARIO, SAN BERNARDINO COUNTY
(ACOE REFERENCE NO. 2006 – 01866)**

Dear Mr. McCune:

On May 1, 2009, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for the construction of a main line rail road track crossing Etiwanda Creek in the City of Ontario. 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 ("Basin Plan"):

Project Description: Construction of a new 2.95-mile long main line rail road track from an area located approximately 1,000-feet east of Haven Avenue (Post Mile 524.60) to another located 900-feet east of Etiwanda Avenue (Post Mile 527.55). The rail line will be within existing railroad right-of-way, parallel to an existing main line north of Slover Avenue. The project will involve the demolition of an existing bridge crossing Lower Etiwanda Creek (at Post Mile 527.19) and replacing it with a 62.5-foot long, multi-cell, reinforced-box culvert crossing. The work will take place within Section 20 of Township 1 South, Range 6 West, of the U.S. Geological Survey *Gausti, California*, 7.5-minute topographic quadrangle map (34 deg. 03 min. 52.24 sec. N/ -117 deg. 31 min. 38.78 sec. W).

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Receiving water: Lower Etiwanda Creek.

Fill area: 0.202 acres of an ephemeral wash (139 linear feet).

Dredge volume: Not applicable.

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

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 Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project is more than one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is required.

The project is subject to 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"), the Regional Board has determined that the proposed project is categorically exempt from provisions of CEQA under Guidelines Section 15303 for the new construction of limited small new facilities. The project consists of the minor addition of a rail line through an urban industrial corridor.

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) The applicant must compensate for the impacts to the beneficial uses of 0.202 acre of waters of the State through the payment of an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.404 acre of invasive plant species. The fee payment must include funding for a minimum of 6-years of follow-on maintenance and the completion of biological condition assessments, using published and generally accepted methods (e.g., California Rapid Assessment Method), for the purpose of evaluating the marginal improvement to the eradication project area. Evidence of the fee payment must be provided to the Executive Officer by October 22, 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 conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at

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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,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Shannon Pankratz
Department of Fish and Game – Michael Flores
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

APF:401/certifications/UPRR bridge 362009-08

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