



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

December 23, 2009

Ernest Seidel
County of Orange Parks Division
13042 Old Myford Road
Irvine, CA 92602-2304

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE MODJESKA CANYON PRESERVE/SANTIAGO CREEK – BOX CAR BRIDGE SEDIMENT REMOVAL PROJECT, ORANGE COUNTY (ACOE PROJECT NO. UNAVAILABLE) (SARWQCB PROJECT NO. 302009-46)

Dear Mr. Seidel:

On December 16, 2009, we received a request for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for emergency sediment removal work in Modjeska Canyon/Santiago Creek in an unincorporated area of Orange County. This letter responds to your request for certification that the proposed project, described in your notification request 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: Removal of up to 2,500 Cubic Yards of loose, gravelly sediment from the creek bed, to provide approximately five feet of clearance (the original design clearance) under the existing boxcar bridge. The removal will start 200 feet downstream of the boxcar bridge at existing grade and will excavate up to three feet of loose sediment from the creek bed and under the bridge and continue 200 feet upstream of the boxcar bridge to meet the existing creek bed grade. The cobble substrate of the creek bed will not be excavated. The work will take place within Section 28 of Township 5 South, Range 7 West, of the U.S. Geological Survey *Santiago Peak, California*, 7.5-minute topographic quadrangle map (33 deg. 42 min. 32 sec. N/ -117 deg. 36 min. 58 sec. W).

Receiving water: Santiago Creek.

Fill area: N/A

California Environmental Protection Agency



Dredge/Fill volume: 0.32 acre of temporary impact to streambed resulting from excavation of 2,500 cubic yards of dredge material (400 linear feet total).

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 3(b) or RGP79

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:

- Temporarily-impacted areas will be allowed to re-vegetate naturally.

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 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.

Construction de-watering discharges 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:

http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf

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. California Department of Fish and Game staff has stated that no Agreement or authorization from the Department is required for this project. Pursuant to the Governor's Executive Order S-13-07 and the California Environmental Quality Act (CEQA), the County of Orange has determined that the project falls under CEQA Guidelines Section 15269 (a)-Emergency Projects and is therefore statutorily exempt from provisions of CEQA. The Executive Officer has considered Executive Order S-13-07 and the County's determination of exemption in making this certification.

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.

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 http://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,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert
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

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