



# California Regional Water Quality Control Board Santa Ana Region



Linda S. Adams  
Secretary for  
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Arnold Schwarzenegger  
Governor

September 4, 2007

Karon Cornell  
Tucker Wildlife Sanctuary  
California State University, Fullerton  
800 North State College Boulevard  
Fullerton, CA 92634

## **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR PROPOSED RETAINING WALL STABILIZATION IN MODJESKA CREEK AT THE TUCKER WILDLIFE SANTUARY, ORANGE COUNTY (ACOE REFERENCE NO. NOT AVAILABLE)**

Dear Ms. Cornell:

On July 12, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for proposed retaining wall stabilization in Modjeska Creek at the Tucker Wildlife Sanctuary in 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:** Installation of concrete slurry below the toe of two concrete retaining walls along the banks of Modjeska Creek. The toe of the retaining walls has been exposed and undermined. The slurry will serve to encapsulate and extend the toe of the retaining walls into the bed of the Creek approximately 1-1/2 feet. Select stone from the Creek will be placed along the toe to provide additional protection. The project is located within Section 26 of Township 5 South, Range 7 West, of the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33 deg. 42 min. 36 sec. N/ - 117 deg. 37 min. 08 sec. W).

**Receiving water:** Modjeska Creek

***California Environmental Protection Agency***



Fill area: 0.04 acres of permanent impact to an ephemeral drainage (60 linear feet).

Dredge/Fill volume: N/A

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

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. This project is less 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 not required.

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. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. The Executive Officer has determined that the proposed project is exempt from provisions of the California Environmental Quality Act (CEQA), according to Guidelines Section 15301 for repair of existing facilities.

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

1. The discharger shall implement an effective combination of source control and treatment best management practices to remove pollutants from discharges of storm water runoff.
2. The rock protection shall consist of well-graded material, sized and placed according to generally accepted engineering criteria.
3. Rock taken from Modjeska Creek shall not result in destabilization and erosion of the Creek.

**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.

Although we anticipate no further regulatory involvement, 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, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation 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.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

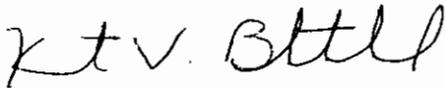
In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

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.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf](http://www.swrcb.ca.gov/resdec/wqorders/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 – Jason Lambert  
State Water Resources Control Board, OCC – Erik Spiess  
State Water Resources Control Board, DWQ-Water Quality Certification  
Unit –Bill Orme  
California Department of Fish and Game – Naeem Siddiqui  
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Tim  
Vendlinski

APF:401/certifications/Modjeska ck bank stabilization 302007-12