



California Regional Water Quality Control Board

Santa Ana Region



Matthew Rodriguez
Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

September 6, 2011

Ken Quon
City of Irvine
1 Civic Center Plaza
Irvine, CA 92606-5207

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE BORREGO CANYON WASH BANK REPAIR PROJECT,
CITY OF IRVINE, ORANGE COUNTY (ACOE REFERENCE NO. UNAVAILABLE)
(SARWQCB PROJECT NO.302011-25)**

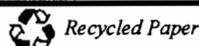
Dear Mr. Quon:

On August 19, 2011, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification"), submitted on your behalf by Glenn Lukos Associates, Inc., for the Borrego Canyon Wash bank repair project located adjacent to the Irvine Metrolink Station in the City of Irvine. The purpose of this project is to repair severe erosion on the banks and scouring within the Borrego Canyon Wash channel bed, recently caused by combined nuisance flows from adjacent agricultural uses and storm water. 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:

The project consists of removing excess sediment within the subject 300-foot reach of Borrego Canyon Wash to match the upstream elevations, which would allow the Wash to closely resemble its original design and grade. Vegetation within this reach will also be removed so that equipment can be mobilized within the Wash. The sediment will be supplemented with an aggregate base to repair a 200-foot section of the eroded western bank of the Wash. Embankment protection (rip rap or similar material) will then be placed on the restored bank to secure the area from future erosion. Finally, a soil blanket will be applied within the voids of the embankment protection and the entire restored bank and toe of slope will be replanted with in-kind species.

California Environmental Protection Agency



The project is located in the city of Irvine, in Orange County, within Section 155 of Township 6 South, Range 8 West, of the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33.654569 N/-117.732039 W).

Receiving water: Borrego Canyon Wash, ephemeral drainage

Fill area: 0.03 acre (200 linear feet) of permanent impact to non-wetland waters of the United States and 0.27 acre (300 linear feet) of temporary impact to non-wetland waters of the United States.

Dredge volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 13

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- The Applicant will mitigate for the removal of riparian vegetation through the replacement with in-kind species on the restored bank and toe of slope.
- To ensure that the restoration area achieves a minimum of 80% cover relative to upstream conditions by the end of year five, the Applicant will maintain and monitor the 0.30-acre restoration site for five years or until the subject reach of Borrego Canyon Wash is impacted by the Heritage Fields El Toro Project (ACOE Reference No. 2006-1452-CJF), whichever occurs first.

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 according to the requirements of Order no. R8-2009-0030 (NPDES Permit No. CAS618030), commonly known as the Orange County Municipal Storm Water Permit, and subsequent iterations thereof. 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, including the preparation of a SWPPP.

Under the terms and conditions of the U.S. Army Corps of Engineers Nationwide Permit No. 13 and the Nationwide Permit General Conditions, the project as proposed does not require a Pre-Construction Notification to be submitted to the district engineer prior to commencing the activity. The proposed project will not involve discharges into special aquatic sites, is not in excess of 500 feet in length, and will not involve the discharge of greater than an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act ("CEQA"), the City of Irvine filed a CEQA Guidelines Section 15302 "Class 2" Categorical Exemption on September 1, 2011, which declares that the project consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The Regional Board has considered the City's Categorical Exemption in the issuance of the Certification and finds that no changes or alterations to the proposed project or on site mitigation standards are necessary to 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 applicable Clean Water Act section 404 Nationwide Permit.
2. All materials generated from construction activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified.
3. The project proponent shall utilize Best Management Practices during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
4. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water. If flowing water is present in the channel during construction, appropriate temporary diversion plans must be implemented.
5. The applicant shall submit an annual report, due on or before December 31st, to the SARWQCB for a period of five years. The annual report shall document implementation and success of the proposed water quality standards mitigation. If the water quality standards mitigation measures are not properly implemented and maintained, corrective measures must be implemented in consultation with SARWQCB staff and the resource agencies.

6. SARWQCB staff and other authorized representatives shall be allowed:
 - a. Entry upon premises where project construction will occur, or where records are kept under the requirements of this Certification and applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification and applicable waste discharge requirements;
 - c. To inspect any facility, equipment, practices, or operations related to the bank repair work; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification and applicable waste discharge requirements.
7. This Certification and any subsequent amendments must be maintained on site.
8. This Certification is transferable only upon written notice to the Executive Officer. The notice must include written acknowledgement of this Certification by the transferee's authorized representative.
9. The applicant must comply with the conditions and provisions of the Corps' Clean Water Act Section 404 permit(s).

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality standards 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 SARWQCB 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

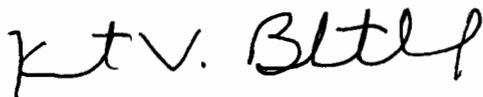
remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401 (d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure 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 Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt Berchtold
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Cori Farrar
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
California Department of Fish and Game – Russell Barabe
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR-8

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