



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
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Jerry Brown
Governor

January 19, 2011

John Madden
Planning Division
U.S. Army Corps of Engineers – Los Angeles District
915 Wilshire Blvd.
Los Angeles, CA 90017

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR CARBON CANYON DAM SEDIMENT REMOVAL PROJECT, CITY OF BREA, COUNTY OF ORANGE, CALIFORNIA (OUR FILE NO. 302010-36)

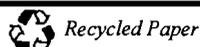
Dear Mr. Madden:

On August 19, 2010, Regional Board staff received an application for a Clean Water Act Section 401 Water Quality Standards Certification (401 Certification) for the above referenced project. The application reports that the proposed action is to be undertaken by the U.S. Army Corps of Engineers (USACE), a Federal Agency, and financed with Federal funds. Furthermore, the application states that the USACE is not subject to provisions of California Environmental Quality Act (CEQA) or Section 1600, et seq., of the California Fish and Game Code, but must comply with Federal environmental laws such as the National Environmental Policy Act (NEPA), Endangered Species Act, and the Clean Water Act (CWA). The application cover letter states Section 404 (t) of the CWA does not authorize the payment of fees as a condition of compliance with the requirements to comply with State or Regional Board's requirements pertaining to the discharge of dredge or fill material, and USACE has asserted that it cannot be required to pay such fees. As a result, a 401 Certification filing fee, a CDFG 1600 Streambed Alteration Agreement Application, and CEQA documentation were not submitted with the application.

A Final Environmental Assessment (EA) for the project was submitted with the application. The EA meets the requirements of the National Environmental Policy Act.

After receiving and reviewing the 401 application Regional Board staff determined that the Regional Board is responsible to meet CEQA requirements for this project. Regional Board staff determined that this project meets the conditions of a Categorical Exemption according to CEQA Guidelines Section 15301. Please see discussion below concerning CEQA requirements for this project. In addition, Regional Board has confirmed that the State Water Resources Control Board has agreed that the USACE is not required to pay fees associated with 401 Certifications in which they are the project proponent.

California Environmental Protection Agency



We understand that the USACE is in danger of losing funding for this project, which is necessary, in part, to reduce flooding of Carbon Canyon Regional Park and resultant damage to facilities in the park. Accordingly, notwithstanding the USACE assertions regarding their obligations under the California Fish and Game Code, this letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project, described below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin 1995 (Basin Plan), and subsequent amendments:

1. Project description:

Carbon Canyon Dam is in the City of Brea, Orange County California. The proposed project will take place in an area that is owned by the Federal Government and is operated by the USACE as a flood control facility. The County of Orange operates a regional park on 124 acres of leased land within the Dam's impoundment area. The park is subject to inundation when Carbon Canyon Creek overflows its banks.

The proposed project entails:

- The removal of sediment that has accumulated behind Carbon Canyon Dam, to enable the facility to operate at its optimal flood control capacity; and,
- The implementation of channel erosion protection measures on Carbon Canyon Creek.

Approximately 200,000 cubic yards of sediment and the overlying vegetation are proposed to be removed from an area covering 30 acres. The removal area consists of 19 acres of riparian habitat (including areas burned during the November 2008 Freeway Complex fire), and 11 acres that have been subject to routine maintenance and are currently barren. Excavated sediment would be temporarily placed at a designated sediment placement site in the uplands outside of waters of the United States. Removed vegetation would be placed at an appropriate facility.

Within the dam's impoundment area, the segment of Carbon Canyon Creek that is within the main sediment removal area will be excavated and reconfigured into an engineered channel with a compacted earth invert and side slopes.

Channel erosion protection actions are proposed to be implemented in the segment of Carbon Canyon Creek that is just upstream of the main sediment removal area. This 1,350 foot-long segment will be excavated to remove up to 4 feet of sediment and vegetation in the channel. Twelve inch-thick riprap underlain by filter fabric will be placed throughout this channel segment. Sections of riprap will be grouted. Grouted stone invert stabilizers will be placed at both

ends of this segment. These actions are proposed to reduce the periodic flooding that has caused severe damage to the County park facilities behind the dam.

2. Location: 33.93751 north, 117.81339 west,
Township 3S, Range 9W,
Yorba Linda, CA, USGS Quadrangle
3. Receiving water: Carbon Canyon Creek
4. Fill Area: 30 acres
5. Dredge volume: 200,000 cubic yards
6. Federal permit: NWP 31 – Maintenance of Existing Flood Control Facilities
7. Mitigation:

The applicant proposes to plant and establish native plant species adjacent to the 1,350 foot segment of Carbon Canyon Creek that is to be treated with rock riprap for erosion protection. A mitigation plan has been prepared to guide this activity. In addition, the riprap at the top of the channel side slopes will be buried to allow plant growth. The goal of these activities is to improve the viewsapes for park visitors and enhance habitat along the Creek that will be impacted by the proposed erosion protection activities.

Should the proposed project impact federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service will ensure those impacts are mitigated to an acceptable level.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2009-0003 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, NPDES No. CAG 998001, at the Regional Board's website: www.waterboards.ca.gov/santaana/.

Regional Board staff have reviewed the Final Environmental Assessment (FEA) for this project.. It was determined by the U.S. Army Corps of Engineers District Commander that the proposed project will not have a significant adverse effect upon the existing environment or the quality of the human environment and that a finding of no significant impact (FONSI) is appropriate for this project. Staff have determined that the FEA provides an adequate environmental assessment of the project. Board staff has used information contained in the FEA and FONSI to independently evaluate those aspects of the project that will or could affect water quality standards. Based upon this evaluation, and the conditions set forth in this Certification, Regional Board staff concludes impacts to water quality resulting from the project will be reduced to a less than significant level and beneficial uses will be protected. Thus, the Regional Board

independently finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level.

The Regional Board staff has determined that the project is categorically exempt from the reporting requirements of CEQA, according to CEQA Guidelines Section 15301 (Class 1). A Section 15301 Class 1 categorical exemption applies to the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The Regional Board finds this project is categorically exempt from CEQA because it is project for the maintenance of an existing facility involving negligible or no expansion of use under Section 15301. A Notice of Exemption will be filed.

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

1. The proposed mitigation measures shall be timely implemented and completed according to the project's Mitigation Plan.
2. The project proponent shall utilize Best Management Practices (BMPs) during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or waters of the United States.
3. Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the United States. All waste concrete shall be removed.
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.
5. This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any of the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result

in appropriate enforcement action, including imposition of administrative civil liability, the revocation of this Certification, and civil or criminal liability.

6. This project is over 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 No. 2009-0009-DWQ, is required, as is preparation and implementation a SWPPP to control the discharge of pollutants from the project site.
7. The applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.
8. A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work as a denoted element of any project SWPPP or WQMP

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.

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 State Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf.

This letter constitutes a conditional water quality standards certification. Although we anticipate no further regulatory involvement, if the above 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 for the project.

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.

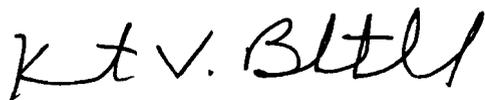
In response to a suspected violation of any condition of this certification, the SARWQCB may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SARWQCB deems appropriate. The burden, including costs, 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 SARWQCB 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. This letter constitutes a technically conditioned water quality certification. Please notify our office five (5) days before construction begins on this project.

If you have any questions, please call David G. Woelfel at (951) 782-7960, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold
Executive Officer

cc: U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office – Tim Vendlinski (WTR-8)
State Water Resources Control Board, DWQ - Water Quality Certification Unit
State Water Resources Control Board, OCC – David Rice
United States Fish and Wildlife Service, Carlsbad Office – Christine Medak
California Department of Fish and Game – Russell Barabe
Orange County Parks Department – Steve Bonhall