



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Acting Secretary for
Environmental Protection

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Edmund G. Brown, Jr.
Governor

January 19, 2011

Loren Smith
Robertson's
200 So. Main, Ste. 200
Corona, CA 92882

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE GYPSUM CANYON CROSSING PROJECT, ANAHEIM,
COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. NOT AVAILABLE)
(SARWQCB PROJECT NO. 302010-22)**

Dear Ms. Smith:

On July 2, 2010, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Robertson's for the placement of a corrugated metal pipe to create a culvert crossing that will provide emergency access to Gypsum Canyon. On September 3, 2010, the application was considered complete, subsequent to a Notice of Exemption filing by this office of a CEQA Guidelines Section 15302 "Categorical Exemption" declaration. 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) (Basin Plan) and subsequent Basin Plan amendments:

Project Description:

The replacement of a 48-inch diameter corrugated metal pipe culvert within a fill prism across the ephemeral drainage of Gypsum Canyon. The culvert and associated fill prism will support a 12-foot wide roadway that provides for emergency access. It replaces a 20-foot wide roadway that was washed away in winter of 2010. The work will take place within Section 30 of Township 3 South, Range 8 West, of the U.S. Geological Survey *Black Star Canyon* quadrangle map (33° 51' 36.51" N/ 117° 41' 59.18" W).

Receiving water:

Unnamed ephemeral drainage within Gypsum Canyon

California Environmental Protection Agency



Fill area: 0.02 acres of permanent impact to streambed habitat (20 linear feet)

Dredge/Fill volume: N/A

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

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:

- None

Offsite Water Quality Standards Mitigation Proposed:

- None

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 (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.

Pursuant to the California Environmental Quality Act ("CEQA"), the Regional Board has determined that the proposed project is categorically exempt from provisions of CEQA according to Guidelines Section 15302 for the 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. Acting on behalf of the Regional Board, the applicant filed a Notice of Exemption (NOE) with the County of Orange. The Regional Board filed a NOE with the State Office of Planning and Research's State Clearinghouse.

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.
- 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) 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 state. All waste concrete shall be removed.
- 5) 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.

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. 2003-0017-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 V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):

- U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert
- Department of Fish and Game – Jeff Brandt
- 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

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