
Santa Ana Regional Water Quality Control Board

June 4, 2012

Louis Abi-Younes
City of Ontario
303 East B Street
Ontario, CA 91764

labiyoun@ci.ontario.ca.us

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE CUCAMONGA CREEK WATERSHED REGIONAL
WATER QUALITY (MILL CREEK WETLANDS) PROJECT, COUNTY OF SAN
BERNARDINO, CALIFORNIA (ACOE REFERENCE NO. NOT AVAILABLE)
(SARWQCB PROJECT NO. 362012-09)**

Dear Mr. Abi-Younes:

On March 19, 2012, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the City of Ontario, for its Cucamonga Creek Watershed Regional Water Quality Project (Mill Creek Wetlands) project (the Project). The purpose of the project is to construct, operate and maintain a regional Best Management Practice (BMP) that will improve the quality of runoff discharged from the Cucamonga Creek Watershed, enhance aquatic and riparian habitat, and create associated passive outdoor recreational opportunities. 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 Project is one component of the City of Ontario's strategy to treat discharges from the City's target municipal separate storm sewer system (MS4) watershed, including New Model Colony. Flows will be diverted from Cucamonga Creek, which currently carries storm runoff, nuisance flows, and treated wastewater from an approximate 77 square-mile watershed that includes the cities of Ontario, Chino, Rancho Cucamonga, and Upland. The Project includes the construction, operation, and maintenance of a diversion pipe and a series of wetland ponds for the purpose of regional water quality treatment of urban runoff. These facilities will be located in uplands adjacent to Cucamonga/Mill Creek.

The portion of the Project that triggers this 401 Certification is a flow diversion structure that would be installed within the fully concrete-lined Cucamonga Creek Channel, west of the Hellman Road Bridge and north of Chino Corona Road. The remainder of the Project, including transmission pipe, desilting basin, four wetland/extended detention ponds, and outlet are located outside of waters of the U.S. and of the State. Routine long-term maintenance of the Project would include sediment and debris removal, vegetation thinning and removal, and repairs as needed. Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. The work will take place within Section 4 of Township 2 South, Range 7 West, as shown on the U.S. Geological Survey *Corona North, California* quadrangle map (33.944849° N/ -117.616623° W).

Receiving water: Cucamonga Creek, Mill Creek

Fill area: 0.40 acres of temporary impact to hard-lined concrete channel (125 linear feet)

Dredge/Fill volume: N/A

Federal permit: 404 Individual Permit

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:

- The proposed Project is a regional BMP. Standard water quality BMPs will be employed during construction activities. No additional mitigation is proposed because of the Project's de minimus and temporary impact on water quality standards that will result from construction within a concrete-lined flood control channel that provides limited support to the WARM, and other, beneficial use(s).

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. R8-2010-0036 (NPDES Permit No. CAS618036), commonly known as the San Bernardino County Municipal Storm Water Permit, and subsequent iterations thereof. As a co-permittee of Order No. R8-2010-0036, you are required to substantially comply with the requirements of the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, including the preparation of a SWPPP.

Over time, the Project's constructed water quality treatment wetlands will support beneficial uses that are recognized in the Basin Plan. Likely beneficial uses of the wetlands will include WILD, WARM, RARE, REC1 and REC2. These wetlands will become waters of the State and of the United States. If necessary, the Regional Board may take regulatory actions that it deems necessary and appropriate to ensure that the wetlands are not adversely affecting other waters, and that they are properly operated and maintained and that their beneficial uses are reasonably protected.

A Notice of Determination for a Mitigated Negative Declaration for the project was filed by the City of Ontario on January 20, 2012. Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an Environmental Impact Report (EIR) or a Negative Declaration prepared by the lead agency in determining whether to approve a project. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project. The Regional Board has independently considered the City's Negative Declaration in making this certification and finds that changes or alterations have been required or incorporated into the proposed project which 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 permit.
- 2) All materials generated from construction and maintenance 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 BMPs during project construction and maintenance 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) Vegetative debris, including mulched material, leaves, and twigs/branches, and other trash which results from or is uncovered by vegetation removal operations shall be removed from the construction area or maintenance staging areas as soon as possible. Vegetative debris shall be managed such that propagules of non-native or invasive plant species are not dispersed.
- 6) 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.
- 7) 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 the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
- 8) An effective monitoring plan must be developed and implemented to document compliance with conditions 2, 4, 5 and 6 above. Any suspected violation of these conditions must be reported to Regional Board staff in writing within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
- 9) The applicant shall implement a Mill Creek bioassessment program designed to determine whether the diversion of flow from Mill Creek is having an adverse effect on the biological integrity of Mill Creek within the project area. This program shall be based on consensus of environmental resource agency staff whose agencies permit the Project. Results on any studies of wetland condition using the California Wetlands Rapid Assessment that are conducted as part of this assessment of shall be reported to www.cramwetlands.org Results of the Mill Creek bioassessment program shall be reported to the Regional Board annually, for a period of not less than three years. Reports shall be submitted by January 31 of each year.

- 10) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 11) Construction de-watering discharges, including temporary stream diversions necessary for project construction 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 www.waterboards.ca.gov/santaana/
- 12) May 29, 2012 The applicant shall ensure that all fees associated with this project are paid to each respective agency prior to conducting any on-site construction activities.

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.

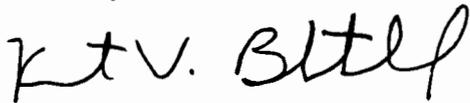
If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge 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. 1

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/wqo2003-0017.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):

RBF Consulting – Regulatory Services Director – Richard Beck
U. S. Army Corps of Engineers, Los Angeles Office- Jim Mace
State Water Resources Control Board, OCC- David Rice
State Water Resources Control Board, DWQ -Water Quality Certification Unit
California Department of Fish and Game - Joanna Gibson
U.S. EPA- Supervisor of the Wetlands Regulatory Office WTR- 8