
Santa Ana Regional Water Quality Control Board

October 23, 2012

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

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE NEW MODEL COLONIES INFRASTRUCTURE
PROJECT, COUNTY OF SAN BERNARDINO, CALIFORNIA (ACOE REFERENCE
NO. SPL-2012-00463-BEM) (SARWQCB PROJECT NO. 362012-14)**

Dear Mr. Abi-Younes:

On May 18, 2012, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the City of Ontario. This application is for drainage improvements connecting to the Cucamonga Creek and Deer Creek flood control channels, and bridges crossing these channels, associated with the New Model Colony East Master Plan Infrastructure Project. 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 New Model Colony East Master Plan Infrastructure Project includes the construction of six (6) storm outlet structures on Cucamonga Creek Channel and one (1) outlet structure on Deer Creek. The project also includes construction of one bridge needed for the future Schaefer Avenue (across Cucamonga Creek and Deer Creek); construction of one bridge across Cucamonga Creek for the future Eucalyptus Avenue; widening of two existing bridges across Cucamonga Creek needed for Riverside Drive and Chino Avenue; and the removal and replacement of two existing bridges across Cucamonga Creek for Edison Avenue and Merrill Avenue. The work will take place within Sections 10, 11, 12, 13, 14, 15, 22, 23, and 24 of Township 2 South, Range 7 West, of the U.S. Geological Survey *Guasti, CA* and *Corona North, CA* quadrangle maps (33.997513° N/ -117.598595° W).

Receiving water: Cucamonga Creek (Perennial) and Deer Creek (Perennial), tributary to Mill Creek

Fill area: 4.83 acres of temporary impact to a hard-lined concrete channel (3,292 linear feet)

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 33

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:

- Standard water quality related Best Management Practices (BMPs) will be employed onsite and includes site design features, as well as source control and treatment control BMPs. No additional mitigation is proposed due to minimal impacts (4.86 acres temporary) and resource type (i.e., concrete channel).

Offsite Water Quality Standards Mitigation Proposed:

Pertinent to the subject project is the planned construction of the Cucamonga Creek Watershed Regional Water Quality Project (also known as the Mill Creek Wetlands), which is located downstream of the activities this Certification authorizes. Mill Creek Wetlands is the primary component of the City of Ontario's strategy to treat primarily dry weather runoff discharges from the City's target municipal separate storm sewer system (MS4) watershed. The Mill Creek project also includes treatment of dry weather urban and storm water runoff discharges generated from the New Model Colony project. The Mill Creek Wetlands project is expected to begin construction in October 2012 and to begin operation in June 2014. The Mill Creek Wetlands project received Certification on June 4, 2012.

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 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 in Order No. R8-2010-0036, the City of Ontario is required to 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.

A Notice of Determination for an Environmental Impact Report that included this project was filed by the City of Ontario on January 28, 2010. 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 Environmental Impact Report 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 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 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.
- 6) 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.

- 7) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 8) 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/
- 9) Applicant shall ensure that all fees associated with this project shall be 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. 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):

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