
Santa Ana Regional Water Quality Control Board

June 27, 2012

Nardy Khan
Orange County Public Works
300 North Flower Street
Santa Ana, CA 92702-4048

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR EIGHT FOOTHILL RETARDING BASINS PROJECT, COUNTY
OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. NOT AVAILABLE)
(SARWQCB PROJECT NO. 302011-28)**

Dear Ms. Khan:

On October 21, 2011, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Orange County Public Works for a project to remove sediment and debris from six stormwater retarding basins to avoid sediment from interfering with basin function and affecting basin flood control capacity. 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 consists of removing accumulated sediment and debris from eight stormwater retarding basins located in and near the foothills of the Santa Ana Mountains. In addition, at the Round Canyon Retarding Basin, the following will be constructed: a 48' x 48' portland cement concrete (PCC) cleaning pad, a 13' wide PCC access road to the concrete pad, and an 8" ABS drain pipe and construction joints. The work will take place within Sections 16, 17, 21, 27, 31, & 34 of Township 5 South, Range 8 West, of the U.S. Geological Survey *Tustin* and *El Toro*, CA quadrangle maps (33° 42' 21.67" N/ -117° 42' 40.19" W).

Receiving water: Bee Canyon, East Hicks Canyon, Hicks Canyon, Orchard Estates, Round Canyon, Lower Peters Canyon, Agua Chinon, Trabuco Retarding Basins; San Diego Creek

Fill area: 0.50 acres of permanent impact to streambed habitat (244 linear feet)
40.0 acres of temporary impact to streambed habitat (3,906 linear feet)

Dredge/Fill volume: Bee Canyon: 62,000 cubic yards
East Hicks Canyon: 8,100 cubic yards
Hicks Canyon: 29,400 cubic yards
Orchard Estates: 35,150 cubic yards
Round Canyon: 45,200 cubic yards
Agua Chinon: 64,500 cubic yards

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 31 & 43 or appropriate 404 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:

- Standard water quality related best management practices (BMPs) will be employed during construction activities.

Offsite Water Quality Standards Mitigation Proposed:

- 0.15 acres of permanent impacts to the non-vireo occupied basins (Marshburn (non-jurisdictional), Trabuco, Round Canyon, Hicks, East Hicks, Bee Canyon, Orchard Estates) will be mitigated by removing *Arundo donax* from a 0.15 acre parcel within the applicant's Santa Ana River Mitigation Site and achieving less than 5% *Arundo* coverage after 5 years.
- 0.35 acres of proposed permanent impacts to vireo occupied vegetation within Peters Basin will be mitigated at the recently approved Peters Canyon Wash Mitigation Site for LBV impacts. Although the mitigation site does not lie within the proposed project area, it is less than half a mile away. Therefore, 1:1 mitigation ratio is proposed by providing the 0.35 acre area of mitigation, proximal to the project site.
- All vireo occupied vegetation within Agua Chinon Basin will be protected in place.
- The mitigation sites shall be monitored and maintained for five years to ensure successful establishment of riparian habitat within the restored/enhanced areas. The monitoring plan shall include annual reports for five years, which shall be submitted to the resource agencies on an annual basis.

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.

On March 22, 2012, the County of Orange, as the CEQA lead agency filed a Mitigated Negative Declaration for this project. Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR or Negative Declaration prepared by the lead agency in determining whether to approve the 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 Section 15091 and, if necessary, 15093, for each and every significant impact of the project. Based on the mitigation proposed and the conditions set forth in this Certification, Board staff has concluded that the project's impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. The Regional Board has independently considered Orange County's Mitigated 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) The compensatory mitigation identified above shall be timely implemented. Documentation of the in-lieu mitigation activities shall be provided to this office prior to commencing with any on-site construction/restoration activities.
- 3) 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.
- 4) 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.

- 5) 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.
- 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) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 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.
- 10) 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/
- 11) Applicant shall ensure that all facilities (outlet structures, grade control structures, and eroded soil-cement access ramps etc.) will be restored to their original design and grade, and that vegetation within the project area will be maintained throughout perpetuity according to WQMP specifications.

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.

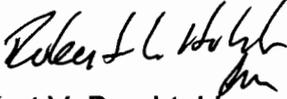
If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge 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 - Stephen Estes
State Water Resources Control Board, OCC - David Rice
California Department of Fish and Game - Kevin Hupf, KHupf@dfg.ca.gov
State Water Resources Control Board, DWQ-Water Quality Certification Unit - Bill Orme

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