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Water Boards

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SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

January 10, 2013

Jay Bautista
City of Ontario
303 East B Street
Ontario, CA 91764

<u>REVISED</u> CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE VINEYARD AVENUE GRADE SEPARATION PROJECT, COUNTY OF SAN BERNARDINO, CALIFORNIA (ACOE REFERENCE NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 362012-18)

Dear Mr. Bautista:

What follows is a revision of the Clean Water Act Section 401 Water Quality Standards Certification (Certification) issued from this office on November 19, 2012, for the subject project. A revision was requested because of recalculations that show additional temporary impacts to streambed habitat will result from the construction of a channel access ramp within the project area. Please note that these changes have been illustrated with strikeout and underlined lettering. This revision supersedes any prior iteration of said Certification for the subject project.

On August 15, 2012, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the City of Ontario for a project to construct a railroad track grade separation to replace the existing at-grade crossing on Vineyard Avenue north of East Airport Drive. The primary purpose is to eliminate traffic delays between railroad and vehicular traffic at the intersection, increase reliability for train movements, improve emergency vehicle access, improve safety by eliminating the at-grade railroad crossing, and provide for more efficient operation of nearby freeways and arterial roadways. 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: To collect drainage from the grade separation and the reconstructed intersection of Vineyard Ave. and Airport Dr., and to install a new 48-inch reinforced concrete pipe (RCP) storm drain. This new storm drain will extend approximately 4,300 feet along Airport Drive, between Vineyard Ave. and the San Bernardino County Flood Control District's concrete-lined Cucamonga Creek flood control channel. Within the

SBCFCD's easement for the channel, the new 48-inch RCP storm drain will turn southerly and parallel the flood control channel for approximately 1,225 feet, terminating at a new 48-inch side drain connection to the Cucamonga Channel. An existing 42" storm drain currently serving the area and the outlet from it into the Cucamonga Channel will remain in service. The work will take place within Section 27, Township 1 South, Range 7 West, of the U.S. Geological Survey *Guasti* quadrangle map (34.0336° N/ -117.3603° W).

Receiving water:	Cucamonga Channel
Fill area:	~~0.01~~ 1.34 acre of temporary impact to streambed habitat (~~<40~~ 1,930 linear feet)
Dredge/Fill volume:	N/A
Federal permit:	U.S. Army Corps of Engineers Nationwide Permit No. 7

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:

- 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 in Order No. R8-2010-0036, the City of Ontario is required to substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity.

The applicant reports that the project qualifies for a Public Resources Code Division 13 Section 21080.13 statuary exemption from the provisions of the California Environmental Quality Act (CEQA). The applicant filed a CEQA Notice of Exemption for the project with the County of San Bernardino on May 4, 2010. The applicant has submitted a determination by the City of Ontario that the project is excluded from the requirements to prepare a National Environmental Protection Act (NEPA) environmental assessment or environmental impact study. The Regional Board acknowledges that the applicant's project is statutorily exempt from the provisions of CEQA. The Regional Board independently 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) 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/

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.

Under the 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/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):
HDR Engineering–Clint Meyer, Clint.Meyer@hdrinc.com
U. S. Army Corps of Engineers, Los Angeles Office-Mark Durham
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