



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

August 7, 2013

Nardy Khan
Department of Public Works
County of Orange
300 North Flower Street
Santa Ana, CA 92702

**RENEWAL OF CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR RECURRING MAINTENANCE IN SAN DIEGO CREEK, CITY
OF IRVINE, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. SPL-
2009-00104-YJC; RWQCB FILE NO. 302008-33)**

Dear Ms. Khan:

On August 4, 2013 we received a request to renew an existing Clean Water Act Section 401 Water Quality Standards Certification ("Certification") issued on July 22, 2009, for recurring maintenance work in a reach of San Diego Creek in the City of Irvine, Orange County. This letter responds to your request for renewal of 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:

Excavation is proposed in San Diego Creek:

- 1.) To maintain the line and grade of the low-flow channel located within a 600-foot long trapezoidal section reach located immediately downstream of Irvine Center Boulevard; and,
- 2.) At two Arizona-style maintenance road crossings located upstream of the proposed crossing of Bake Parkway and San Diego Creek.

All three areas of work will be excavated to remove accumulated sediment deposits. Work will also include vegetation cutting or removal as needed for equipment access. All work will be recurring on an as-needed basis. The work will take place within Section 171 of Township 6 South, Range 8 West, of the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33 deg. 38 min. 04 sec. N/ -117 deg. 44 min. 16 sec. W).

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | www.waterboards.ca.gov/santaana

Receiving water: San Diego Creek

Fill area: N/A

Dredge/Fill volume: Approximately 2,750 cubic yards, affecting 0.92 acre of streambed, including 0.75 acres of wetlands (620 linear feet total).

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 31

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:

- Sediment and other pollutants in the Channel flows will be removed using flocculent-impregnated fiber wattles and in-channel check dams.
- Excavated areas will be allowed to re-vegetate naturally.

Offsite Water Quality Standards Mitigation Proposed:

- No off-site water quality standards mitigation is proposed.

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 Wildlife 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, including the preparation of a SWPPP.

Construction de-watering discharges 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/santanana/board_decisions/adopted_orders/orders/2009/09_003_deminimus_permit_wdr.pdf

Previous modifications of the affected reach of San Diego Creek were authorized under a waiver of waste discharge requirements issued by the Executive Officer pursuant to Regional Board Resolution No. 96-6 on November 2, 1998, and by the aforementioned July 22, 2009, Certification.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), Orange County Public Works has determined that the project is categorically exempt from provisions of CEQA under Guidelines Section 15304. The Regional Board has independently determined that the project also is categorically exempt under Guidelines Section 15301 for the maintenance of existing facilities, not expanding their use. The proposed project consists of the maintenance of a previously-authorized and constructed facility and does not expand or alter the channel's capacity.

This 401 Certification is contingent upon the execution of the following conditions:

- 1) The applicant must comply with the requirements of applicable Clean Water Act section 404 permits.
- 2) The discharge of the propagules of woody invasive plant species as the result of project-related activities to waters of the State, or to land where they may be discharged to waters of the State, is prohibited.
- 3) Woody invasive plant species that are disturbed as the result of project-related activities must be disposed of according to published and generally-accepted methods.
- 4) Project activities must not depress the dissolved oxygen content of receiving waters below 5 mg/L as a result of controllable water quality factors. When natural dissolved oxygen content is less than 5 mg/L, the discharger must not cause further depression.
- 5) Project activities must not raise the pH of receiving waters above 8.5 or lower pH below 6.5 as the result of controllable water quality factors.
- 6) Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units(NTUs), in receiving waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
 - a) If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.
 - b) If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.

- c) If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity.
- 7) An effective monitoring plan must be developed and implemented to document compliance with conditions 2, 3, 4, 5, and 6 above. Any suspected violation of these conditions must be reported to Regional Board staff in writing within 240 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.
- 8) The removal of the tree canopy over San Diego Creek must be minimized to the maximum extent practicable.
- 9) This certification expires on March 18, 2017; however, it may be extended for a period of 12 months by the Executive Officer, after the submittal of a written request prior to the date of expiration.
- 10) A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work and be made available for review upon request.

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/wqo2003-0017.pdf

Should there be any questions, please contact Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



So 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 Wildlife - Russell M. Barabe
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme