



California Regional Water Quality Control Board

Santa Ana Region



Matthew Rodriguez
Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

July 19, 2013

Daniel Bott
Orange County Water District
18700 Ward Street
Fountain Valley, CA 92708

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE ORANGE COUNTY WATER DISTRICT
BURRIS BASIN PUMP STATION PROJECT, CITY OF ANAHEIM, COUNTY OF
ORANGE, CALIFORNIA (OUR FILE NO. 30-2013-08)
(U.S. ARMY CORPS OF ENGINEERS PERMIT NO. SPL-2012-00066-JPL)**

Dear Mr. Bott:

On April 8, 2013, Regional Board staff received an application for Clean Water Act (CWA) Section 401 water quality standards certification (401 Certification) from Orange County Water District (OCWD) for the Burris Basin Pump Station Project. Included with the application were the following:

- Documentation showing that a Notification for a California Department of Fish and Wildlife (CDFW) Lake or Streambed Alteration Agreement for the project has been submitted;
- \$944 as a flat fee required to process this 401 Certification, as specified by California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3) and which is summarized on the State Water Resources Control Board (SWRCB) Dredge and Fill Fee Calculator¹;
- A copy of the California Environmental Quality Act Draft Initial Study/Mitigated Negative Declaration for the project; and
- A copy of a project Biological Assessment completed by the Orange County Water District.

In June 2013, Regional Board staff received verification that the project Mitigated Negative Declaration (MND) was certified.

¹ Regional Board staff made the determination that this project meets the definition of a Restoration Project as specified in the SWRCB Dredge and Fill Calculator (fee category vii) such that total charges to process the 401 Certification are \$944. Restoration projects are projects undertaken for the sole purpose of restoring or enhancing the beneficial uses of water. This project will enhance the Groundwater Recharge (GWR) and other beneficial uses.

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U.S. Army Corps of Engineers (Corps) staff has verified that the referenced project would be included in their Regional General Permit (RGP) 90 (No. SPL-2012-00066-JPL), for OCWD's groundwater recharge facilities maintenance. The Regional Board had previously certified all the activities proposed to be covered under RGP 90 in Certification 302012-01. The Corps decided to add the proposed Burris Basin Pump Station project under RGP 90 and therefore a new application for a Corps CWA 404 permit just for the pump station project would not be required. Regional Board staff decided to issue a 401 certification for this project instead of amending 401 Certification 302012-01.

On July 12, 2013 Regional Board staff received a copy of notification from CDFW that the proposed project may be completed without a Lake or Streambed Alteration Agreement (Operation of Law Notification). It was stated in the notification that the project must be completed as specified in the submitted project Notification of Lake or Streambed Alteration and any modifications to the project as specified in the Notification must be submitted to CDFW.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project, described 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 amendments.

1. Project description:

The proposed project involves the replacement of an existing pump station at the OCWD Burris Basin groundwater recharge basin. The existing pump station has been experiencing maintenance problems and OCWD has decided to replace the pump station. Burris Basin is located just north of Ball Road and west of the Santa Ana River Channel, in the city of Anaheim. Burris Basin was originally developed as a sand and gravel quarry and was used for this purpose up to the 1960s. The existing Burris Basin Pump Station was built in 1986 as part of the OCWD Santiago Creek Replenishment Project. This project allows the pumping of water to and from the OCWD Santiago Creek Basin groundwater recharge facilities located approximately 3.75 miles away in the City of Orange. The existing pump station lies on a peninsula projecting from the southern end of the basin.

The purposed project consists of three phases. Phase 1 involves dewatering a portion of Burris Basin, removing vegetation and clearing of the proposed pump station site. After dewatering, an area of the Basin away from the construction site will remain with a pool of water from 10 to 15 feet in depth. The site for the new pump station will be at the end of the peninsula beyond where the existing pump station is located. Phase 2 consists of demolishing and removing existing concrete slope protection on the eastern slope of the peninsula, and rough grading the site. After this is accomplished, a 45-foot earthen berm will be constructed around the proposed pump station site. The earthen berm will create a dry area for construction of the pump station while allowing water



levels in the basin to be raised to their normal operation level. In addition, the berm will provide a sound and visual barrier from project activities to nesting birds that utilize the basin's sand nesting island. Soil for construction of the berm will be taken from two sections of the Basin.

Phase 3 involves the construction of the new pump station, demolishing the existing pump station and finish grading the site after construction is complete. Soil from the earthen berm will be used as fill for the project site area and for finish grading work. The basin will again be dewatered to allow finish fine grading of the slopes around the pump station site. As planned, by 2015 the project will be completed and the basin will be filled to its normal operating water level.

Burris Basin is being classified as Waters of the United States and of the State. Project construction operations will result in temporary impacts to 8.97 acres of federal jurisdictional waters, including 8.8 acres of waters of the U.S. and 0.17 acre of wetlands.

2. Location: Longitude/Latitude: 122-271-07°/37-25-19°
Township/Range/Section/Quadrangle:
4S/10W/13/Orange, California
3. Receiving water: Burris Basin
4. Fill Area: Water of the United States: 8.8 acres of Lake Waters and
0.17 acre of Wetlands impacts
5. Dredge volume: NA
6. Federal permit: RGP 90; SPL-2012-00066-JPL
7. Mitigation:

OCWD will provide onsite, in-kind compensatory riparian vegetation mitigation. A total of 0.34 acre of riparian vegetation will be planted around the slope of the pump station site. This is double the amount of wetlands of the US that will be permanently impacted. The proposed mitigation area will be incorporated into the existing Burris Basin Habitat Management Plan and will be actively managed by OCWD.

The project's temporary jurisdictional impacts, which include 8.8 acres of Burris Basin that will be dredged to complete the project, are expected to improve the groundwater recharge function (and beneficial use) of the Basin and other basins in the Santiago Creek area.

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, NPDES No. CAG 998001, at the Regional Board's website: www.waterboards.ca.gov/santaana.

The applicant provided a copy of the Draft and Final Mitigated Negative Declaration (MND) that was completed for this project. The MND was certified on June 21, 2013. Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board must consider the environmental impact report (EIR) or Negative Declaration prepared for a project by the Lead Agency, and reach its own conclusions on whether and how to approve the project. Regional Board staff has reviewed the project MND, especially the sections concerning impacts to water quality and aquatic habitat. In addition, Regional Board staff has reviewed the Informal Section 7 Consultation completed by the USFWS for this project. As a result of staff's review, the Regional Board independently determines that the project, with the application of mitigation and avoidance measures as specified in the project description, will have a less than significant impact on the environment.

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

1. The applicant must implement the proposed mitigation in a timely manner.
2. The discharger must comply with all conditions and provisions of a Department of Army Section 404 Individual Permit for the project.
3. The conditions of CDFW Notification of Operation of Law for the project must be implemented.
4. During construction activities reasonable efforts must be taken to maintain water quality and quantity in the Basin suitable to sustain the resident fish population as a source of food for resident and migratory birds.
5. As discussed with OCWD staff, reasonable efforts must be taken to maintain feeding habitat for the least tern in the adjacent sections of the Santa Ana River channel during construction activity.
6. Impact avoidance and minimization measures and the site design, source control, and structural source control Best Management Practices (BMPs) must be implemented for the project, as described in the 401 application materials.
7. The project proponent must utilize appropriate BMPs during project activities to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
8. 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, and metal cutting or forming wastes including grinding debris and slag, must not be discharged to soils or waters of the state. All waste concrete must be removed.

9. 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. Equipment must not be operated in areas of flowing water.
10. 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 of the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in appropriate enforcement action, including imposition of administrative civil liability, the revocation of this Certification, and civil or criminal liability.

Under California Water Code, Section 1058, and Pursuant to 23 CCR 3860, the following shall be included as conditions of all water quality standards 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.

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 State Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf.

This letter constitutes a conditional water quality standards certification. Although we anticipate no further regulatory involvement, if the above 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, we may formulate Waste Discharge Requirements for the project.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation 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.

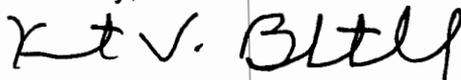
In response to a suspected violation of any condition of this certification, the Regional Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality certification. Please notify our office five (5) days before construction begins on this project.

If you have any questions, please call Dave Woelfel at (951) 782-7960, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold
Executive Officer

cc: U.S. Army Corps of Engineers – Jason Lambert
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office – Tim Vendlinski (WTR-8)
State Water Resources Control Board, DWQ - Water Quality Certification Unit
State Water Resources Control Board, OCC – David Rice
California Department of Fish and Wildlife – Kevin Hupf
United States Fish and Wildlife Service – Christine Medak

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