
Santa Ana Regional Water Quality Control Board

September 24, 2013

Nancy J. Sansoneti
San Bernardino County Department of
Public Works
825 East Third Street, Room 127
San Bernardino, CA 92415-0835

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE UPPER CACTUS BASINS FLOOD CONTROL CHANNEL
SYSTEM ENHANCEMENT PROJECT, COUNTY OF SAN BERNARDINO,
CALIFORNIA (ACOE REFERENCE NO. SPL-2012-00858-SLP) (SARWQCB
PROJECT NO. 362013-10)**

Dear Ms. Sansoneti,

On May 8, 2013, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the San Bernardino County Department of Public Works for a project to expand the existing Upper Cactus Basin and eliminate a portion of the Cactus Channel, in order to increase flood retention capacity, to provide riparian habitat and to provide 100-year flood protection to private property and public infrastructure within the city of Rialto, San Bernardino County. The applicant has also submitted a filing fee of \$944.00, which satisfies this project's fee requirement for obtaining a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the most current iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3). 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 proposed project will align San Bernardino County Flood Control facilities known as Upper Cactus Basins 3/3a, 4 and 5 with the Cactus Channel, to the north of Basin 5, and with the Rialto Channel, at the southwest corner of Basin 3/3A.

The proposed design involves the widening and deepening of these Upper Cactus Basins to an average depth of 43 feet (average elevation 1,346 feet above sea level (asl)).

The Basin system will also be aligned with the Cactus Channel, to the north, and the Rialto Channel, to the south, and subdivided with the construction of two Division of Safety of Dams (DSOD)-compliant earthen dams between Basins 3/3A and 4, and between Basins 4 and 5. Various flow control appurtenant structures will also be constructed.

Additionally the proposed project will implement a Flood Control System Maintenance Plan for on-going management of Basins 3/3A, 4 and 5 upon completion of construction. Additionally, the proposed project includes the construction of a bicycle/walking trail for recreational use on the perimeter of the basins.

All earthmoving activities will be confined within the project area. Approximately 1,829,000 CY of material are anticipated to be exported, with no anticipated import of any material. Stockpiled spoils piles will be temporarily placed (as necessary) within the project area, until exported off-site.

Basin Expansion and Deepening

The Proposed Action will widen and deepen Cactus Basins 3/3A, 4, and 5. The three basins will be excavated to a uniform depth of approximately 1,346 feet asl. In order to maximize the use of the subject property, the basins will be widened to the east into the location of the existing Cactus Channel. All flows from the existing concrete box structure under Easton Street (along the northern, upstream boundary of the site) will discharge into Basin 5. Each Basin will include 15 foot wide access ramps, constructed as needed for construction of basin improvements and maintenance.

California of Department of Water Resources- Division of Safety of Dams (DSOD)

The proposed earthen dams will be constructed between Basins 3/3A and 4, and between Basins 4 and 5. As designed by the District, the dams will be subject to the regulations of the State of California Department of Water Resources DSOD regulations. Construction of the dams would be supervised by the DSOD.

Basin Appurtenant Structures

A series of appurtenant structures will be constructed on the basin dams, to allow the realignment of flows from the

existing Cactus Channel outlet through the reconfigured detention basin system, to the Rialto Channel. The proposed appurtenant structures are:

- At the outlet from Cactus Channel into Basin 5, at the basin's northeast corner, an ungrouted rock rip-rap splash pad will be embedded into the facility's levee. The splash pad will be 3-feet in depth with a 3:1 slope, and span 240 feet along the levee slope and 135 feet of the channel, for a total splash pad length of 375 feet.
- A storm drain inlet from Ayala Drive and Jerry Eaves Park, to the west of Basins 4 and 5, will be constructed beneath the western levee to allow for flows to enter the basin facility from the west.

The work will take place within Section 34 of Township 1 North, Range 5 West, of the U.S. Geological Survey *Devore* and *Fontana* quadrangle maps (34° 8' 22" N/-117° 30' 13" W).

Receiving waters: Upper Cactus Storm Water Detention Basins

Fill area:

Permanent Impact to Riparian Habitat	8.8 acres
Permanent Impact to Streambed Habitat	7.5 acres
Temporary Impact to Streambed Habitat	17.2 acres

Dredge/Fill volume: 1,829,000 cubic yards of excavated soils

Federal permit: Individual Permit SPL-2012-00858-SLP

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:

- Construction of the Upper Cactus Basins Flood Control System Enhancement Project would result in permanent impacts to 7.6 acres of willow cottonwood woodland and 1.2 acres of mulefat habitat.

- Per mitigation BIO-3 of the Final Supplemental Environmental Impact Report (SEIR) for the Upper Cactus Basins Flood Control System Enhancement Project, "impacts for the loss of 8.8 acres of riparian habitat shall be compensated via the restoration and enhancement of 14.6 acres (11.8 acres of which are Waters of the U.S.) of riparian habitat in an earthen channel portion of the Rialto Channel." Specifically, the mitigation area is located within the Agua Mansa Industrial Corridor Specific Plan boundaries in Sub-Area 7 of the Specific Plan managed by the San Bernardino County Flood Control District. Mitigation activities will be executed in accordance with the draft Habitat Mitigation and Monitoring Plan, dated March 2013, prepared and submitted for this project.

Impacts (acres) and Resource Impacted	Mitigation ratio	Mitigation
7.6 acres of willow cottonwood woodland and 1.2 acres of mulefat habitat (8.8 acres total)	~ 1.66:1	14.6 acres of restored riparian habitat within Rialto Channel

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. R8-2010-0036 (NPDES Permit No. CAS618036), commonly known as the San Bernardino County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2010-0036 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.

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 Negative Declaration (ND) 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.

As required by Section 15096, the Regional Board has independently considered the EIR and SEIR prepared for the proposed project in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR and Supplemental EIR relating to water quality.

Specifically, Board staff evaluated whether the proposed project would be detrimental to ongoing groundwater quality cleanup and management projects taking place in the area of the Cactus Basins. Based on the mitigation proposed in the EIRs, and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. Thus, the Regional Board independently finds that changes or alterations have been required in, or incorporated into the 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) Guidelines and performance standards specified within the project's HMMP, shall be implemented to ensure the enhancement and preservation of the designated 14.6 acres of riparian habitat at the Rialto Channel, where it outlets to the Santa Ana River.
- 3) Proposed mitigation shall be timely implemented in accordance with and in sequence to designated sections of the draft HMMP for this project, as approved by the Regional Board's Executive Officer.
- 4) HMMP Performance Standards shall ensure exotic plant species shall not exceed 5% coverage within the mitigation area. Increased native plant cover and erosion protection measures shall also be implemented according to the project's HMMP.
- 5) The mitigation area will be monitored for five years or until the performance standards are achieved. Detailed monitoring reports shall be submitted to this agency annually. At a minimum, these reports shall reflect all annual observations and activities as described in the draft HMMP's discussion of its the Adaptive Management Plan (Section 7.0) for the project.
- 6) 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.

- 7) 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.
- 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, shall not be discharged to soils or waters of the state. All waste concrete shall 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. No equipment shall 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 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.
- 11) A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work as a denoted element of any project SWPPP Flood Control System Maintenance Plan and WQMP.
- 12) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 13) 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/
- 14) 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.

- 15) Prior to any grading for the project in areas where wetland and riparian habitat exist, functional assessments of these wetland and riparian habitats areas, and of proposed mitigation sites, shall be conducted using the California Rapid Assessment Method, February 2012. Site mitigation assessments shall be conducted from October through December, until success criteria are met for consecutive years. This information shall be reported to <http://www.californiawetlands.net/tracker/>

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.

Nancy J. Sansoneti
San Bernardino County
Department of Public Works
401 Certification No. 362013-10

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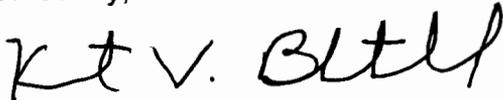
September 24, 2013

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 marc.brown@waterboards.ca.gov, or Mark Adelson at (951) 782-3234 or mark.adelson@waterboards.ca.gov.

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- 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 Wildlife –Joanna Gibson–
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U.S. EPA- Supervisor of the Wetlands Regulatory Office WTR- 8