

Santa Ana Regional Water Quality Control Board

July 11, 2014

Fermin G. Preciado, Associate Engineer
City of Yucaipa
34272 Yucaipa Boulevard
Yucaipa, CA 92399

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE LOW WATER CROSSING AT 13TH STREET AND
WILSON CREEK, CITY OF YUCAIPA, COUNTY OF SAN BERNARDINO,
CALIFORNIA (OUR FILE NO. 36-2011-23) (U.S. ARMY CORPS OF ENGINEERS
PERMIT NO. SPL-2013-00496-DPS)**

Dear Mr. Preciado:

On October 6, 2011, Regional Board staff received an application for Clean Water Act (CWA) Section 401 Water Quality Standards Certification (401 Certification) from the City of Yucaipa for the Low Water Crossing at 13th Street and Wilson Creek 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 had been submitted;
- \$500 intended as the base fee¹ required for consideration of a 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 Calculator;
- A copy of the California Environmental Quality Act Mitigated Negative Declaration for the project, including the certified Notice of Determination; and
- A copy of a Nationwide Permit Pre-Construction (PCN) Form completed for the project and submitted to the U.S. Army Corps of Engineers (USACE) to complete an application for a Clean Water Act Section 404 Nationwide Permit.

¹ At the time that this application was submitted, the base fee for a 401 certification action was \$944; additional fees were assessed at the rate of \$4059 per acre of excavated or filled jurisdictional area or \$9.44 per linear ft. of channel and shoreline impacts, whichever results in the higher fee.

In June 2013, Regional Board staff received a Habitat and Mitigation Monitoring Plan (HMMP) for the proposed mitigation site for the project. In August 2013, Regional Board staff received the final payment of \$4,106.72 to satisfy the fee requirements for consideration of the 401 Certification application. The fee was based on the criteria specified by the California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3) that were in effect at the time the application was submitted, and the State Water Resources Control Board (SWRCB) Dredge and Fill Fee Calculator. In July 2014, a revised HMMP was submitted to the California Department of Fish and Wildlife and Regional Board staff. The revised HMMP reflected the addition of habitat enhancement requirements for the proposed mitigation site.

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:

Wilson Creek carries ephemeral and/or intermittent flows. The proposed project consists of elevating the existing 50-foot wide "at-grade" low water crossing of 13th Street at Wilson Creek, located in the City of Yucaipa, by constructing a bridge/box culvert. The project would eliminate the existing low-water crossing and alleviate current flood control deficiencies. The culvert will be comprised of a five barrel, 14 ft. (wide) by 12 ft. (high) reinforced concrete box culvert (RCB), with grouted riprap inverts and concrete wing-walls on the upstream and downstream sides. The riprap and wing-wall transition structures would extend approximately 45 linear feet upstream and downstream of the culvert. Sections of the channel bottom immediately up- and downstream of the proposed culvert will be converted from the natural substrate to concrete grouted riprap.

The project impacts to jurisdictional waters of the United States total 0.43 acre and 388 linear feet. The impact consists of converting the channel bottom from asphalt to concrete pavement to an enclosed culvert (0.06 acre), and replacing natural substrate with 2-ton riprap (0.11 acre), and concrete (0.26 acre). However, the primary flow capacity, grade, and size of the channel will not change as a result of the project.

2. Location: Longitude/Latitude: 117.091077°W/34.020433°N
Township/Range/Section/Quadrangle:
2S/2W/Un-Sectioned/Yucaipa, California
3. Receiving water: Wilson Creek, tributary to Yucaipa Creek, San Timoteo Creek, Santa Ana River, Pacific Ocean.
The beneficial uses of Wilson Creek include REC1, REC2, WILD, WARM (all intermittent uses)

4. Fill Area: 0.43 acre of "Water of the United States" jurisdictional streambed
5. Dredge volume: NA
6. Federal permit: NWP-14
7. Mitigation:

The City has agreed to mitigation for project impacts as recommended by USACE and CDFW. For this project, the low water crossing project at D Street and Wilson Creek (Regional Board File Number 36-2011-24) and the Transit Center Project (Regional Board File Number 36-2013-06), mitigation will consist of preservation of 4.22 acres of upland buffering a riparian resource and preservation of 0.08 acre of ephemeral stream within the City of Yucaipa's El Dorado Mitigation area. An approved Habitat and Mitigation Monitoring Plan will guide the management of the mitigation area. The mitigation area will be used by two other City of Yucaipa projects, the Avenue D Low Water crossing and the Transit Center.

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 Minimis) 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.

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 that 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 the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity and the Regional Board's Order No. R8-2010-0036 (NPDES Permit No. CAS618036), commonly known as the San Bernardino County Municipal Storm Water Permit, and subsequent iterations thereof.

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.

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 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 considered the environmental documentation prepared for the project, a Mitigated Negative Declaration (MND). The MND was certified on March 15, 2005. Regional Board staff has reviewed the project MND, especially the sections concerning impacts to water quality and aquatic habitat. 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 401 Certification application, 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. This includes implementing the Habitat Management Monitoring Plan approved for the project and reporting implementation activities.
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 Streambed Alteration Agreement for the project must be implemented.
4. Impact avoidance and minimization measures and the site design, source control, and structural source control Best Management Practices (BMPs) described in the 401 application materials must be implemented for the project.
5. The applicant 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.
6. 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.

7. 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.

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.

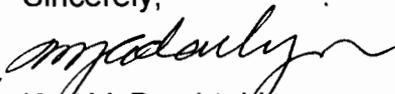
In response to a suspected violation of any condition of this certification, the Regional Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including 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,

for 
Kurt V. Berchtold
Executive Officer

cc: U.S. Army Corps of Engineers – Dan Swenson
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 – Kim Freeburn
Ruth Villalobos & Associates – Ruth Villalobos