
Santa Ana Regional Water Quality Control Board

August 12, 2014

Kishen Prathivadi
City of Beaumont
550 E 6th Street
Beaumont, CA 92223

AFTER-THE- FACT CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR FILL IMPACTS ASSOCIATED WITH THE CONSTRUCTION OF POTRERO BLVD., BEAUMONT, RIVERSIDE COUNTY (ACOE CORPS FILE NO. SPL-2011-00959-JPL ; SARWQCB CERTIFICATION NO. 332014-14)

Dear Mr. Prathivadi,

On December 20, 2013, the City of Beaumont submitted an application for after-the-fact Clean Water Act (CWA) Section 401 Water Quality Standards Certification ("Certification) of several impacts to waters of the U.S. in an unincorporated area of Riverside County west of the city of Beaumont. The applicant requests Certification of discharges of fill to three watercourses that are waters of the United States. The sites of these impacts are along Potrero Boulevard, north of State Route 60 (SR60). Two of these impacts are adjunct parts of, but were not certified with, the Heartland Project (TM27971) that received Certification on April 28, 2005. The third impact occurred without a current permit. The US Army Corps of Engineers (USACOE) determined that these watercourse impacts violated CWA Section 404, because federal permits had not been obtained by the City of Beaumont for their work at these sites, or that work was done under an expired permit.

The applicant has submitted a filing fee of \$6,390.00, which satisfies this project's fee requirement for consideration of 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 completed project, described in your application and summarized below, complies 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, provided that all conditions specified herein are timely met:

Project Description:

The aforementioned potential USACOE violations occurred adjacent to Potrero Boulevard, between SR60 and Oak Valley Parkway (aka San Timoteo Canyon Road) located west of the City of Beaumont (City), in unincorporated Riverside County, California. There are three potential violation areas:

- **Area A** is located on the east side of Potrero Boulevard. This drainage was labeled D-2B in documentation for the CWA Section 404 permit for SunCal Companies' Heartland Project (USACOE Permit No. SPL-2011-00959-JPL). Under the Corps permit, SunCal was authorized to impact drainage D-2B up to the permit limit. Impacts to two small ephemeral watercourses on the east side of the existing road exceeded the permit limit.
- **Area B** is located at the bend in Potrero Boulevard north of State Route 60, where the road crosses a drainage. Drainages in this area are labelled D1, and its tributary, D2, in the 2009 jurisdictional delineation (JD) report (LSA 2009) submitted with the application. At Area B, there has been an unpaved road and culvert crossing the drainage at least since the 1980's. The crossing was improved several times since its original construction, including when the Potrero force mains were built in 2007. The area was thought to be non-jurisdictional and the City believed that the contractor had received all necessary approvals to proceed with the construction of force mains and paving the crossing in 2007. In 2010, the City did additional work in the drainage during the paving of Potrero Boulevard.

No vegetation was impacted at Area B and USACOE impacts were to non-wetland waters of the U.S. Impacts at Area B are approximately:

- 0.032 acre (111 linear feet) of non-wetland waters at D1; and,
- 0.007 acre (151 linear feet) of non-wetland waters at D2.

Note that all impacts at Area B are included in the project impacts for the Caltrans Potrero Blvd./SR60 Interchange project (USACOE Permit No. SPL-2012-00625-VCC and SARWQCB Certification No. 332012-17), as this entire area will be graded during that project.

- **Area C** consists of the areas affected by construction of the Potrero Boulevard Bridge over San Timoteo Wash, including bridge decking, abutments and supports. Under the original SunCal permit for the Heartland Project (USACOE Permit No. SPL-2011-00959-JPL and SARWQCB April 28, 2005, Certification), the 0.37 acres of impacts from

the bridge installation were considered off-site impacts and covered under that permit and certification. These impacts are:

- 0.27-acres from bridge installation, including grading the banks, contour grading, and installing the bridge and 4 bridge supports; and,
- 0.10 acre for an access road.

Aerial photographs from 2005 through 2012 indicate that most construction impacts associated with the bridge occurred when the site was under the control of SunCal and before the City's direct involvement. The City installed the bridge's 4 supports and bridge deck after SunCal's USACOE Permit, No. SPL-2011-00959-JPL, expired. The 4 bridge supports resulted in approximately 0.01 acre (40 linear feet) of impacts to non-wetland waters. Therefore the City's impacts (conducted under a memorandum of understanding with SunCal) are 0.01acre.

Total impacts from Areas A, B and C considered by this certification are approximately 0.067 acre and 432 linear feet of non-wetland waters of the U.S.

The work took place within Section 6 of Township 3 South, Range 1 West, of the U.S. Geological Survey *El Casco* 7.5 minute topographic quadrangle map (33° 56' 19" N/ -117° 01' 00" W).

Receiving water:

Unnamed intermittent tributaries to San Timoteo Creek, which has present or potential beneficial uses, including groundwater recharge (GWR); municipal and domestic supply (MUN); water contact recreation (REC1); non-contact water recreation (REC2); warm freshwater habitat (WARM); and wildlife habitat (WILD).

Fill area:

Permanent Impact to Streambed Habitat	0.067 acre	432 linear feet
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Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 14

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.
- At Area A, all fill (sand bags and plastic liner) has been removed. The city will re-route the existing drainage to run through a swale along the east side of Potrero Boulevard to connect with San Timoteo Wash on the east side of Potrero Bridge. The swale will take the flows from the drainage and re-connect them to San Timoteo Wash, while avoiding the Heartland Project development area.
- At Area B, the existing Potrero Boulevard will be incorporated into the Potrero Boulevard/SR-60 interchange and a new culvert system will be installed under the interchange as part of that project. All impacts at Area B are included in the Potrero Interchange project which is currently under permit review by the Corps and has already been certified by the Regional Board (Corps Permit No.SPL-2012-00625-VCC and SARWQCB Certification No. 332012-17).
- At Area C, Potrero Bridge and its supports and abutments will remain in place, as they were installed as per the original SunCal permit, although not by SunCal and after the permit expired.

Offsite Water Quality Standards Mitigation Proposed:

- Total impacts from Areas A, B and C are approximately 0.067 acre and 432 linear feet of Corps non-wetland waters of the U.S., which is proposed to be mitigated through payment of an in-lieu fee to the Santa Ana Watershed Association (SAWA).

Board staff notes that SAWA is not able to accept in-lieu fees for new mitigation at this time, therefore, this proposal is unacceptable. This certification conditions the applicant to mitigate impacts in a manner acceptable to the Executive Officer. Examples of acceptable mitigation include payment of in-lieu fees to Riverside Corona Resource Conservation District's In-Lieu Fee program or to the Riverside Conservation Authority's Multi-Species Habitat Conservation Plan implementation program that are proportional to the applicant's unpermitted impacts.

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.

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 conditions contained in any other permit or approval for this project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including imposition of administrative civil 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 (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 considered the EIR prepared for the Heartland Project by the City of Beaumont and filed with the Riverside County Clerk's Office on August 4, 2004, the Mitigated Negative Declaration (MND) for the Potrero Road /SR 60 interchange project filed with the Riverside County Clerk by Caltrans on March 13, 2013, and information provided subsequently in the applicant's CWA Section 401 application, in the evaluation of this project for Certification.

In the issuance of this Certification, the Executive Officer has considered those sections of the EIR and MND that relate to water quality. The EIR and MND identify mitigation measures for impacts to water quality standards the project will cause. Based on the mitigation measures proposed in the applicant's EIR and the Caltrans MND, 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. The Regional Board independently finds that changes or alterations have been required or incorporated into the project that 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) Within thirty (30) days of the issuance of this certification, the applicant shall submit a proposal for mitigation of the permanent impacts to streambed habitat identified above, for approval by the Executive Officer. Once approved, the proposed mitigation shall be timely implemented. Materials documenting the purchase of necessary mitigation credits or the acquisition of other approved mitigation shall be provided to this office within 90 days of mitigation approval.
- 3) 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.

- 4) 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.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 9) Beneficial uses of watercourses that have been subjected to temporary impacts shall be restored. Native plant species, native rock and stone, and similar materials that occur naturally in the project vicinity shall be used whenever feasible to restore impacted water courses. Restoration shall be done under the supervision of a qualified restoration ecologist or similarly qualified professional.
- 10) Constructed water courses shall be planted or seeded with native plant species, and maintained such that within five years of establishment, native plant species constitute no less than 90% of the plant species present. Planting and maintenance of constructed watercourses shall be done under the supervision of a qualified restoration ecologist or similarly qualified professional.
- 11) 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/

- 12) 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 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 certify 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 Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):

Harmsworth Associates – Paul Galvin – pgalvin9@cox.net
U. S. Army Corps of Engineers, Los Angeles Office - Jason Lambert
CA Department of Fish and Wildlife – Joanna Gibson
State Water Resources Control Board, Office of Chief Counsel-David Rice
State Water Resources Control Board DWQ -Water Quality Certification Unit
U.S. EPA -Supervisor of the Wetlands Regulatory Office WTR-8