
Santa Ana Regional Water Quality Control Board

January 21, 2014

Steve L. Cheney
Union Pacific Railroad
1400 Douglas St., Stop 0910
Omaha, NE 68179

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE UNION PACIFIC RAILROAD'S "BREA CHEMICAL
LEAD MP 503.99 CULVERT REPLACEMENT PROJECT", LA HABRA, COUNTY OF
ORANGE, CALIFORNIA (ACOE REFERENCE NO. NOT AVAILABLE) (SARWQCB
PROJECT NO. 302013-21)**

Dear Mr. Cheney:

On October 11, 2013, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Union Pacific Railroad (UPRR) Company for a project at milepost 503.99 in La Habra, Orange County. This project will remove and replace existing deteriorated culverts under UPRR's tracks, and align the culverts with an existing downstream drainage channel. With your application, we also received your filing fee of \$1,188, which satisfies this project's fee for discharges of fill or dredged material or excavation in waters of the state and to obtain Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site that was in effect when the application was submitted. The calculator is based on 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 consists of the following activities that relate to water quality:

Replace three existing culverts that are 5 feet in diameter and 73 feet long, running north-to-south, with new corrugated steel pipe (CSP) culverts 92 feet long by 6 feet in diameter, oriented northwest to southeast, and align the replacement culverts with the existing downstream drainage channel.

The existing culverts serve a small drainage area and carry seasonal runoff, and occasional releases from a water pipeline, under the tracks to a swale and an open concrete drainage channel that begins approximately 130 feet south of the UPRR track centerline.

Approximately 35 linear feet of rail bed ballast and rail panel will be removed to accommodate the three replacement culverts, and then replaced. The resulting excavations will be backfilled using approximately 2,000 cubic feet of excavated fill material, after ballasts and rail panels are reconstructed. The UPRR right-of-way (ROW) measures 60 feet north and south from track centerline at the location of the proposed project.

Permanent impacts to jurisdictional, intermittent riverine waters of the U.S. will occur when the inlet of the existing culvert is reconfigured, when the existing culvert outlet is excavated and backfilled, and when a new culvert outlet is constructed. All other work, and construction staging, will take place in uplands within the UPRR ROW or on easements that will be obtained from adjacent landowners for temporary use.

The work will take place within Section 10 of Township 2 South, Range 10 West, of the U.S. Geological Survey *La Habra* quadrangle map (33° 55' 41.487" N/ -117° 57' 45.643" W).

Receiving water: Unnamed tributaries to Coyote Creek, Coyote Creek, and the San Gabriel River

Fill area:

Temporary Impact to Streambed Habitat	0.02 acre
Permanent Impact to Streambed Habitat	0.06 acre

Dredge/Fill volume: 2,000 cubic feet

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.

Offsite Water Quality Standards Mitigation Proposed:

- None.

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 State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity.

The applicant reports that the project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code §21080(b)(10)¹; this exemption is clarified in Title 14 of the California Code of Regulations (CEQA Guidelines) §15275. The applicant filed the Santa Ana Regional Water Quality Control Board's CEQA Notice of Exemption for the project on October 16, 2013, citing Public Resources Code §21080(b)(10) and CEQA Guidelines §15275.b, as well as CEQA Guidelines §15302, the categorical exemption class for, "replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced."

The applicant has not documented that the project is for the benefit of passenger or commuter rail services, and that the cited statutory exemption applies. Nevertheless, the Region Board concludes that the project does qualify for the CEQA Guidelines §15302 categorical exemption for replacement or reconstruction of existing facilities. The Regional Board independently finds that measures 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 PRC Section 21080(b)(10) states: (b) This division (*that is, the California Environmental Quality Act*) does not apply to...(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

- 1) The applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 2) 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.
- 3) 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.
- 4) 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 wastes from metal cutting or welding, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.
- 5) 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.
- 6) 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.
- 7) Best management practices to stabilize disturbed soils and measures to mitigate temporary impacts to waters must include the use of native plant species whenever feasible.
- 8) 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/

- 9) 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),

Steve L. Cheney
Union Pacific Railroad
401 Certification No. 302013-21

- 6 -

January 21, 2014

"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 .

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

Sincerely,



for

Kurt V. Berchtold
Executive Officer

cc (via electronic mail):

CH2M HILL – Aarty Joshi Aarty.Joshi@CH2M.com
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 – Kim Freeburn-Marquez
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme