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ENVIRONMENTAL PROTECTION

## Santa Ana Regional Water Quality Control Board

December 22, 2015

Mr. Garry Cohoe  
Agency Engineer  
San Bernardino Associated Governments  
1170 West Third Street  
San Bernardino, CA 92410

[garry@sanbag.ca.gov](mailto:garry@sanbag.ca.gov)

### **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR STATE ROUTE 210/PEPPER AVENUE INTERCHANGE PROJECT, CITIES OF RIALTO AND SAN BERNARDINO, SAN BERNARDINO COUNTY (USACE FILE NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 362015- 28)**

Dear Mr. Cohoe,

On July 6, 2015, we received from the San Bernardino Associated Governments (SANBAG) (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to construct a new freeway interchange on State Route (SR) 210 at Pepper Avenue in the Cities of Rialto and San Bernardino. The Applicant submitted a filing fee of \$200.00 with the Certification application materials, which satisfies the Project 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 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:** SANBAG proposes to construct a new freeway interchange at the intersection of Pepper Avenue and SR-210. Impacts to waters of the United States (WOUS) will result from the extension of an existing culvert an additional 25 feet in order to construct the SR-210 East Bound On-Ramp to modern freeway standards.

WILLIAM RUH, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

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The Project will take place in Section 36 of Township 1 North, Range 5 West within the cities of Rialto and San Bernardino, San Bernardino County. The Project is located on of the U.S. Geological Survey *San Bernardino North 7.5* minute topographic quadrangle map (34° 8' 3.64" N/ -117. ° 21' 11.79" W).

**Receiving water:** The Valley Reach of Lytle Creek Wash has designated beneficial uses (existing or potential) that include: municipal and domestic supply (MUN), groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), and wildlife habitat (WILD).

**Fill area:**

Permanent Impact to Waters of the U.S.	0.003 acres	25 linear feet
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**Dredge/Fill volume:** Not Applicable

**Federal permit:** U.S. Army Corps of Engineers (USACE) Nationwide Permit No. 14 (Non-notifying) – Linear Transportation Projects

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

Lytle Creek Wash at the Project location supports populations of San Bernardino Kangaroo Rat (SBKR) and their habitat, and the Santa Ana River woolly-star. The SBKR and Woolly Star are federal and State listed endangered species. Should the proposed Project have the potential to impact these or other State- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) 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 in compliance with the requirements of the State Water Resources Control Board General NPDES Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order Number 2012-0006-DWQ.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a Responsible Agency, the Regional Board is required to consider the California Environmental Quality Act document (e.g., Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND)) prepared by the lead agency in determining whether to approve an application submitted for a project to receive 401 Water Quality Certification. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project that 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 MND prepared by the California Department of Transportation for the proposed Project and filed with the State Clearinghouse on July 13, 2015, and subsequent information provided in the Applicant's application, in approving this Certification. More specifically, the Regional Board has considered those sections of the MND pertaining to impacts to water quality standards. Based upon the mitigation proposed in the MND, and the conditions set forth in this Certification, potentially adverse impacts to water quality should be reduced to a less than significant level and beneficial uses protected if all stated mitigation and conditions are performed. Thus, the Regional Board independently finds that these changes or alterations have been incorporated into the Project that should 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) This Order for Water Quality Certification will remain valid until the USACE 2012 Nationwide permits expire on March 18, 2017, or through an extended period beyond the expiration date that is authorized in writing by the USACE.
- 2) The Applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.
- 3) The Applicant shall ensure that all fees associated with this Project are paid to each respective agency prior to conducting any on-site construction activities.
- 4) 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 Storm Water Pollution Prevention Plan (SWPPP) or Water Pollution Control Program (WPCP).

- 5) Prior to construction activities, the Project proponent shall delineate the work area with brightly colored fencing or other methods to ensure that both temporary and permanent impacts to waters of the United States and waters of the State of California do not exceed the limits authorized in this Certification.
- 6) On- and off-ramp street lighting must be designed in a manner such that the lighting does not shine upon adjacent Waters of the State of California. This may be achieved by placement or by partially shielding the light fixtures.
- 7) The wildlife resources at the Project location shall be evaluated in advance of the commencement of Project activities and thereafter monitored by a qualified field biologist. Construction shall proceed in accordance with recommendations by the field biologist, the CDFW and USFWS to avoid adverse impacts to rare and endangered species.
- 8) 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. Additionally, no materials may be stored within waters of the United States or waters of the State of California.
- 9) 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.
- 10) 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 from the Project site.
- 11) 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 condition. 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.

- 12) Construction dewatering discharges, including temporary stream diversions necessary to carry out the Project, are subject to regulation by Regional Board Order No. R8-2015-0004, 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. R8-2015-0004 at [www.waterboards.ca.gov/santaana/](http://www.waterboards.ca.gov/santaana/)
- 13) 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 revocation of this Certification and imposition of administrative 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 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 that the Applicant 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

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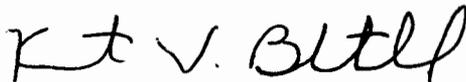
conditions of this Certification may subject the Applicant to civil liability pursuant to Water Code Sections 13350 and/or 13385.

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](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf)

Should there be any questions, please contact Jason Bill at (951) 782-3295 or [Jason.Bill@waterboards.ca.gov](mailto:Jason.Bill@waterboards.ca.gov), or Wanda Cross at (951) 782-4468 or [wanda.cross@waterboards.ca.gov](mailto:wanda.cross@waterboards.ca.gov).

Sincerely,



Kurt V. Berchtold  
Executive Officer

cc (via electronic mail):

VCS Environmental – Jessica Son – [json@vcsenvironmental](mailto:json@vcsenvironmental)  
U. S. Army Corps of Engineers, Los Angeles Office - Veronica Li  
CA Department of Fish and Wildlife – Kim Freeburn-Marquez  
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 Section – Jason A. Brush