



Santa Ana Regional Water Quality Control Board

July 18, 2016

Ms. Carrie Schindler
Director of Rail and Transit Programs
San Bernardino Associated Governments
1170 West 3rd Street, 2nd Floor
San Bernardino, California 92401

cschindler@sanbag.ca.gov

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR REDLANDS PASSENGER RAIL PROJECT, CITIES OF
REDLANDS AND SAN BERNARDINO, SAN BERNARDINO COUNTY (USACE FILE
NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 362014-31)**

Dear Ms. Schindler,

On October 28, 2014, 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 develop new rail infrastructure that allows passenger rail traffic between the Cities of Redlands and San Bernardino. Additional information was submitted by the Applicant via email from January 15, 2015 to April 20, 2016. The Applicant submitted a filing fee of \$1,097.00 with the Certification application materials, and a check for \$75,071.00 on April 18, 2016, 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 iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, Section 2200 (a) (3) the date the Project was deemed complete.

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 develop new railroad infrastructure along an approximately nine-mile section of rail corridor from 'E' Street in San Bernardino to University Street in Redlands. Impacts to waters of the United States will result from channel stabilization activities adjacent to the rail line in Mission Zanja Creek and the placement of new bridge support structures that will replace or retrofit five existing bridge support structures in the Santa Ana River, Warm Creek, Twin Creek, Mill Creek Zanja, and Mission Zanja.

The construction will take place along nine miles of SANBAG-owned rail right-of-way between E Street in the City of San Bernardino and University Avenue in the City of Redlands, San Bernardino County, in an unsectioned area of the historic San Bernardino Mexican Land Grant. The Project is located on of the U.S. Geological Survey *San Bernardino South and Redlands* 7.5 minute topographic quadrangle maps (34.065559° N/ -117.231477° W).

Receiving water: Mission Zanja and Mill Creek Zanja, tributaries of Reach 5 of the Santa Ana River, and the Santa Ana River, Reach 5, have designated beneficial uses (existing or potential) that include: municipal and domestic supply (MUN), agricultural supply (AGR), groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), wildlife habitat (WILD) and Rare, Threatened or Endangered Species (RARE).

Twin Creek, Valley Reach, 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).

Warm Creek, a tributary of Santa Ana River, Reach 4, has designated beneficial uses (existing or potential) that include: groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), wildlife habitat (WILD), Rare, Threatened or Endangered Species (RARE), and Spawning, Reproduction and Development (SPWN).

Fill area:

Permit Area	Impacted Water	Temporary Impacts (acres/linear feet)	Permanent Impacts (acres/linear feet)
1	Warm Creek	0.046/112	0.000/0.0
2	Twin Creek	0.450/255	0.000/0.0
3	Santa Ana River	0.835/150	0.101/70
4	Mission Zanja	2.735/6,706	0.147/350
6	Mill Creek Zanja	0.091/150	0.022/20
Total		4.157/7,343	0.270/440

Dredge/Fill volume: Not Applicable

Federal permit: U.S. Army Corps of Engineers (USACE) Nationwide Permit No. 7 (Outfall Structures and Associated Intake Structures), 13 (Bank Stabilization), 14 (Linear Transportation Projects), and 33 (Temporary Construction, Access, and Dewatering)

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.
- Waters of the United States within the Project area that have temporary impacts will be restored to pre-Project conditions as guided by a Regional Board-approved Habitat Mitigation and Monitoring Plan.

Offsite Water Quality Standards Mitigation Proposed:

- The Applicant will mitigate 0.270 acre permanent impacts through the purchase of 4.0 acres rehabilitation mitigation credit with the Riverside-Corona Resource Conservation District (RCRCD) In-Lieu-Fee Program.
- The Applicant will mitigate impacts to Riversidean alluvial fan sage scrub habitat by the purchase of 0.10 acre credit in the Lytle Creek Conservation Bank.

Based on the application materials submitted, the Santa Ana River supports a population of least Bell's vireo (LBV) at the Project location. The LBV is a federal and State-listed endangered bird species. Should the proposed Project impact the LBV, implementation of measures identified in consultation with U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) should ensure those impacts are mitigated to an acceptable level.

Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State per the requirements of Regional Board 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 the Applicant substantially comply with the requirements of 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 Environmental Impact Report (EIR) or Negative Declaration (ND) 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, in approving this Certification, the Regional Board has considered the EIR prepared by the San Bernardino Associated Governments (in its role as the San Bernardino Transportation Commission) for the proposed Project and filed with the San Bernardino County Clerk and State Clearinghouse on March 9, 2015, and subsequent information provided in the Applicant's application, in approving this Certification. More specifically, the Regional Board considered those sections of the EIR pertaining to impacts to water quality standards. Based upon the mitigation proposed in the EIR, 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 construction activities at the Project site.

- 4) A copy of this Certification and any subsequent amendments must be maintained onsite for the duration of work as a denoted element of any Project Storm Water Pollution Prevention Plan (SWPPP) or Habitat Mitigation and Monitoring Plan (HMMP).
- 5) Proposed mitigation shall be implemented in a timely manner. A copy of the receipt from the transfer of funds to the Riverside Corona Resource Conservation District and Lytle Creek Conservation Bank shall be provided to the Regional Board prior to the discharge of fill to, or the dredging or excavation of material from, waters of the State of California.
- 6) Prior to the initiation of Project activities, the Applicant shall submit a proposed HMMP prepared for the area disturbed by Project activities (Mitigation Area) to the Regional Board for approval. No construction activities shall commence prior to HMMP approval by the Regional Board. The HMMP shall include the following information: (a), a functional assessment of the existing physical and biological conditions of the Mitigation Area using the California Rapid Assessment Method, April 2013 (CRAM); (b) an evaluation of present and potential beneficial uses; (c), a plan for management actions to occur in the Mitigation Area, including but not limited to, restoration plantings, the removal of nonnative plant species and any re-contouring of the streambed; (c), a restoration schedule including the specific monitoring and maintenance measures; (d), the establishment of fixed photographic monitoring locations; and (e), mitigation success standards and contingency measures.
- 7) Monitoring and maintenance of the Mitigation Area shall be conducted for a minimum of five years, or until the Regional Board determines the Mitigation Area has met the performance criteria of successful restoration as set forth in the Regional Board approved HMMP. After installation of the Mitigation Area, the Applicant shall submit an annual monitoring report to the Regional Board each year, for a minimum of five years. The first report summarizing annual maintenance activities is due to the Regional Board no later than April 1 of the year following the beginning of Project activities. The report shall include: (a) a summary of the annual restoration activities conducted; (b) an analysis of the changes to the vegetative community (including species present; percent cover, stem density of riparian trees and shrubs); and (c) photographs taken at the fixed monitoring locations specified in the HMMP.
- 8) The Applicant shall complete the post-construction restoration of temporary impacts to waters of the U.S. within 30 days following completion of construction activities. Upon consideration of a written request, this period may be extended by Regional Board authorization to accommodate proper planting times. If restoration is not initiated within one year of impacts, additional mitigation may be required to offset temporal loss of waters of the U.S.
- 9) 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.

- 10) The RARE, WILD, and WARM beneficial uses 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.
- 11) Effective perimeter control BMPs must be in place at all times to control the discharge of pollutants from the Project site during construction. Construction waste must be contained and protected against wind and exposure to storm water at all times unless being actively handled. Chemical, fuel, and lubricant containers must be kept closed and protected from damage or upset at all times unless being actively used. Dirt and landscaping material stockpiles must have effective erosion control BMPs in place to prevent their transport in storm water or directly into the channel, and may not be located within waters of the United States. Discharges of wastewater from the site are prohibited.
- 12) 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.
- 13) 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.
- 14) 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 onsite, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.
- 15) 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 Minimis) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at www.waterboards.ca.gov/santaana/
- 16) 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 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/wqo2003-0017.pdf

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

Sincerely,



Kurt V. Berchtold
Executive Officer

cc (via electronic mail):

HDR Engineering, Inc. – Clint Meyer – clintmeyer@hdrinc.com
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