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Santa Ana Regional Water Quality Control Board

July 5, 2016

Mr. Daniel Bott
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CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR SANTA ANA SUCKER HABITAT RESTORATION PROJECT, UNINCORPORATED RIVERSIDE COUNTY (USACE FILE NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 332016-10)

Dear Mr. Bott:

On February 1, 2016, we received from the Orange County Water District (OCWD) (Applicant) an application requesting Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project to enhance habitat conditions for the federally listed¹ Santa Ana Sucker (Project). This is deemed a restoration project. The OCWD submitted a check for \$200 with the Certification application materials, which satisfies the 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). The Certification application materials submitted included:

- A copy of the California Department of Fish and Wildlife (CDFW) Notification of Lake or Streambed Alteration Project application;
- A copy of the United States Army Corps of Engineers (USACE) Clean Water Act Section 404 Permit Project application; and
- The Project Biological Assessment report.

On April 27, 2016, we received a copy of the final CDFW Streambed Alteration Agreement for the Project.

¹ Listed as threatened under the Federal Endangered Species Act.

This letter responds to your request for Certification that the proposed Project, as 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 entails the construction of 10 below-grade and 10 above-grade rock gabions in the Santa Ana River on property owned by OCWD approximately 0.6 mile upstream of River Road Bridge. The gabions would be designed to function as stream current deflectors, creating localized erosion to expose the underlying gravel beds. A successful 2009 OCWD gabion project was constructed with a similar design to provide essential gravel and cobble streambed habitat for the Santa Ana Sucker (*Catostomus santaanae*).

Five gabions are proposed to be placed along the south side of the river and five along the north side. The proposed positioning of the gabions will be in an alternating pattern at a 45 degree angle to the banks of the river, spaced approximately 150 feet from each other on the same bank and staggered on the opposite bank. Each gabion will be constructed by excavating a 5 ft. deep by 12 ft. long and 3 ft. wide trench in the streambed. A wire mesh gabion basket sized to fit the trench will be placed into the excavation and filled with approximately 7 cubic yards of rock material and secured. A 12 ft. long by 3 ft. high and wide gabion will then be placed and fastened to the top of the below-grade gabion, and filled with 4 cubic yards of rock material. The two stacked gabions will contain a total of 11 cubic yards of rock material.

The Project construction will result in the removal of 0.98 acre of *Arundo donax* and 0.09 acre of eucalyptus trees/non-native weeds (1.07 acres total). To ensure that there is no net increase in fill material discharged into the river as a result of installing the 10 stacked gabions, 220 cubic yards of sediment will be removed from the river and hauled offsite. Cofferdams and berms will be installed to divert Santa Ana River flows around the gabion excavation sites during construction and then removed at Project completion. In addition, a temporary loop road, staging area, and frontage road will be constructed along the river edge through existing giant reed (*Arundo donax*) vegetation to access the site. Heavy equipment and manual labor will be used to construct the Project.

The Project site shall be monitored for 5 years to determine the effectiveness of the gabions to increase Santa Ana Sucker habitat conditions. Monitoring will measure the occurrence of:

- local erosion and resulting exposed gravel beds;
- algae growth on gravel beds created by the gabions;
- overall increase in amount of gravel beds and spawning habitats within the study area; and

- the presence of the Santa Ana Suckers near the gabions.

The Project site will be monitored twice weekly by an OCWD biologist when flows allow measurements of site conditions. Rock will be added to the gabions as needed to maintain their function.

The work will take place within Longitude 117°35'32"
Latitude 33°55'54" Section 11 of Township 3 South, Range
7 West of the U.S. Geological Survey Corona North 7.5
minute topographic quadrangle map.

Receiving water: The Santa Ana River, Reach 3, has designated beneficial uses (existing or potential) that include: 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).

Fill area:

Permanent Impacts to Non-Wetland Waters of the United States	None
Temporary Impacts to Non-Wetland Waters of the United States	0.0082 acre Streambed 0.98 acre Riparian

Dredge/Fill volume: 110 cubic yards

Federal permit: U.S. Army Corps of Engineers (USACE) Permit Nationwide No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities

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:

- The Project site, including the access roads and staging area, is located in an area of thick *Arundo donax*. Upon Project completion and during the five-year gabion maintenance period, OCWD will establish and maintain native vegetation along the Project site access road alignments using a combination of natural recruitment and plantings to ensure that non-native vegetation does not get reestablished. In addition, the CDFW Streambed Alteration Agreement requires that OCWD restore 1.07 acres no later than 12 months following Project

completion, and develop a Habitat Restoration Plan (HRP) to guide the restoration of the impacted area.

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 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 per the requirements of Regional Board Order No. R8-2010-0033 (NPDES Permit No. CAS618033), commonly known as the Riverside County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2010-0033 requires that the Applicant substantially comply 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 an 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 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 MND prepared for the proposed Project and filed by OCWD in approving this Certification. The MND was certified in March 2016. More specifically, the Regional Board has considered those sections of the Project MND pertaining to impacts to water quality standards. Based on 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 changes or alterations have been required or 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 Project CDFW Streambed Alteration Agreement conditions shall be implemented. These conditions include: the construction of a sand coffer dam around the gabion sites to protect water quality; all vegetation removal activities are to occur outside of the migratory bird nesting season; the construction of the gabion structures are to occur outside of the native fish spawning season; the development and implementation of the Project Habitat Restoration Plan (HRP), and the establishment of native vegetation in the Project site after Project completion.
- 4) The OCWD shall allow a State Water Resources Control Board Surface Water Ambient Monitoring Program (SWAMP) full bio-assessment protocol survey² to be completed at the project site during the project's implementation. The survey will likely be conducted by staff from Cal State University Long Beach funded by SWAMP and/or Regional Board directed funds. A purpose of the bio-assessment survey and OCWD's proposed site monitoring shall be to address two key questions: a) Will the project site attract or improve populations of Santa Ana Sucker (*Catostomus santaanae*) and b) will the project improve the general biological condition of the project site? OCWD shall conduct baseline and follow-up Santa Ana Sucker population assessments to answer the first question. OCWD shall analyze and interpret the monitoring and bio-assessment data collected with assistance from staff at the Regional Board and possibly the Southern California Coastal Water Research Project. The analysis and interpretation shall include contextual data derived from previous bio-assessments completed by the Stormwater Monitoring Coalition especially those assessments completed near the project site. OCWD shall report the analysis of the bio-assessment survey and other monitoring in the monitoring reports required for the project.
- 5) Submit to the Regional Board all monitoring reports that are required for this project by USFWS and or CDFW at the time that they are submitted to those agencies.
- 6) A copy of this 401 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).

² Includes benthic macroinvertebrates, algae, and physical habitat data following SWAMP standard operating procedures and scored with the California Stream Condition Index and algae Indexes.

- 7) 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 being transported in storm water or directly into the River, and may not be located within waters of the United States. Discharges of wastewater from the site are prohibited.
- 8) 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.
- 9) 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.
- 10) Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such manner that petroleum products or other pollutants from the equipment might 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.
- 11) This 401 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 condition contained herein, or any conditions contained in any other permit or approval issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including the revocation of this Certification and imposition of administrative civil or criminal liability.
- 12) Construction de-watering 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/.

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 401 Water Quality 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

Mr. Dan Bott
Orange County Water District
SARWQCB File Number 332016-10

- 8-

July 5, 2016

Should there be any questions, please contact Dave Woelfel at (951) 782-7960 or David.Woelfel@waterboards.ca.gov, or Wanda Cross at (951) 782-4468 or wanda.cross@waterboards.ca.gov.

Sincerely,



KV Kurt V. Berchtold
Executive Officer

cc: U. S. Army Corps of Engineers, Los Angeles Office – James Mace
CA Department of Fish and Wildlife – Claire Ingel
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
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