
Santa Ana Regional Water Quality Control Board

July 11, 2016

Mr. Robert Stein
City of Newport Beach
100 Civic Center Drive, P.O. Box 1768
Newport Beach, CA 92658

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE SEMENIUK SLOUGH MAINTENANCE DREDGING
PROJECT, CITY OF NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA
(USACE REFERENCE NO. SPL-2016-147-JMV) (SARWQCB PROJECT NO. 302015-
22)**

Dear Mr. Stein:

On October 27, 2015, we received an application from the City of Newport Beach (Applicant) for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to restore flood conveyance capacity in Semeniuk Slough and a State-owned storm drain box culvert that drains into the south end of the slough. The proposed Project is situated along the Lower Santa Ana River, Reach 1. The proposed Project will result in 3.9 acres of temporary impacts to jurisdictional waters. The Applicant submitted a filing fee of \$1,200.00, which satisfies part of the \$28,275.00 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) in effect when the application was submitted.

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 cooperative project, led by the City of Newport Beach with support by Caltrans, will restore flood conveyance capacity in Semeniuk Slough and a State-owned storm drain box culvert that drains into the south end of the slough in order to contain high-intensity rain events to control flooding along Pacific Coast Highway (PCH) or adjacent developments. Approximately 15,000 cubic yards of accumulated sediment from the slough will be removed along with 2,000 cubic yards from the storm drain box-culvert.

Project activities include removing the excessive sediment accumulated in Semeniuk Slough and within the 14-foot wide, 5-foot high State-owned box culvert. The slough will be excavated to its original depth of minus three (-3) feet, Mean Lower Low Water (MLLW) to match the recently restored downstream section at the Santa Ana River Salt Marsh. Concurrently, the Caltrans box culvert will be cleaned out to the depth of the culvert invert, which is at elevation -3 feet, MLLW.

The work will take place within Sections 20 & 29 of Township 6 South, Range 10 West of the U.S. Geological Survey *Newport Beach* 7.5 minute topographic quadrangle map (33.627423° N, -117.947240° W).

Receiving water: Reach 1 of the Santa Ana River has designated beneficial uses (existing or potential) that include: contact recreation (REC1), non-contact recreation (REC2), wildlife habitat (WILD), warm freshwater habitat (WARM).

Fill area:

Temporary Impact to Streambed Habitat	3.9 acres	2,050 linear feet
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Dredge/Fill volume: 17,000 cubic yards

Federal permit: U.S. Army Corps of Engineers (USACE) Individual Permit Number SPL-2016-147-JMV

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.
- Five (5) areas measuring 40'x 30' each that currently have non-native vegetation and are located within equipment access points will be re-vegetated with native upland plants.

Offsite Water Quality Standards Mitigation Proposed:

- None.

Should the proposed Project have the potential to 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 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 Santa Ana Regional Board Order No. R8-2009-0030 (NPDES Permit No. CAS618030), commonly known as the Orange County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2009-0030 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 the California Environmental Quality Act (CEQA), the City of Newport Beach filed a CEQA Guidelines Section 15304 (g) "Class 4" Categorical Exemption on October 26, 2015, which declares that the Project consists of minor public or private alterations in the condition of land, water, and/or vegetation that do not involve removal of mature, scenic trees except for forestry and agricultural purposes, specifically dealing with minor trenching and backfilling where the surface is restored. The Regional Board has independently considered the CEQA Categorical Exemption in the issuance of this Certification and finds that no changes or alterations to the proposed Project are necessary to 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) The Applicant shall ensure that all fees associated with this Project (including the remaining \$27,075.00 application fees associated with the issuance of this Certification) are paid to each respective agency prior to conducting any onsite construction activities at the Project site.
- 3) 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.

- 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 from the Project site.
- 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 onsite, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.
- 7) 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 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 appropriate enforcement action, including the revocation of this Certification and imposition of administrative civil or criminal liability.
- 8) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 9) 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 401 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 Sections 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying 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. Robert Stein
City of Newport Beach
SARWQCB # 302015-22

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Should there be any questions, please contact Marc Brown at or (951) 321-4584 or marc.brown@waterboards.ca.gov , or Wanda Cross at (951) 782-4468 or wanda.cross@waterboards.ca.gov .

Sincerely,


for Kurt V. Berchtold
Executive Officer

cc (via electronic mail):

Noble Consultants, Inc. – Jon T. Moore – jmoore@nobleconsultants.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 – Russell Barabe – rbarabe@dfg.ca.gov
State Water Resources Control Board, DWQ-Water Quality Certification Unit - Bill Orme