



# California Regional Water Quality Control Board

## Santa Ana Region



**Linda S. Adams**  
Secretary for  
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221  
[www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

**Arnold Schwarzenegger**  
Governor

November 16, 2009

Nardy Khan  
Orange County Flood Control District  
c/o Department of Public Works  
County of Orange  
300 North Flower Street  
Santa Ana, CA 92702

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR PROPOSED SEDIMENT REMOVAL AT THE AGUA CHINON  
RETARDATION BASIN, ORANGE COUNTY (ACOE REFERENCE NO. NOT  
AVAILABLE) ( SARWQCB REFERENCE NO. 302009-41)**

Dear Ms. Khan:

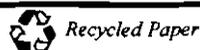
On September 17, 2009, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the removal of sediment at the Agua Chinon Retardation Basin in an unincorporated area of Orange County. This letter responds to your request for certification that 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) and subsequent Basin Plan amendments:

**Project Description:** In preparation for the 2009-10 wet season, it is necessary to excavate 24,340 cubic yards of sediment and debris that had accumulated within the Agua Chinon Retardation Basin, following the Santiago Canyon Fire of 2007, which burned the basin and surrounding canyons. The work site is located within Section 152, and within Township 5 South, Range 8 West, as shown on the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33°41'30" N / -117°41'28"W).

**Receiving water:** Agua Chinon Retardation Basin

**Fill area:** 6.56 acre of a detention basin.

**California Environmental Protection Agency**



Dredge volume: 24,340 cubic yards.

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 31.

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 Game 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 Order No. R8-2009-0030, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2009-0030 requires that you substantially comply with the requirements of the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, until June 30, 2010, and with Order No. 2009-0009-DWQ thereafter, including the preparation of a SWPPP for projects greater than one acre.

Construction de-watering discharges 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/board\\_decisions/adopted\\_orders/orders/2009/09\\_03\\_deminimus\\_permit\\_wdr.pdf](http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders/orders/2009/09_03_deminimus_permit_wdr.pdf)

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), Orange County Public Works and the Regional Board have determined that the proposed project is categorically exempt from provisions of CEQA according to Guidelines Section 15301 for the maintenance and repair or minor alteration of an existing facility. The proposed project constitutes the maintenance of the basin's hydraulic capacity.

**This 401 Certification is contingent upon the execution of the following conditions:**

- 1) 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.

- 2) This Certification expires 60 months from the date of issuance.
- 3) A copy of this Certification, and any subsequent amendments, must be maintained at the project site for the duration of work.

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 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. 200-0017-DWQ is available at:

[www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

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

Sincerely,



GERARD J. THIBEAULT  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Mark Durham  
Department of Fish and Game – Erinn Wilson  
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 Regulatory Office WTR- 8

APF:401/certifications/agua chicon sediment removal 302009-41