



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

Arnold Schwarzenegger
Governor

October 3, 2008

Scott Heule
Big Bear Municipal Water District
40524 Lakeview Drive
Big Bear Lake, CA 92315

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR EXCAVATING THE RATHBUN CREEK SEDIMENTATION BASINS, CITY OF BIG BEAR LAKE, SAN BERNARDINO COUNTY (ACOE REFERENCE NO. NOT AVAILABLE)

Dear Mr. Heule:

On July 22, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the excavation of sediment in basins in Rathbun Creek in the City of Big Bear Lake, San Bernardino County. Your application was deemed complete on August 21, 2008. 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:

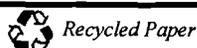
Project Description: Excavation of approximately 6,000 cubic yards of sediment from two basins located in Rathbun Creek. Excavation will occur on an annual basis following the bird nesting season. The basins were constructed in 1993 for the purpose of capturing sediment and other pollutants before discharging into Big Bear Lake. The basins are near the mouth of the Creek and its confluence with Big Bear Lake, located within Section 16 of Township 2 North, Range 1 East, of the U.S. Geological Survey *Fawnskin, California*, 7.5-minute topographic quadrangle map (34 deg. 15 min. 16 sec. N/ -116 deg. 53 min. 24.75 sec. W).

Receiving water: Rathbun Creek.

Fill area: 1.14 acre of temporary impact to constructed wetland basins in an ephemeral mountain creek (500 linear feet total).

Dredge/Fill volume: N/A

California Environmental Protection Agency



Federal permit: U.S. Army Corps of Engineers Nationwide Permit Nos. 3, 31, and 35.

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 Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is required, as is development of a SWPPP, to control the discharge of pollutants from the project site.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2003-0061, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality and subsequent renewals. For more information, please review Order No. R8-2003-0061 at: www.waterboards.ca.gov/santaana/pdf/03-61.pdf.

The wetlands within the affected reach of Rathbun Creek are the result of excavation of the reach for the construction of the sedimentation basins. The basins were constructed for the express purpose of capturing pollutants before they are discharged into Big Bear Lake. The Basin Plan (page 3-4) recognizes that "...while the purpose of [constructed wetlands] would be to provide wastewater treatment, they will inevitably have other uses and benefits". Further, "The Regional Board's approach toward regulation of the use of these constructed wetlands will be to ensure that these affiliated uses are reasonably protected". Conditions 2 and 3 below are included in order to protect the affiliated beneficial uses of the basins, consistent with the Basin Plan. However, because of the purpose of the basins, Regional Boards staff does not believe that the Regional Board's "no-net-loss" policy under the California Wetlands Conservation Policy (1993) should apply.

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), the Big Bear Municipal Water District and the Regional Board have determined that the project is exempt from provisions of CEQA under a Categorical Exemption pursuant to Guidelines Section 15301 for maintenance and minor alteration of an existing facility. The proposed work constitutes maintenance and minor alteration of an existing facility.

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

- 1) The applicant must comply with the requirements of the Clean Water Act section 404 permits.

- 2) Impacts to riparian vegetation growing along the edge of the basins must be avoided to the maximum extent practicable.
- 3) Best management practices must be implemented to minimize turbidity within inundated portions of the basins to the maximum extent practicable.
- 4) This Certification is valid for maintenance activities described above until October 3, 2013. Thereafter, this Certification may be extended following receipt of a written request.

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

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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 http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



for GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Gerry Salas
Department of Fish and Game – Michael Flores
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

APF:401/certifications/rathbun ck basins 362008-12

