



California Regional Water Quality Control Board

Santa Ana Region



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Secretary for
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Arnold Schwarzenegger
Governor

December 22, 2008

Nardy Khan
Orange County Public Works
300 North Flower Street
Santa Ana, CA 92703-5000

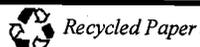
EMERGENCY CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR WORK IN WILLIAMS CANYON AND MODJESKA CANYON CREEKS, ORANGE COUNTY (ACOE REFERENCE NO. NOT AVAILABLE)

Dear Ms. Khan:

On December 19, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the excavation of debris accumulation in Williams Canyon and Modjeska Canyon Creeks in 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 ("Basin Plan"):

Project Description: Excavation of debris that has been deposited in Modjeska Canyon Creek subsequent to the 2007 wildfires and the placement of rock slope protection in Williams Canyon Creek adjacent to Williams Canyon Road. The burned condition of the watersheds of Williams Canyon and Modjeska Canyon has resulted in high debris flows during storm events occurring on December 15, 2008 through December 17, 2008. The debris has clogged or threatens to clog culverts at Modjeska Canyon Road over Modjeska Canyon Creek and has eroded the banks of Williams Canyon Creek at Williams Canyon Road. The erosion at Williams Canyon Road threatens to undermine the roadway, cutting off access for residents of Williams Canyon. Both creeks are intermittent. Pending and ongoing storm events in the next few days have the potential to result in local flooding, property damage, and threat to human life. Both projects

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are located in Santiago Canyon, tributary to Santiago Creek (Modjeska Canyon: 33.70898 degrees N/-117.63198 degrees W; Williams Canyon: 33.72979 degrees N/-117.6297 degrees W)

Receiving water: Williams Canyon Creek and Modjeska Canyon Creek.

Fill area: up to 200 square feet at Williams Canyon Creek (50 linear feet).

Dredge/Fill volume: 700 cubic yards excavated from 200-ft upstream, and 85-foot downstream of the culvert beneath Modjeska Canyon Road.

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. not available.

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 (Service) and the California Department of Fish and Game (Department) 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 according to the requirements of Order No. R8-2002-0010, commonly known as the Orange County Municipal Storm Water Permit, and subsequent renewals. Order No. R8-2002-0010 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

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. For more information, please review Order No. R8-2003-0061 at: www.waterboards.ca.gov/santaana/pdf/03-61.pdf.

The proposed activities are subject a 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 Regional Board has determined that the proposed project is statutorily exempt from provisions of CEQA according to Public Resources Code 21080(b)(4) and 21080.33 for emergency work. The proposed activities are intended to prevent damage to local roadways that provide emergency

access to rural communities and to prevent loss of life and damage to private property, in consideration of pending and ongoing rain events.

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. A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work.
3. Project activities must not depress the dissolved oxygen content of receiving waters below 5 mg/L as a result of controllable water quality factors. When natural dissolved oxygen content is less than 5 mg/L, the discharger must not cause further depression.
4. Project activities must not raise the pH of receiving waters above 8.5 or lower pH below 6.5 as the result of controllable water quality factors.
5. Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in receiving waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
 - a. If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.
 - b. If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.
 - c. If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity
6. An effective monitoring plan must be developed and implemented to document compliance with conditions 4, 5, and 6 above. Any violation or suspected violation of these conditions must be reported to Regional Board staff in writing within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
7. The final excavated channel configurations must not cause or contribute to streambed instability.

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/wqo_2003-0017.pdf

December 22, 2008

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 – Stephanie Hall
Department of Fish and Game – Erinn Wilson
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/Modjeska & Williams cyn work 302008-32

