



California Regional Water Quality Control Board Santa Ana Region



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Arnold Schwarzenegger
Governor

July 9, 2008

Samuel Fuller
San Bernardino Valley Municipal Water
District
1350 South "E" Street
San Bernardino, CA 92408-2725

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR CITY CREEK SCOUR PROTECTION PROJECT, CITY OF HIGHLAND, SAN BERNARDINO COUNTY (ACOE REFERENCE NO. 2008-199-SLP)

Dear Mr. Fuller:

On November 8, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by Psomas Engineering for the construction of scour protection structures for pipelines in City Creek in the City of Highland, California. On February 21, 2008 we received a requested scour analysis. On March 3, 2008, we received requested design plans. On May 2, 2008, we received additional information regarding the impacts of scour on the pipelines.

This letter responds to your request for a 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: Construction of a grade-control armoring layer in the bed of City Creek to protect the Foothill Pipeline and Inland Feeder Pipeline against scour and erosion. The project is located between Highland Avenue and Base Line Road within Section 12 of Township 1 North, Range 3 West, of the U.S. Geological Survey *Harrison Mountain, California*, 7.5-minute topographic quadrangle map (34 deg. 07.981 min. N/ -117 deg. 11.424 min. W).

Receiving water: City Creek

California Environmental Protection Agency



Fill area: 0.15 acre of permanent impact, and 0.14 acre of temporary impact, to a perennial riparian drainage (180 linear feet total).

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 3

The affected reach of City Creek is under the ownership or control of the San Bernardino County Flood Control District (District). Since 2003, the Creek has undergone substantial degradation in its physical and biological integrity as the result of various events. Regional Board staff has been involved to some extent in those actions. On May 20, 2008, Regional Board staff met with District staff at City Creek to discuss the timing and extent of the events and actions in order to more fully understand them:

In October and November of 2003, a large portion of the City Creek watershed burned in a wildfire. During the 2003-2004 rain season, storm events deposited mud and debris in City Creek. The debris-laden storm flows removed large woody riparian vegetation in the channel which was carried downstream and threatened to damage the Base Line Road crossing. Deposits of mud diverted flows over the banks of the Creek, flooding adjacent properties. Following the deposit of mud and debris, the District obtained emergency authorizations from the U.S. Army Corps of Engineers and the Regional Board to clear material from the creek.

The District's efforts to clear City Creek involved pushing deposited debris onto the adjacent banks of the active channel between Baseline Road and Highland Avenue and removing debris south of Baseline Road, in order to create a clear path for subsequent flows. Material was not removed completely from the Creek. Because District staff was unaware of the extent of the floodplain in this area, it is unclear as whether or not the material cleared from the active channel affected the flows from larger, subsequent storm events. However, following substantial storm events in 2004-2005, a large amount of material remains along the banks of the Creek to date and the Creek bed has dropped approximately five feet on average below the thalweg of the channel that had been excavated in 2003.

Prior to the 2003 wildfires, the District did not conduct any regular maintenance of City Creek between Highland Avenue and Base Line Road. The Creek consisted of a broad, irregular braided channel with a terrace along the east bank. A number of rare, threatened, and endangered plant and animal species occupied the site. Since 2003, the District has not done any additional work in

the Creek. Water releases from East Valley Water District's facilities above Highland Avenue have added to perennial flow in a single confined channel and immature riparian vegetation is continuing to grow. However, it appears that none of the rare, threatened, or endangered plant or animal species has re-colonized the site.

District staff has expressed reluctance to allow the re-growth of large-diameter trees because of their potential to be carried downstream and damage the Base Line Road culvert crossings. District staff has indicated that they would reconsider this position when the Base Line Road crossing is eventually improved into a crossing more capable of passing large debris beneath it.

In consideration of the circumstances of City Creek, Regional Board staff does not believe that the proposed grade control structure should continue or contribute to the biological or physical degradation of the Creek. Condition 1 below prohibits the proposed structure from posing or becoming a barrier to the passage of aquatic species and requires consultation with and approval from appropriate technical staff at the California Department of Fish and Game or the U.S. Fish and Wildlife Service prior to construction.

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 Storm Water Pollution Prevention Plan (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. For more information, please review Order No. R8-2003-0061 at: www.waterboards.ca.gov/santaana/pdf/03-61.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. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act (CEQA), the San Bernardino Valley Municipal Water District and the Regional Board have determined that the proposed project is exempt from provisions of CEQA under Guidelines Section 15301

and 15304. The proposed project qualifies as a minor alteration of an existing facility and the minor alteration of land and water, not involving the removal of mature scenic trees, in accordance with these Sections.

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

1. Proposed discharges of fill associated with this project must not represent or become a barrier to the passage of native aquatic species that have historically been present, or have the potential to be present in City Creek. Prior to construction, the discharger must provide a letter of approval of the proposed grade control structure(s) to the Executive Officer, from appropriate biological staff at the Department of Fish and Game or the U.S. Fish and Wildlife Service, indicating that the armoring layer(s) are passable by these species under normal circumstances.
2. Elements of the proposed armoring layer(s), visible at the finished surface, must be composed of materials and colors that blend the armoring layer(s) into the overall landscape.
3. Timely implementation of the proposed project is important to minimizing the impact of construction on recovering riparian vegetation in City Creek. In the event that the armoring layer(s) is not completed by October 9, 2009, the discharger must pay an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.75 acre of invasive plant species in and adjacent to waters of the State in the Upper Santa Ana River Watershed. The funding must include a minimum of 10-years of follow-on maintenance. Evidence of the payment or certification of completion of work must be provided to the Executive Officer by October 9, 2009.
4. Regional Board staff and other authorized representatives shall be allowed:
 - a. Entry upon premises where proposed structures are located, or where records are kept under the requirements of this Certification and applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification and applicable waste discharge requirements;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from the project site; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification and applicable waste discharge requirements.
5. This Certification and any subsequent amendments must be maintained on site as a denoted element of any project SWPPP.
6. The applicant shall comply with the requirements of the Clean Water Act section 404 permit

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.

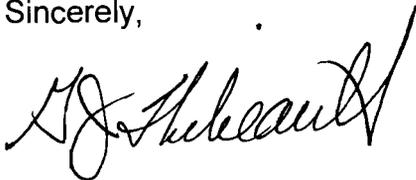
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean 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. 2003-0017-DWQ is available at:
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,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Shannon Pankratz
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme
California Department of Fish and Game, Ontario Office – Jeff Brandt
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith
San Bernardino County Flood Control District – Naresh Varma

APF:401/certifications/city ck scour prot 332007-19