



California Regional Water Quality Control Board

Santa Ana Region



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Secretary for
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Arnold Schwarzenegger
Governor

September 25, 2007

Dan Bott
Orange County Water District
10500 Ellis Avenue
Fountain Valley, CA 92728

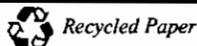
CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE SANTIAGO CANYON CREEK RECHARGE ENHANCEMENT PROJECT, CITY OF ORANGE, ORANGE COUNTY (ACOE REFERENCE NO. 2007-76-Y)

Dear Mr. Bott:

On January 4, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for your proposal to re-grade four segments of Santiago Creek in the City of Orange. On May 23, 2007, we received requested draft and final environmental documents prepared pursuant to the California Environmental Quality Act (CEQA). 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: Re-grading four segments of Santiago Creek downstream of the Santiago Pipeline outfall in order to improve existing groundwater recharge operations for water taken from the Santa Ana River. The re-grading will promote a more dispersed flow of the Pipeline discharges thereby improving groundwater recharge from approximately 15-cubic feet per second (cfs) to 30-cfs. The grading work will impact 7.76-acres. With the exception of approximately 150-square feet of riparian vegetation, the grading will largely affect un-vegetated waters and non-native weeds. Orange County Water District (OCWD) is proposing to maintain the creek and the proposed grade elevations on an as-needed basis, for example, following significant storm events that alter the channel bed or to remove debris deposits. Current recharge operations consist of managing Pipeline discharges to closely match streambed infiltration capacity. The proposed project involves more active management of the infiltration

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surface of Santiago Creek in order to allow for an increased discharge rate from the Pipeline. Two of the segments of Santiago Creek are adjacent to one another but separated by a short concrete-lined portion of the Creek. All of the segments are located in proximity to one another along Santiago Creek near Tustin Avenue and State Route 55 freeway in an un-sectioned portion of Township 4 South, Range 9 West, of the U.S. Geological Survey *Orange, California*, 7.5-minute topographic quadrangle map (See Table 1 below for latitude and longitude).

Table 1: Location Information for Each Project Area

Site	Latitude	Longitude
Project Area1	33.77382	-117.84893
Project Area 2A	33.78202	-117.83601
Project Area 2B	33.78339	-117.83277
Project Area 3	33.78905	-117.82851

- Receiving water: Santiago Creek, tributary to the Santa Ana River.
- Fill area: 0.14 acres of temporary impact to streambed (330 linear feet).
- Dredge/Fill volume: N/A
- Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 33.

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized in part below:

Onsite Water Quality Standards Mitigation Proposed:

- Grading operations would occur when surface water is not in Santiago Creek. Discharges from the Santiago Pipeline would be stopped prior to excavation.
- Access routes to the construction area would be stabilized.
- Stock piles of debris would be placed in controlled locations.
- Additional best management practices (BMPs) will be identified in the project Storm Water Pollution Prevention Plan (SWPPP).

Offsite Water Quality Standards Mitigation Proposed:

- An in-lieu fee will be paid to the Santa Ana Watershed Association towards the eradication of 0.5-acres of invasive plant species in Santiago Creek in a location west of Irvine Park.

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 affects an area that is more than 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.

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 CEQA, the Orange County Water District adopted a Mitigated Negative Declaration on May 16, 2007. The Executive Officer has considered the OCWD's Mitigated Negative Declaration in the issuance of this Certification.

It is Regional Board staff's understanding that both the City of Orange and the County of Orange have constructed parking lots in the bed of Santiago Creek. In a comment letter on OCWD's Mitigated Negative Declaration, dated December 20, 2006, the City of Orange expressed concerns regarding the potential for OCWD's discharged water to undermine a downstream City parking lot located in the bed of Santiago Creek. At the same time, the City expressed concerns regarding the release of pollutants from construction equipment that might be stored in the bed of Santiago Creek as part of OCWD's project. OCWD has agreed to manage discharges such that dry-weather flow from the Santiago Pipeline outfall does not flow over the City's parking lot. The same discharges will be conveyed around, but not over, the County's parking lot. Because of the potential for flows across the parking lots to carry pollutants from parking lots, this Certification does not apply to dry-weather discharges from the Santiago Pipeline that flow beyond the defined recharge areas.

OCWD will implement BMPs to prevent the discharge of pollutants from construction equipment into waters of the State or to land from where those pollutants could enter waters of the State. The City and the County would implement BMPs to prevent discharges of pollutants from the parking lots in the bed of Santiago Creek in

accordance with the requirements of Regional Board Order No. R8-2002-0010, NPDES Permit No. CAS618030¹.

In a comment letter on OCWD's Mitigated Negative Declaration, dated December 22, 2006, the County of Orange requested that OCWD obtain permits for the proposed project and "for the future maintenance and management of flood control capacity within Santiago Creek". This Certification does not authorize future discharges related to maintenance and management of Santiago Creek outside the area of the recharge operations. The County will need to request authorization for their own discharges that result from the noted maintenance and management.

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

1. During grading activities, the limits of the work area within the bed and banks of Santiago Creek, shall be clearly delineated on the ground using flagged stakes, fencing, or other appropriate means.
2. An in-lieu fee shall be paid to the Santa Ana Watershed Association towards the eradication of 0.5-acres of invasive plant species in Santiago Creek in a location west of Irvine Park. Evidence of the fee payment shall be provided to the Executive Officer no later than November 25, 2007.
3. OCWD shall maintain records of all grading and excavation within Santiago Creek. The records shall include the dates of grading and excavation, the aerial extent, estimated quantities of material removed, and – where the activity impacts more than ½-acre – representative site photographs before and after the activity taken not more than 90-days apart.
4. This Certification authorizes the proposed discharges of fill, associated with the initial grading and follow-on maintenance, occurring for a period not to exceed five years from the date of its issuance. Consequently, this Certification expires on September 25, 2012. Certification may be renewed or reissued by the Executive Officer upon receipt of a valid application.

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

¹ Such BMPs may include prohibiting over-night parking and having sufficient access controls to prevent parking in advance of storm events. However, because of the potential for accidental releases of pollutants adjacent to groundwater recharge areas, Regional Board staff believes that the parking lots should ultimately be abandoned.

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.

Although we anticipate no further regulatory involvement, 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, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation 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.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

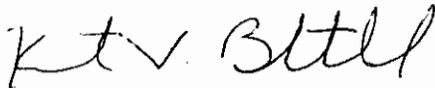
In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

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.swrcb.ca.gov/resdec/wqorders/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 – Jae Chung
State Water Resources Control Board, OCC – Eric Spiess
State Water Resources Control Board, DWQ-Water Quality Certification Unit –
Bill Orme
California Department of Fish and Game, San Diego Office – Naeem Saddiqui
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini
and David Smith
City of Orange – Sharon Baik-Song

APF:401/certifications/santiago ck recharge 302007-01