



# California Regional Water Quality Control Board

## Santa Ana Region



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

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**Arnold Schwarzenegger**  
Governor

September 24, 2007

Heidi Sickler  
Calnev Pipeline Company, LLC  
1100 Town & Country Road  
Orange, CA 92868

### **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR SWARTHOUT CANYON ROAD PIPELINE WASHOUT REPAIR, SAN BERNARDINO COUNTY (ACOE REFERENCE NO. NOT AVAILABLE)**

Dear Ms. Sickler:

On April 10, 2007, we received a request for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by TRC Solutions, for the proposed streambed stabilization for a pipeline washout near Swarthout Canyon Road in San Bernardino County. Upon review of your application, Regional Board staff determined that the use of a Categorical Exemption from the requirements of the California Environmental Quality Act (CEQA) was inappropriate. After confirming that there was no other entity with discretionary approval over the project, an Initial Study and notice of intent to adopt a Mitigated Negative Declaration was prepared and circulated to the State Clearinghouse and other entities on August 14, 2007. The public comment period closed on September 16, 2007.

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:** Construction of a protective cover over an existing 8-inch petroleum pipeline located within a perennial stream in Swarthout Canyon in San Bernardino County. The pipeline has been exposed as the result of natural erosion of the channel. The work will involve excavation around the pipeline, installation of a geotube and covering the pipeline with approximately 21 articulated concrete revetment mats. A rock rip-rap, longitudinal peaked stone toe protection system will be constructed in the nearby northwest bank. The project will require that stream flows be temporarily diverted. An access road will be constructed from Swarthout Canyon Road to the project site and a work area will be cleared. The project is

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located in Section 11 of Township 2 North, Range 6 West, of the U.S. Geological Survey *Cajon, California*, 7.5-minute topographic quadrangle map (34.2787 degrees N/-117.4755 degrees W).

Receiving water: Un-named perennial, riparian stream, tributary to Cajon Wash.

Fill area: 0.06 acres of permanent impact, and 0.02 acres of temporary impact, to riparian streambed (1,070 linear feet).

Dredge/Fill volume: N/A

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

Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project is less 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 not required.

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](http://www.waterboards.ca.gov/santaana/pdf/03-61.pdf).

The project has the potential to result in the accidental release of petroleum to waters of the State. Releases are to be reported to the Office of Emergency Services Warning Center at [\(800\) 852-7550](tel:8008527550) or [\(916\) 845-8911](tel:9168458911).

The project is subject to 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), Regional Board staff prepared a mitigated negative declaration (State Clearinghouse No. 2007081089) and submitted it for circulation to the State Clearinghouse on August 14, 2007. The comment period closed on September 16, 2007.

The Executive Officer hereby finds, based on the mitigated negative declaration, that the impacts of the project have been mitigated to a level that is insignificant. Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in the mitigation measures shown in the Mitigated Negative Declaration, required as part of this Certification, and developed in consultation

with U.S. Fish and Wildlife Service and the California Department of Fish and Game, will ensure those impacts are mitigated to a level that is less than significant. The Executive hereby adopts the mitigated negative declaration.

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

1. Placement of the articulated concrete revetment and streambed grading must not cause changes in flow velocity, depth, or volume that may limit the habitat value of the stream to support local populations of speckled dace.
2. The discharger must implement an effective combination of source control and treatment best management practices to remove pollutants in storm water runoff from the project site.
3. Prior to and during work, the discharger must survey the work area for staining and odors or other evidence of prior discharges of hazardous materials. If evidence of discharges is found, the discharger must notify the Department of Toxic Substances Control in writing within 48-hours of discovery.
4. Temporary access roads and work areas must be rendered inaccessible to off-road vehicles upon completion of the project.
5. Waters of the State must be re-vegetated with appropriate native plant species. This effort may rely on natural recruitment of plants as opposed to active planting. However, the effort must be accompanied by effective monitoring and eradication of non-native plant species occurring for a duration of 5-years. The monitoring and eradication effort may be discontinued upon approval by Regional Board staff if Regional Board staff determines that the site is likely to achieve similar vegetative cover, density, diversity, and structure as nearby comparable waters without further intervention.
6. The discharger must pay an in-lieu fee to the Inland Empire Resource Conservation District, as proposed, towards the enhancement or restoration of 0.3-acres of waters of the State in the Devore area of San Bernardino County. The payment must include a minimum of 6-years of follow-on maintenance. Evidence of the payment must be provided to the Executive Officer no later than November 24, 2007.
7. All vehicles and equipment entering the work area must be free of viable propagules of non-native plant species that may be discharged to waters of the State or to land where they may eventually be discharged to waters of the State.
8. All proposed structures must be composed of materials that are colored such that they blend into the overall landscape.
9. A copy of this Certification and any subsequent amendments must be maintained on 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.

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](http://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,



GERARD J. THIBEAULT  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Gerry Salas  
State Water Resources Control Board, OCC – Erik Spiess  
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

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