



Santa Ana Regional Water Quality Control Board

May 28, 2013

Nardy Khan
OC Public Works
300 N. Flower Street
Santa Ana, CA 92702

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE BREA CREEK CHANNEL SEDIMENT REMOVAL
PROJECT, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. NOT
AVAILABLE) (SARWQCB PROJECT NO. 302013-01)**

Dear Ms. Khan:

On January 17, 2013, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Orange County Public Works, for a project to restore Brea Creek flood control channel to capacity by removing sediment and to ensure sediment is prevented from washing further downstream. The subject project is located in a section of the channel located in the City of Buena Park, 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) (Basin Plan) and subsequent Basin Plan amendments:

Project Description: This project is for on-going channel maintenance by clearing up to approximately 3,200 cubic yards of sediment and debris from the Brea Creek channel on an as-needed basis. Using either a dozer or excavator in the channel, the material will be pushed into piles along the channel's edge and allowed to dry. After approximately one week, the sediment will be removed via backhoe and loaded onto haul trucks for delivery to a landfill. No expansion of the facility is proposed. The work will take place within Sections 25 & 26, Township 3 South, Range 11 West, of the U.S. Geological Survey *La Habra* quadrangle map (33° 52' 38.64" N/ -117° 59' 30.79" W).

Receiving water: Brea Creek, Coyote Creek, San Gabriel River

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

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Fill area: 3.58 acres of temporary impact to streambed habitat (3,318 linear feet)

Dredge/Fill volume: 3,200 cubic yards

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 below:

Onsite Water Quality Standards Mitigation Proposed:

- Standard water quality related best management practices (BMPs) will be employed during construction activities.

Offsite Water Quality Standards Mitigation Proposed:

- None.

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 Wildlife will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2009-0030 (NPDES Permit No. CAS618030), commonly known as the Orange County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2009-0030 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.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR or Negative Declaration prepared by the lead agency in determining whether to approve a project. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the Orange County Flood Control District's "Mitigated Negative Declaration for the County-Wide Long-Term Routine Maintenance Program," which includes the proposed project, and information provided subsequently in OC Public Works' application, in approving this Certification. The final MND was adopted on May 21, 2013. Pursuant to California Code of

Regulations, Title 14, Section 15096, subdivision (f), the Regional Board must consider the environmental effects of the project as shown in the associated negative declaration prior to reaching a decision on the project. The Regional Board has independently considered the County's draft MND in the issuance of this Certification. The Regional Board finds that changes or alterations have been required, or incorporated into the proposed project, which avoid impacts to water quality or reduce impacts to a less than significant level.

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

- 1) The applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 2) All materials generated from construction activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified.
- 3) The project proponent shall utilize BMPs during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
- 4) Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.
- 5) Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.
- 6) This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.

- 7) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 8) Construction de-watering discharges, including temporary stream diversions necessary for project construction may be regulated under Regional Board Order No. R8-2009-0003, 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. R8-2009-0003 at www.waterboards.ca.gov/santaana/
- 9) No maintenance activities described herein are authorized prior to adoption of Orange County Flood Control District's *Mitigated Negative Declaration for the County-Wide Long-Term Routine Maintenance Program*. The applicant shall provide the Board with documentation showing that this MND has been adopted before maintenance activities commence.

Applicant shall ensure that all fees associated with this project shall be paid to each respective agency prior to conducting any on-site construction activities. 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 Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):

U.S. Army Corps of Engineers, Los Angeles Office - Stephen Estes
State Water Resources Control Board, OCC - David Rice
California Department of Fish and Wildlife – Russell M. Barabe
State Water Resources Control Board, DWQ-Water Quality Certification Unit - Bill Orme