CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

November 17, 2014

Vincent Gin
Orange County Public Works
300 N. Flower Street
Santa Ana, CA 92703

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE GREENVILLE-BANNING CHANNEL IMPROVEMENT PROJECT, CITY OF COSTA MESA, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. SPL 408 2014-088) (SARWQCB PROJECT NO. 302014-13)

Dear Mr. Gin:

On August 1, 2014, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the Orange County Public Works (OCPW) for a 5.71 acre project (limited by the right-of-way on both sides) within the Greenville-Banning Channel (OCPW Facility No. D03), located in Costa Mesa, Orange County. The purpose of the project is to reduce maintenance issues associated with channel slope erosion, increase flow capacity and reduce risk of flooding and damage to adjacent properties. The applicant has also submitted a filing fee of $43,003.00, which satisfies this project's fee requirement for the consideration of a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3) in effect when the application was submitted. 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: The multi-segmented project consists of the following activities:

1. **From 1050 linear feet downstream from the California Street Crossing to the California Street Crossing :** This segment is an existing, trapezoidal channel that is concrete lined to a height of 10.5 feet. The upper portions of the channel side slopes are earthen. The Project entails the reconstruction of the existing concrete

lined section of the trapezoidal channel and the addition of concrete lining to the top of the channel side slopes.

2. **California Street Crossing (80 linear feet):** This segment is a triple barrel 12'x10' reinforced concrete box culvert (RCB). The crossing will not be modified; however, the concrete transition structures will be re-constructed upstream and downstream of the bridge crossing to provide stable inverts for the flow transitions and to provide turn-around areas for maintenance equipment. The proposed transition structures will be similar to the existing structures in length. The invert of the proposed transition structure on the upstream side will be widened from 24 to 40 feet.

3. **Upstream of California Street to New Hampshire Drive (2,070 linear feet):** This reach is currently an earthen trapezoidal channel that is armored in areas with either rip rap or concrete-lined side slopes. The channel-sides will be steepened and concrete-lined, and the channel bottom will be widened from its existing width of 25 feet, to 40 feet. The 40 foot bottom is to be divided into two longitudinal sections. The left 26-foot wide section (looking upstream) will have a reinforced earthen bottom. The existing rip rap on the channel side slopes in this reach will be relocated to the channel bottom and buried and covered with 1 foot of soil to create the 26-foot-wide, reinforced earthen portion of the channel bottom. Additional rock may be brought in if necessary. The buried rip rap will function as permeable fill, which will allow infiltration and vegetation growth while guarding against localized scour. The right 14-foot wide section (looking upstream) will feature a concrete bottom to provide the required hydraulic capacity and will also facilitate maintenance activities.

4. **New Hampshire Street Crossing (40 linear feet):** The New Hampshire RCB will be replaced. The concrete transition structures will be re-constructed upstream and downstream of the bridge crossing to provide stable inverts for the flow transitions and to provide turn-around areas for maintenance equipment. The proposed transition structures will be similar to the existing structures in length. The invert of the proposed transition structure will be widened to 40 feet on the upstream side, and to 40 feet on the downstream side.

5. **Upstream of New Hampshire Street to I-405 right of way (240 linear feet):** This segment is an existing trapezoidal channel with earthen or riprap side slopes, concrete transition structures and an earthen bottom. The channel sides will be steepened and the bottom widened to 40 feet. This proposed cross section is fully concrete-lined, including concrete lining the existing earthen bottom, to increase hydraulic capacity.

The work will take place within Section 33 of Township 5 South, Range 10 West, of the U.S. Geological Survey *Newport Beach* 7.5 minute topographic quadrangle map (33.691348° N/ -117.929580° W).

Receiving water: Greenville-Banning Channel and Gisler Storm Channel, which have present or potential beneficial uses, including: contact recreation (REC1), non-contact recreation (REC2), wildlife habitat (WILD), rare/threatened/endangered species (RARE), municipal and domestic supply (MUN), and warm freshwater habitat (WARM).

Fill area:

Temporary Impact to Streambed Habitat	2.10 acres	3,240 linear feet
Permanent Impact to Streambed Habitat	0.07 acres	240 linear feet

Dredge Volume: 0 cubic yards

Federal permits: U.S. Army Corps of Engineers 404 Individual Permit (SPL-2014-00227-SME)

U.S. Army Corps of Engineers 408 Permit (SPL 408 2014-088)

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.
- Temporary impacts to 2.10 acres of intermittent streambed will be mitigated at a 1:1 ratio through restoration of 2.10 acres of intermittent streambed; and
- Permanent impacts to 0.07 acre of intermittent streambed will be mitigated at an almost 2:1 ratio through creation of 0.13 acres of intermittent streambed.

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 Mitigated Negative Declaration (MND) prepared for the proposed project and filed by Orange County Public Works on October 28, 2014, and information provided previously in the applicant's application and draft MND, in approving this Certification. More specifically, the Regional Board has independently considered those sections of the MND relating to water quality. Based on the mitigation proposed in the MND, and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected.

Thus, the Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality 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) Proposed mitigation shall be timely implemented.

3) 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.

4) 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.

5) 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.

6) 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.

7) 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.

8) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.

9) Construction de-watering discharges, including temporary stream diversions necessary for project construction, will 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/

10) 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 certify 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 - James Mace
State Water Resources Control Board, OCC - David Rice
California Department of Fish and Wildlife – Russell M. Barabe
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme