

Santa Ana Regional Water Quality Control Board

September 22, 2014

Kirk Gilligan
U.S. Fish and Wildlife Service
Seal Beach National Wildlife Refuge
800 Seal Beach Blvd., Bldg. 226
Seal Beach, CA 90740

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE BOLSA LEVEE WATER CONTROL CULVERT
REPLACEMENT PROJECT, SEAL BEACH NATIONAL WILDLIFE REFUGE, CITY
OF SEAL BEACH, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO.
NOT AVAILABLE) (SARWQCB PROJECT NO. 302014-12)**

Dear Mr. Gilligan:

On June 20, 2014, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the U.S. Fish and Wildlife Service, Seal Beach National Wildlife Refuge, for a project to remove the two 30" X 55' degraded, collapsing concrete culverts at the south end of the Bolsa Levee and to subsequently install a new, comparably sized box culvert with a tide gate in the same general location. 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:

As part of the project, up to 80 cubic yards of existing rip-rap in the immediate vicinity of the culverts will be temporarily removed to allow work to proceed. During removal of the existing culverts and construction for the new culvert, the site must be free of water. At low tides, the water level is above culvert inverts. To keep water out of the construction area during the project, cofferdams will be used to isolate the project area so that it can be dewatered. It is anticipated that no more than 170 linear ft. of cofferdams will be utilized to dewater an area of 1500 sq. ft. Water removed during the dewatering process will be filtered and placed back in the bay adjacent to the project site. In addition, silt fencing or weed-free straw bale rolls will be placed as appropriate around the perimeter of the construction footprint. The implementation of these measures will avoid or minimize the

potential for siltation into the salt marsh during construction. The general earthwork and excavation trough for installation of the new culvert is anticipated to be no larger than 60' X 25' X 10' deep with an additional 6 holes dug for 24" piling installation.

The work will take place within the southwesterly portion of the Los Alamitos Rancho, which is part of a historic land grant and not divided into Section, Township or Range. The site is on the *Seal Beach, California* 7.5 minute topographic quadrangle map (33° 44' 42.48" N/ -118° 05' 02.02" W).

Receiving water: Anaheim Bay which has present or potential beneficial uses, including: preservation of biological habitats of special significance (BIO), marine habitat (MAR), contact recreation (REC1), non-contact recreation (REC2), spawning, reproduction and development (SPWN), wildlife habitat (WILD), rare/threatened/endangered species (RARE), municipal and domestic supply (MUN), and warm freshwater habitat (WARM).

Fill area:

Temporary Impact to Wetland Habitat	0.05 acres	60 linear feet
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Dredge/Fill volume: N/A

Federal permit: Nationwide 404 Permit No. 3

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 (USFWS) 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.

Pursuant to the California Environmental Quality Act (CEQA), the USFWS filed a CEQA Guidelines Section 15301 "Class 1" Categorical Exemption, which declares that the project involves the operation, repair, maintenance, and minor alteration of public/private structures that result in a negligible expansion of uses. The configuration and uses will remain unchanged and the proposed project will not expand the culvert beyond its original design volume. The Regional Board has considered the USFWS Categorical Exemption in the issuance of this Certification and independently finds that no changes or alterations to the proposed project are necessary to 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) 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) 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/wqo_2003-0017.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
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme