

Response to Comments

Water Quality Certification for Proposed Maintenance Clearing of Engineered Earth-Bottom Channels in Various Watersheds Within Los Angeles County

Comment due date: August 5, 2009

Table 1. Commenters*

1. Heal the Bay and Santa Monica Baykeeper (August 5, 2009)
2. Friends of the Los Angeles River (August 5, 2009)

Table 2. Response to Comments

No.	Author	Comment	Response
1.1	Heal the Bay and Santa Monica Baykeeper	The LACDPW 401-Certification application is riddled with inaccurate information and incomplete analysis, which prevents the public from truly ascertaining the full environmental impacts associated with channel maintenance or alternatives to channel maintenance. As such, it begs the question if an incomplete 401-Certification application was submitted by the County or sufficiently evaluated by the staff. For example, the applicant states that there will be no dredge volume (99-011 2009 Renewal—page 11). However, the County acknowledges that for one of its 100 reaches to be cleared, the Las Virgenes Creek (Reach 29) alone will have “approximately 462 tons of sediment and vegetation...removed from this site.” (99-011 2009 Renewal—page 4). Nowhere in the application are there estimates of total of acres impacted, total vegetated acres impacted or total sediment volume removed. Has the non-vegetated wetland numbers or the vegetated wetland numbers changed from any of the previous three County 401 applications?	The application was deemed complete on July 10, 2008. Dredge volume (page 11) refers to the volume of dredged material to be discharged into waters of the United States. No dredged material will be discharged into waters of the United States under this Certification. There has been a long lapse in time since the previous approvals of this Certification. As such, the total vegetated acreage impacts or and total volume of sediment removed has changed over time. Each time an amendment occurs to add, delete, or change reaches covered within the Certification, the acreage impacts will increase or decrease. The revised Certification will include a requirement to specifically document acreage impacts for each reach and to also document impacts by habitat type with vegetation surveys prior to maintenance activities (See revised tentative Certification, Attachment B, No. 3 and

* Two comment letters were submitted after the August 5, 2009 comment deadline: 1. Marcus Eriksen, Algalita Marine Research Foundation, and 2. Los Angeles County Department of Public Works (Applicant).

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1.2	Heal the Bay and Santa Monica Baykeeper	In addition, the County states that for the past five years and for the next five years, that it has not identified any related project to be implemented (99-011 2009 Renewal—page 11). Yet in a separate document to the RWQCB entitled “Soft-Bottom Channels Maintenance Clearing”, the County alludes to its great work on Sun Valley Watershed (Sun Valley Park and Tuxford Green), the Tujunga Wash Restoration Project, and the Dominguez Gap Wetlands. Clearly, these were additional, albeit exemplary, projects that needed to be included in the analysis. In addition, the County promotes its paradigm shift in project endeavors from “typical, underground drain or channel to multi-use, multi-benefit solutions” by highlighting Oxford Basin (which is not an environmental rehabilitation project), Rio Hondo and San Gabriel Coastal Spreading Grounds, and the Lario Creek. Heal the Bay would add previously mentioned projects such as the Compton Creek Treatment Wetland and the Compton Creek Ecosystem Restoration projects. These projects should be discussed in this application as relevant and related projects. Because these projects are not vetted in this application, the public has no idea what the County is doing, that is in stark contrast to the singular objective of this 401 Certification application—dredging of earthen bottom channels.	27) Comment noted. There are many activities performed by the Los Angeles County Department of Public Works (LADPW) which may directly and/or indirectly relate to this project. Staff has included a brief summary of the types of other related LADPW activities in the revised tentative Certification, such as reservoir cleanouts, debris basin maintenance, flood control maintenance, structural maintenance and/or replacement of dams, channels and other flood control structures as well as some channel restoration activities. The tentative Certification has been revised to list these other types of related projects in the “related projects” section with a statement indicating that the public can acquire information regarding other related LADPW activities through the Regional Board’s web pages (See revised tentative Certification, Attachment A, No. 13)
1.3	Heal the Bay and Santa Monica Baykeeper	The 2009 LACDPW’s 401-Certification application over-relies on outdated reference materials to justify its channel maintenance. The current application cites studies, permits, and environmental documentation that are 10 to 15 years old. Public policies, regulatory requirements, site conditions, and environmental concerns have changed drastically over this time	In this Certification, the Regional Board has required a Feasibility Study - a technical report on the hydrologic capacity of each covered reach and recommendations on which reaches may retain more vegetation. Staff has revised the tentative Certification to also include an updated habitat

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		<p>period. The 1999 Mitigated Negative Declaration must be renewed when a number of site conditions have changed with this Certification application. How is the California Department of Fish Game's Streambed Alteration Agreement from 1999 still valid? How can the 1996 "Effects of Vegetation on the Capacity of Soft-Bottom Flood Control Channels" and 1993 "Design Memorandum for Compton Creek Improvements" be used and cited for why vegetation must be removed for earthen bottom areas, when both of these documents clearly do not take into account current policies targeting stormwater capture, infiltration and reuse. The application uses studies that assume that flow rates will continue to increase over time indefinitely. Yet, there is no discussion throughout this document how Regional Board regulations regarding the Municipal Separate Storm Sewer Systems (MS4) permit, the Standard Urban Stormwater Mitigation Plans (SUSMPs), and Total Maximum Daily Loads (TMDLs) impact the County's need for channel maintenance.</p>	<p>assessment of all reaches over the 5-year period this permit will be valid (see revised permit). Each year, LADPW will be required to analyze a particular watershed as part of the Feasibility Study requirement. An assessment of Compton Creek will be required in the first year, prior to any maintenance activities being implemented.</p> <p>The Regional Board does not issue or approve the California Department of Fish and Game (CDFG) Streambed Alteration Agreements. The Applicant has requested an extension of this agreement.</p> <p>Staff has clarified that the scope of the hydrologic analysis in the Feasibility Studies shall include a consideration of changes in expected flow rates, if any, in response to requirements of the MS4 permit, SUSMPs, and TMDLs. (See Attachment B, 4.a. and 4.b.)</p>
1.4	Heal the Bay and Santa Monica Baykeeper	<p>The LACDPW application references the FEMA Levee Certification as the only driving public policy for obtaining this permit. Absent from this 401-Certification application is any discussion on the Integrated Regional Water Management Plan (IRWMP), the City of Los Angeles' Integrated Resources Plan, the County of Los Angeles' Drought Management Plan, the County of Los Angeles' Low Impact Development Ordinance, and the County of Los Angeles' Drought Tolerant Landscaping Ordinance. Even more frustrating is that the application cites the</p>	<p>The application references the FEMA Levee Certification because it is a critical and new requirement which LADPW must comply with in addition to the CWA Section 401 Certification, Section 404 permit, and DFG Streambed Alteration Agreement. The Regional Board will require LADPW to consider and incorporate information from the plans cited by the commenter into the required Feasibility Study (Condition No. 4,</p>

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		1993 US Army Corp of Engineers study on Compton Creek Improvements but fails to cite the County's own Compton Creek Treatment Wetland or Compton Creek Ecosystem Restoration projects.	Attachment B). Staff has revised this condition in the revised tentative Certification to include considerations such as the ones presented in this comment as a requirement for the Hydrologic & Geomorphologic Assessment. (See Attachment B, 4.a. and 4.b.)
1.5	Heal the Bay and Santa Monica Baykeeper	Also, the application refers to the August 2005, Mitigation Monitoring Program and the Maintenance Plan. Neither of these documents was available for file review so we did not have the opportunity to review the adequacy of the plans. However, we did review the 1999 Mitigation Monitoring Program and post 2005 field sheets for monitoring, and neither the program, the field sheets, or the field notes are adequate for assessing impacted resources or water quality. Considering the scope of the channel maintenance activities in the County, it is disturbing that mitigation and monitoring requirements are far less than is required in a typical stormwater pollution prevention plan for a large facility.	The Mitigation Monitoring Program and the Maintenance Plan are available for review. The 2005 Mitigation Monitoring Plan includes criteria for evaluating the success of mitigation based on the Corps' Regulatory Guidance on Compensatory Mitigation Projects. The Mitigation Plans are required to provide performance standards, which are evaluated by both the Corps and the Regional Board. The objective of the 5-year monitoring requirement is to ensure the functionality of the mitigation site in order for it to be self-sustaining once the success criteria have been met. .
1.6	Heal the Bay and Santa Monica Baykeeper	All of these documents and policies have been developed subsequent to the initial 1999 LACDPW 401-Certification application. As such, this Certification appears to simply be a copy of previously issued Certifications, with minor modifications.	Staff disagrees. The renewal of this Certification entailed a detailed review of new reaches to be included or reaches to no longer include. In addition, the tentative Certification includes many new requirements for hydrologic and biological assessment, in order to determine the feasibility of retaining vegetation within the soft-bottom portion of the channels (while still providing evidence of meeting current flood control capacity

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			requirements). (See Attachment B, Conditions 4 a.-c., 27 and 28.)
1.7	Heal the Bay and Santa Monica Baykeeper	In reviewing the conditions of Certification from the last 401 application (File 99-011 2009 Renewal), there was little to no information contained in the application or file regarding the County of Los Angeles' compliance with past 401-Certification conditions. For example, there are a number of conditions in the 1999 and 2003 Certifications that require monitoring and or baseline assessments to be conducted (2003 Conditions 5, 6, 9, 14, 15, 16, 17, and 21) prior to and after any work. Yet, there is no water quality, toxicity, sediment, or ecological monitoring data provided in the current application associated with past activities. There were mitigation monitoring reports for 2003, 2004, and 2005, but these contained little to no real data.	<p>The previous Certification only required water quality monitoring to take place during any surface water diversion activities associated with the maintenance clearing. The scope of this requirement is consistent with all other 401 Certifications issued by the Regional Board.</p> <p>However, as part of the new condition to conduct Feasibility Studies (Attachment B, No. 4.b.) or, alternatively, as part of the Annual Project Report (Attachment B, No. 28), the Regional Board will be requiring detailed baseline water quality assessments as well as water quality assessments during and after project implementation. See revised Condition No. 4.b. for the Feasibility Studies, and revised Condition 28. Water quality assessments will include testing for the same parameters as specified in Condition No. 23 (Surface Water Diversion) monitoring. (See revised Attachment B, No. 28)</p>
1.8	Heal the Bay and Santa Monica Baykeeper	The lack of any objective scientific data makes it impossible to determine if ecological and or water quality resources were impacted by the County's past channel maintenance activities. With all of the County's channel maintenance activities, how is the RWQCB protecting existing stream and river beneficial uses, ensuring progress towards TMDL compliance, or ensuring other Basin Plan objectives are met if no water quality or biological	In order to fully evaluate the efficiency of BMPs and project implementation, the following requirements are included in the Annual Report: BMP documentation; assessment of BMP effectiveness through water quality assessments; documentation of volumes of trash, sediment and/or vegetation removed; and tracking of

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		<p>monitoring is required? Also, what Best Management Practices were implemented during channel maintenance? What was the efficacy of those BMPs? Was there any water quality or sediment monitoring conducted downstream of the impacts to determine compliance with Basin Plan Objectives? Was there any sediment or vegetation removed? If so, then how much was removed?</p>	<p>disposal (location). See revisions to Attachment B, Conditions 27 and 28.</p>
1.9	<p>Heal the Bay and Santa Monica Baykeeper</p>	<p>As stated in the August 29, 2008 extension letter to the LACDPW, the RWQCB required the County to complete an “assessment of the biological functions and values for each reach.” Was this element completed? In a review of the documents for this 401-Certification, there is no report detailing biological functions or values for each reach. This is disconcerting given that every reach scheduled for maintenance has some type of existing designated beneficial uses related to Warm, Wild, Wet, Rare, or Cold. Has the RWQCB ever completed an assessment of the County’s 401-Certification program that has included field visits?</p>	<p>To date, assessments of biological functions and values have not been completed. Assessments are required prior to any maintenance activities, as part of the renewed Certification. See Attachment B, Conditions 3, 4, and 27.</p> <p>Regional Board staff has been out to many LADPW facilities for site specific 401 Certifications. Due to staffing limitations, the Regional Board has not completed field visits for all the reaches included in this Certification.</p>
1.10	<p>Heal the Bay and Santa Monica Baykeeper</p>	<p>For example, in the 2003 LACDPW 401-Certification application, the County stated in its response to RWQCB comments that “In fact...five of those [100 earthen bottom] reaches have been turned into concrete-lined channels, and will no longer require maintenance.” The 2009 application states that 10 additional reaches will be “removed from the Certification” because they are no longer an earthen bottom channel or “were impacted by new developments.” Over the past ten years, 15</p>	<p>The Regional Board fulfills the State Policy of “no net loss” by requiring compensatory mitigation for projects which impact waters (California Executive Order W-59-93). In the cases where reaches have been removed from coverage under this 401 Certification, as part of a separate 401 Certification process, developments which impact earthen</p>

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		<p>earthen bottom reaches, all of which probably had designated beneficial uses, have been permanently lost to development or concrete channelization. Even more disturbing is that the County wants to add 10 new reaches for channel maintenance. How are biologically based designated beneficial uses being protected through the implementation of the County's 401 Certification program, especially with the loss of soft bottomed reaches and new channels included in their maintenance program? The continued loss of riparian corridor habitat to pavement and channelization through the 401-Certification process is troubling. Does the RWQCB or the County have any goals or objectives for reducing the frequency of disturbance, the number of reaches needing "maintenance", restorative best management practices to reduce sediment and or contaminant loading after "maintenance", or reducing the hydromodification impacts (downstream scour, sedimentation, and erosion) of increasing peak flow velocities through channelization and maintenance?</p>	<p>bottom reaches (by replacing them with fully concrete-lined channels) must be fully mitigated through compensatory mitigation. In cases where earthen bottom channels have been added to this Certification, as part of a separate 401 Certification process, developers have acquired a separate 401 Certification for these earthen bottom reaches (typically during development of a new housing tract) and were required to fully mitigate for impacts either on or off-site. After the development is completed and mitigated for, operation and maintenance of these channels is routinely transferred to LADPW. If impacts due to ongoing maintenance were not mitigated for in the individual 401 Certification, LADPW must fully mitigate for any new impacts resulting from ongoing maintenance at a ratio of 2:1. New impacts include those to reaches added to the tentative Certification, which have not been mitigated for previously. See revised Attachment B, Condition 25.</p> <p>Goals and objectives for minimizing impacts from maintenance clearing will be identified in the recommendations that result from the Feasibility Studies (Attachment B, Condition 4) and are also identified in the Mitigation Monitoring Plan and Maintenance Plan.</p>

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1.11	Heal the Bay and Santa Monica Baykeeper	<p>As of 2006, Compton Creek was listed as impaired by the State of California for the pollutants: copper, lead, pH, trash (the Regional Board recently confirmed that Compton Creek is part of the LA River trash TMDL) and elevated coliform counts. Nearly all water bodies in the region have beneficial uses. An impaired water body is unable to attain a designated beneficial use (therefore impaired) because the waters are too polluted with a particular pollutant or pollutants. There are a number of existing beneficial uses associated with Compton Creek. They are: groundwater recharge (GWR), recreational I and II (REC I & REC II), warm freshwater (WARM), wildlife (WILD), and wetland (WET). The “Mitigation Monitoring Program” report’s Hydrology and Water Quality section fails to provide any data on water quality conditions prior and post grading/maintenance activities. This type of work invariably increases turbidity in the water column during the construction activity, which can lead to downstream water quality degradation through the re-suspension of contaminants. And while certain BMPs were noted in the report (2004 and 2005) as being implemented, there was no documentation regarding their effectiveness. The 2004 report is the only report of the three that states a specific comment about water quality: “good”. What does “good” mean in terms of compliance with water quality objectives when there is no water quality data?</p>	See responses 1.7 and 1.8.
1.12	Heal the Bay and Santa Monica	<p>Also, there is no discussion of post construction BMP implementation subsequent to the grading. Given that the grading work requires the denuding of large amounts of acreage prior to</p>	See response 1.8. Additionally, the tentative Certification includes Avoidance/Minimization Activities, which include Best Management

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	Baykeeper	the rainy season, sedimentation through erosion of disturbed soils will happen. What measures/BMPs are implemented to ensure that sediments (contaminated or not) do not enter the receiving water and impact downstream resources, especially for those reaches with identified impairments or developed TMDLs?	Practices as outlined in the Maintenance Plan. BMPs are required in order to provide stabilization upon maintenance completion. A complete listing of BMPs to be implemented can be found in the Maintenance Plan.
1.13	Heal the Bay and Santa Monica Baykeeper	Finally, the reporting form asks for trash information, yet in reviewing the files there is no data provided on the amount of trash present when channel maintenance is initiated or how much trash was removed when the project was completed.	See response 1.8 and revisions to Attachment B, Condition 27.
1.14	Heal the Bay and Santa Monica Baykeeper	There are a number of current and future TMDL requirements in place for the LA River (Bacteria, Metals, Toxicity, and Trash) and Malibu Creek (Sediment, Bacteria, Metals, and Nutrients). As such, waste load allocations and load allocations are required for each pollution source that has a reasonable potential to cause or contribute to a water quality standard exceedance. Maintenance and grading activities have a meet the reasonable potential standard for these water bodies because sediments often are repositories for fecal bacteria, nutrients and metals. Maintenance activities need to be part of TMDL implementation and compliance assurance programs. What is the Regional Board doing to ensure that maintenance impacts are covered under pertinent TMDLs?	The tentative Certification requires LADPW to comply with all provisions of the Basin Plan, which include TMDLs. (See Attachment B, Condition 7.) TMDLs are adopted as amendments to the Basin Plan, and upon approval become a part of the Basin Plan. Responsible parties are identified in each TMDL. Los Angeles County is a responsible party in many TMDLs, including the Los Angeles River and Malibu Creek TMDLs.
1.15	Heal the Bay and Santa Monica Baykeeper	Ecological Data: Compton Creek is one of the few remaining soft bottomed, riparian corridors in an ultra-urbanized setting. The earthen bottom allows for a substantial vegetation and macro-invertebrate community to develop. As such, a number of bird	Comments noted. The requested information has not yet been submitted by the County. When the Feasibility Studies required by the new conditions in the Certification are completed, the information will be made available to the public. (See

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		<p>and mammal species have been identified as habitants of the area. In terms of aquatic resources, Compton Creek is listed as having beneficial uses associated with warm freshwater (WARM), wildlife (WILD), and wetland (WET). Given that the grading work conducted by the County requires the denuding of large amounts of habitat acreage, there was little information provided in terms of impacted ecological habitats and associated species. As was stated earlier, the RWQCB requested this information from the County. Was it ever completed and submitted? If so, the public needs to review this information, and similar information for other reaches, before the County is granted another Certification.</p>	<p>Attachment B, Conditions 3 and 4.)</p>
1.16	<p>Heal the Bay and Santa Monica Baykeeper</p>	<p>In reviewing the “Mitigation Monitoring Program” report’s Biological Resources Monitoring Form, the section fails to provide any relevant data on habitat conditions prior and post grading/maintenance activities, or any discussion of impacted fauna species. In addition, simply stating that ruderal vegetation—plants that grow in rubbish, poor land, or waste—exist, and is typified by castor bean, is not a complete inventory of floral species present.</p> <p>Absent from the Biological Resources Monitoring Form is any discussion or data of existing fauna in the area. To reiterate, How are basin plan objectives for protecting and preserving the beneficial uses of warm freshwater (WARM), wildlife (WILD), and wetland (WET) ever to be achieved if they are continually impacted by on-going grading?</p>	<p>Previous monitoring requirements were developed in accordance with the ACOE Regulatory Guidance on Compensatory Mitigation (December 24, 2002.)</p> <p>The revised tentative Certification includes the requirement for more detailed biological assessments prior to maintenance activities and as part of the Feasibility Studies. See Attachment B, Conditions 3 and 4. Beneficial Uses will be protected and preserved by conducting surveys of sensitive/endangered species prior to maintenance, and postponing maintenance if such species are identified in the project area (Attachment A, Condition 15); retaining biologists during maintenance should issues of potential impacts to</p>

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			biological impacts arise (Attachment A, Conditions 15 and 19); and by performing Feasibility Studies to identify where and how much vegetation may remain within the channels, and to identify channels that may provide restoration opportunities for riparian habitat/vegetation (Attachment B, Condition 4). See also response 1.6.
1.17	Heal the Bay and Santa Monica Baykeeper	<p>Photo Data: The photo documentation included in the files failed to provide any relevant information to a reviewer about the impacts from the grading activity. For example, those Monitoring and Maintenance reports where photos were actually included, the before and after photos were often taken many months apart—six months apart in the 2005 Report. The amount of time elapsed between photos does not accurately portray the impacts to the creek from channel maintenance. For instance, photos should be taken immediately prior to, during, and immediately after any grading activity. If BMPs are required, then there should be photos of bmp implementation during the construction and post-construction. The photos should be the visual representation of the Mitigation Monitoring Program report. As currently presented, the photos have no relationship to the written report.</p>	Staff agrees. The tentative Certification has been revised to require more useful photo documentation to accurately portray actual impacts from proposed maintenance activities. See revised Attachment B, Condition 27.
1.18	Heal the Bay and Santa Monica Baykeeper	The Compensatory Mitigation section has merely been copied from the County’s previous two Certifications. It is not clear to the public what is being mitigated and how the mitigation is being implemented. The language from the 1999, 2003, and now 2009 simply state that “the County has provided mitigation for all areas described in the Certification by creating a 62.7	The required compensatory mitigation at the Big Tujunga Wash Mitigation Bank Site was sized to mitigate for continued periodic impacts from channel maintenance activities as was the fact that beneficial uses continue to be at least partially supported in the earth-bottom channels. See

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		<p>mitigation site know as the Big Tujunga Wash Mitigation Bank Site” (99-011 2009 Renewal—page 12). Was the intent of the Regional Board to allow channel maintenance in perpetuity based on the one time mitigation at Tujunga? If so, that is outrageous. Each maintenance year results in new impacts that couldn’t possible have been foreseen over a decade ago. New reaches were added to the maintenance program and other reaches were paved over subsequent to 1999. This demonstrates that the mitigation requirement from the last millennium should not apply to activities over a decade later.</p>	<p>response 1.10.</p> <p>The revised tentative Certification includes a new condition for a compensatory mitigation ratio of 2:1 for any new impacts. Impacts which were previously mitigated under a valid 401 Water Quality Certification, would not be considered. For example, if a developer obtained a 401 Certification, which included ongoing maintenance as an impact and the compensatory mitigation was accounted for, then additional mitigation will not be required. However, if continued maintenance of the channel was not included as an impact in the individual 401 Certification and maintenance responsibility is transferred to LADPW, then LADPW will be responsible for additional compensatory mitigation at a ratio of 2:1 for new impacts related to its periodic maintenance of the channel. See revised Attachment B, Condition 25.</p>
1.19	Heal the Bay and Santa Monica Baykeeper	<p>In reviewing the aforementioned statement on mitigation as is, the public could infer that: 1) the total number of vegetated acres “temporarily” impacted and therefore requiring mitigation was exactly the same every year; 2) that all the vegetated acres impacted were of the same quality and diversity, and required the same level of mitigation; 3) that the diversity of habitats impacted were all found in the Big Tujunga Wash Mitigation Bank Site; and 4) that the Big Tujunga Wash Mitigation Bank</p>	<p>LADPW provided the required Mitigation and Monitoring Reports through the completion of the mitigation on April 1, 2005, documenting the successful completion of the compensatory mitigation required by the previous 401 Certifications. The success criteria for mitigation completion are determined from the ACOE</p>

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		<p>Site should have approximately 150 acres of habitat as mitigation for 10 years of on-going earthen bottom clearing and dredging. The Big Tujunga Wash Mitigation Bank Site supposedly concluded April 1, 2005 in accordance with the 5-year Master Mitigation Plan from the 2003 Certification. In short, how has the RWQCB determined if the County's mitigation program is working and producing desired results? What criteria have been established for success in perpetuity? Because there is no discussion or assessment of past mitigation programs, and the language appears to be misleading, the public has no idea if equal compensation is truly being delivered. As such a number of problematic questions remain.</p> <p>As stated previously, it appears as if the Regional Board allowed the County to provide a one-time compensatory mitigation of 62.7 acres for the clearing and dredging of 100 plus earthen-bottom reaches. If so, then how was this mitigation ratio determined? In 1997, the Los Angeles County, Department of Public Works estimated that of the 886 acres contained in the 100 reaches, there was a minimum of 203 acres that were vegetated (1999 MOU between LACDPW and CDFG—#5-076-99). Of the estimated 203 vegetated acres, approximately 77 (38%) of the vegetated acres were cleared during channel maintenance activities. Of the 77 vegetated acres cleared, it appears that only 48.2 acres required mitigation. At a two to one (2:1) ratio, the expected compensatory mitigation for the 1999 certificate should have been 96.4 acres. As required by the RWQCB in the 2003, the mitigation ratio for impacting vegetated areas was 2:1.</p>	<p>Regulatory Guidance on Compensatory Mitigation Projects. The Mitigation Plans are required to provide performance standards, which are evaluated by both ACOE and the Regional Board. The objective of the 5-year monitoring requirement is to ensure the functionality of the mitigation site in order for it to be self-sustaining once the success criteria have been established.</p>

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		<p>In reviewing the 2003 certificate, the County estimated 966 acres were contained in the 100 reaches, a 9% increase in total acres from the 1999 certificate. However, there was no data or information regarding environmental impacts to vegetated areas. As such, only inferences can be made for the 2003 certificate. How is the RWQCB, much less the public, supposed to determine the amount of compensatory mitigation required for the 2003 certificate or the 2009 certificate?</p>	
1.20	<p>Heal the Bay and Santa Monica Baykeeper</p>	<p>It is unconceivable that a one-time compensatory mitigation of 62.7 acres could truly mitigate over a decade of clearing and dredging. Using the 1999 number for vegetated acres cleared of 77, because no other data points exist, an estimation of vegetated acres impacted and required mitigation can be calculated. If 77 vegetated acres per year are cleared and there are 15 years involved (starting in 1999 through 2014), then the estimated number of vegetated acres impacted is 1,155 acres. As required by the RWQCB in the 2003, the mitigation ratio for impacting vegetated areas was 2:1. Therefore, the estimated number of compensatory mitigation should be 2,310 acres. Even if the Regional Board uses the less environmentally protective criteria of one time mitigation per five year Certification, then the County would have been obligated to provide approximately 450 acres. Has the County ever produced a yearly estimation of the number of vegetated acres impacted? Has the County ever reported actual vegetated acres impacted for each year of maintenance? For the past 10 years, what has been the total vegetated acres cleared for each year? What is the estimated total</p>	<p>The required compensatory mitigation mitigated for the continuing, periodic, clearing of these reaches with intervening times available to provide more habitat and ability to support beneficial uses. See also response 1.18.</p> <p>The extent of maintenance activities is described in Attachment A for most newly added reaches.</p> <p>This Certification provides for improved reporting and public outreach by the County to make this type of information readily available to the public. See Attachment B, Condition 3.</p>

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		vegetated acres to be cleared by maintenance activities for the coming year?	
1.21	Heal the Bay and Santa Monica Baykeeper	<p>Heal the Bay recommends that all subsequent compensatory mitigation related to the County's 401 Certification application shall:</p> <ul style="list-style-type: none"> • Be based on annual impacts, or during the 5 year Certification period at a minimum; • Be mitigated as close to the impacted reach as possible, with a minimum criteria being that mitigation take place in the same watershed. Examples of needed mitigation projects are removal of armoring in the Malibu Creek watershed, invasive species removal in numerous watersheds, and restoration of the soft bottomed segment of Compton Creek; • Determine a mitigation ratio based on the quality of habitat disturbed. A disturbed, high quality habitat should receive a higher mitigation ration than impacts to already highly disturbed habitat; • Involve the various watershed councils, workgroups, or stakeholders in the implementation of habitat mitigation. 	<p>Comment noted. See response 1.18. The tentative Certification has been revised to require that compensatory mitigation occur in the vicinity of the impact area if possible, or at a minimum within the same watershed as the impacted reach. Additionally, the tentative Certification has been revised to include a new compensatory mitigation requirement for new impacts.</p> <p>A mitigation ratio of 2:1 will be required for all new impacts. This ratio requirement is derived from an average, considering conditions throughout the project area. See revised Attachment B, Conditions 4 and 25.</p>
1.22	Heal the Bay and Santa Monica Baykeeper	Heal the Bay believes the major points highlighted in our letter indicate that an incomplete 401-Certification application was submitted by the County, and therefore should be denied.	Regional Board staff determined that LADPW's application was complete on July 10, 2008.
1.23	Heal the Bay and Santa	Condition #4: What criteria are to be used to determine 'potential'? If no criteria are developed or recommended, then the County could theoretically determine that all reaches must be	The language of Condition 4 has been clarified to make clear that a Feasibility Study is required for

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	Monica Baykeeper	<p>free of vegetation and therefore not conduct one Feasibility Study.</p> <p>However, assuming the County does implement its obligatory one watershed per year—this represents 1% of the 500 reaches (100 reaches times 5 years)—then a minimum of three reaches and a maximum of five reaches would be completed in 5 year timeframe. Does the RWQCB assume that the County be obligated to conduct multiple Feasibility Studies over time?</p> <p>Heal the Bay believes the intent of this condition, developing goals and objectives for reducing the frequency of disturbance, the number of reaches needing “maintenance”, restorative best management practices to reduce sediment and or contaminant loading after ‘maintenance’, or reducing the amount of flow entering these reaches that would allow for greater vegetation, should apply to all 100 reaches</p>	<p>all reaches covered by this Certification. Further, the workplan and the recommendations required by Condition 4 are subject to approval by the Executive Officer so the County cannot dismiss the Feasibility Study.</p> <p>The Regional Board considers a “watershed” as the mainstem and all associated tributaries. For example, in year one the Feasibility Study will be required for the Los Angeles River watershed. All channels and associated tributaries covered under this Certification within the watershed boundary will be included in the Feasibility Study. For the Los Angeles River watershed, this would include Compton Creek, Tujunga Wash, Rio Hondo, Arroyo Seco, etc.</p>
1.24	Heal the Bay and Santa Monica Baykeeper	<p>Condition #11: Best Management Practices should be implemented to “eliminate” impacts to water quality and beneficial uses, not minimize them. Also, the RWQCB should require the use of re-vegetation of impacted areas as a possible BMP to reduce the amount of sediment leaving the site after maintenance is completed.</p>	<p>The proposed project is removal of vegetation and sediment as necessary to ensure flood control. The new condition requiring Feasibility Studies will ensure that, where feasible, some vegetation is retained to preserve habitat and reduce the amount of sediment leaving the site after maintenance is completed. The project, inherently, will have impacts. However, the conditions of the Certification require that these impacts be minimized to the extent feasible, and that new impacts are mitigated for per Attachment B, Condition 25.</p>

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1.25	Heal the Bay and Santa Monica Baykeeper	<p>Condition #13: The sentence in this condition, “all waste and/or dredge material removed...,” is mute because the County asserts in its application statement that there will be no dredge volume (99-011 2009 Renewal—page 11).</p> <p>If the RWQCB believes otherwise, then the County should be required to monitor the sediment that leaves the site to determine proper disposal because a number of reaches are impaired for sediment toxicity and metals.</p>	<p>See response 1.1.</p> <p>In addition, Attachment B, Condition 13 requires that “All waste and/or dredged material removed shall be relocated to a legal point of disposal if applicable...”</p>
1.26	Heal the Bay and Santa Monica Baykeeper	<p>Condition #14: How will the RWQCB ensure that Basin Plan objectives are complied with if no monitoring is required? At a minimum, there should be pre-construction, during construction and post-construction monitoring at those reaches that contain surface water at the time of maintenance. The water quality and sediment monitoring for each reach should be tied to general Basin Plan Standards and TMDL constituents. In addition, constituents of concern for downstream reaches and receiving waters should be monitored based on the ‘tributary rule’.</p>	<p>See response 1.7 and revised tentative Certification, Attachment B, Condition 28.</p>
1.27	Heal the Bay and Santa Monica Baykeeper	<p>Condition #15: What is the timeframe for compliance with this condition? The condition broadly states that “the discharge shall not” impact beneficial uses. The clearing and dredging of earthen bottom channel often requires the denuding of large amounts of acreage prior to the rainy season. While a discharge of material does not take place immediately after the clearing and dredging, a discharge of sediment (contaminated or not) does take place subsequent to the first large rain event.</p>	<p>The condition applies at all times. The objective of the issuance of a Certification is to minimize or avoid impacts. If impacts are anticipated, BMPs are required to minimize those impacts. The Regional Board may consider any non-compliance of this condition as a violation of the Certification. Non-compliance may be considered as any impact beyond those anticipated due to the certified maintenance activities.</p>

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1.28	Heal the Bay and Santa Monica Baykeeper	<p>Condition #18: Please provide a definition of “excessive erosion”? There are a number of tributaries or reaches that are part of this 401-Certification listed as impaired for sediment, specifically Las Virgenes Creek, Malibu Creek, Medea Creek, and Triunfo Canyon Creek. As such, clearing and dredging activities in earthen bottom habitats will likely lead to increased downstream sedimentation after a rain event at these locations. In these cases, it does not matter if the erosion is excessive or not.</p>	<p>“Excessive erosion” is any erosion which Regional Board staff determines is detrimental to beneficial uses. BMPs are required in order to avoid water quality impacts; beyond the anticipated impacts from the actual maintenance activities. Maintenance in the channels identified by the commenter is necessary to prevent potential flooding during storms, which may cause damage and public safety hazards downstream. Vegetation clearing in these reaches will be based upon the results and recommendations of the Feasibility Study that will be conducted for the Malibu Creek watershed.</p>
1.29	Heal the Bay and Santa Monica Baykeeper	<p>Condition #19: The RWQCB should require the County to differentiate the types of habitat impacted? Is all riparian habitat the same in terms of quality and diversity? Also, more information must be collected and noted in monitoring reports as to the fauna and flora diversity of impacted areas.</p>	<p>See response 1.16.</p>
2.1	Friends of the Los Angeles River (FOLAR)	<p>The Friends of the Los Angeles River categorically opposes the renewal of the 401 Water Quality Certification permit to the Los Angeles County Department of Public Works that gives the DPW permission to bull-doze Reach 24 (Compton Creek) and Reach 25 (Long Beach estuary) of the Los Angeles River.</p> <p>This is especially disturbing since hand clearing is a much less destructive method and employed in many of the other reaches called out in the permit.</p>	<p>Comment noted. The tentative Certification includes a new condition to conduct Feasibility Studies, the intent of which is to find a balance between necessary channel maintenance for flood control and habitat preservation. The tentative Certification requires LADPW to conduct the first Feasibility Study in the Los Angeles River watershed, which includes Compton Creek and the Los Angeles River. A workplan for the Feasibility</p>

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			<p>Study must be submitted to the Regional Board’s Executive Officer for approval within 6 months of Certification. Additionally, where sensitive species are present, maintenance will be postponed or conducted by hand. (See Attachment A, “Background” and Condition 15, and Attachment B, Conditions 4 and 19.)</p>
2.2	<p>Friends of the Los Angeles River (FOLAR)</p>	<p>It is long overdue for the Dept. of Public Works to stop referring to these riparian corridors as flood control channels, and start using the term “natural bottom” to describe the watercourses they are seeking a five year permit to destroy.</p>	<p>The tentative Certification does recognize these earthen bottom channels as differing from fully concrete-lined channels and includes a number of additional conditions to minimize impacts and preserve habitat and aquatic species, while allowing for the necessary maintenance of these channels for flood protection. See Attachment A, “Background” and Condition 15, and Attachment B, Conditions 4 and 19, among others.</p>
2.3	<p>Friends of the Los Angeles River (FOLAR)</p>	<p>We insist that each of the riparian zones Public Works is seeking permission to destroy be examined by biologists and other appropriate scientists reporting not just to the Department of Public Works, but also to the public in a public hearing.</p>	<p>The Regional Board will be requiring a Feasibility Study, including biological assessments, in order to analyze where there is a possibility for vegetation to remain in these reaches. See Attachment B, Condition 4. See also response 1.7 and 1.8.</p> <p>In addition, this Certification includes new reporting requirements for the County to make this information readily available to the public and stakeholders. See Attachment B, Condition 3.</p>

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2.4	Friends of the Los Angeles River (FOLAR)	The burden of proof needs to be on Public Works to prove that the damage done to each river habitat outweighs the need for habitat protection and restoration, and the public needs to be involved in this decision.	<p>Comment noted.</p> <p>LADPW is responsible for providing flood control in channels throughout Los Angeles County to ensure public safety. Adequate channel capacity must be maintained in order to avoid any loss of life or property due to flood events. The Certification recognizes the need for maintenance clearing of earth-bottom channels for flood protection, but establishes numerous conditions to minimize the impacts of maintenance clearing and preserve aquatic and riparian habitat to the extent possible while still providing adequate channel capacity for public safety purposes.</p>
2.5	Friends of the Los Angeles River (FOLAR)	What official studies have been done to show we need complete removal of vegetation in reaches 24 and 25? What official studies have been requested by the State Water Quality Control Board to show that bulldozing habitat doesn't impact TMDLs for Water Quality downstream? Has there been sediment testing of the soils that wash into the Los Angeles River and ocean after these reaches have been cleared?	<p>The Feasibility Studies required by Attachment B, Condition 4 of the tentative Certification will provide information regarding how much vegetation must be removed, and how much can be retained, to achieve the necessary channel capacity for flood control purposes.</p> <p>In addition, see response 1.14 regarding compliance with TMDLs.</p>
2.6	Friends of the Los Angeles River (FOLAR)	These reaches have beneficial uses, REC 1, REC 2, warm fresh water habitat. How does issuing a blanket permit ensure the protection of these uses and that the objectives for improvement within the Basin Plan are being upheld?	This Certification is not a "blanket" permit, but includes those engineered, earthen bottom reaches necessary for flood protection. This Certification will allow maintenance activities necessary for flood protection, while ensuring impacts to beneficial uses and water quality objectives are

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			minimized and mitigated for. See Attachment A, Condition 15 and Attachment B, Conditions 4, 7, 8, 15, 19, 23, 24 and 25.
2.7	Friends of the Los Angeles River (FOLAR)	What hydrological modeling data substantiates bull dozing as a Best Management Practice (BMP) for this type of clearing? Bull-dozing the vegetation in these areas goes against objectives outlined in the State’s Basin Plan in addition to revitalization projects planned by various agencies throughout the watershed including the Los Angeles County, Department of Public Works. Friends of the Los Angeles River particularly wants to point out that at the same time the County Department of Public Works is hiring a consultant to oversee what is purportedly a study to begin the restoration of Compton Creek, it is seeking a five year permit to destroy it. At the very least, we insist that the 401 permit process be suspended on Compton Creek and the Lower Los Angeles River until the County’s own restoration plan is complete.	The tentative Certification has been revised to include a consideration of restoration plans among other things in the Feasibility Study. See Attachment B, Condition 4. Additionally, the Los Angeles River watershed, including Compton Creek and the lower Los Angeles River, will be the first watershed for which LADPW must conduct a Feasibility Study. See responses 1.4 and 2.1. Due to the importance of maintaining adequate flood protection, staff does not recommend removing Compton Creek or the lower Los Angeles River from the Certification.
2.8	Friends of the Los Angeles River (FOLAR)	In light of the current movement to revitalize wetland habitat within L.A. County and improve disparities in the amount of green space for citizens, how is a onetime 62.7 acre mitigation plan in the Tujunga Wash watershed appropriate for the continual destruction of river habitat within the Long Beach and Compton Creek communities year after year?	See responses 1.18 and 1.20.
2.9	Friends of the Los Angeles	Flood control management practices within the Los Angeles County Department of Public Work’s needs to be better	Comment noted. See responses 1.14 and 2.6.

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	River (FOLAR)	integrated into watershed management protection programs and projects. In the very least everything they do to water courses in the Los Angeles River watershed, no matter how impaired, must function as tools to achieve the goals and objectives of the State's Basin Plan including TMDLs. The day is ending when the County Dept. of Public Works can call the work they do in the River system "improvements" when what they do is destroy.	