



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Los Angeles Regional Water Quality Control Board

December 10, 2018

Katie Nichols
Orange County Coastkeeper
3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7017 1450 0002 1559 2403

Dear Ms. Nichols:

RE: CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER FOR THE COMMUNITY OLYMPIA OYSTER RESTORATION IN THE JACK DUNSTER MARINE RESERVE (WDID FILE #4WQC40118052)

Enclosed please find a Clean Water Act Section 401 Water Quality Certification and Order, authorized by Los Angeles Regional Water Quality Control Board Executive Officer, Deborah J. Smith. This Order is issued to Orange County Coastkeeper for the Community Olympia Oyster Restoration in the Jack Dunster Marine Reserve (Project). Attachments A through C of the Enclosure are also part of the Order.

This Order is issued in response to an application submitted by the Orange County Coastkeeper for proposed Project discharges to waters of the state, to ensure that the water quality standards for all waters of the state impacted by the Project are met. You may proceed with your Project according to the terms and conditions of the enclosed Order.

If you require further assistance, please contact Valerie CarrilloZara by phone at (213) 576-6759 or by email at Valerie.CarrilloZara@waterboards.ca.gov

You may also contact me by phone at (213) 576-6785 or by email at LB.Nye@waterboards.ca.gov

Sincerely,

LB Nye
Senior Environmental Scientist
Section 401 Certification and Wetlands Unit
Los Angeles Water Quality Control Board

Enclosures (1): Order for Community Olympia Oyster Restoration, File No. 18-052

cc: [Via email only] (w/ enclosure):

Colin Kelly
Orange County Coastkeeper

Elizabeth Payne
CWA Section 401 WQC Program
Division of Water Quality
State Water Resources Control Board

Justin Pearce
U.S. Army Corps of Engineers
Regulatory Branch, Los Angeles District

Melissa Scianni
US EPA, Region 9

Cassidy Teufel
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802

Los Angeles Regional Water Quality Control Board

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

Effective Date: December 7, 2018

Program Type: Restoration

Reg. Meas. ID:	422332
Place ID:	848594
WDID:	4WQC40118052
NWP:	27
USACOE#:	SPL-2011-00381-JWM
R4 File No	18-052

Project Type: Ecological Aquatic/Stream/Habitat Restoration

Project: Community Olympia Oyster (Project)

Applicant: Orange County Coastkeeper

Applicant Contact: Katie Nichols
3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone: (714) 850-1965
Email: Katie@coastkeeper.org

Applicant's Agent: Orange County Coastkeeper
Colin Kelly
3151 Airway Avenue, Suite F-110
Costa Mesa, CA 92626
Phone: (714) 850-1965
Email: colin@coaskeeper.org

Water Board Staff: Valerie CarrilloZara
Engineering Geologist
320 W. 4th Street, Suite 200
Los Angeles, CA 90013
Phone: (213) 576-6759
Email: Valerie.CarrilloZara@waterboards.ca.gov

Water Board Contact Person:

If you have any questions, please call Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) Staff listed above or (213) 576-6600 and ask to speak with the Water Quality Certification and Wetlands Unit Program Manager.

Table of Contents

I. Order.....3

II. Public Notice3

III. Project Purpose.....3

IV. Project Description3

V. Project Location4

VI. Project Impact and Receiving Waters Information4

VII. Description of Direct Impacts to Waters of the State.....5

VIII. Compensatory Mitigation.....5

IX. California Environmental Quality Act (CEQA).....5

X. Petitions for Reconsideration.....5

XI. Fees Received5

XII. Conditions5

XIII. Water Quality Certification..... 11

- Attachment A** Maps
- Attachment B** Signatory Requirements
- Attachment C** Report and Notification Requirements

I. Order

This Clean Water Act (CWA) section 401 Water Quality Certification action and Order (Order) is issued at the request of Orange County Coaskeeper (herein after Permittee) for the Project. This Order is for the purpose described in the application and supplemental information submitted by the Permittee. The application was received on May 21, 2018. The application was deemed complete on September 5, 2018.

II. Public Notice

The Los Angeles Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from May 23, 2018 to the effective date of Order. The Los Angeles Water Board did not receive any comments during the comment period.

III. Project Purpose

The purpose of the Project is to expand the 2012 Olympia oyster bed habitat in Alamitos Bay via a community-based restoration and education program.

IV. Project Description

The Orange County Coastkeeper, California State University Long Beach (CSULB), California State University Fullerton (CSUF) and the City of Long Beach (collectively the "Project Proponents"), along with KZO Education, implemented a native Olympia oyster restoration project in Alamitos Bay designed to restore an important estuarine species and integrate the community into the restoration efforts. The multi-year project is located at the Jack Dunster Marine Reserve in Long Beach, California.

The Jack Dunster Marine Reserve (JDMR) is a 2.7 acre site containing 1.5 acres of land and 1.2 acres of shallow water along the northwesterly side of the Los Cerritos Channel adjacent to the Rowing Center at Marine Stadium. The JDMR was selected as the target location because it offers educational opportunities to the public, yet provides mudflat habitat in a protected area with no public access. The public could observe the community bed during low tides via a meandering pathway throughout the reserve, as well as gangway access to two floating observation platforms and one floating dock. The site is protected from the potentially erosive currents and boat wakes in the Los Cerritos Channel by a floating breakwater. The protected nature of the JDMR provided ideal conditions for the construction of an oyster bed.

Oyster Bed Construction – In June 2012, the Project Proponents constructed a 2m x 30m oyster bed under ACOE Aquatic Restoration Nationwide Permit 27 (Los Angeles Water Board File No. 12-026). The oyster bed was established on the intertidal mudflat centered at a tidal elevation of +0.4m MLLW using loose, dead *Crassostrea gigas* oyster shell applied at approximately 8cm thickness. Shell material was transported onto the mudflat and deployed by community volunteers and students. To minimize footprint impact on the mudflat habitat during construction, plastic lattice trays were placed extending along the mudflat from the observation dock to the end of the plot where the bed was to be built. Volunteers and students then walked on top of the line of trays and formed a chain for passing shell. A control plot was also established.

Shell Percent Cover- Prior to oyster bed construction, surveys were conducted for shell percent cover (e.g., dead shell, *Mytilus* spp., *Ostrea lurida*) on the area where the oyster bed was to be constructed and the control. Surveys were again conducted at 6, 12, 18, and 24 months after bed construction. The purpose of these percent cover surveys was to assay the

loss of clean shell available on the surface for spat to attach because when the shells are fouled with sediments, they can no longer serve as adequate "cultch."

Augmenting the Bed- After conducting surveys of shell percent cover in June 2013, approximately 12 months after construction of the shell bed (that resulted in 100% oyster shell cover), the shell percent cover was reduced to 28% on the bed and remained 0% on the control plot. Excavations of the bed revealed significant sediment deposition. In addition, two "drainage" channels divided the previously contiguous bed into three sections. Therefore, the Project Proponents augmented the three separate sections with 4.3 cubic yards of additional shell (building the "New Bed") with the help of community volunteers and left the drainage channels in place. Augmentation occurred only on the seaward edge of the bed at approximately +0.2m MLLW.

After augmentation shell percent cover decline was not as severe on the New Bed, with shell cover at 82% in January 2014 and 79% in June 2014. In fact, there was moderate shell percent cover gain on the old section of the bed with percent shell cover increasing from 28% in June 2013 to 42% in June 2014.

This Project seeks to further augment the existing oyster bed by bolstering areas damaged by sedimentation and/ or erosion with additional oyster shell. Using hand crews, the Project Proponents will place nonviable oyster shells in the restoration area and will also place young, native, *Ostrea lurida* within the restoration area up to several times a year. The amount of oyster shell to be placed will be less than or equal to the 9.4 cubic yards authorized in 2012.

V. Project Location

<u>Latitude</u>	<u>Longitude</u>
33.76206	-118.1202
33.76195	-118.1200
33.76251	-118.1194
33.76240	-118.1193

Maps showing the Project location are found in Attachment A of this Order.

VI. Project Impact and Receiving Waters Information

The Project is located within the jurisdiction of Los Angeles Regional Water Quality Control Board. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the applicable water quality control plan (Basin Plan) for the region and other plans and policies which may be accessed online at:

http://www.waterboards.ca.gov/plans_policies/. The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies.

Receiving Water: Alamitos Bay
(Hydrologic Unit Code: 180701060702)

Designated Beneficial Uses: IND, NAV, REC-1, REC-2, COMM, EST, MAR, WILD, RARE, SHELL, WET

VII. Description of Direct Impacts to Waters of the State

Total Project fill/excavation quantities for all impacts are summarized in Table 1.

Aquatic Resource Type	Temporary Impact ¹			Permanent Impact					
				Physical Loss of Area			Degradation of Ecological Condition Only		
	Acres	CY ²	LF	Acres	CY	LF	Acres	CY	LF
Ocean/bay/estuary	0.02								

VIII. Compensatory Mitigation

No compensatory mitigation is required for these impacts because the impacts are minor and improve aquatic habitat and support of the beneficial uses.

IX. California Environmental Quality Act (CEQA)

The Los Angeles Water Board has determined that the Project is exempt from review under CEQA pursuant to California Water Code of Regulations, title 14, section 15061. Specifically, the issuance of this Order and the activities described herein meet the exemption criteria under California Code of Regulations title 14, section(s) 15304 *Minor Alterations to Land*. Additionally, the Los Angeles Water Board concludes that no exceptions to the CEQA exemption apply to the activities approved by this Order.

X. Petitions for Reconsideration

Any person aggrieved by this action may petition the State Water Board to reconsider this Order in accordance with California Code of Regulations, title 23, section 3867. A petition for reconsideration must be submitted in writing and received within 30 calendar days of the issuance of this Order.

XI. Fees Received

An application fee of \$400 was received on August 24, 2018. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3), and was calculated as Ecological Restoration and Enhancement Projects with the dredge and fill fee calculator.

XII. Conditions

The Los Angeles Water Board has independently reviewed the record of the Project to analyze impacts to water quality and designated beneficial uses within the watershed of the Project. In accordance with this Order, the Permittee may proceed with the Project under the following terms and conditions:

A. Authorization

Impacts to waters of the state shall not exceed quantities shown in Table 1.

¹ Includes only temporary direct impacts to waters of the state and does not include upland areas of temporary disturbance which could result in a discharge to waters of the state.

² Cubic Yards (CY); Linear Feet (LF)

B. Reporting and Notification Requirements

Requirements for the content of these reporting and notification types are detailed in Attachment C, including specifications for photo and map documentation during the Project. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment C, which must be signed by the Permittee or an authorized representative.

1. Project Reporting

- a. **Annual Reporting:** The Permittee shall submit an Annual Report each year on the anniversary of Project effective date. Annual Reporting requirements are detailed in Attachment C. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the Permittee.

2. Project Status Notifications

- a. **Request for Notice of Completion of Discharges Letter:** The Permittee shall submit a Request for Notice of Completion of Discharges Letter following completion of active Project construction activities, including any required restoration and permittee-responsible mitigation. This request shall be submitted to the Los Angeles Water Board staff within thirty (30) days following completion of all Project construction activities. Upon acceptance of the request, Los Angeles Water Board staff shall issue a Notice of Completion of Discharges Letter to the Permittee which will end the active discharge period and associated annual fees.
- b. **Request for Notice of Project Complete Letter:** The Permittee shall submit a Request for Notice of Project Complete Letter when construction and/or any post-construction monitoring is complete,³ and no further Project activities will occur. This request shall be submitted to Los Angeles Water Board staff within thirty (30) days following completion of all Project activities. Upon approval of the request, the Los Angeles Water Board staff shall issue a Notice of Project Complete Letter to the Permittee which will end the post discharge monitoring period and associated annual fees.

3. **Conditional Notifications and Reports:** The following notifications and reports are required as appropriate.

- a. **Accidental Discharges of Hazardous Materials⁴**

³ Completion of post-construction monitoring shall be determined by Los Angeles Water Board staff and shall be contingent on successful attainment of restoration and mitigation performance criteria.

⁴ "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Saf. Code, § 25501.)

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Wat. Code, § 13271):

- i. As soon as (A) Permittee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures then:
 - first call – 911 (to notify local response agency)
 - then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
 - Lastly follow the required OES procedures as set forth in:
[http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill Booklet Feb2014 FINAL BW Acc.pdf](http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill%20Booklet%20Feb2014%20FINAL%20BW%20Acc.pdf)
 - ii. Following notification to OES, the Permittee shall notify Los Angeles Water Board, as soon as practicable (ideally within 24 hours). Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
 - iii. Within five (5) working days of notification to the Los Angeles Water Board, the Permittee must submit an Accidental Discharge of Hazardous Material Report.
- b. Violation of Compliance with Water Quality Standards:** The Permittee shall notify the Los Angeles Water
- c.** Board of any event causing a violation of compliance with water quality standards. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
- i. Examples of noncompliance events include: lack of storm water treatment following a rain event, discharges causing a visible plume in a water of the state, and water contact with uncured concrete.
 - ii. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.
- d. Modifications to Project**
Project modifications may require an amendment of this Order. The Permittee shall give advance notice to Los Angeles Water Board staff if Project implementation as described in the application materials is altered in any way or by the imposition of subsequent permit conditions by any local, state or federal regulatory authority by submitting a Modifications to Project Report. The Permittee shall inform Los Angeles Water Board staff of any Project modifications that will interfere with the Permittee's compliance with this Order.
- e. Transfer of Property Ownership:** This Order is not transferable in its entirety or in part to any person or organization except after notice to the Los Angeles Water Board in accordance with the following terms:
- i. The Permittee must notify the Los Angeles Water Board of any change in ownership or interest in ownership of the Project area by submitting a Transfer of Property Ownership Report. The Permittee and purchaser must

sign and date the notification and provide such notification to the Los Angeles Water Board at least 10 days prior to the transfer of ownership

- ii. Until such time as this Order has been modified to name the purchaser as the permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order.

C. Standard

1. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330, and California Code of Regulations, title 23, chapter 28, Article 6 commencing with sections 3867-3869, inclusive. Additionally, the Los Angeles Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Permittee, if the Los Angeles Water Board determines that: the Project fails to comply with any of the conditions of this Order; or, when necessary to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) or federal Clean Water Act section 303 (33 U.S.C. § 1313). For purposes of Clean Water Act section 401(d), the condition constitutes a limitation necessary to assure compliance with water quality standards and appropriate requirements of state law.
2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations and owed by the Permittee.
4. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. For purposes of Clean Water Act, section 401(d), the applicability of any state law authorizing remedies, penalties, processes, 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 Order.

D. General Compliance

1. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The Permittee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.
2. Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plans by any applicable Los Angeles Water Board or any applicable State Water

Board (collectively Water Boards) water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.

3. In response to a suspected violation of any condition of this Order, the Los Angeles Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the Water Boards deem appropriate, provide that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The additional monitoring requirements ensure that permitted discharges and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.
4. The Permittee must, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support this Order; and all subsequent submittals required as part of this Order. The conditions within this Order and Attachments supersede conflicting provisions within Permittee submittals.
5. This Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project. For purposes of Clean Water Act, section 401(d), this condition constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements of state law.

E. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment B of this Order.
2. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). If a "take" will result from any act authorized under this Order held by the Permittee, the Permittee must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Permittee is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.
3. The Permittee shall grant Los Angeles Water Board staff, or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
 - a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.
 - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.
 - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
 - d. Sample or monitor for the purposes of assuring Order compliance.

4. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the Project site for the duration of this Order. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors.
5. A copy of this Order must be available at the Project site(s) during construction for review by site personnel and agencies. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.
6. This Order shall expire **five (5) years** from date of this Order. The Applicant shall submit a complete application at least 90 days prior to termination of this Order if renewal is requested.

F. Best Management Practices

1. The Permittee shall access the intertidal oyster restoration site only from riprap footpath adjacent to the public viewing docks within JDMR without the use of motorized equipment of any kind inside JDMR (to avoid disturbance of California least terns);
2. The Permittee shall not traverse vegetated areas of the JDMR, to avoid trampling nesting habitat;
3. The Permittee shall work only at intertidal depths between 2 ft MLLW and -0.5 ft MLLW and stay at least 10 meters away from land actively used by California least terns or light-footed clapper rails;
4. The Permittee shall avoid direct or indirect contact with native eelgrass, except during twice-yearly eelgrass monitoring events of 1-2 days duration as required by the California Coastal Commission, and in full compliance with the National Marine Fisheries Service's *Southern California Eelgrass Mitigation Policy* Revision 11. Any adverse impacts to eelgrass due to monitoring or restoration activities will be mitigated at a minimum of 1.2:1 ratio on-site and in accordance with the *Southern California Eelgrass Mitigation Policy* Revision 11;
5. The project shall comply with the local regulations associated with the Los Angeles Water Board's Municipal Stormwater Permit issued to the City of Long Beach under NPDES No. CAS004003 and Waste Discharge Requirements Order No. R4-2014-0024.

- G. Ecological Restoration and Enhancement:** The quantity of waters of the state enhanced by the Project is shown in Table 2.