



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
Secretary for  
Environmental Protection

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Arnold Schwarzenegger  
Governor

October 18, 2010

Nardy Khan  
Orange County Public Works  
300 North Flower Street  
Santa Ana, CA 92702

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE FAIRVIEW CHANNEL (OCFCD FACILITY D04) SLOPE EROSION REPAIR PROJECT , DOWNSTREAM OF PLACENTIA AVENUE, COSTA MESA, ORANGE COUNTY (ACOE REFERENCE NO. NOT AVAILABLE) (SARWQCB REFERENCE NO. 302010-41)**

Dear Ms. Khan:

On September 16, 2010, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the Fairview Channel (OCFCD Facility D04) slope erosion repair project in the city of Costa Mesa, Orange County. The application was deemed complete on September 29, 2010. This letter responds to the request from Orange County Public Works 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:**

Repair of 150 linear feet of the south slope of Fairview Channel (OCFCD Facility D04), downstream of Placentia Avenue. The repair consists of the placement of earthen fill and rock riprap. The earthen fill quantity is estimated at 280 cubic yards and the rock riprap is estimated to be 430 tons (270 cubic yards). Rock will be placed on the slope and the toe of the slope, but not on the existing earthen invert. A backhoe operating from the maintenance road will be used to place the earthen fill and the rock riprap. No equipment, other than a hand held vibratory compacting plate, will enter the channel.

Portions of the adjacent access areas and roads will be used for equipment and materials staging. The project will take place within Section 8 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Orange, California*, 7.5-minute topographic quadrangle map (33°40'5" N, -117°56'33" W).

*California Environmental Protection Agency*



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Receiving water: Fairview Channel, tributary to the Santa Ana River

Fill area: 0.02 acre of permanent impact to streambed habitat (150 linear feet)

Dredge volume: None

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 13.

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.

**Off-site Water Quality Standards Mitigation Proposed:**

- An in-lieu fee will be paid to the Santa Ana Watershed Association towards the eradication of 0.04 acre of invasive species within and adjacent to waters of the State in the Upper Santa Ana Watershed. The fee payment includes funding for a minimum of 6-years of follow-on maintenance and the completion of biological condition assessments, using published and generally accepted methods (e.g., California Rapid Assessment Method) for the purpose of evaluating the incremental improvement to the eradication project area.

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 Game will ensure those impacts are mitigated to an acceptable level.

Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2009-0030, commonly known as the Orange County Municipal Storm Water Permit. 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 and Land Disturbance Activities, and with Water Quality Order No. 2009-0009-DWQ, including the preparation of a SWPPP, if required.

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 conditions contained in any other permit or approval for this project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including imposition of administrative civil liability.



You are performing this repair work under Nationwide Permit No. 13 from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), Orange County Public Works filed a CEQA Guidelines Section 15301 "Class 1" Categorical Exemption on September 14, 2010, 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 flood control channel configuration and uses will remain unchanged and the proposed project will not expand the channel beyond its original design volume. The Regional Board has considered the County's Categorical Exemption in the issuance of this Certification and 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 Clean Water Act Section 404 Nationwide Permit No. 13.
2. A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work.
3. The off-site water quality standards mitigation proposed shall be carried out in a timely manner.
4. Evidence of the fee payment must be provided to the Executive Officer prior to the discharge of fill or by November 18, 2010, whichever occurs first.
5. Materials must not be placed in a manner where they could be discharged to surface waters except as authorized by this certification. In the event that trash or debris is discharged to surface waters, the discharger must recover the material.
6. The project proponent shall utilize Best Management Practices 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.
7. 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.
8. 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.



9. 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.
10. Project-related activities must not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in the receiving waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
  - a. If natural turbidity is between 0 and 50 NTU, the maximum increase must not exceed 20% of the measured natural turbidity.
  - b. If natural turbidity is 50 to 100 NTU, the increase must not exceed 10 NTU.
  - c. If natural turbidity is greater than 100 NTU, the maximum increase must not exceed 10% of the measured natural turbidity.

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.

Should there be any questions, please contact Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt Berchtold  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Stephen Estes  
Department of Fish and Game – Russell Barabe  
State Water Resources Control Board, Office of Chief Counsel – David Rice  
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme  
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

