



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

September 13, 2010

Dean Kirk
The Irvine Company
550 Newport Center Drive
Newport Beach, CA 92660

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR ROUTINE MAINTENANCE OF THE BEE CANYON DRAINAGE CHANNEL, CITY OF IRVINE, ORANGE COUNTY (ACOE REFERENCE NO. 2010-00682-RJV) (SARWQCB PROJECT NO. 30-2010-23)

Dear Mr. Kirk:

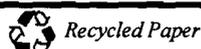
On July 5, 2010, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification"), submitted on your behalf by Glenn Lukos Associates, Inc., for routine maintenance of the Bee Canyon Drainage Channel located within Planning Area 6 in the City of Irvine. The project consists of implementation of activities identified in the *Bee Canyon Drainage Channel VTTM 16814 and TR 17114 Operation and Maintenance Manual* (O&M Manual), prepared by Stantec Consulting Services, Inc., dated May 2010, in order to allow the Bee Canyon Drainage Channel (Channel) to function at its original flood control design capacity and to ensure public safety. Routine maintenance specified in the O&M Plan includes periodic sediment removal, trash and debris removal, repair of existing channel structures and access roads, and vegetation management, including removal. 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) and subsequent Basin Plan amendments ("Basin Plan"):

Project description:

The project is routine operations and continued maintenance of the subject channel. Specific activities include:

- Sediment removal within the Channel that will be scheduled when surveys indicate that sediment accumulation has exceeded a depth of one foot above the design invert.
- Any invasive plants, and woody plants with a trunk diameter of one inch or greater, will be removed from the Channel invert or side walls. Any dense groupings of invasive, herbaceous, or riparian vegetation that exceeds 18 inches in height from the Channel invert, with a density that occupies more than 20-percent of the

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Channel invert and/or sidewall area, will be maintained in the aforementioned manner.

- Maintenance of riprap and gabion structures (this includes removal of all vegetation within the riprap erosion control areas to provide maximum hydraulic capacity of the channel at gabion drop structures and culvert inlet and outlet structures);

Other routine maintenance activities associated with the Channel include:

- Repairing access roads, eroded basin slopes and embankments, spillways, down drains, trash barriers, outlet towers, inlet chutes, fencing, facing slabs, buildings and their appurtenances. These activities are included under this Certification only if any impacts are within the same footprint of the structure or facility;
- Removing ponded water, trash, and invasive vegetation/weeds for vector control purposes (in compliance with requirements for vector control); and
- Vector control spraying.

The project is located in the city of Irvine, in Orange County, within Section 34 of Township 5 South, Range 8 West, of the U.S. Geological Survey *El Toro, California*, 7.5-minute topographic quadrangle map (33.70119 N/-117.71239. W).

Receiving water:	Bee Canyon Drainage Channel
Fill area:	0.50 acres (2,925 linear feet) of temporary impact to wetland habitat.
Dredge volume:	N/A
Federal permit:	U.S. Army Corps of Engineers Nationwide Permit No. 31

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Sediment excavation will be scheduled outside of the avian nesting/breeding season and prior to the Southern California annual rainy season. Except in emergency situations, sediment removal shall be completed outside of the avian nesting / breeding season, which begins on March 15th and ends on September 15th.
- The Santa Ana Regional Water Quality Control Board's (SARWQCB) 401 Coordinator will be notified in writing within 10 days of emergency vegetation removal.
- To sustain interim habitat values and maintain the habitat linkage between the wetland and riparian mitigation sites, located south of Portola Parkway, and NCCP/HCP open space located on the north side of the SR-241 Tollroad, no herbicides will be used on native vegetation in the Channel.
- Selective use of herbicides will be carried out to control invasive exotic vegetation within the Channel. Herbicides used will not be deleterious to fish and wildlife resources, and water quality.
- Care will be taken when using herbicides on invasive exotics to limit overspray that could affect native vegetation.
- The Channel will be allowed to become naturally vegetated with riparian/wetland vegetation between maintenance events.
- Motorized equipment shall not be maintained or parked within or near any stream crossing or channel in such a manner that petroleum products or other pollutants from the equipment can enter these areas under any flow conditions.

Offsite Water Quality Standards Mitigation Proposed:

- The applicant will provide a one-time compensatory mitigation of 0.50 acre of wetlands. The 0.50 acre impact would be mitigated downstream from the area of impact within the Planning Area 18 mitigation site, which consists of an overall 5.9-acre wetland and riparian area. This mitigation site is being installed in the Fall of 2010, therefore the mitigation will be implemented prior to or concurrently with the impacts to the Channel.

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. This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 2009-0009 DWQ, is required, as is development of a SWPPP to control the discharge of pollutants from the project site.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game.

Pursuant to the California Environmental Quality Act ("CEQA"), the City of Irvine approved an Environmental Impact Report (EIR) for the Northern Sphere, which included Planning Area 6 and therefore construction of this Channel, on June 4, 2002. Pursuant to California Code of Regulations, Title 14, Section 15096, subdivision (f), the Regional Board is required to consider an EIR or MND prepared by the lead agency in determining whether to approve a Section 401 Certification, must consider the environmental effects of the project as reported in the associated EIR prior to reaching a decision on the project. The responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project. As required by Section 15096, the Regional Board has considered the EIR prepared for the proposed project, and information provided subsequently by the applicant in approving this Certification.

In the issuance of this Certification, the Executive Officer has considered those sections of the City's Environmental Impact Report that relate to water quality. Based on the mitigation proposed and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. The Regional Board independently finds that changes or alterations have been required or incorporated into the project that 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 shall incorporate this Certification into the O&M Manual. Any subsequent amendments must be maintained on site as a denoted element of the O&M Manual
2. The applicant shall fully implement the Planning Area 18 Mitigation Plan in order to provide compensatory mitigation for impacts of 0.50-acre of wetland habitat.
3. Vegetation removal will be scheduled outside of the avian nesting/breeding season and prior to the Southern California annual rainy season. Except in emergency situations, sediment removal shall be completed outside of the avian nesting / breeding season, which begins on March 15th and ends on September 15th.



4. For a period of five (5) years, the applicant must annually conduct a California Rapid Assessment Method (CRAM) assessment, or an equivalent functional assessment, of the mitigation site, to determine the overall success of the mitigation for the impacted site(s).
5. The applicant shall submit an annual report, due on or before December 31st, to the SARWQCB for a period of five years.
 - a. The annual report shall document operations and maintenance activities conducted during the prior year that are subject to this certification.
 - b. The annual report shall document implementation and success of the water quality standards mitigation measures that have been proposed.
 - c. Results of CRAM studies or other functional assessment shall be submitted with the annual report. CRAM data shall be reported in a format agreed upon or specified by Board staff.
 - d. If the water quality standards mitigation measures proposed have not been properly implemented and maintained, or are not meeting expected success criteria, a report to that effect shall be submitted, and corrective measures proposed. Corrective measures must be approved in consultation with SARWQCB staff and other appropriate resource agencies, and implemented upon approval.
6. SARWQCB staff and other authorized representatives shall be allowed:
 - a. Entry upon premises where routine maintenance will occur, or where records are kept under the requirements of this Certification and applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification and applicable waste discharge requirements;
 - c. To inspect any facility, equipment (including maintenance equipment), practices, or operations related to the routine maintenance of the Channel; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification and applicable waste discharge requirements.
7. This Certification is transferable only upon written notice to the Executive Officer. The notice must include written acknowledgement of this Certification by the transferee's authorized representative.
8. The applicant must comply with the conditions and provisions of the Corps' Clean Water Act Section 404 permit(s).
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.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality standards 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 SARWQCB may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

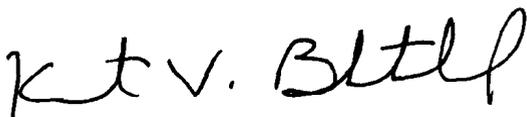
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401 (d) of the Clean 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

cc (via electronic mail):

- U. S. Army Corps of Engineers, Los Angeles Office – R.J. Van Sant
- State Water Resources Control Board, OCC – David Rice
- State Water Resources Control Board, DWQ – Water Quality Certification Unit
- California Department of Fish and Game – Michael Flores
- U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR-8

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