CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

January 26, 2016

Mr. Chris Miller
City of Newport Beach
829 Harbor Island Drive
Newport Beach, CA 92660

CMiller@newportbeachca.gov

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE GRAND CANAL MAINTENANCE DREDGING & SEAWALL AUGMENTATION SUPPORT PROJECT, CITY OF NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA (USACE REFERENCE NO. SPL-2015-00628-GS) (SARWQCB PROJECT NO. 302015-24)

Dear Mr. Miller:

On November 23, 2015, we received from the City of Newport Beach (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to perform for a five year period, an annual maintenance dredging program in the Grand Canal in order to maintain long-term navigational access. The dredged material will be used to augment the Canal's aging seawalls. The Project is situated along the Grand Canal located in the City of Newport Beach, western Orange County. The Project will result in 3.4 acres of temporary impacts to jurisdictional waters. The Applicant has submitted a filing fee of $600.00, which satisfies a portion of the $20,850.00 Project fee requirement for consideration of a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the most current iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, Section 2200 (a) (3) in effect when the application was submitted.

This letter responds to your request for Certification that the proposed Project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) (Basin Plan) and subsequent Basin Plan amendments:

Project Description:	The Applicant will conduct annual maintenance dredging along the centerline of the Grand Canal to address navigation constraints.

The duration of the Project will be five years. The current depth in the center of the canal ranges from -4 feet to +1 foot mean lower low water (MLLW). This condition results in restricted access to the canal such that, during low tides, boats become grounded in the sediment.
The proposed post-dredge depth is - 2 feet MLLW, which will allow non-motorized vessel access (kayaks, stand up paddle boards, etc.) during all tidal cycles. Motorized vessels would have full access to the canal, except during extreme low tides, when access would be limited.

A maximum of 5,000 cubic yards will be dredged annually from the canal. Dredging will likely be conducted using a crane and clamshell bucket or an excavator mounted on a barge. The material dredged from the canal will be positioned along the interior bases of the seawalls at the same elevations for reinforcement and to avoid the need to construct permanent structures at the site.

The work will take place within Section 35 of Township 6 South, Range 10 West of the U.S. Geological Survey *Newport Beach* 7.5 minute topographic quadrangle map (33° 36' 54" N, -117° 54' 23" W).

Receiving water: Lower Newport Bay has designated beneficial uses (existing or potential) that include: contact recreation (REC1), non-contact recreation (REC2), wildlife habitat (WILD), commercial and sport fishing (COMM), spawning, reproduction, and development (SPWN), marine habitat (MAR), shellfish harvesting (SHEL), navigation (NAV), and rare, threatened, or endangered species (RARE).

Fill area:

Temporary Impact to Ocean Habitat	3.4 acres	1,500 linear feet

Dredge/Fill volume: Up to 5,000 cubic yards/year

Federal permit: U.S. Army Corps of Engineers (USACE) Permit No. SPL-2015-00628-GS

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.
- The City will conduct a pre-construction eelgrass survey during the eelgrass growing season prior to the first year dredging event. Consistent with the California Eelgrass Mitigation Policy (CEMP), any permanent impacts to eelgrass that are determined by the survey will be mitigated by transplanting the eelgrass from within the Grand Canal to a location within Newport Harbor outside of the Grand Canal. Based on an analysis prepared by Coastal Resources Management (2014), there are potential transplant locations in the Lower Bay Transitional Eelgrass Zone that comprises a combined acreage of about 1.2 acres (excluding 17th-18th Street Beach, Marina Park). The newly planted eelgrass mitigation site will be monitored for 5 years and protected in perpetuity as a mitigation site.

Offsite Water Quality Standards Mitigation Proposed:

- None.

Should the proposed Project impact State- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife should ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce project-related impacts to waters of the State according to the requirements of Santa Ana Regional Board Order No. R8-2009-0030 (NPDES Permit No. CAS618030), commonly known as the Orange County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2009-0030 requires that the Applicant substantially comply with the requirements of the State Water Resources Control Board General NPDES Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order Number 2012-0006-DWQ.

Pursuant to the California Environmental Quality Act (CEQA), the City of Newport Beach filed a CEQA Guidelines, Title 14 Section 15268(a) Ministerial Exemption on November 12, 2015. The Regional Board has independently considered the City of Newport Beach CEQA Ministerial 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 applicable Clean Water Act Section 404 permit.

2) Using generally accepted protocols, the discharger must survey for *Caulerpa taxifolia*, an invasive marine seaweed, to help locate and prevent its spread. If *Caulerpa taxifolia* is found prior to or during implementation of the Project, the Applicant must not begin or continue at that location until authorized by Regional Board staff. If the invasive seaweed is discovered, it is not to be disturbed, and the Regional Board must be notified within 48-hours of the location and date of the discovery. In addition, any sightings of *Caulerpa taxifolia* should be reported to the California Department of Fish and Wildlife (William Paznokas at (858) 467-4218 (wpaznokas@wildlife.ca.gov) or the National Marine Fisheries Service (Bryant Chesney (Bryant.Chesney@noaa.gov)) within 24 hours of discovery. Further information regarding *Caulerpa taxifolia* sightings can be obtained at www.sccat.net. Should no *Caulerpa* be observed during the Project, the Applicant must notify the Regional Board of this fact when all construction has been completed. Please contact Wanda Cross at (951) 782-4468 concerning issues related to *Caulerpa taxifolia*.

3) The eelgrass survey portion of the proposed mitigation shall commence prior to construction activities. All other portions of the mitigation shall commence within 90 days from the date of completion of the initial dredging sequence.

4) All materials generated from construction activities associated with this Project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this Project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified.

5) The Project proponent shall utilize BMPs during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the State and of the United States.

6) 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 from the Project site.

7) Receiving Water Limitations: The Applicant must comply with the following applicable narrative and/or numeric water quality objectives:

   a. Narrative Objectives for Physical Characteristics: Wastes associated with the dredging operation shall not violate Basin Plan narrative objectives for color, floatables, and oil and grease.
      i. Waste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affects beneficial uses.
      ii. Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.
      iii. Waste discharges shall not result in deposition of oil, grease, wax, or other materials in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.

   b. Numeric Limits for Physical/Chemical Characteristics: the Project must comply with the numeric receiving water limitations specified in Table 1. The turbidity limits in Table 1 are based on recent data collected in Lower Newport Bay. If these turbidity values are exceeded for more than one day, then dredging operations shall be halted or modified to include BMPs to reduce turbidity and increase transmissivity to meet the receiving water limitations. The turbidity limit will not apply during storm runoff events.

Table 1: Numeric Receiving Water Limitations

Parameter	Receiving Water Limitation
Turbidity	47 NTU
pH	7 < pH < 8.6; < 0.2 unit change from ambient
Dissolved Oxygen	> 5 mg/L

8) Monitoring: The Applicant must implement a monitoring program to ensure compliance with the receiving water limitations specified above in Condition No. 7. Minimum requirements of the monitoring plan are listed in Table 2. Data shall be collected from two locations at a distance of no more than 300 feet from the active dredge site, and at three depths in the water column: 1 foot below the surface, mid-depth, and 1-foot above the bottom. Compliance will be determined by the mid-column measurement.

Table 2: Minimum Monitoring Program

Locations	Monitored Analytes	Frequency
Two locations no more than 300 feet from the dredge site; one on a line perpendicular to the shore, and another down current of the site	Turbidity Dissolved Oxygen pH	Daily during the first week, weekly thereafter

9) A copy of this Certification must remain at the Project site for the duration of the work and be available for inspection upon request.

10) 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.

11) 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 for the Project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including the revocation of this Certification and imposition of administrative civil or criminal liability.

12) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.

13) Construction de-watering discharges, including temporary stream diversions necessary for Project construction may be regulated under Regional Board Order No. R8-2015-0004, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at www.waterboards.ca.gov/santaana/

14) Applicant shall ensure that all fees associated with this Project shall be paid to each respective agency prior to conducting any onsite construction activities.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all 401 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 that the Applicant 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 Sections 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/wqo2003-0017.pdf

Should there be any questions, please contact Marc Brown at (951) 321-4584 or marc.brown@waterboards.ca.gov, or Wanda Cross at (951) 782-4468 or wanda.cross@waterboards.ca.gov .

Sincerely,

Kurt V. Berchtold
Executive Officer

cc (via electronic mail):

U.S. Army Corps of Engineers, Los Angeles Office - Stephen Estes
State Water Resources Control Board, OCC - David Rice
CA Dept. of Fish and Wildlife – Kevin Hupf - kevin.hupf@wildlife.ca.gov
CA Dept. of Fish and Wildlife - William Paznokas - wpaznokas@wildlife.ca.gov
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme
U.S. EPA - Wetlands Section – Jason A. Brush – brush.jason@epa.gov
CA Dept. of Fish and Wildlife – Russell Barabe – rbarabe@dfg.ca.gov