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GOVERNOR

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SECRETARY FOR
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Santa Ana Regional Water Quality Control Board

January 4, 2016

Mr. Vincent Gin
Orange County Public Works
300 N. Flower Street
Santa Ana, CA 92703

Email: Vincent.gin@ocpw.ocgov.com

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE LOWER SANTA ANA RIVER MAINTENANCE
DREDGING PROJECT, CITIES OF HUNTINGTON BEACH, NEWPORT BEACH,
COSTA MESA AND SEAL BEACH, COUNTY OF ORANGE, CALIFORNIA (USACE
REFERENCE NO. SPL-2007-00765-JPL) (SARWQCB PROJECT NO. 302015-01)**

Dear Mr. Gin:

On February 2, 2015, we received from Orange County Public Works (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to maintain the last approximately 3.5 miles of the Lower Santa Ana River (LSAR) from the Pacific Ocean outlet (Station 8+00), to just upstream of Adams Avenue, Costa Mesa (Station 194+00). Maintenance activities include vegetation control/removal and removal of sediment shoals within the LSAR channel to re-establish its original design grade. Moffatt & Nichol studied and characterized LSAR sediments. Their September 2015 Final Sampling and Analysis Plan Results Report found, and the Applicant determined, that a portion of LSAR bed sediment within the Project area's proposed dredge prism is suitable for deposition into predetermined Orange County littoral zones that need sediment augmentation. The physical composition and chemical characterization of LSAR soils were reviewed by the US Army Corps of Engineers (USACE), US Environmental Protection Agency (USEPA), Santa Ana Regional Water Quality Control Board (Regional Board) and other regulatory agencies that comprise the Southern California Dredged Material Management Team (SC-DMMT). The shoreline locations were also determined to be suitable locations for placement of this soil. However, other portions of the LSAR that consist of clayey soils were determined not suitable for placement on shore areas and will not be excavated.

The Applicant has submitted a filing fee of \$75,071.00, which satisfies part of the \$90,000.00 Project fee requirement for consideration of 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 maintenance activities on approximately 3.5 miles of the lower Santa Ana River (LSAR) from the Pacific Ocean outlet to just upstream of Adams Avenue, Costa Mesa. The Project consists of maintenance that includes vegetation control/removal and removal of accumulated soils. Initially, larger removal operations of accumulated soils will be performed to excavate and maintain a maximum 40-ft wide pilot channel that allows the LSAR to flow freely along the entire reach. Smaller annual or routine operations will be conducted as needed. Excavated soils will be fully characterized to determine littoral zone compatibility according to the *Lower Santa Ana River Maintenance Dredging Project Final Sampling and Analysis Plan*, as presented before the SC-DMMT on September 23, 2015 by Moffatt & Nichol staff.

A total of 1,100,000 cubic yards (CY) of sediment will be removed from the Project area. A total of 50,000 CY will be used for shore augmentation within Newport Harbor and the littoral zones of designated receiving beaches. Excavated soils will be deposited in the following near-shore littoral zones: at Newport Beach in a designated near-shore zone, adjacent to the mouth of the Santa Ana River, between depths of -10 and -30 feet Mean Lower Low Water (MLLW); at Huntington Beach bluffs in the near-shore zone; at Sunset/Surfside Colony; at Seal Beach East Beach onshore; or at a combination of these sites. Excavated soils that do not meet onshore or littoral zone deposition criteria will be transported to an approved upland location.

Sediment removal will require the use of dredges, barges, excavators, bulldozers, scrapers, front end loaders, dump

trucks, mowers, chippers, screening plants, pick-up trucks, and other equipment. All vegetation will be allowed to grow between annual maintenance events. Non-native vegetation (i.e. *Arundo donax* and *Ricinus communis* (castor bean)) will be eliminated annually using either herbicide or mechanical removal. Native vegetation may be mowed or removed with herbicide or equipment during routine maintenance. Where and when impacts to nesting birds can be avoided, woody vegetation (including willows, mulefat and other large shrubs and trees) will be thinned annually due to constraints on storm water carrying capacity.

The dredge work will take place within Section 10 of Township 4 South, Range 7 West of the U.S. Geological *Huntington Beach, California* 7.5 minute topographic quadrangle map (33.649750° N, -117.951688° W).

Receiving water: Santa Ana River, Reach 1, which has designated beneficial uses (existing or potential) that include: contact recreation (REC1), non-contact recreation (REC2), wildlife habitat (WILD), rare, threatened or endangered species (Rare), and warm freshwater habitat (WARM).

Fill area:

Temporary Impact to Streambed Habitat	116.94 acres	18,600 linear feet
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Dredge/Fill volume: 1,100,000 cubic yards

Federal permit: U.S. Army Corps of Engineers Individual Permit No SPL-2007 -00765-JPL

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.

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 (USFWS) and the California Department of Fish and Wildlife (CDFW) will ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State in compliance with the requirements of 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 you substantially comply with the requirements of 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 California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an Environmental Impact Report (EIR) or Negative Declaration (ND) prepared by the lead agency in determining whether to approve an application submitted for a project to receive 401 Water Quality Certification. A responsible agency has responsibility to mitigate and avoid the direct and indirect environmental effects of those parts of the project that 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 on February 2, 2004 for the proposed Project in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR pertaining to water quality standards. Based upon the mitigation proposed in the EIR, and the conditions set forth in this Certification, impacts to water quality should be reduced to a less than significant level, and beneficial uses will be protected if all stated mitigation and conditions are performed. Thus, the Regional Board independently finds that these changes or alterations have been required or incorporated into the Project that should 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) 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.

- 3) 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.
- 4) Should the proposed Project impact State- or federally-listed endangered species or their habitat, the applicant shall ensure those impacts are mitigated to an acceptable level, according to measures identified in consultation with the USFWS and the CDFW.
- 5) All work is to be conducted either by the Applicant or its designated subcontractor(s) under a mutually executed *Construction Manager Risk Contract*, prepared and managed by the Applicant.
- 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) 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.
- 8) 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 appropriate enforcement action, including revocation of this Certification and imposition of administrative civil or criminal liability.
- 9) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 10) Construction de-watering discharges, including temporary stream diversions necessary for Project construction, are subject to regulation by 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/

- 11) Applicant shall ensure that all fees associated with this Project shall be paid to each respective agency prior to conducting any on-site construction activities.

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 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):

USACE, Los Angeles Office-Stephen Estes; Stephen.M.Estes@usace.army.mil
State Water Resources Control Board, OCC - David Rice
California Department of Fish and Wildlife – Kevin Hupf; khupf@dfg.ca.gov
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme
U.S. EPA -Region 9 Wetlands Section- Jason A. Brush; brush.jason@epa.gov
U.S. Fish and Wildlife Services- Jonathan Snyder; Jonathan_D_Snyder@fws.gov