



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

August 3, 2016

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

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE FULLERTON CREEK CHANNEL IMPROVEMENTS –
BEACH BOULEVARD TO DALE STREET PROJECT, CITY OF BUENA PARK,
COUNTY OF ORANGE, CALIFORNIA (USACE REFERENCE NO. SPL-2015-0085-
SME) (SARWQCB PROJECT NO. 302015-23)**

Dear Mr. Gin,

On November 20, 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 increase the storm water carrying capacity of Fullerton Creek Channel by removing the existing concrete and constructing a rectangular concrete-lined channel. The proposed Project is located in the Fullerton Creek Channel between Beach Boulevard and Dale Street, Buena Park, Orange County, California. The proposed Project will result in 1.72 acres of temporary impacts to jurisdictional waters. The Applicant submitted a filing fee of \$57,888.00, which satisfies the 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 Project consists of the removal of the existing concrete lining in a trapezoidal section of Fullerton Channel (Channel) for reconfiguration into a rectangular concrete-lined channel. Project activities will be conducted in two reaches of the Channel: Reach 1 – upstream of Beach Boulevard (STA 124+12) to upstream of the Interstate 5 (I-5) freeway and Reach 2 – from upstream of the I-5 freeway (STA, 148+02)

WILLIAM RUH, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

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to upstream of Dale Street (STA, 167+00=/-) in the City of Buena Park. The proposed areas to be reconfigured will measure 31 to 37.5 feet wide and approximately 14 to 17.5 feet deep. The reconstructed Channel will be several feet deeper than the existing trapezoidal shaped channel. Fullerton Channel will also be reconstructed from trapezoidal to vertical wall under the following bridges: Stanton Avenue Railroad Bridge, I-5 Freeway Bridge, Auto Center Drive Bridge, pedestrian bridge, and Dale Street Bridge. The bridge structures will not be modified.

The Project will result in the removal of approximately 60,000 cubic yards of soil, in addition to the concrete. The Project proposes to utilize approximately 8,750 cubic yards of backfill, 5,200 cubic yards of gravel base material, and 25,000 cubic yards of concrete.

The work will take place within Section 35 of Township 3 South, Range 11 West of the U.S. Geological Survey *Los Alamitos, CA* and *Anaheim, CA* 7.5 minute topographic quadrangle map (33.861636° N, -117.9956366° W)

Receiving water: Fullerton Creek is a tributary of Coyote Creek. Coyote Creek has beneficial use designations¹ (existing or potential) that include: contact recreation (REC1), non-contact recreation (REC2), municipal and domestic supply (MUN), warm freshwater habitat (WARM), and wildlife habitat (WILD).

Fill area:

Temporary Impact to Streambed Habitat	1.72 acres	4,288 linear feet
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Dredge/Fill volume: 60,000/38,500 cubic yards

Federal permit: U.S. Army Corps of Engineers (USACE) Nationwide Permit No. 43, storm water management facilities

¹ Beneficial uses of Coyote Creek within the Santa Ana Regional Boundary.

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:

- Since the existing channel is fully concrete-lined, no compensatory mitigation is proposed.

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 construction-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 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 Mitigated Negative Declaration (MND) 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 only 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, in approving this Certification, the Regional Board has considered the existing MND (MND IP 97-003) for the proposed Project prepared by Orange County Public Works and filed with the County of Orange County Clerk Office and approved by the County of Orange Board of Supervisors on July 28, 1998, and subsequent information provided in the Applicant's application.

More specifically, the Regional Board has considered those sections of the MND pertaining to impacts to water quality standards. Based upon the mitigation proposed in the MND, and the conditions set forth in this Certification, potentially adverse impacts to water quality should be reduced to a less than significant level and beneficial uses protected if all stated mitigation and conditions are performed. Thus, the Regional Board independently finds that these changes or alterations have been 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) This Order for Water Quality Certification will remain valid until the USACE 2012 Nationwide permits expire on March 18, 2017, or through an extended period beyond the expiration date that is authorized in writing by the USACE.
- 2) The Applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.
- 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) 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.
- 5) 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 onsite, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.
- 6) This 401 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 the revocation of this Certification and imposition of administrative civil or criminal liability.

- 7) A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work as a denoted element of any Project SWPPP or WQMP.
- 8) Construction dewatering 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 Minimis) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at www.waterboards.ca.gov/santaana/
- 9) The Applicant shall ensure that all fees associated with this Project shall be paid to each respective agency prior to conducting any onsite construction activities.
- 10) Effective perimeter control BMPs must be in place at all times to control the discharge of pollutants from the Project site during construction. Construction waste must be contained and protected against wind and exposure to storm water at all times unless being actively handled. Chemical, fuel, and lubricant containers must be kept closed and protected from damage or upset at all times unless being actively used. Dirt and landscaping material stockpiles must have effective erosion control BMPs in place to prevent their being transported in storm water or directly into the channel, and may not be located within waters of the United States. Discharges of wastewater from the site are prohibited.

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.

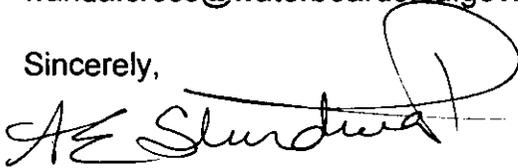
If the above-stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require that the Applicant submit a Report of Waste Discharge and obtain Waste Discharge 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 certify 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 or (951) 321-4584 or marc.brown@waterboards.ca.gov, or Wanda Cross at (951) 782-4468 or wanda.cross@waterboards.ca.gov.

Sincerely,



for: 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
California Department of Fish and Wildlife – Russell Barabe – rbarabe@dfg.ca.gov
State Water Resources Control Board, DWQ - Water Quality Certification Unit - Bill Orme
U.S. EPA - Supervisor of the Wetlands Section – Jason A. Brush