



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold
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Governor

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(858) 467-2952 • Fax (858) 571-6972
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

September 12, 2008

In reply refer to: WP:08C-045: cloflen

Richard Bell
Municipal Water District of Orange County
18700 Ward Street
P.O. Box 20895
Fountain Valley, CA 92728

WDID	9000001798
CIWQS:	
Party No.	316978
Place No.	632533
Reg. M. No.	347901
Cert Mail	7006 2760
	0000 1615
	7233

Dear Mr. Bell:

SUBJECT: Action on Request for Clean Water Act Section 401 Water Quality Certification for the **Dana Point Ocean Desalination Project Subsurface Intake System Feasibility Investigation, Phase 3 Extended Pumping and Pilot Plant Testing** (Project) Water Quality Certification No. **08C-045**

Enclosed find Clean Water Act Section 401 Water Quality Certification with Waiver of Waste Discharge Requirements for discharge to Waters of the U.S. for the **Dana Point Ocean Desalination Project Subsurface Intake System Feasibility Investigation, Phase 3 Extended Pumping and Pilot Plant Testing** (Project). A description of the project and project location can be found in the project information sheet, project location map, and project site maps, by the California Regional Water Quality Control Board, San Diego Region (Regional Board), which are included as Attachments 1 through 4.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the California Regional Water Quality Control Board, San Diego Region, including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

California Environmental Protection Agency

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web-site at <http://www.swrcb.ca.gov>.

Recycled Paper



Mr. Richard Bell
Municipal Water District of Orange County
401 Certification 08C-045

- 2 -

September 12, 2008

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions regarding this notification, please contact Chad Loflen directly at 858-467-2727 or by email via cloflen@waterboards.ca.gov.

Respectfully,




JOHN H. ROBERTUS
Executive Officer

Enclosure:

- Clean Water Act Section 401 Water Quality Certification No. 08C-045 for Dana Point Ocean Desalination Project Subsurface Intake System Feasibility Investigation, Phase 3 Extended Pumping and Pilot Plant Testing project, with 4 attachments

cc: Refer to Attachment 2 of Certification 08C-045 for Distribution List.

California Environmental Protection Agency

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Action on Request for Clean Water Act Section 401 Water Quality Certification and Waiver of Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials

PROJECT: Dana Point Ocean Desalination Project Subsurface
Intake System Feasibility Investigation, Phase 3
Extended Pumping and Pilot Plant Testing, Certification
(401 Project No. 08C-045)
(WDID# 9000001798)

APPLICANT: Richard Bell
Municipal Water District of Orange County
18700 Ward Street
P.O. Box 20895
Fountain Valley, CA 92728

CIWQS:	
Party No.	316978
Place No.	632533
Reg. M. No.	347901

In reply refer to: WP:08C-045: cloflen

ACTION:

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input checked="" type="checkbox"/> Waiver of Waste Discharge Requirements

STANDARD CONDITIONS:

The following three standard conditions apply to all certification actions, except as noted under Condition 3 for denials (Action 3).

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically

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identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. The validity of any non-denial certification action (Actions 1 and 2) must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

ADDITIONAL CONDITIONS:

In addition to the three standard conditions, the Municipal Water District of Orange County must satisfy the following:

A. GENERAL CONDITIONS:

1. The Municipal Water District of Orange County must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the California Regional Water Quality Control Board, San Diego Region (Regional Board), to support this 401 Water Quality Certification and all subsequent submittals required as part of this certification and as described in Attachment 1. The conditions within this certification must supersede conflicting provisions within such plans submitted prior to the certification action. Any modifications thereto, would require notification to the Regional Board and reevaluation for individual Waste Discharge Requirements and/or certification amendment.
2. The Municipal Water District of Orange County must maintain a copy of this certification at the project site so as to be available at all times to site personnel and agencies.
3. The Municipal Water District of Orange County must permit the Regional Board or its authorized representative at all times, upon presentation of credentials:
 - a. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this certification.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this certification.
 - d. Sampling of any discharge or surface water covered by this Order.
4. The Municipal Water District of Orange County must notify the Regional Board within 24 hours of any unauthorized discharge, including hazardous or toxic materials, to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and

- recovered; and additional best management practice (BMPs) or other measures that will be implemented to prevent future discharges.
5. The Municipal Water District of Orange County must, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the U.S. and/or State.
 6. This Certification is not transferable to any person except after notice to the Executive Officer of the Regional Board. The Municipal Water District of Orange County must notify the Regional Board of any change in ownership or leasing of the project area. Notification must include, but not be limited to, a statement that the original lessee has provided the owner or new lessee with a copy of the Section 401 Water Quality Certification and that the owner or new lessee understands the permit requirements and must implement them; the lessee and owner or new lessee must sign and date the notification. The notification for transfer of mitigation responsibility shall include a signed statement from the new party demonstrating acceptance and understanding of the responsibility to meet the mitigation conditions and applicable requirements of the Certification. Notification must be provided within 10 days of the transfer of the property.
 7. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation must 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.
 8. In response to a suspected violation of any condition of this certification, the Regional Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate, provided that the burden, including costs, of the reports must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
 9. In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
 10. Only discharge of fill material associated with the construction of the outfall structures are authorized by this Certification. Discharges of cuttings and other waste are not covered under this Certification.

B. PROJECT CONDITIONS:

1. Prior to the start of the project, and annually thereafter, the Municipal Water District of Orange County must educate all personnel on the requirements in this certification, pollution prevention measures, spill response, and Best Management Practices (BMPs) implementation and maintenance.
2. The Municipal Water District of Orange County must notify the Regional Board in writing at least **10 days** prior to the actual commencement of dredge, fill, and discharge activities.
3. The Municipal Water District of Orange County shall not commence dredge, fill and/or discharge activities prior to issuance of a National Pollutant Discharge Elimination System (NPDES) Permit from the Regional Board for the discharge of effluent from the extended well pumping into waters of the United States.
4. The Municipal Water District of Orange County shall develop and implement a plan to manage and prevent discharges of pollutants in storm water discharges associated with construction activities. The plan shall be kept on-site and shall address all potential discharges of pollutants, including, but not limited to those from spills, concrete/cement, fuel, lubricants and trash.
5. The Municipal Water District of Orange County must comply with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ (or any subsequent re-issuances), the NPDES General Permit for Storm Water Discharges Associated with Construction Activity.
6. Sand used to backfill the pipeline trench areas shall be native sand from the general project area at Doheny State Beach.
7. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or the State or placed in locations that may be subjected to storm flows.
8. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.
 - a. The Municipal Water District of Orange County must prepare a "Spill Prevention, Containment and Countermeasure Plan" that specifies fueling and equipment maintenance procedures to prevent spills and leaks, and containment and cleanup measures to

be followed in the event of a spill.

- b. All equipment shall be inspected for leaks immediately prior to the start of beach operations, and regularly inspected thereafter until project completion. Vehicles with leaks shall not enter the beach area.
 - c. Equipment shall be cleaned and repaired (other than emergency repairs) at least 500 feet from waters of the United States. All contaminated water, sludge, spill residue or hazardous compounds from said activities shall be disposed of at a lawfully authorized designation.
9. Grunion Protection. If pipeline and diffuser installation and removal occur between March 1st and August 31st, the Municipal Water District of Orange County must comply with the following:
- a. Determine beach habitat suitability for grunion spawning:

The Municipal Water District of Orange County must evaluate the proposed discharge site no more than 30 days before any pipeline and diffuser installation or removal for suitability to support successful spawning of California Grunion (e.g. adequate beach width at spring tide level, sand depth greater than 5 inches and/or presence of grunion eggs) and provide notice of suitability to the Regional Board. No additional monitoring will be required for beaches with unsuitable habitat.
 - b. If beach is potentially suitable for grunion spawning and pipeline and diffuser installation and removal will occur during the grunion runs:
 - i. The Municipal Water District of Orange County shall develop and implement measures to minimize disturbance to grunion and buried grunion eggs. The Municipal Water District of Orange County shall notify the Regional Board of the potential to impact grunion spawning and/or eggs, and the Municipal Water District of Orange County shall coordinate with appropriate State Agencies (e.g., California Department of Fish and Game, Regional Board) for opportunities to comment on appropriate mitigation measures.
10. California least tern, *Sterna antillarum browni*, Breeding Season. No pipeline and diffuser installation or removal activities authorized under 08C-045 will be conducted within 1,000 yards of a California least tern breeding colony from

April 1 through September 30.

11. A qualified biologist shall be present on-site during pipeline and diffuser installation and removal to ensure that said activities do not occur if snowy plovers (*Charadrius alexandrinus nivosus*) are present within any of the work areas. No activities shall occur until snowy plovers have left the site.

C. COMPENSATORY MITIGATION FOR LOSS OF WATERS OF THE U.S./STATE:

1. No permanent discharges of fill are authorized by this Certification. Discharges of fill material authorized include the temporary installation of outfall pipeline and diffuser structures, and the associated fill during trenching.
2. Mitigation for temporary discharges to 350 linear feet must be achieved by the restoration of impacts within two weeks following demobilization of the project.

D. REPORTING:

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.
2. All reports and information submitted to the Regional Board must be submitted in both hardcopy and electronic format. The preferred electronic format for each report submission is one file in PDF format that is also Optical Character Recognition (OCR) capable.
3. The Municipal Water District of Orange County must submit a report to the Regional Board within 30 days of completion of the project. The report should include photos and as-built drawings no bigger than 11" x 17" of the completed project.
4. The Municipal Water District of Orange County must submit GIS shape files of the impact area within 30 days of project impacts. All impact area shape files must be polygons.
5. All applications, reports, or information submitted to the Regional Board must be signed and certified as follows:
 - a. For a corporation, by a responsible corporate officer of at least the level of vice president.
 - b. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.

- c. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
6. A duly authorized representative of a person designated in Items 4.a. through 4.c. above may sign documents if:
- a. The authorization is made in writing by a person described in Items 4.a. through 4.c. above.
 - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 - c. The written authorization is submitted to the Regional Board Executive Officer.

7. All applications, reports, or information submitted to the Regional Board must be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

8. The Municipal Water District of Orange County must submit reports required under this certification, or other information required by the Regional Board, to:

Executive Officer
California Regional Water Quality Control Board
San Diego Region
Attn: 401 Certification; Project No. 08C-045
9174 Sky Park Court, Suite 100
San Diego, California 92123

9. Required Reports: The following list summarizes the reports, excluding spill notifications and emergency situations, required per the conditions of this Certification to be submitted to the Regional Board.

Report Topic	Certification Condition	Due Date(s)
Notifications	B.2	10 days prior to initiation of project construction
Completion Report	D.3	Within 30 days of project completion
GIS Shape Files	D.4	Within 30 days of project completion

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On June 25, 2008 receipt of the project application was posted on the Regional Board web site to serve as appropriate notification to the public.

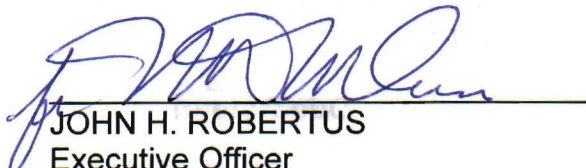
REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Chad L. Loflen
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
858-467-2727
cloflen@waterboards.ca.gov

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the <Project Name> (Project No. 08C-045) 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. This discharge is also regulated under California Regional Water Quality Control Board, San Diego Region, Waiver of Waste Discharge Requirements (Waiver Policy) No. 17. Please note that this waiver is conditional and, should new information come to our attention that indicates a water quality problem, the Regional Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).



JOHN H. ROBERTUS
Executive Officer
Regional Water Quality Control Board

9/12/08
Date

Attachments: 1. Project Information
 2. Distribution List
 3. Location Map
 4. Site Map

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant:	Richard Bell Municipal Water District of Orange County 18700 Ward Street P.O. Box 20895 Fountain Valley, CA 92728 714-593-5003 Fax: 714-964-9389 rbell@mwdoc.com
Applicant Representatives:	n/a
Project Name:	Dana Point Ocean Desalination Project Subsurface Intake System Feasibility Investigation, Phase 3 Extended Pumping and Pilot Plant Testing
Project Location:	The project would be located within Doheny State Beach, just upcoast from the mouth of San Juan Creek within the City of Dana Point. APN: 121 34-84 Latitude/Longitude: 33°27'41"N - 117°41'4"W
Type of Project:	Long Term Testing for Desalination Research and Development
Federal Agency/Permit:	U.S. Army Corps of Engineers §404, NWP 7
Other Required Regulatory Approvals:	California Department of Fish and Game Streambed Alteration Agreement, California Coastal Commission Coastal Development Permit California State Lands Commission Lease California Water Quality Control Board - San Diego Region NPDES discharge permit California Department of Parks and Recreation right-of-entry permit
California Environmental Quality Act (CEQA) Compliance:	The Municipal Water District of Orange County issued a Mitigated Negative Declaration on June 18, 2008
Receiving Water:	Pacific Ocean
Affected Waters of the United States:	Temporary: Ocean (up to 350 linear feet)

Permanent: none

Dredge Volume: n/a

Related Projects Implemented/to be Implemented by the Applicant(s): The Metropolitan Water District of Orange County plans to build an ocean desalination project near the project site. The current project is a long-term pumping feasibility study. A test slant well project was done prior to this project.

Mitigation: Temporary fill areas shall be restored to pre-project conditions.

Best Management Practices (BMPs): During installation and removal of the pipeline and diffuser no vehicles with leaks will be allowed on the beach.

Equipment shall be cleaned and repaired (other than emergency repairs) at least 500 feet from waters of the United States. All contaminated water, sludge, spill residue or hazardous compounds from said activities shall be disposed of at a lawfully authorized designation.

The Municipal Water District of Orange County shall develop and implement a plan to manage and prevent discharges of pollutants in storm water discharges associated with construction activities. The plan shall be kept on-site and shall address all potential discharges of pollutants, including, but not limited to those from spills, concrete/cement, fuel, lubricants and trash.

Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials

Public Notice: On June 25, 2008 receipt of the project application was posted on the California Regional Water Quality Control Board, San Diego Region (Regional Board) web site to serve as appropriate notification to the public.

Fees: Total Due: \$2250
Total Paid: \$2250 (check No. 118926 and No. 119178)
Remaining Due: \$0

**ATTACHMENT 2
DISTRIBUTION LIST
(E-mail Only)**

Forrest Vanderbilt
U.S. Army Corps of Engineers, Regulatory Branch
Los Angeles Office
P.O. Box 532711
Los Angeles, CA 90053-2325
Forrest.B.Vanderbilt@usace.army.mil

Tamara Spear
California Department of Fish and Game
South Coast Region
Habitat Conservation Planning – South
4949 Viewridge Avenue
San Diego, CA 92123
TSpear@dfg.ca.gov

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Attn: Bill Orme
P.O. Box 100
Sacramento, CA 95812-0100
borme@waterboards.ca.gov

Deborah Lee
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
dlee@coastal.ca.gov

Ken Kramer
California Department of Parks and Recreation
Orange Coast District
3030 Avenida Del Presidente
San Clemente, CA 92672
kkramer@parks.ca.gov

ATTACHMENT 4 SITE MAP

