



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

March 24, 2009

Nardy Khan
Department of Public Works
County of Orange
300 North Flower Street
Santa Ana, CA 92702

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE LANE CHANNEL EROSION PROTECTION PROJECT, CITY OF IRVINE, ORANGE COUNTY (ACOE REFERENCE NO. SPL – 2009 – 00115 – VCC)

Dear Ms. Khan:

On January 22, 2009, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for grading and stabilization work in Lane Channel in the City of Irvine, Orange County. 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:

Project Description: Excavation of a 299 foot long earthen section of Lane Channel in order to restore line and grade. The re-contoured banks will then be armored with rock slope protection underlain by filter fabric. The work will correct slope instability currently posed by the near-vertical earthen banks. The work site is located 770 feet upstream of the Main Street bridge within Section 6 of Township 6 South, Range 9 West, of the U.S. Geological Survey *Tustin, California*, 7.5-minute topographic quadrangle map (33 deg. 41 min. 18 sec. N/ -117 deg. 51 min. 12 sec. W).

Receiving water: Lane Channel.

California Environmental Protection Agency



Fill area: 0.13 acre of permanent impact to streambed (299 linear feet total).

Dredge volume: Not applicable.

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 13.

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:

- No on-site water quality standards mitigation is proposed.

Offsite Water Quality Standards Mitigation Proposed:

- 0.20 acre of invasive riparian plant species (*Arundo donax*) will be eradicated in the Santa Ana River.

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 BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of Order No. R8-2002-0010, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2002-0010 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, including the preparation of a SWPPP.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2003-0061, 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. R8-2003-0061 at: www.waterboards.ca.gov/santaana/pdf/03-61.pdf

The affected reach of Lane Channel currently does not have the hydraulic capacity to convey flows from the 100-year storm runoff event according to the Orange County Hydrology Manual. The proposed rock slope protection will increase the roughness of the Channel, however the channel bottom width will be increased to compensate for the decreased hydraulic capacity. Orange County Public Works has plans to implement permanent channel improvements in the near future to convey runoff flows from the

100-year storm.

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. Pursuant to the California Environmental Quality Act (CEQA), Orange County Public Works and the Regional Board have determined that the proposed project is categorically exempt from provisions of CEQA according to Guidelines Section 15301 for the maintenance and repair or minor alteration of an existing facility.

This 401 Certification is contingent upon the execution of the following conditions:

- 1) The applicant must comply with the requirements of the Clean Water Act section 404 permits.
- 2) Project activities must not depress the dissolved oxygen content of receiving waters below 5 mg/L as a result of controllable water quality factors. When natural dissolved oxygen content is less than 5 mg/L, the discharger must not cause further depression.
- 3) Project activities must not raise the pH of receiving waters above 8.5 or lower pH below 6.5 as the result of controllable water quality factors.
- 4) Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in receiving waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
 - a. If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.
 - b. If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.
 - c. If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity.
- 5) An effective monitoring plan must be developed and implemented to document compliance with conditions 2, 3, and 4 above. Any suspected violation of these conditions must be reported to Regional Board staff in writing within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
- 6) BMPs, used to stabilize excavated areas, must utilize native plant species to the maximum extent practicable.
- 7) The applicant must eradicate 0.20 acres of invasive plant species from infested areas in the Lower Santa Ana River Watershed as proposed. An area is only considered infested if 70% or greater of the vegetative cover of an area is occupied by live invasive plant species. The eradication effort must

proceed according to published and generally accepted methods with a minimum of 6-years of follow-on maintenance. The initial eradication work must start within 12-months of the start of the proposed project. A report, identifying the location of the eradication site(s), and certifying that the eradication effort is being completed solely in satisfaction of State and Federal permits, licenses, or authorizations for the Lane Channel Erosion Protection Project, must be submitted to the Executive Officer not later than May 24, 2009.

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 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.

March 24, 2009

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. 200-0017-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 Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert
Department of Fish and Game – Erinn Wilson
State Water Resources Control Board, Office of Chief Counsel – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8

APF:401/certifications/lane channel erosion prot 302009-03