



California Regional Water Quality Control Board

Santa Ana Region



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Arnold Schwarzenegger
Governor

June 16, 2009

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

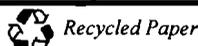
**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE CONSTRUCTION OF DOCK EXTENSIONS FOR THE
15TH, 19TH, AND FERNANDO STREETS PUBLIC DOCKS, CITY OF NEWPORT
BEACH (U.S. ARMY CORPS OF ENGINEERS REFERENCE NOS. SPL – 2009 –
00262 AND – 00290)**

Dear Mr. Miller:

On April 3, 2009, we received three separate applications for Clean Water Act Section 401 Water Quality Standards Certification ("Certification"), submitted on your behalf by Bluewater Design Group, LLC, for the construction of dock extensions for the 15th, 19th, and Fernando Streets public docks in the City of Newport Beach. This letter responds to your request for certification that the proposed projects, described in your applications 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 ("Basin Plan"):

Project Description: Installation of dock piles for the extension of three public docks located at the ends of 15th Street, 19th Street, and Fernando Street in Lower Newport Bay. Five new dock piles, four new dock piles, and four new dock piles will be installed at the locations, respectively. An additional fifth new dock pile will be installed at the 19th Street dock for use as a tide gauge. The existing docks provide temporary mooring for 18 to 21 dingies and the dock extensions will provide mooring for an additional 29 to 33 dingies. None of the proposed dock extensions will include utilities. The project sites are located in Sections 33 and 34 of Township 5 South, Range 10 West, of the U.S. Geological Survey *Newport Beach, California*, 7.5-minute topographic quadrangle map (see Table 1 below for individual latitude and longitude).

California Environmental Protection Agency



Receiving water: Lower Newport Bay.

Fill area: See Table 1 below.

Table 1: Impacts to Waters of the U.S. and projects' locations

Dock Location	Fill area (square feet)	Dock extension surface area (acres)	Latitude/Longitude (decimal degrees)
15 th Street	5	0.0097	33.60915 N/-117.91946 W
19 th Street	4	0.014	33.61090 N/-117.92596 W
Fernando Street	5	0.0097	33.60567 N/-117.90218 W

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Rivers and Harbors Act Section 10.

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. R8-2009-0030, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2009-0030 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 for projects greater than one acre.

You have applied for a Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act ("CEQA"), the City of Newport Beach determined that the proposed projects are categorically exempt from provisions of CEQA pursuant to Guidelines Section 15301 for the minor alteration of existing structures or facilities, not expanding existing uses. The Regional Board has determined that the proposed projects are categorically exempt from provisions of CEQA pursuant to Guidelines

Section 15303 for the new construction of small new facilities. While the dock extensions substantially increase the service capacity of the existing docks, the docks are small facilities that serve small, temporarily-moored boats. The tide gauge, having a footprint of one square foot, also constitutes a small new facility.

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

1. The proposed discharge must not adversely affect recreational use of the receiving waters or cause a condition of nuisance as the result of controllable water quality factors. In the event of an adverse impact to recreation or a condition of nuisance, the discharger must take corrective action, which may include the modification or the suspension of discharges.
2. The discharger must survey the project area for *Caulerpa taxifolia*, an invasive marine seaweed, to help locate and prevent its spread using generally accepted protocols. 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* must be reported to the California Department of Fish and Game (William Paznokas at (858) 467-4218 (wpaznokas@dfg.ca.gov)) or the National Marine Fisheries Service (Robert Hoffman at (562) 980-4043 (bob.hoffman@noaa.gov)) within 24-hours of discovery. Further information regarding a *Caulerpa taxifolia* sighting 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 of this office at (951) 782-4468 concerning issues related to *Caulerpa taxifolia*.
3. The discharge of trash and debris into waters of the U.S., which may cause a nuisance or adversely affects beneficial uses, is prohibited.
4. 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.
5. Project activities must not raise the pH of receiving waters above 8.6 or lower pH below 7.0 as the result of controllable water quality factors; ambient pH levels must not be changed by more than 0.2 units.
6. 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.
7. An effective monitoring plan must be developed and implemented to document compliance with conditions 4, 5, and 6 above. Any violation or 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.
 8. This Certification and any subsequent amendments must be maintained on site for the duration of work.
 9. The discharger must comply with the requirements of the Clean Water Act Section 404 Permit.

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

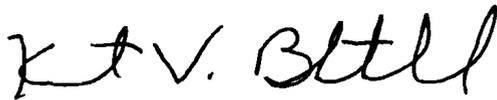
remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure 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.

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,



for GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Corice Farrar, Jason Lambert, and Yvette Cardenas
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
California Coastal Commission – Fernie Sy
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8