



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Acting Secretary for
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Edmund G. Brown, Jr.
Governor

April 13, 2011

Ms. Iris Lee
City of Newport Beach
Public Works Department
3300 Newport Boulevard
Newport Beach, CA 92663

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE BUCK GULLY RESTORATION PROJECT, NEWPORT
BEACH, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. NOT
AVAILABLE) (SARWQCB PROJECT NO. 302010-42)**

Dear Ms. Lee:

On October 11, 2010, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from RBF Consulting for the installation of grade control structures and bend-way weirs along the upper bend of lower Buck Gully. These structures are proposed to limit bed erosion, particularly along the base of the gully slopes, and reduce the potential of slope destabilization/failure. Failure of slopes may result in damage to the residential structures situated at the top of these slopes. Additionally, subsurface flow wetlands will be constructed concurrently with gabion structures to offset the disturbance of currently established wetlands within the project area. 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 installation of three (3) outfall structures, five (5) gabion structures or groins, and associated grading. A large temporary easement will be constructed and utilized for construction equipment during construction and restoration activities. Stepped-down gabion grade control structures will be installed along the lower reach and bend-way weirs along the upper bend to limit bed erosion along the base of the slopes of lower Buck Gully Canyon, immediately south of East Coast Hwy. Two subsurface flow (SSF) wetlands will be constructed concurrently with the gabion structures. The SSF wetlands will be constructed immediately upstream of the two downstream gabion structures. The newly constructed wetlands will accommodate flows without compromising

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the beneficial uses of the currently established wetlands. The work will take place within an unsectioned portion of Township 7 South, Range 9 West, of the U.S. Geological Survey *Laguna Beach* quadrangle map (33.591110° N / -117.868349° W).

Receiving water: Pacific Ocean

Fill area: 0.05 acre of permanent impact (25 linear feet) and 0.14 acre of temporary impact (100 linear feet) to wetland habitat.
0.01 acre of permanent impact (75 linear feet) and 0.32 acre of temporary impact (1,100 linear feet) to riparian habitat.

Dredge/Fill volume: 3,000 cubic yards

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 27

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:

- Disturbed areas will be restored and revegetated with native seed mix and/or container plants and trees that would be approved by California Department of Fish & Game, California Coastal Commission and City of Newport Beach.
- Excavated areas will be backfilled to pre-project elevations to the maximum extent practicable.

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 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 (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's General Permit for Storm Water Discharges Associated with Construction Activity.

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 prepared by the lead agency in determining whether to approve a Section 401 Certification. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which 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, for the purpose of this Certification, the Regional Board has considered the Negative Declaration prepared for the proposed project, adopted by the City of Newport Beach on January 27, 2011, and provided in the City's application.

In the issuance of this Certification, the Executive Officer has considered those sections of the City's Environmental Impact Report that relate to water quality. Based on the mitigation proposed and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. The Regional Board independently finds that changes or alterations have been required or incorporated into the project that 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 Best Management Practices 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.

- 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 on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.
- 6) Any construction de-watering discharges, including temporary stream diversions necessary for project construction may be regulated under Regional Board Order No. R8-2009-0003, 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. R8-2009-0003 at www.waterboards.ca.gov/santaana/
- 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) 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 the revocation of this Certification and civil or criminal liability.
- 9) Applicant shall follow all procedures and policies specified for this project in the project's Mitigation Monitoring & Reporting Program dated January 2011.
- 10) 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.

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.

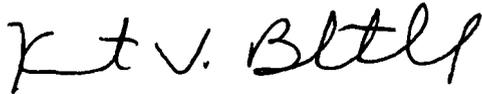
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean 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. 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 (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert
Department of Fish and Game – Jeff Brandt
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
RBF Consulting-Wesley Salter; Wsalter@rbf.com

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