

EDMUND G. BROWN JR.
GOVERNORMATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION**State Water Resources Control Board****OCT 22 2012**

Mr. Nardy Khan
Orange County Public Works
300 North Flower Street
Santa Ana, CA 92702

Dear Mr. Khan:

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE ORANGE COUNTY PUBLIC WORKS ORANGE COUNTY OCEAN OUTLETS MAINTENANCE PROGRAM (FILE NO. SB11002IN)

Orange County Public Works Department submitted an application for a Clean Water Act section 401 water quality certification (Certification) for the Orange County Ocean Outlets Maintenance Program on March 24, 2011. The application was found to be complete on May 14, 2012.

The Orange County Ocean Outlets Maintenance Program provides routine and ongoing maintenance activities for six ocean outlets at various specified locations in Orange County. The U.S. Army Corps of Engineers (Corps) issued Regional General Permit number 46 for these (Corps file no. SPL-2010-00868-SME) activities on November 23, 2003, and reissuance is currently pending.

State Water Resources Control Board staff reviewed all information submitted regarding the maintenance activities, proposed water quality protection measures, and mitigation requirements. Consultations were conducted with the Santa Ana Regional Water Quality Control Board, San Diego Regional Water Quality Control Board, and the Corps.

Pursuant to the California Code of Regulations title 23, section 3838, I hereby make the Certification determination described in the enclosure. Attachments A through C of the enclosure are also part of this Certification.

If you require further assistance, please contact Cliff Harvey, the staff person most knowledgeable on the subject, at (916) 558-1709 (charvey@waterboards.ca.gov). You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 (borme@waterboards.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Thomas Howard".
Thomas Howard
Executive Director

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

Mr. Nardy Khan

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Enclosures (4): Water Quality Certification for RGP 46 and attachments

Attachment A: Signatory Requirements

Attachment B: Project Information Sheet

Attachment C: Location Map – Orange County Ocean Outlets

cc: Mr. Dave Castanon
Chief, Regulatory Branch
Los Angeles District, Ventura Field Office
U.S. Army Corps of Engineers
Department of the Army
2151 Alessandro Drive, Suite 110
Ventura, CA 93001

Ms. Therese O. Bradford
Chief, South Coast Branch
Regulatory Division
U.S. Army Corps of Engineers
6010 Hidden Valley Road, Suite 105
Carlsbad, CA 92011

Mr. Jason A. Brush
Chief, Wetlands Regulatory Office (WTR-8)
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, CA 94105

Mr. Jim Bartel
Field Supervisor
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011

Mr. Brian Owens
Marine Environmental Scientist
California Department of Fish and Game
350 Harbor Boulevard
Belmont, CA 94002

Mr. Chris Yates
Assistant Regional Administrator
Protected Resources
NOAA National Marine Fisheries Service
501 West Ocean Boulevard, Suite 4200
Long Beach, CA 90802-4213

Mr. Rory Paster
Orange County Public Works
300 North Flower Street
Santa Ana, CA 92702

Mr. David W. Gibson
Executive Officer
San Diego Regional Water Quality
Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Mr. Kurt Berchtold
Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

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State Water Resources Control Board

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE ORANGE COUNTY OCEAN OUTLETS MAINTENANCE PROGRAM – U.S. ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT REGIONAL GENERAL PERMIT 46 FILE NO. SB11002IN

PROJECT: Orange County Ocean Outlets Maintenance Program
U.S. Army Corps of Engineers Los Angeles District Regional General Permit 46
(SPL-2010-00868-SME)

APPLICANT: Mr. Nardy Kahn
Orange County Public Works
300 North Flower Street
Santa Ana, CA 92702-4048

This Clean Water Act section 401 water quality certification (Certification) responds to your request on behalf of Orange County Public Works (OCPW) for the project. Your application was received on March 15, 2011. Public notice of the application was posted on the State Water Resources Control Board's (State Water Board) Web site on February 29, 2012. Your application was determined to be complete on May 14, 2012.

ACTION:

- | | |
|---|---|
| <input type="checkbox"/> Order for Standard Certification | <input type="checkbox"/> Order for Denial of Certification |
| <input checked="" type="checkbox"/> Order for Technically Conditioned Certification | <input type="checkbox"/> Order for Waiver of Waste Discharge Requirements |

AUTHORIZATION:

On March 15, 2011, the State Water Board received an application from OCPW requesting a Certification for activities related to the Regional General Permit 46 (RGP 46) for the Orange County Ocean Outlets Maintenance Program (Program) The maintenance activities for each location are described in OCPW's Ocean Outlets Maintenance Manual (OOM Manual).

The Program was originally certified on November 19, 2003. That Certification was extended

for an additional two-year period and has now expired. This new Certification addresses updates to the project's CEQA compliance, mitigation measures, and the U.S. Army Corps of Engineers (Corps) renewal of RGP 46.

The Program proposes the recurrent opening or re-opening of six river and estuary outlets to the ocean that have been blocked with sand, and, in some locations, to reshape the outlet by replacing rocks or removing streambed meanders. Proposed activities would consist of removing sand at the end of the outlets, distributing sand on the beach above the high tide line, and re-establishing rock revetments where necessary. The outlets would typically be treated: once before the storm season (late summer) and once before the summer recreation season (early spring). Notification will be provided to the State Water Board and Regional Water Quality Control Boards (Regional Water Boards) before commencement of each permitted activity.

Six sites are proposed for treatment (See Attachment C). The sites are:

1. Segunda Deshecha Canada Ocean Outlet, near Avenida Estacion and Calle Deshecha, in San Clemente.
2. Santa Ana River Outlet, near Pacific Coast Highway, south of Brookhurst Street in Huntington Beach.
3. Talbert Channel Outlet, near Pacific Coast Highway, south of Brookhurst Street in Huntington Beach.
4. Estrella Storm Channel, off Beach Road, in Dana Point.
5. North Doheny Creek at Doheny State Beach, near Dana Point Harbor off Puerto Place, in Dana Point.
6. Salt Creek, at Salt Creek Beach Park off Pacific Coast Highway, in Dana Point.

The planned activities are authorized to continue for a five year period commencing with the adoption of this Certification.

STANDARD CONDITIONS:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to the Water Code, section 13330, and the California Code of Regulations, title 23, section 3867 and following.
2. This Certification action is not intended and shall not be construed to apply to 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 California Code of Regulations, title 23, section 3855, subdivision (b), and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. This Certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, and owed by OCPW.

ADMINISTRATIVE CONDITIONS:

4. The State Water Board reserves the right to suspend, cancel, or modify and reissue this Certification, after providing notice to OCPW and/or responsible contractor/sub-contractor, if the State Water Board determines that the project or any activities conducted pursuant to this Certification fail to comply with any of the terms or conditions of this Certification or any State Water Board or Regional Board water quality plan or policy.
5. A copy of this Certification, the application, and supporting documentation must be available at project sites during construction for review by site personnel and agencies. All personnel performing work on the projects shall be familiar with the content of this Certification and its posted location on the project sites.
6. OCPW shall grant the State Water Board, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) and San Diego Regional Water Quality Control Board (San Diego Water Board) staff(s), or their authorized representative(s), upon presentation of credentials and other documents as may be required by law, permission to enter the project site(s) at reasonable times, to ensure compliance with the terms and conditions of this Certification and/or to determine the impacts the project activities may have on waters of the state.
7. In response to any violation of the conditions of this Certification, the State Water Board may amend this Certification as appropriate to ensure compliance.

ADDITIONAL CONDITIONS:

8. This Certification does not apply to any project associated with any diversion of water for domestic, irrigation, industrial or other beneficial use.
9. All conditions of RGP 46 (SPL-2010-00868-SME) shall be in effect for this Certification and are incorporated by reference into this Certification, except as modified in the conditions below.
10. All activities conducted under this Certification shall comply with all reporting, monitoring, Best Management Practices (BMPs), and all other conditions and specifications of the August 2012 OOM Manual (or subsequent revisions as approved by the State Water Board), and the associated Initial Study and Mitigated Negative Declaration (IS/MND).
11. This Certification does not obviate the need to obtain other permits that may be required by federal, state, and local authorities.
12. Ocean outlet maintenance at the Salt Creek outlet will occur within and adjacent to the boundaries of Dana Point State Marine Conservation Area. The permitted activity shall

not be conducted in a manner that violates any regulations as described in the California Code of Regulations title 14, section 632(a) and, in particular, section 632(b)(114), which states that operation and maintenance of artificial structures inside the conservation area is allowed pursuant to any required federal, state and local permits, or as otherwise authorized by the Department of Fish and Game.

13. Projects covered under this Certification shall not result in taking of any endangered, threatened or candidate species or the habitat of such species except as authorized pursuant to the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and the federal Endangered Species Act (16 U.S.C. § 1531 et seq.).

Discharges

14. Projects covered under this Certification shall not discharge substances in concentrations toxic to human, plant, animal or aquatic life or that produce detrimental physiological responses.
15. Projects covered under this Certification shall comply with all applicable National Pollutant Discharge Elimination System permits and Waste Discharge Requirements.
16. Projects covered under this Certification shall not discharge waste classified as "hazardous" as defined in California Code Regulations, title 22, section 66261 and Water Code section 13173.
17. The discharge of petroleum products or other pollutants to surface waters that may result in violation of water quality standards is prohibited. Activities shall not cause visible oil, grease, or foam in the work area or downstream or in the Pacific Ocean.

Best Management Practices

18. BMPs described in Appendix F of the OOM Manual shall be implemented and maintained throughout the life of permitted projects to help minimize and avoid impairment of water quality. In addition, BMPs for all projects shall, at minimum, include the following:
 - a. Boundaries of each work site shall be clearly marked. Boundary markers shall be maintained for the life of the project.
 - b. All BMP materials shall be on site prior to project activity and ready for use. BMPs shall be in full compliance with all specifications governing the proper design, installation, operation, and maintenance of such management practices.
 - c. Disposal of any excavated material shall be at the locations designated in the OOM Manual.
 - d. No equipment or materials shall be stored, staged, or fueled in waters of the state, including wetlands or in any area where waters of the state might be adversely

affected by the equipment or materials. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall be conducted in designated upland areas outside of waters of the state and shall not result in a discharge or a threatened discharge to waters of the state.

- e. All work areas shall be effectively isolated from stream flows using suitable control measures before commencement of any in-water work. Diverted stream flows shall not be contaminated by construction activities.
- f. All areas disturbed by project activities shall be protected from washout and erosion.
- g. When a project is completed, any excess material or debris shall be removed from the work area and disposed of properly.

Notification and Reporting

- 19. Pre-Construction:** A pre-construction notification as described in Appendix G-2 of the OOM Manual shall be sent to the State Water Board, and either the Santa Ana Water Board and/or the San Diego Water Board, as appropriate, at the addresses shown.

Notification shall be provided no later than 30 days prior to commencing ocean outlet maintenance activities that may affect waters of the state. The notification fee as published by the State Water Board shall be provided by OCPW pursuant to California Code of Regulations, title 23, section 2200. Notifications must indicate which project site(s) will be affected, the expected schedule of activity, and any new information or proposed modifications to the work plans presented in the OOM Manual.

The State Water Board and Regional Water Board(s) Executive Officer or designee reserve the authority to request additional information or exclude an individual project from coverage under this Certification.

- 20. Annual Reports:** Copies of the annual report, which is to be provided to the Corps by February 1 of each year for the life of the project, shall also be provided to the State Water Board and the Regional Water Boards.

- 21. Violations:** OCPW or the OCPW's contractor and subcontractors shall report in writing to the staff of the State Water Board and the appropriate Regional Water Board(s) all violations of any terms or conditions of this Certification within two consecutive days (48 hours) from the time the Orange County becomes aware of the violation. The written report shall contain:

- a. A description of the violation and its cause.
- b. The period of the violation event, including dates and times, photos of the site, and if the violation has not been corrected, the anticipated time the violation is expected to continue.
- c. Steps taken or planned to reduce, eliminate, and prevent recurrence of the violation.

22. Submittal Addresses: The pre-construction notifications, non-compliance reports and annual reports shall be directed to: **Program Manager, 401 Certification and Wetlands Program**, at the following State Water Board and appropriate Regional Water Board office(s):

State Water Resources Control
Board
Division of Water Quality
1001 I Street, 15th Floor
Sacramento, CA 95814

Santa Ana Regional
Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

San Diego Regional
Water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123-4340

STATE WATER BOARD CONTACT PERSON:

If you have any questions, please contact State Water Board Environmental Scientist Cliff Harvey at (916) 558-1709, via e-mail at charvey@waterboards.ca.gov, or at:

State Water Resources Control Board
Division of Water Quality - 401 Certification and Wetland Program
1001 I Street, 15th Floor
P.O. Box 100
Sacramento, CA 95812-2000

You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 or via e-mail at borme@waterboards.ca.gov.

California Environmental Quality Act (CEQA)

OCPW is the lead agency responsible for compliance with CEQA (Pub. Resources Code, § 21000 et seq.). OCPW issued a Notice of Intent to Adopt a MND for the proposed project, State Clearinghouse No. 2012011009 (SCH) on January 10, 2012. State Water Board staff has reviewed and considered this document and find it to generally be adequate in its description of the proposed activities and the potential impacts, although clarification of some details is needed.

CEQA Findings

On January 6, 2012, OCPW, as lead agency, adopted a mitigated negative declaration SCH for the project in accordance with CEQA. In making its determinations and findings, the State Water Board must presume that OCPW's certified environmental document comports with the requirements of CEQA and is valid. (Pub. Resources Code, § 21167.3, subd. (b).) State Water Board staff has reviewed and considered the environmental document and all

proposed mitigation measures as presented in the OCPW OOM Manual of August, 2012 (which serves as a Mitigation Monitoring and Reporting Plan or MMRP).

Changes or alterations have been required in, or incorporated into the project, which avoid or substantially lessen the significant water quality effects as identified in the MND. However, State Water Board staff finds that minor clarifications and corrections are needed.

IS/MND Errors and Omissions

Section 1, Introduction (p. 28) of the IS/MND contains two minor inaccuracies regarding regulatory jurisdiction, which are corrected as follows:

1. The State Water Board, not any one Regional Water Board is responsible for the Certification of this programmatic project because the proposed activities would take place in two water quality control regions separately administered by the Santa Ana Water Board and San Diego Water Board.
2. The document should state, but does not, that the San Diego Water Board sets water quality standards for their region.

Disagreement with IS/MND Findings

The IS/MND indicates "no impact" for two environmental issues:

1. Part 3.4(b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service? (p. 63)
2. Part 3.4(c) Have a substantial adverse effect on federally protected wetlands as defined by section 404 of the Clean Water Act (*including, but not limited to, marsh, vernal pool, coastal, etc.*) through direct removal, filling, hydrological interruption, or other means? (p. 73)

The IS/MND does not consider the waters of the state associated with the resources issues highlighted in Part 3.4(b) and (c) which could potentially be affected by the project. The lead agency's determination of "No Impact" for Impacts 3.4(b) and 3.4(c) may therefore not be appropriate. Due to this omission, the State Water Board staff made the determination for Part 3.4(b) and (c) of "Less Than Significant With Mitigation" for impacts to waters of the state. The mitigation measures described for Impact 3.4(a) will also address these potential impacts to non-wetland waters for 3.4(b) and (c). In addition, Section 3.9(c) adequately addresses mitigation to offset potential impacts due to the physical effects of alteration of the channels.

In addition, the IS/MND indicates "No Impact" for Part 3.4(c) – Impacts to changes in pool elevations. The discussion in this section correctly notes that wetlands as defined by the federal Clean Water Act are not present at the site of the excavations, but that such wetlands exist upstream from the ocean outlets to be maintained and could be affected by changes in the pool elevation caused by the proposed maintenance. Based on the discussion of project purposes and project impacts provided in the IS/MND, there is little potential to cause any significant impacts to these wetlands. However, the IS/MND's determination of "No Impact" is probably not

appropriate since the potential exists. Therefore, State Water Board staff make the determination of "no significant impact" for Part 3.4(c), based on the facts that no concerns about this effect have been raised by agencies or by the public, and that no mitigation measures have been proposed to offset this project effect.

Adequacy of IS/MND:

State Water Board staff finds that the IS/MND provided is adequate, and is sufficient for review of those impacts that affect resources that are subject to the State Water Boards' authority. The minor errors and deficiencies described above do not necessitate any additional study or public review. The mitigation measures proposed are adequate to address the identified impacts, including Impacts 3.4(b) and (c) as discussed above.

The proposed activity would cause impacts and potential impacts to water quality, wildlife, fish, recreation, and other resources. These impacts are mitigated by the various mitigation measures laid out in the OOM Manual, which are presented as BMPs. These include: project scheduling to avoid impacts to wildlife, fish and recreation; spill prevention and response procedures; noise and traffic management measures; solid waste management measures; vehicle and equipment cleaning measures; structural management of outflows to prevent beach contamination, and employee and contractor training.

Adequacy of Mitigation Measures:

The OOM Manual provides an adequate program for monitoring and reporting the changes required in the project or made conditions of approval in order to mitigate or avoid significant environmental effects. (Cal. Code Regs., tit. 14, § 15091)

The State Water Board therefore finds that the proposed mitigation measures for significant and potentially significant water quality impacts as identified in the IS/MND and in the measures proposed in the application for Certification and supplemental application materials, including the OOM Manual, when implemented with the conditions of RGP 46 and the conditions of this Certification, are adequate to reduce water quality impacts to less than significant levels.

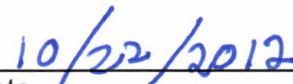
State Water Board staff has reviewed and considered the environmental document and found that OCPW has avoided or substantially reduced all potentially significant environmental effects through the adoption of various mitigation measures as set forth in the MND and supporting documents. The rationale for each environmental impact and the selected mitigation measures that reduce the impact to levels below significant are found in the MND, which is incorporated by reference into this Certification. In accordance with California Code of Regulations, title 14, section 15075, the State Water Board will file a Notice of Determination with the State Clearinghouse within five days from the issuance of this Certification.

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that as long as all of the conditions listed in this Certification action are met, any discharge from the referenced project will comply with the applicable provisions of Clean Water Act 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). This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Certification to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Act (Wat. Code § 13000 et seq.). 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 conditions of the Certification and the attachments to this Certification, and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, the pertinent Regional Water Boards' Water Quality Control Plans and the project IS/MND.


Thomas Howard
Executive Director


Date

Attachments (3): Attachment A: Signatory Requirements
 Attachment B: Project Information Sheet
 Attachment C: Location Map – Orange County Ocean Outlet