



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 *Environmental Leadership Award* from Keep California Beautiful

Arnold Schwarzenegger
Governor

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Christine Jones
CEMEX Construction Materials, L.P.
430 N. Vineyard, Suite 500
Ontario, CA 91764

WATER QUALITY CERTIFICATION FOR PROPOSED (STREAMBED RESTORATION AND FILL REMOVAL) PROJECT (Corps' Project No. 2006-01887-JWM), UNNAMED TRIBUTARY TO THE ARROYO SIMI, MOORPARK, VENTURA COUNTY (File No. 06-204)

Dear Ms. Jones:

Board staff has reviewed your request on behalf of CEMEX Construction Materials, L.P. (Applicant) for a Clean Water Act Section 401 Water Quality Certification for the above-referenced project. Your application was deemed complete on April 30, 2007.

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, "General Waste Discharge Requirements for Dredge and Fill Discharges that have received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Certification.

The Applicant shall be liable civilly for any violations of this Certification in accordance with the California Water Code. This Certification does not eliminate the Applicant's responsibility to comply with any other applicable laws, requirements and/or permits.

Should you have questions concerning this Certification action, please contact Dana Cole, Section 401 Program, at (213) 576-5733.

[Original Signed By]
Deborah J. Smith
Interim Executive Officer

June 5, 2007
Date

California Environmental Protection Agency



Our mission is to preserve and enhance the quality of California's water resources for the benefit of present and future generations.

DISTRIBUTION LIST

Jared Varonin
West Coast Environment
1838 Eastman Avenue, Suite 200
Ventura, CA 93003

Vicki Clark, Staff Attorney
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101

Oscar Balaguer
State Water Resources Control Board
Division of Water Quality
P.O. Box 944213
Sacramento, CA 94244-2130

Jessie Altstatt
Santa Barbara Channel Keeper
714 Bond Street
Santa Barbara, CA 93103

Natasha Lohmus
California Department of Fish and Game
Streambed Alteration Team
4949 View Ridge Avenue
San Diego, CA 92123

John Markham
U.S. Army Corps of Engineers
Regulatory Branch, Ventura Field Office
2151 Alessandro Drive, Suite 255
Ventura, CA 93001

Eric Raffini
U.S. Environmental Protection Agency
600 Wilshire Boulevard, Suite 1460
Los Angeles, CA 90017

Dave Smith
Supervisor, Wetlands Regulatory Office (WTR-8)
US EPA, Region 9
75 Hawthorne
San Francisco, CA 94105

Diane Noda
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

Peter Brand
Coastal Conservancy
1330 Broadway, Suite 1100
Oakland, CA 94612

ATTACHMENT A

Project Information File No. 06-204

1. Applicant: CEMEX Construction Materials, L.P.
430 N. Vineyard, Suite 500
Ontario, CA 91764

Phone: (909) 974-5471 Fax: (909) 974-5525

2. Applicant's Agent: West Coast Environmental
1838 Eastman Avenue, Suite 200
Ventura, CA 93003

Phone: (805) 644-7976 Fax: (805) 644-5929

3. Project Name: Streambed Restoration and Fill Removal

4. Project Location: Moorpark, Ventura County
Longitude: 118° 53' 13.7"; Latitude: 34° 20' 37.5"
Longitude: 118° 53' 13.5"; Latitude: 34° 20' 37.9"
Longitude: 118° 53' 14.4"; Latitude: 34° 20' 39.2"
Longitude: 118° 53' 14.8"; Latitude: 34° 20' 39.0

5. Type of Project: Unauthorized fill removal

6. Project Purpose: Applicant proposes to remove material deposited by an unknown party, from an unnamed tributary located on Applicant's property near the City of Moorpark in unincorporated Ventura County.

7. Project Description: Earthen material was deposited along 380 feet of tributary and portions of the tributary were graded and cleared of vegetation (applicant presumes materials were deposited during the clearing of an access road). This project will remove all introduced materials and the streambed will be restored to pre-disturbance conditions based on the prior topography and revegetated with native species. Currently, the only vegetation growing in the fill material are invasives which will be removed. Removal of the fill material will be done with a rubber-tired excavator; track-mounted excavator (out of stream); and a rubber-tired front end-loader.

ATTACHMENT A

Project Information File No. 06-204

A Biological Resources Assessment was conducted in 2004 as part of the Minor Modification with the Ventura County Planning Department. No special status species are expected to occur within the construction area.

8. Federal Agency/Permit: U.S. Army Corps of Engineers
NWP No. 27 (Permit No. 2006-01887-JWM)
9. Other Required Regulatory Approvals: California Department of Fish and Game
Streambed Alteration Agreement
10. California Environmental Quality Act Compliance: The proposed project is Categorically Exempt from CEQA pursuant to the CEQA Guidelines, Section 15302 (Replacement or Reconstruction) on by the California Department of Fish and Game on April 25, 2007.
11. Receiving Water: Unnamed tributary to the Arroyo Simi (Hydrologic Unit No. 403.62)
12. Designated Beneficial Uses: MUN*, IND, GWR, FRSH, REC-1, REC-2, WARM, WILD, RARE,

*Conditional beneficial use
13. Impacted Waters of the United States: Non-wetland waters (unvegetated streambed): 0.41 temporary acres (387 linear feet)
14. Dredge Volume: None
15. Related Projects Implemented/to be Implemented by the Applicant: The Applicant has not identified any related projects carried out in the last 5 years or planned for implementation in the next 5 years.

ATTACHMENT A

Project Information File No. 06-204

16. Avoidance/ Minimization Activities:

The Applicant has proposed to implement several Best Management Practices, including, but not limited to, the following:

- Staging and storage areas for equipment and materials shall be located outside of the stream/lake.
- Any materials placed in seasonally dry portions of a stream or lake that could be washed downstream or could be deleterious to aquatic life shall be removed from the project site prior to inundation by high flows.
- Areas of disturbed soils with slopes toward a stream or lake shall be stabilized to reduce erosion potential. Planting, seeding and mulching is conditionally acceptable. Where suitable vegetation cannot reasonably be expected to become established, non-erodible materials, such as coconut fiber matting, shall be used for such stabilization.
- No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.
- No debris, soil, silt, sand, bark, slash, sawdust, rubbish, construction waste, concrete or washings thereof, or oil or petroleum products shall be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State.
- When operations are completed, any excess materials or debris shall be removed from the work area.
- Any equipment or vehicles driven and/or operated within or adjacent to the stream/lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
- Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream, lake shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life.
- No equipment maintenance shall be done within or near any stream channel or lake margin where petroleum products or

ATTACHMENT A

Project Information File No. 06-204

other pollutants from the equipment may enter these areas under any flow.

- Equipment shall not be operated in ponded, flowing, wet, or wetland areas.
- Precautions to minimize turbidity or siltation shall be taken into account during project planning and shall be installed prior to construction. A row of straw bales or silt fencing shall be placed across the streambed immediately downstream of any work done within the creek.
- Precautions shall include placement of silt fencing, straw bales, sand bags, or the construction of silt catchments basins so that silt or other deleterious materials will not be allowed to pass to downstream reaches. The method used to prevent siltation shall be monitored and cleaned or repaired weekly.
- Silty or turbid water created from dewatering or other activities shall not be discharged into the stream. Such water shall be settled, filtered, or otherwise treated prior to discharge.
- The Operator's ability to minimize turbidity or siltation shall be the subject of pre-construction planning and feature implementation.
- Water containing mud, silt, or other pollutants from equipment washing or other activities, shall not be allowed to enter a lake or flowing stream or be placed in locations that may be subjected to high storm flows.
- The Project's activities within the stream course shall be limited to periods when the stream is not actively flowing. If measurable rain is predicted within 72 hours during construction, protective measures to prevent siltation and erosion shall be inspected and repaired at the end of each work day.

17. Proposed
Compensatory
Mitigation:

The Applicant has proposed to restore 0.041 acres of wetland habitat (1:1 ratio) onsite.

ATTACHMENT A

Project Information
File No. 06-204

18. Required
Compensatory
Mitigation:

For temporary impacts, the Applicant shall restore 0.041 acres of wetland habitat (1:1 ratio) onsite. See *Attachment B, Conditions of Certifications, Additional Conditions* for modifications and additions to the above proposed compensatory mitigation.

ATTACHMENT B

Conditions of Certification File No. 06-204

STANDARD CONDITIONS

Pursuant to §3860 of Title 23 of the California Code of Regulations (23 CCR), the following three standard conditions shall apply to this project:

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13330 of the California Water Code and Article 6 (commencing with 23 CCR §3867).
2. This Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and 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 identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR Chapter 28 and owed by the Applicant.

ADDITIONAL CONDITIONS

Pursuant to 23 CCR §3859(a), the Applicant shall comply with the following additional conditions:

1. The Applicant shall submit to this Regional Board copies of any other final permits and agreements required for this project, including, but not limited to, the U.S. Army Corps of Engineers' (ACOE) Section 404 Permit and the California Department of Fish and Game's (CDFG) Streambed Alteration Agreement. **These documents shall be submitted prior to any discharge to waters of the State.**
2. The Applicant shall adhere to the most stringent conditions indicated with either this certification, the CDFG's Streambed Alteration Agreement, or the ACOE Section 404 Permit.
3. The Applicant shall comply with all water quality objectives, prohibitions, and policies set forth in the *Water Quality Control Plan, Los Angeles Region (1994)*.
4. The Avoidance/Minimization activities proposed by the Applicant as described in Attachment A, No. 15, are incorporated as additional conditions herein.

ATTACHMENT B

Conditions of Certification File No. 06-204

5. The Applicant and all contractors employed by the Applicant shall have copies of this Certification, the approved maintenance plan, and all other regulatory approvals for this project on site at all times and shall be familiar with all conditions set forth.
6. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the State. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the State.
7. All excavation, construction, or maintenance activities shall follow best management practices to minimize impacts to water quality and beneficial uses. Dust control activities shall be conducted in such a manner that will not produce downstream runoff.
8. No construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the State. Designated spoil and waste areas shall be visually marked prior to any excavation and/or construction activity, and storage of the materials shall be confined to these areas.
9. All waste and/or dredged material removed shall be relocated to a legal point of disposal if applicable. A legal point of disposal is defined as one for which Waste Discharge Requirements have been established by a California Regional Water Quality Control Board, and is in full compliance therewith. Please contact Rodney Nelson, Land Disposal Unit, at (213) 620-6119 for further information.
10. The Applicant shall implement all necessary control measures to prevent the degradation of water quality from the proposed project in order to maintain compliance with the Basin Plan. The discharge shall meet all effluent limitations and toxic and effluent standards established to comply with the applicable water quality standards and other appropriate requirements, including the provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act. This Certification does not authorize the discharge by the applicant for any other activity than specifically described in the 404 Permit.
11. The discharge shall not: a) degrade surface water communities and populations including vertebrate, invertebrate, and plant species; b) promote the breeding of mosquitoes, gnats, black flies, midges, or other pests; c) alter the color, create visual contrast with the natural appearance, nor cause aesthetically undesirable discoloration of the receiving waters; d) cause formation of sludge deposits; or e) adversely affect any designated beneficial uses.

ATTACHMENT B

Conditions of Certification File No. 06-204

12. The Applicant shall allow the Regional Board and its authorized representative entry to the premises, including all mitigation sites, to inspect and undertake any activity to determine compliance with this Certification, or as otherwise authorized by the California Water Code.
13. Application of pesticides must be supervised by a certified applicator and be in conformance with manufacturer's specifications for use. Compounds used must be appropriate to the target species and habitat. All pesticides directed toward aquatic species must be approved by the Regional Board. Pesticide utilization shall be in accordance with State Water Resources Control Board Water Quality Order Nos. 2004-0008-DWQ and 2004-0009-DWQ.
14. The Applicant shall not conduct any construction activities within waters of the State during a rainfall event. The Applicant shall maintain a **five-day (5-day) clear weather forecast** before conducting any operations within waters of the State. The Applicant shall not conduct any maintenance activities within waters of the State during a rainfall event, or at any period when site conditions would lead to excessive erosion. If any maintenance activities are to be held within five (5) days of a predicted rainfall event, the Applicant shall stage materials necessary to prevent water degradation on site, and shall ensure that all stabilization procedures are completed prior to the rainfall event.
15. If rain is predicted after operations have begun, grading activities must cease immediately and the site must be stabilized to prevent impacts to water quality, and minimize erosion and runoff from the site.
16. Sediment removal at each phase shall not go beyond the extent as defined in the application packet.
17. The grading, stabilization and re-vegetation will be phased to limit the exposed or working face such that the graded area can be stabilized within 24 hours after the first prediction of rain during the 5-day forecast or within 24 hours after final grading of the phased area.
18. No activities shall involve wet excavations (i.e., no excavations shall occur below the seasonal high water table). A minimum **5-foot** buffer zone shall be maintained above the existing groundwater level. If construction or groundwater dewatering is proposed or anticipated, the Applicant shall file a **Report of Waste Discharge** to this Regional Board and obtain any necessary NPDES permits/Waste Discharge Requirements prior to discharging waste. Sufficient time should be allowed to obtain any such permits (generally 180 days). If groundwater is encountered without the benefit of appropriate permits, the Applicant shall cease all activities in the areas where groundwater is present, file a Report of Waste Discharge to this Regional Board, and obtain any necessary permits prior to discharging waste.

ATTACHMENT B

Conditions of Certification File No. 06-204

19. All project construction and maintenance activities not included in this Certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Bank stabilization and grading, as well as any other ground disturbances, are subject to restoration and revegetation requirements, and may require additional Certification action.
20. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. If surface water diversions are anticipated, the Applicant shall develop and submit a **Surface Water Diversion Plan** (plan) to this Regional Board. The plan shall include the proposed method and duration of diversion activities, structure configuration, construction materials, equipment, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. Contingency measures shall be a part of this plan to address various flow discharge rates. The plan shall be submitted prior to any surface water diversions. If surface flows are present, then upstream and downstream monitoring for the following shall be implemented:
 - pH
 - temperature
 - dissolved oxygen
 - turbidity
 - total suspended solids(TSS)
 - Downstream TSS shall be maintained at ambient levels
 - Where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20%. Where natural turbidity is greater than 50 NTU, increases shall not exceed 10%.

Analyses must be performed using approved US Environmental Protection Agency methods, where applicable. These constituents shall be monitored for on a daily basis during the first week of diversion and/or dewatering activities, and then on a weekly basis, thereafter, until the in-stream work is complete.

Results of the analyses shall be submitted to this Regional Board by the 15th day of each subsequent sampling month. A map or drawing indicating the locations of sampling points shall be included with each submittal. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any such violations may result in corrective and/or enforcement actions, including increased monitoring and sample collection.

21. The Applicant shall restore the proposed **0.41 acres** of TEMPORARY IMPACTS to waters of the United States and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the State. Restoration shall include grading of disturbed areas to pre-project contours and revegetation with native species. Restored

ATTACHMENT B

Conditions of Certification File No. 06-204

- areas shall be monitored and maintained with native species as necessary for five years. The Applicant shall implement all necessary Best Management Practices to control erosion and runoff from areas associated with this project.
22. All open space and mitigation areas shall be placed within a conservation easement to ensure preservation in perpetuity. Documentation of proper easement placement shall be submitted to the Regional Board within one year.
23. The Applicant shall submit to this Regional Board **Annual Mitigation Monitoring Reports** (Annual Reports) by **January 1st** of each year for a minimum period of **five (5) years** following this issuance of 401 Certification or until mitigation success has been achieved and documented. The Annual Reports shall describe in detail all of the project/construction activities performed during the previous year and all restoration and mitigation efforts; including percent survival by plant species and percent cover. The Annual Reports shall describe the status of other agreements (e.g., mitigation banking) or any delays in the mitigation process. At a minimum the Annual Reports shall include the following documentation and answered appropriately whether or not mitigation has been performed:
- (a) Color photo documentation of the pre- and post-project and mitigation site conditions;
 - (b) Geographical Positioning System (GPS) coordinates in decimal-degrees format outlining the boundary of the project and mitigation areas;
 - (c) The overall status of project including a detailed schedule of work;
 - (d) Copies of all permits revised as required in Additional Condition 1;
 - (e) Water quality monitoring results for each reach (as required) compiled in an easy to interpret format;
 - (f) A certified Statement of “no net loss” of wetlands associated with this project;
 - (g) Discussion of any monitoring activities and exotic plant control efforts; and
 - (h) A certified Statement from the permittee or his/her representative that all conditions of this Certification have been met.
24. Prior to any subsequent maintenance activities within the subject drainages, including clearing, maintenance by-hand, and/or the application of pesticides, the Applicant shall submit to this Regional Board a NOTIFICATION of any such activity. Notification shall include: (a) the proposed schedule; (b) a description of the drainage’s existing condition; (c) the area of proposed temporary impact within waters of the State; (c) a description of any

ATTACHMENT B

**Conditions of Certification
File No. 06-204**

existing aquatic resources (e.g., wetland/riparian vegetation); and (d) any proposed compensatory mitigation. Notifications must be submitted a minimum of **three (3) weeks** prior to commencing work activities.

25. All applications, reports, or information submitted to the Regional Board shall be signed:
- (a) For corporations, by a principal executive officer at least of the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which discharge originates.
 - (b) For a partnership, by a general partner.
 - (c) For a sole proprietorship, by the proprietor.
 - (d) For a municipal, State, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee.

26. Each and any report submitted in accordance with this Certification shall contain the following completed declaration:

“I declare under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who managed the system or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Executed on the _____ day of _____ at _____.

(Signature)
(Title)”

27. All communications regarding this project and submitted to this Regional Board shall identify the Project File Number **06-204**. Submittals shall be sent to the attention of the 401 Certification Unit.
28. Any modifications of the proposed project may require submittal of a new Clean Water Act Section 401 Water Quality Certification application and appropriate filing fee.

ATTACHMENT B

Conditions of Certification File No. 06-204

29. The project shall comply with the local regulations associated with the Regional Board's **Municipal Stormwater Permit** issued to Ventura County and co-permittees under NPDES No. CAS004002 and Waste Discharge Requirements Order No. 00-108. This includes the Stormwater Quality Urban Impact Mitigation Plan (SQUIMP) and all related implementing local ordinances and regulations for the control of stormwater pollution from new development and redevelopment. The project shall also comply with all requirements of the National Pollutant Discharge Elimination System (NPDES) **General Permit** for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ. All stormwater treatment systems shall be located outside of any water of the State and shall not be used as a wetland or riparian mitigation credit.
30. Coverage under this Certification may be transferred to the extent the underlying federal permit may legally be transferred and further provided that the Applicant notifies the Executive Officer at least 30 days before the proposed transfer date, and the notice includes a written agreement between the existing and new Applicants containing a specific date of coverage, responsibility for compliance with this Certification, and liability between them.
31. The Applicant or their agents shall report any noncompliance. Any such information shall be provided verbally to the Executive Officer within 24 hours from the time the Applicant becomes aware of the circumstances. A written submission shall also be provided within five days of the time the Applicant becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected; the anticipated time it is expected to continue and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. The Executive Officer, or an authorized representative, may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.
32. *Enforcement:*
 - (a) In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation 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.
 - (b) In response to a suspected violation of any condition of this Certification, the State Water Resources Control Board (SWRCB) or Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this Certification

ATTACHMENT B

Conditions of Certification File No. 06-204

to furnish, under penalty of perjury, any technical or monitoring reports the SWRCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

- (c) In response to any violation of the conditions of this Certification, the SWRCB or RWQCB may add to or modify the conditions of this Certification as appropriate to ensure compliance.
33. This Certification shall expire **five (5) years** from date of this Certification. The Applicant shall submit a complete application prior to termination of this Certification if renewal is requested.