



# California Regional Water Quality Control Board San Diego Region

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**Matthew Rodriguez**  
Secretary for  
Environmental Protection

**Edmund G. Brown Jr.**  
Governor

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<http://www.waterboards.ca.gov/sandiego>

December 29, 2011

**In reply refer to:**  
**745397:jebsen**

Mr. Kris McFadden  
City of San Diego  
9370 Chesapeake Drive, Suite 100  
San Diego, CA 92123

Dear Mr. McFadden:

**SUBJECT: Action on Request for Amendment to Clean Water Act Section  
401 Water Quality Certification for Tijuana River Valley Channel  
Maintenance Project, 09C-077**

Enclosed find amended Clean Water Act Section 401 Water Quality Certification (Certification) with acknowledgment of enrollment under State Water Resources Control Board Order No. 2003-017-DWQ for Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that have received State Water Quality Certification for the Tijuana River Valley Channel Maintenance Project 09C-077. A description of the project can be found in the project information sheet and on location and site maps compiled by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), which are included as Attachments 1 through 5.

The recent amendment request is to perform annual channel maintenance along the Tijuana River and Smuggler's Gulch for 5 consecutive years. Included in the amendment request were CEQA documents with a mitigated negative declaration. The 2011 Certification amendment reflects the new information provided in the supplemental documents and changes have been made to multiple sections in the Certification.

In order to ensure clarity and maintain consistency, the amended Certification has been re-formatted to current San Diego Water Board standards. Issuance of this Certification incorporates all changes made in response to amendment requests.

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification.

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*California Environmental Protection Agency*

Kris McFadden  
City of San Diego  
401 Water Quality Certification 09C-077

- 2 -

December 29, 2011

Failure to comply with all conditions of this Certification may subject you to enforcement actions by the San Diego Water Board including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability, referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

In the subject line of any response, please include the requested **"In reply refer to:"** information located in the heading of this letter. If you have any questions regarding this notification, please contact Ms. Jody Ebsen directly at 858-636-3146 or by email via [jebsen@waterboards.ca.gov](mailto:jebsen@waterboards.ca.gov).

Respectfully,



*James G. Smith, AEO*  
for DAVID W. GIBSON  
Executive Officer  
San Diego Regional Water Quality Control Board

Enclosure: Clean Water Act Section 401 Water Quality Certification No. 09C-077 Tijuana River Valley Channel Maintenance Project, with 5 attachments

cc: Refer to Attachment 2 of Certification for Distribution List.

CIWQS Place ID	745397
WDID	9 000001976
Reg. Measure No.	371693
Party ID	5020071



# California Regional Water Quality Control Board

## San Diego Region



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*Action on Request for*  
Clean Water Act Section 401 Water Quality Certification  
and Waste Discharge Requirements  
for Discharge of Dredged and/or Fill Materials

**PROJECT:** Tijuana River Valley Channel Maintenance,  
Water Quality Certification 09C-077,  
WDID Number 9000001976

**APPLICANT:** Kris McFadden  
City of San Diego  
9370 Chesapeake Drive, Suite 100  
San Diego, CA 92123

CIWQS Reg. Meas. ID: 371693 Place ID: 745397 Party ID: 5020071
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**ACTION:**

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

**PROJECT DESCRIPTION:**

The City of San Diego has proposed annual maintenance dredging along the Tijuana River, located just north of the International Border in the Tijuana River Valley. The proposed project is annual excavation of approximately 10,000-30,000 cubic yards of sediment and trash debris to restore storm water conveyance capacities of the channels, and reduce the chance of flooding to the surrounding properties. The targeted dredging areas are 5,400 linear feet of the Tijuana River Pilot Channel, 100 feet east to 5,300 feet west of Hollister Bridge, and 3,040 linear feet of Smuggler's Gulch. The dredging in the Pilot Channel will occur along a 23 feet wide corridor centered on the channel, approximately 5 feet deep with a 15 feet wide channel bottom. Grading within the 23 feet wide corridor may be necessary to reconstruct and compact channel banks. Dredging of Smuggler's Gulch will occur along a footprint approximately 20 feet wide, and include cleaning of existing culverts under Monument Road and Disney Crossing. Maintenance will also be done on an existing gabion rock mattress at the

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confluence of Smuggler's Gulch and the Pilot Channel, necessary access routes, and two staging areas. Total permanent impacts are 4.31 acres of waters of the U.S. and/or State.

In October 2009 the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) issued Water Quality Certification 09C-077. This allowed a one-time maintenance event to occur along the Tijuana River Pilot Channel and Smuggler's Gulch. The impacts to 4.84 acres of vegetated and unvegetated waters of the U.S. and/or State were mitigated by the eradication of exotic invasive species within the project footprint. An April 2010 amendment was issued that extended the end of the maintenance period until April 15, 2010.

In July 2010 the San Diego Water Board received a second amendment request to Water Quality Certification 09C-077. The amendment was granted. It allowed for 3 years of annual maintenance to be done along the same stream reaches, but the overall impact acreage was 3.54 acres. The impacts to 3.54 acres of vegetated and unvegetated waters of the U.S. and/or State were to be mitigated by the eradication of invasive species within the project footprint, and by eradication of exotic invasive species on 3.54 acres adjacent to the project footprint. Maintenance work began in October 2010, but the work to eradicate exotic invasive species on the 3.54 acres adjacent to the project footprint was not completed. The mitigation was to be completed within 9 months of the initial dredging activities. Based on the project start date of October 2010 the mitigation on 3.54 acres adjacent to the project footprint should have been completed by July 2011.

Amendment of Water Quality Certification 09C-077 does not relieve the City of San Diego from their obligation to complete mitigation required for the work completed in 2010. Therefore the City of San Diego is still required to complete permanent eradication of exotic invasive species on the 3.54 acres adjacent to the project footprint. Condition C.4 in the 2010 amendment to Certification 09C-077 requires that mitigation be completed no later than 9 months following initial discharge in order to avoid increases to the required mitigation by 10 percent for each month of delay, in this case completed by July 2011. Starting in August 2011, the cumulative mitigation penalty through December 2011 is equal to 2.16 acres. As of December 2011, a total of 5.70 acres (3.54 + 2.16 acres) adjacent to the project foot print must be permanently eradicated of exotic invasive species to satisfy mitigation requirements for the work completed in 2010. Further delays in implementing this mitigation will continue to accrue penalties by 10 percent for each month of delay as described in condition C.4 of the amended Certification issued on September 22, 2010.

In August 2011 the San Diego Water Board received a third amendment request to Water Quality Certification 09C-077. Included with the request was a Mitigated Negative Declaration dated July 18, 2011 (State Clearing House

No. 2011071061). A Notice of Determination was filed on October 25, 2011, in compliance with the California Environmental Quality Act.

In order to ensure clarity and maintain consistency, the amended certification has been re-formatted to current San Diego Water Board standards. Issuance of this Certification incorporates all three amendment requests.

This amendment will allow 5 years of annual maintenance to be done along 5,400 linear feet of the Tijuana River Pilot Channel, 100 feet east to 5,300 feet west of Hollister Bridge, and 3,040 linear feet of Smuggler's Gulch. The overall impacts are to 4.31 acres of vegetated and unvegetated waters of the U.S. and/or State. Mitigation for the impacts to 4.31 acres will be done by the eradication of invasive species within the project footprint, and by eradication of exotic invasive species on 4.31 acres adjacent to the project footprint. Eradication of exotic invasive species is required to be maintained in perpetuity. The 4.31 acres of mitigation adjacent to the project footprint is a separate mitigation requirement than from the mitigation required for the work completed in 2010. Completion of the 4.31 acres will need to be done within 9 months of initial discharge done pursuant to the issuance of this amendment to Certification 09C-077.

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## I. STANDARD CONDITIONS:

The following three standard conditions apply to all Certification actions, except as noted under Condition 3 for denials.

- A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
- B. This Certification action is not intended and must not be construed to apply to any discharge from 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 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.
- C. The validity of any non-denial Certification action must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

## II. ADDITIONAL CONDITIONS: GENERAL

- A. Water Quality Certification No. 09C-077 (Certification) allows for 5 years of annual channel maintenance work and must be completed within the 5 year time frame. The expiration date shall be in concurrence with the expiration date of the Clean Water Act section 404 permit issued by U.S. Army Corps of Engineers for this project.
- B. City of San Diego must comply with the requirements of State Water Resources Control Board Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material That Have Received State Water Quality Certification*. These General Waste Discharge Requirements are accessible at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/generalorders/go\\_wdr401regulated\\_projects.pdf](http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf).
- C. City of San Diego must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the San Diego Water Board, to support this Certification and all subsequent submittals required as part of this Certification and as described in Attachment 1. The conditions within this Certification must supersede conflicting

provisions within such plans submitted prior to the Certification action. Any modifications thereto, would require notification to the San Diego Water Board and reevaluation for individual Waste Discharge Requirements and/or Certification amendment

- D. During construction, City of San Diego must maintain a copy of this Certification at the project site so as to be available at all times to site personnel and agencies.
- E. City of San Diego must permit the San Diego Water Board or its authorized representative at all times, upon presentation of credentials:
  - 1. Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
  - 2. Access to copy any records required to be kept under the terms and conditions of this Certification.
  - 3. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
  - 4. Sampling of any discharge or surface water covered by this Order.
- F. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must 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.
- G. In response to a suspected violation of any condition of this Certification, the San Diego Water Board may pursuant to Water Code sections 13267 and 13383, require the holder of any permit or license subject to this Certification to investigate, monitor and report information on the violation. The burden, including costs, of preparing the reports must bear a reasonable relationship to the need for and the benefits to be obtained from the reports.
- H. In response to any violation of the conditions of this Certification, or if the results of the project have unintended impacts to water quality, the San Diego Water Board may modify the conditions of this Certification as appropriate to ensure compliance.



- I. The issuance of this Certification only applies to maintenance work done within 5 consecutive years of issuance date as proposed in the 401 application and the engineering plans, specifications and technical reports submitted to the San Diego Water Board, to support this Certification and all subsequent submittals required as part of this Certification and as described in Attachment 1. Additional work beyond this scope for continued regular maintenance is **not** authorized by this Certification.

### **III. ADDITIONAL CONDITIONS: CONSTRUCTION BEST MANAGEMENT PRACTICES**

- A. Prior to the start of the project, and annually thereafter, City of San Diego must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response, and Best Management Practices (BMPs) implementation and maintenance.
- B. City of San Diego must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the U.S. and/or State.
- C. City of San Diego must enroll in and comply with the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, NPDES No. CAS000002, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*.
- D. The treatment, storage, and disposal of wastewater during the life of the project must be done in accordance with waste discharge requirements established by the San Diego Water Board pursuant to CWC § 13260.
- E. Discharges of concentrated flow during construction or after completion must not cause downstream erosion or damage to properties or stream habitat.
- F. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the U.S. and/or the State or placed in locations that may be subjected to storm flows. Pollutants discharged to areas within a stream diversion area must be removed at the end of each work day or sooner if rain is predicted.
- G. All surface waters, including ponded waters, must 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. Diversion activities must not result in the degradation of beneficial

uses or exceedance of water quality objectives of the receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.

- H. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the U.S. and/or State. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.
- I. Removal of vegetation must occur by hand, mechanically, or using U.S. Environmental Protection Agency approved herbicides deployed with applicable BMPs to prevent impacts to beneficial uses of waters of the U.S. and/or State. Use of aquatic pesticides must be done in accordance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, and any subsequent reissuance as applicable. Removal of vegetation must occur outside of the avian nesting season (March 15-August 31).
- J. Removal and disposal of exotic invasive species shall be done in a manner that prevents the spread of exotic invasive species to other areas.
- K. All of the maintenance actions must be completed by March 14, of each year.
- L. The dredged sediment will be temporarily stockpiled at two separate staging areas as described in the Mitigated Negative Declaration for the *Tijuana River Pilot and Smuggler's Gulch Channel Maintenance*. (City of San Diego, July 18, 2011).
- M. Management of dredged sediment stockpiles temporarily stored at the staging area must comply with R9-2007-0104 Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge within the San Diego Region, Conditional Waiver 8.

#### IV. ADDITIONAL CONDITIONS: COMPENSATORY MITIGATION

- A. **2010 Amendment.** During the 2010-2011 rainy season an amendment to the Certification allowed for 3.54 acres of permanent impacts to waters of the U.S. and/or State to occur for channel maintenance activities. The mitigation requirements were to eradicate exotic invasive species in the 3.54 acre project footprint, and on 3.54 acres adjacent to the project footprint. Maintenance work began in October 2010. However, the work

to eradicate exotic invasive species on the 3.54 acres adjacent to the project footprint was not completed. Amendment of this Certification does not relieve the City of San Diego from their obligation to complete mitigation required for the 2010-2011 rainy season. Therefore the City of San Diego is still required to complete permanent eradication of exotic invasive species on the 3.54 acres adjacent to the project footprint. Condition C.4 in the 2010 amendment to Certification 09C-077 requires that mitigation be completed no later than 9 months following initial discharge in order to avoid increases to the required mitigation by 10 percent for each month of delay.

	2010 Mitigation - Adjacent to Project Footprint (acres)	Monthly Penalty if Mitigation not complete within 9 months of starting project	Monthly Penalty (acres)	Cumulative Total Mitigation Due (acres)
If mitigation completed by July 2011	3.54			3.54
Aug-11	3.54	0.1	0.35	3.89
Sep-11	3.89	0.1	0.39	4.28
Oct-11	4.28	0.1	0.43	4.71
Nov-11	4.71	0.1	0.47	5.18
Dec-11	5.18	0.1	0.52	5.70

Since August 2011, the cumulative penalty for compensatory mitigation to date is equal to 2.16 acres. As of December 2011, a cumulative total of 5.70 acres (3.54 + 2.16 acres) adjacent to the project foot print must be permanently eradicated of exotic invasive species to satisfy mitigation requirements for the 2010-2011 rainy season. The penalty will continue to accrue for each month of delay in completing the mitigation.

- B. **2011 Amendment.** The 2011 amendment allows for 4.31 acres of permanent impacts to waters of the U.S. and/or State. These impacts are to 0.39 acres of vegetated and 3.92 acres of unvegetated waters of the U.S. and/or State. Mitigation must be achieved with the permanent eradication of exotic invasive species. Exotic invasive species within the project foot print of 4.31 acres and within 4.31 acres adjacent to the project footprint will be removed and maintained to meet the final success criteria in perpetuity. The mitigation area of 4.31 acres adjacent to the project footprint must be separate acreage from the adjacent mitigation areas done to satisfy the 2010 amendment.

- C. City of San Diego must include protocols described in the *Conceptual Wetlands Mitigation and Monitoring Plan* (August 2010, Dudek) and the *Project Proposal: Control of Invasives along and near the Pilot Channel, Tijuana River 2/23/11*, Southwest Wetlands Interpretive Association. The 5<sup>th</sup> year success criteria are the complete kill of the targeted invasive species in the acreage amounts as specified above. Thereafter the eradication of the exotic invasive species must be maintained in perpetuity.
- D. The construction of proposed mitigation must be concurrent with project grading and completed no later than 9 months following the initial discharge of dredge or fill material into on-site waters. Delays in implementing mitigation must be compensated for by an increased mitigation implementation of 10 percent of the cumulative compensatory mitigation for each month of delay.
- E. City of San Diego must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the U.S. and/or State. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species. City of San Diego must implement all necessary BMPs to control erosion and runoff from areas associated with this project.
- F. Mitigation shall be considered acceptable once it has met the pre-determined success criteria for that site, and must be maintained, in perpetuity, in a manner that consistently meets the final success criteria identified.
- G. The San Diego Water Board acceptance of the final mitigation plan must not be construed as approval of the mitigation site or plan for use by other current or future projects that are planning to use additional acreage at the site for mitigation.
- H. Any maintenance activities that do not contribute to the success of the mitigation site and enhancement of beneficial uses and ecological functions and services are prohibited. Maintenance activities are limited to the removal of trash and debris, removal of exotic plant species, replacement of dead native plant species and remedial measures deemed necessary for the success of the restoration program.
- I. For the purpose of determining mitigation credit for the removal of exotic/invasive plant species, only the actual area occupied by exotic/invasive plant species must be quantified to comply with mitigation requirements.

- J. For purposes of this Certification, establishment is defined as the creation of vegetated or unvegetated waters of the U.S. and/or State where the resource has never previously existed (e.g. conversion of nonnative grassland to a freshwater marsh). Restoration is divided into two activities, re-establishment and rehabilitation. Re-establishment is defined as the return of natural/historic functions to a site where vegetated or unvegetated waters of the U.S. and/or State previously existed (e.g., removal of fill material to restore a drainage). Rehabilitation is defined as the improvement of the general suite of functions of degraded vegetated or unvegetated waters of the U.S. and/or State (e.g., removal of a heavy infestation or monoculture of exotic plant species from jurisdictional areas and replacing with native species). Enhancement is defined as the improvement to one or two functions of existing vegetated or unvegetated waters of the U.S. and/or State (e.g., removal of small patches of exotic plant species from an area containing predominantly natural plant species). Preservation is defined as the acquisition and legal protection from future impacts in perpetuity of existing vegetated or unvegetated waters of the U.S. and/or State (e.g., conservation easement).

## **V. NOTIFICATION REQUIREMENTS:**

- A. City of San Diego must report to the San Diego Water Board any noncompliance which may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time City of San Diego becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time City of San Diego becomes aware of the circumstances. The written submission shall contain a written description of the incident and its cause, the period of the 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 reoccurrence of the noncompliance. The San Diego Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours.
- B. This Certification is not transferable in its entirety or in part to any person except after notice to the San Diego Water Board in accordance with the following terms:
1. Transfer of Property Ownership: City of San Diego must notify the San Diego Water Board of any change in ownership of the project area. Notification of change in ownership must include, but not be limited to, a statement that City of San Diego has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands and accepts the certification requirements and

the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the Executive Officer of the San Diego Water Board **within 10 days of the transfer of ownership.**

2. **Transfer of Mitigation Responsibility:** Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in this Certification must include a signed statement from an authorized representative of the new party (transferee) demonstrating acceptance and understanding of the responsibility to comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under Water Code section 13385, subdivision (a). Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board **within 10 days of the transfer date.**
- C. City of San Diego must notify the San Diego Water Board in writing at least **5 days** prior to the actual commencement of dredge, fill, and discharge activities.
  - D. City of San Diego must notify the San Diego Water Board in writing at least **5 days** prior to the actual commencement of mitigation installation, and completion of mitigation installation.

## **VI. REPORTING REQUIREMENTS:**

- A. City of San Diego must submit annual progress reports describing status of compliance with all requirements of this Certification to the San Diego Water Board prior to **August 1** of each year following the issuance of this Certification until the project has reached completion. City of San Diego must submit a Project Annual Report to the San Diego Water Board **prior to August 1 following completion of the project.** The reports must include the following:
  1. Date of construction initiation.
  2. Projected date of construction completion.
  3. Status of BMPs for the project.
  4. As-built drawings that show all areas where dredging has been completed from the previous year's work, no larger than 11"X17".

- B. City of San Diego must submit a report (including topography maps) to the San Diego Water Board within 60 days of completion of approved mitigation project, describing as-built status of the mitigation project.
- C. Prior to initiation of mitigation activities, the City of San Diego must conduct a quantitative function-based assessment to establish baseline conditions, set success criteria and assess mitigation site progress using the California Rapid Assessment Method (CRAM). The results of the functional assessment establishing baseline conditions must be submitted to the San Diego Water Board in a report no later than **30 days** after the initiation of mitigation activities.
- D. City of San Diego must develop and implement a five-year Receiving Waters Monitoring Plan in the Tijuana River Watershed to evaluate potential project impacts from pollutants/stressors to the Tijuana River. The Receiving Waters Monitoring Plan must be developed and submitted to the San Diego Water Board for approval **prior to construction commencement**. The Receiving Waters Monitoring Plan must assess conditions before, during, and after impacts have occurred by measuring changes in benthic, macroinvertebrate community, water quality, and a functional assessment of the health of wetland and riparian habitats in Tijuana River. The five year receiving water monitoring will begin prior to the start of project construction, and the data and analysis must be submitted with the Annual Progress Reports pursuant to Section VI of this certification.

#### 1. **Benthic Macroinvertebrate Community Analysis**

Bioassessment monitoring must be performed using the professional level non-point source protocol of the California Stream Bioassessment procedure<sup>1</sup> to assess effects of the project on the biological integrity of receiving waters. At a minimum, bioassessment monitoring must be performed at three sites (assessment stations) on the Tijuana River (as flow permits) once per year, during the established "index period" for the Tijuana River Watershed. The first assessment station is the reference station, which must be located upstream of the discharge from the project site on the Tijuana River in a reference area; the second assessment station must be located immediately upstream of the discharge from the project site on the Tijuana River, the third assessment station must be located immediately downstream of the discharge from the discharge from the project site on the Tijuana River. The reference station upstream of the project discharge must be located and sampled concurrently with second and third assessment stations.

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<sup>1</sup> Copies of the California Stream Bioassessment Procedure can be obtained at <http://www.dfg.ca.gov/cabw/cabwhome.html>. Additional Information on Stream bioassessment may be obtained at [http://www.waterboards.ca.gov/rwqcb9/water\\_issues/programs/bioassessment/index.shtml](http://www.waterboards.ca.gov/rwqcb9/water_issues/programs/bioassessment/index.shtml)

The results of the Benthic Macroinvertebrate Community Analysis must be submitted each year **with the Annual Progress Report.**

## 2. Water Quality Assessment

The City of San Diego must perform water quality sampling and analysis for alkalinity, ammonia as N (NH<sub>3</sub>-N), chloride (Cl<sup>-</sup>), nitrate-nitrogen as N (NO<sub>3</sub>-N), nitrite-nitrogen as N (NO<sub>2</sub>-N), total Kjeldahl nitrogen (TKN), ortho-phosphate phosphorus (OPO<sub>4</sub> as P), total phosphorus (TPO<sub>4</sub>), total suspended solids (TSS), chlorophyll *a*, pH, temperature, turbidity, specific conductance, and dissolved oxygen. At a minimum, sampling will be conducted once each year, concurrent with D.1. above. The results of the water quality assessment must be submitted each year **with the Annual Progress Report.**

## 3. California Rapid Assessment Method

The City of San Diego must conduct a quantitative function-based assessment of the health of wetland and riparian habitats in the Tijuana River using the California Rapid Assessment Method (CRAM)<sup>2</sup> at the three assessment stations described above. The results of the CRAM assessment must be submitted each year **with the Annual Progress Reports.**

- E. Where procedures are not otherwise specified for the Receiving Water Quality Monitoring Program, sampling, analysis, and quality assurance/quality control must be conducted in accordance with the Surface Water Ambient Monitoring Program (SWAMP) Quality Assurance Program Plan (QAPrP)<sup>33</sup> for the State of California's Surface Water Ambient Monitoring Program, adopted by the State Water Resources Control Board.
- F. The San Diego Water Board Executive Officer may make revisions to the Receiving Water monitoring program at any time during the five year monitoring term, and may include a reduction or increase in the number of parameters to be monitored, locations monitored, the frequency of monitoring, or the number and size of samples collected.
- G. Mitigation monitoring reports must be submitted annually until mitigation has been deemed successful. Annual monitoring reports must be submitted **prior to December 1 of each year.** Monitoring reports must include, but not be limited to, the following:

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<sup>2</sup> Information on CRAM is available at the California Rapid Assessment Method homepage at <http://www.cramwetlands.org/>

<sup>3</sup> The Quality Assurance Program Plan is available on the State Water Board's SWAMP website at [http://www.waterboards.ca.gov/water\\_issues/programs/swamp/docs/qapp/qaprp082209.pdf](http://www.waterboards.ca.gov/water_issues/programs/swamp/docs/qapp/qaprp082209.pdf)



1. Names, qualifications, and affiliations of the persons contributing to the report;
  2. Date of initiation of mitigation installation and date mitigation installation was completed.
  3. Mitigation as-builts, including topography maps and planting locations.
  4. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
  5. Topographic complexity characteristics at each mitigation site;
  6. Upstream and downstream habitat and hydrologic connectivity;
  7. Source of hydrology;
  8. Width of native vegetation buffer around the entire mitigation site;
  9. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results.
  10. Stream Photodocumentation, including all areas of permanent and temporary impact, prior to and after project construction, and mitigation areas, including all areas of permanent and temporary impact, prior to and after project construction. Photo documentation must be conducted in accordance with guidelines posted at [http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/401\\_certification/docs/StreamPhotoDocSOP.pdf](http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf). In addition, photo documentation must include Geographic Positioning System (GPS) coordinates for each of the photo points referenced.
  11. A Survey report documenting boundaries of mitigation area, including Geographic Information System (GIS) shape files (polygons) of the impact and mitigation areas (Two GPS readings (points) must be taken on each line of the polygon and the polygon must have a minimum of 10 points). GIS metadata must also be submitted.
- H. The submittal of information under this Certification is required pursuant to California Water Code (CWC) sections 13267 and 13283. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit required information pursuant to CWC section 13268 or 13385.
- I. All reports and information submitted to the San Diego Water Board must be submitted in both hardcopy and electronic format. The preferred

electronic format for each report submission is one file in PDF format that is also Optical Character Recognition (OCR) capable.

- J. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:
1. For a corporation, by a responsible corporate officer of at least the level of vice president.
  2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
  3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
  4. A duly authorized representative may sign applications, reports, or information if:
    - a. The authorization is made in writing by a person described above.
    - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
    - c. The written authorization is submitted to the San Diego Water Board Executive Officer.
- K. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

- L. City of San Diego must submit reports required under this Certification, or other information required by the San Diego Water Board, to:

Executive Officer  
California Regional Water Quality Control Board  
San Diego Region  
Attn: 401 Certification; Project No. 09C-077  
9174 Sky Park Court, Suite 100  
San Diego, California 92123

## **VII. CEQA FINDINGS:**

- A. The City of San Diego is the lead agency under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)), and filed a Notice of Determination on October 25, 2011, for a Mitigated Negative Declaration dated July 18, 2011 (SCH No. 2011071061) under CEQA Guidelines Title 14, California Code of Regulations. The City of San Diego has determined the project will not have a significant effect on the environment and mitigation measures were made a condition of the project.
- B. The San Diego Water Board has reviewed the lead agency's Mitigated Negative Declaration and also finds that the project as proposed will not have a significant effect on the environment with conditioned mitigation measures and therefore determines that issuance of this Certification is consistent with the Mitigated Negative Declaration.

## **VIII. PUBLIC NOTIFICATION OF PROJECT APPLICATION:**

On September 7, 2011, receipt of the amendment request to the project application was posted on the San Diego Water Board web site to serve as appropriate notification to the public (23 CCR .§ 3858). No public comments were received on this project.

## **IX. SAN DIEGO WATER BOARD CONTACT PERSON:**

Jody Ebsen  
California Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123  
858-636-3146  
jebesen@waterboards.ca.gov

## X. WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Tijuana River Valley Channel Maintenance Project (Project No. 09C-077) 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. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges That Have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue waste discharge requirements at that time.

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 applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Water Quality Control Plan for the San Diego Basin Region (9) (Basin Plan).



James G. Smith, AEO

for DAVID W. GIBSON  
Executive Officer  
Regional Water Quality Control Board

27 Dec 2011  
Date

- Attachments:
1. Project Information
  2. Distribution List
  3. Location Map
  4. Site Map/
  5. Mitigation Map

**ATTACHMENT 1  
PROJECT INFORMATION**

**Applicant:** City of San Diego  
Attention: Kris McFadden  
9370 Chesapeake Drive, Suite 100  
San Diego 92123  
Telephone: 858-541-4325  
Facsimile: 858-541-4350  
Email: kmcfadden@sandiego.gov

**Applicant Representative(s):** Dudek  
Attention: Vipul Joshi  
605 Third Street Encinitas, CA 92024  
Telephone: 760-479-4284  
Facsimile: 760-632-0164  
Email: vjoshi@dudek.com

**Project Name:** Tijuana River Valley Channel Maintenance

**Project Location:** 2310 Hollister Street, San Diego California 92154, in the Tijuana River Valley  
Latitude: 32° 33' 05.05" N Longitude: 117° 05' 02.47" W

**Type of Project:** Channel Maintenance Dredging

**Need for Project:** Provide regular maintenance dredging in the Tijuana River to reduce the chance of flooding in the Tijuana River Valley by removing sediment and debris.

**Project Description:** The City of San Diego has proposed annual maintenance dredging along the Tijuana River, located just north of the International Border in the Tijuana River Valley. The proposed project is annual excavation of approximately 10,000-30,000 cubic yards of sediment and trash debris to restore storm water conveyance capacities of the channels, and reduce the chance of flooding to the surrounding properties. The targeted dredging areas are 5,400 linear feet of the Tijuana River Pilot Channel, 100 feet east to 5,300 feet west of Hollister Bridge, and 3,040 linear feet of Smuggler's Gulch. The dredging in the Pilot Channel will occur along a 23 feet wide corridor centered on the channel, approximately 5 feet deep with a 15 feet wide channel bottom. Grading within the 23 feet wide corridor may be necessary to reconstruct and compact channel banks. Dredging of Smuggler's Gulch will occur along a footprint approximately

20 feet wide, and include cleaning of existing culverts under Monument Road and Disney Crossing. Maintenance will also be done on an existing gabion rock mattress at the confluence of Smuggler's Gulch and the Pilot Channel, necessary access routes, and two staging areas. Total permanent impacts are 4.31 acres of waters of the U.S. and/or State.

In October 2009 the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) issued Water Quality Certification 09C-077. This allowed a one-time maintenance event to occur along the Tijuana River Pilot Channel and Smuggler's Gulch. The impacts to 4.84 acres of vegetated and unvegetated waters of the U.S. and/or State were mitigated by the eradication of exotic invasive species within the project footprint. An April 2010 amendment was issued that extended the end of the maintenance period until April 15, 2010.

In July 2010 the San Diego Water Board received a second amendment request to Water Quality Certification 09C-077. The amendment was granted. It allowed for 3 years of annual maintenance to be done along the same stream reaches, but the overall impact acreage was 3.54 acres. The impacts to 3.54 acres of vegetated and unvegetated waters of the U.S. and/or State were to be mitigated by the eradication of invasive species within the project footprint, and by eradication of exotic invasive species on 3.54 acres adjacent to the project footprint. Maintenance work began in October 2010, but the work to eradicate exotic invasive species on the 3.54 acres adjacent to the project footprint was not completed. The mitigation was to be completed within 9 months of the initial dredging activities. Based on the project start date of October 2010 the mitigation on 3.54 acres adjacent to the project footprint should have been completed by July 2011.

Amendment of Water Quality Certification 09C-077 does not relieve the City of San Diego from their obligation to complete mitigation required for the work completed in 2010. Therefore the City of San Diego is still required to complete permanent eradication of exotic invasive species on the 3.54 acres adjacent to the project footprint. Condition C.4 in the 2010 amendment to Certification 09C-077 requires that mitigation be completed no later than 9 months following initial discharge in order to avoid increases to the required mitigation by 10 percent for each month of delay, in this case completed by July 2011. Starting in August 2011, the cumulative mitigation

penalty through December 2011 is equal to 2.16 acres. As of December 2011, a total of 5.70 acres (3.54 + 2.16 acres) adjacent to the project foot print must be permanently eradicated of exotic invasive species to satisfy mitigation requirements for the work completed in 2010. Further delays in implementing this mitigation will continue to accrue penalties by 10 percent for each month of delay as described in condition C.4 of the amended Certification issued on September 22, 2010.

In August 2011 the San Diego Water Board received a third amendment request to Water Quality Certification 09C-077. Included with the request was a Mitigated Negative Declaration dated July 18, 2011 (State Clearing House No. 2011071061). A Notice of Determination was filed on October 25, 2011, in compliance with the California Environmental Quality Act.

In order to ensure clarity and maintain consistency, the amended certification has been re-formatted to current San Diego Water Board standards. Issuance of this Certification incorporates all three amendment requests.

This amendment will allow 5 years of annual maintenance to be done along 5,400 linear feet of the Tijuana River Pilot Channel, 100 feet east to 5,300 feet west of Hollister Bridge, and 3,040 linear feet of Smuggler's Gulch. The overall impacts are to 4.31 acres of vegetated and unvegetated waters of the U.S. and/or State. Mitigation for the impacts to 4.31 acres will be done by the eradication of invasive species within the project footprint, and by eradication of exotic invasive species on 4.31 acres adjacent to the project footprint. Eradication of exotic invasive species is required to be maintained in perpetuity. The 4.31 acres of mitigation adjacent to the project footprint is a separate mitigation requirement than from the mitigation required for the work completed in 2010. Completion of the 4.31 acres will need to be done within 9 months of initial discharge done pursuant to the issuance of this amendment to Certification 09C-077.

Federal  
Agency/Permit:

U.S. Army Corps of Engineers §404, Individual Permit,  
Robert R. Smith.

Other Required Regulatory Approvals: California Department of Fish and Game, Streambed Alteration Agreement, Kelly Fisher.

Coastal Development Permit No. 852981 and Site Development Permit No. 852978, City of San Diego.

California Environmental Quality Act (CEQA) Compliance: Mitigated Negative Declaration, October 25, 2011, SCH No. 20011071061, City of San Diego.

Receiving Water: Tijuana River in the Tijuana Hydrologic Unit, Tijuana Valley Hydrologic Area, San Ysidro Hydrologic Sub-Area (911.11)

Affected Waters of the U.S. and/or State Total permanent impacts to 4.31 acres comprised of 0.39 acres of vegetated waters of the U.S. and/or State. and 3.92 acres of unvegetated waters of the U.S. and/or State.

Dredge Volume: Approximately 10,000-30,000 cubic yards of sediment will be removed from the channels annually.

Compensatory Mitigation: **2010 Amendment.** During the 2010-2011 rainy season an amendment to the Certification allowed for 3.54 acres of permanent impacts to waters of the U.S. and/or State to occur for channel maintenance activities. The mitigation requirements were to eradicate exotic invasive species in the 3.54 acre project footprint, and on 3.54 acres adjacent to the project footprint. Maintenance work began in October 2010. However, the work to eradicate exotic invasive species on the 3.54 acres adjacent to the project footprint was not completed. Amendment of this Certification does not relieve the City of San Diego from their obligation to complete mitigation required for the 2010-2011 rainy season. Therefore the City of San Diego is still required to complete permanent eradication of exotic invasive species on the 3.54 acres adjacent to the project footprint. Condition C.4 in the 2010 amendment to Certification 09C-077 requires that mitigation be completed no later than 9 months following initial discharge in order to avoid increases to the required mitigation by 10 percent for each month of delay.



	2010 Mitigation - Adjacent to Project Footprint (acres)	Monthly Penalty if Mitigation not complete within 9 months of starting project	Monthly Penalty (acres)	Cumulative Total Mitigation Due (acres)
If mitigation completed by July 2011	3.54			3.54
Aug-11	3.54	0.1	0.35	3.89
Sep-11	3.89	0.1	0.39	4.28
Oct-11	4.28	0.1	0.43	4.71
Nov-11	4.71	0.1	0.47	5.18
Dec-11	5.18	0.1	0.52	5.70

Since August 2011, the cumulative penalty for compensatory mitigation to date is equal to 2.16 acres. As of December 2011, a cumulative total of 5.70 acres (3.54 + 2.16 acres) adjacent to the project foot print must be permanently eradicated of exotic invasive species to satisfy mitigation requirements for the 2010-2011 rainy season. The penalty will continue to accrue for each month of delay in completing the mitigation.

**2011 Amendment.** The 2011 amendment allows for 4.31 acres of permanent impacts to waters of the U.S. and/or State. These impacts are to 0.39 acres of vegetated and 3.92 acres of unvegetated waters of the U.S. and/or State. Mitigation must be achieved with the permanent eradication of exotic invasive species. Exotic invasive species within the project foot print of 4.31 acres and within 4.31 acres adjacent to the project footprint will be removed and maintained to meet the final success criteria in perpetuity. The mitigation area of 4.31 acres adjacent to the project footprint must be separate acreage from the adjacent mitigation areas done to satisfy the 2010 amendment.

Mitigation Location:

2310 Hollister Street, San Diego California 92154, in the Tijuana River Valley.  
Latitude: 32° 33' 05.05" N Longitude: 117° 05' 02.47" W

Related Projects  
Implemented/to be  
Implemented by the  
Applicant(s):

Channel maintenance along the Tijuana Pilot Channel and Smuggler's Gulch was performed in 2009 and 2010. Completion of mitigation for the 2010-2011 rainy season will be done to eradicate exotic invasive species on areas adjacent to the project footprint. The City of San Diego is currently developing a programmatic channel maintenance plan for all of their storm water channels which will require permits from the resources agencies.

Best Management  
Practices (BMPs):

Implementation of BMPs includes having a designated monitoring person on site to ensure proper application of BMPs on a daily basis. The City of San Diego's Water Quality Plan (October 1, 2009) describes proposed BMPs for erosion controls, sediment controls, materials management and good housekeeping measures. BMPs for stockpiles temporarily stored at the staging areas must comply with R9-2007-0104 Conditional Waivers of Waste Discharge Requirements for Specific Types of Discharge within the San Diego Region.

Public Notice:

On September 7, 2011 receipt of the amendment request to the project application was posted on the San Diego Water Board web site to serve as appropriate notification to the public. No public comments were received on this project.

Fees:

Total Due: \$ 20,419.00  
Total Paid: \$ 640.00 (check No. 1011760)  
\$16,380.00 (check No. 1014366)  
\$ 640.00 (check No. 110546)  
\$ 2,759.00 (check No. 1157059)

CIWQS:

Regulatory Measure ID: 371693  
Place ID: 745397  
Party ID: 5020071

**ATTACHMENT 2  
DISTRIBUTION LIST**

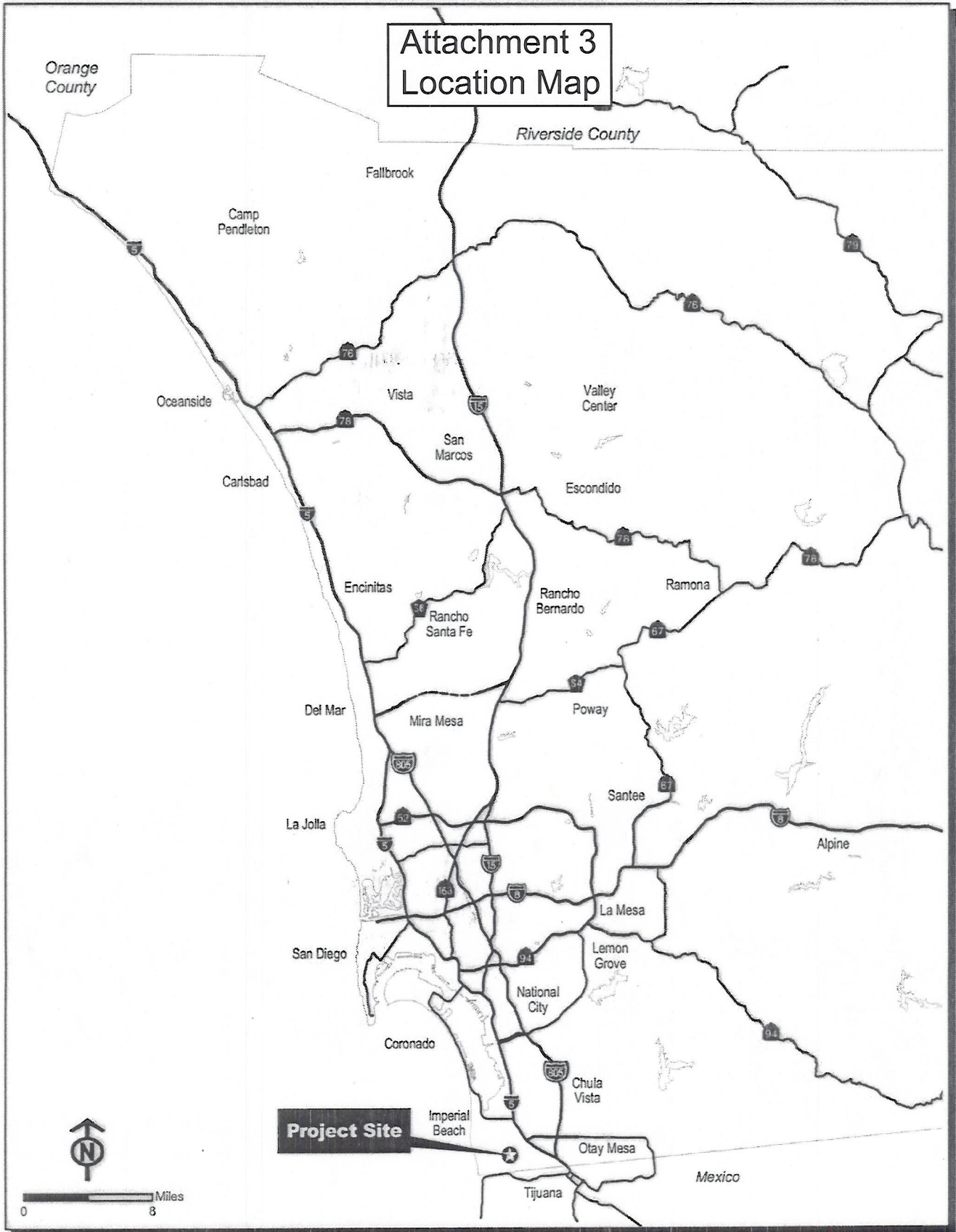
Cc via email:

Robert R. Smith  
U.S. Army Corps of Engineers, Regulatory Branch  
[Robert.R.Smith@usace.army.mil](mailto:Robert.R.Smith@usace.army.mil)

State Water Resources Control Board, Division of Water Quality  
401 Water Quality Certification and Wetlands Unit  
[Stateboard401@waterboards.ca.gov](mailto:Stateboard401@waterboards.ca.gov)

U.S. Environmental Protection Agency, Region 9  
Wetlands Regulatory Office  
[R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov)

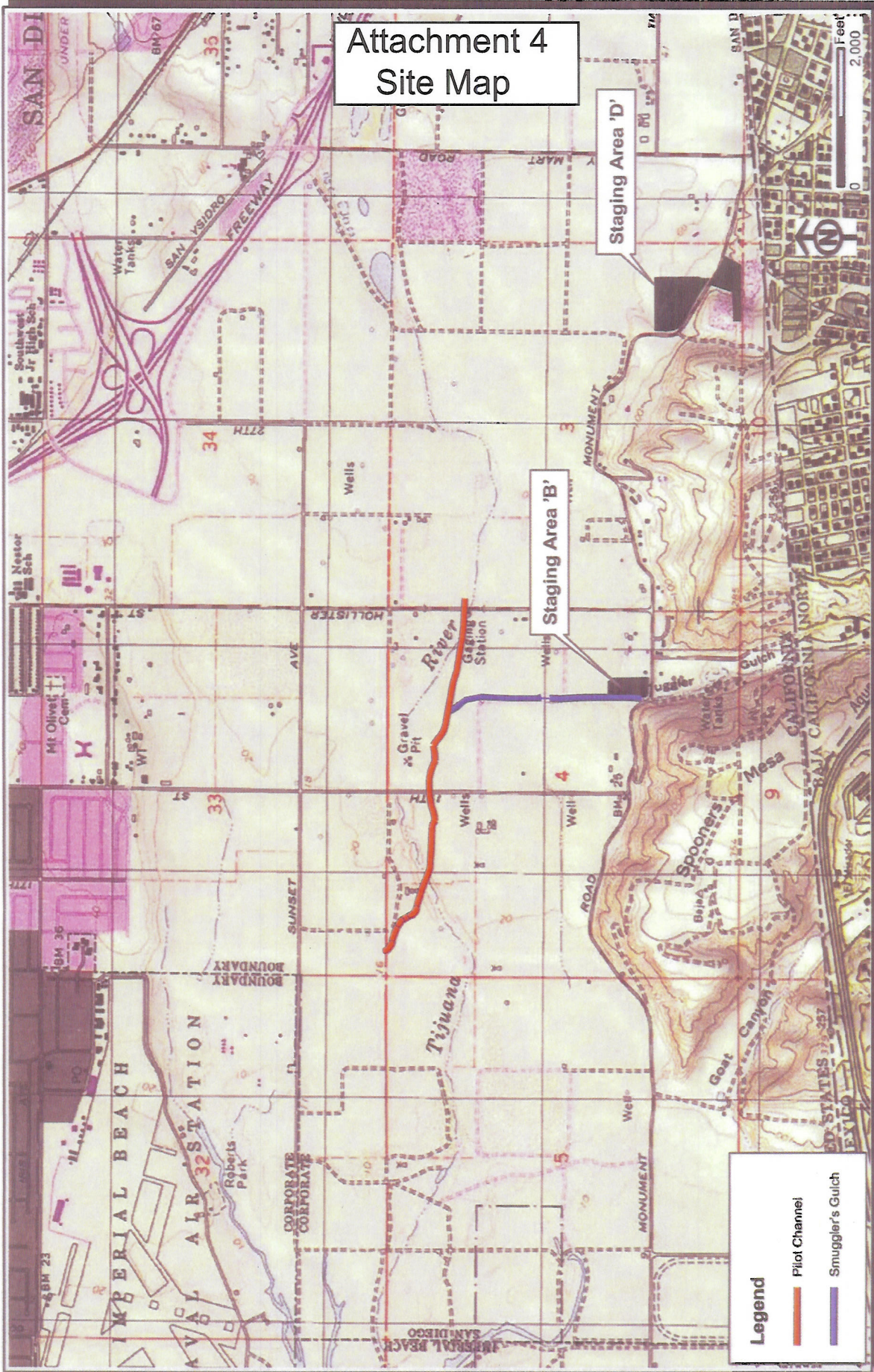
David Zoutendyk  
U.S. Department of the Interior  
Fish and Wildlife Service  
[david\\_zoutendyk@fws.gov](mailto:david_zoutendyk@fws.gov)



Tijuana River Valley Maintenance Project  
 Conceptual Wetlands Mitigation and Monitoring Plan  
**Regional Map**

**FIGURE  
1**





BASE MAP SOURCE: USGS 7.5 Minute Series, Imperial Beach Quadrangle

**Tijuana River Valley Maintenance Project  
Conceptual Wetlands Mitigation and Monitoring Plan  
Vicinity Map**



# Attachment 5 Mitigation Site Map

FIGURE  
3

Tijuana River Valley Maintenance Project  
Conceptual Wetlands Mitigation and Monitoring Plan  
Impacts and Mitigation Map



Completed Mitigation

Potential Exotic Control Area

**Permitted Impact:**

**Pilot Channel:**

- Erodible Berm
- Pilot Channel Excavation
- Turnaround

**Smuggler's Gulch:**

- Gabion Rock Mattress
- Smuggler's Gulch Excavation

BASE MAP SOURCE: DigitalGlobe, January 2008