

EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## San Diego Regional Water Quality Control Board

March 1, 2016

**In reply refer to:**

R9-2016-0060:241915:dbradford

Mr. Eduardo T. De Mesa  
Chief, Planning Division  
U.S. Army Corps of Engineers  
Los Angeles District  
911 Wilshire Blvd., #14007  
Los Angeles, CA 90017

**Certified Mail – Return Receipt Requested**

Article Number: 7011 0470 0002 8952 7878

Mr. Warren Williams  
General Manager, Chief Engineer  
Riverside County Flood Control  
and Water Conservation District  
1995 Market Street  
Riverside, CA 92501

**Certified Mail – Return Receipt Requested**

Article Number: 7010 1060 0000 4953 0655

**Subject: Notice of Violation No. R9-2016-0060**

Mr. De Mesa and Mr. Williams:

Enclosed is Notice of Violation (NOV) No. R9-2016-0060 issued to you for violations of Clean Water Act Section 401 Water Quality Certification No. 03C-046. As described in the NOV, the violations subject you to further enforcement pursuant to the California Water Code (WC). The San Diego Water Board reserves the right to take any enforcement action authorized by law.

Please contact us at your earliest opportunity. The San Diego Water Board would like to work cooperatively with you to resolve these violations. In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

Please submit all responses and information to this NOV in electronic format via e-mail to [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov). Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to the San Diego Water Board, 2375 Northside Drive, San Diego, CA 92108. Each electronic document must be

HENRY ABARBANEL, PH.D., CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, California 92108-2700 | [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

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submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: R9-2016-0060:241915:dbradford

In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." For questions pertaining to the subject matter, please contact Darren Bradford at (619) 521-3356 or [darren.bradford@waterboards.ca.gov](mailto:darren.bradford@waterboards.ca.gov).

Respectfully,



Eric Becker, P.E.  
Senior Water Resources Control Engineer  
San Diego Water Board

EB:DB:dlb

Enclosures:

Notice of Violation R9-2016-0060 with attachments

CC (by email with enclosures):

Tiffany Bostwick  
U.S. Army Corps of Engineers  
[tiffany.bostwick@usace.army.mil](mailto:tiffany.bostwick@usace.army.mil)

Peggy Bartels  
U.S. Army Corps of Engineers  
[Peggy.J.Bartels@usace.army.mil](mailto:Peggy.J.Bartels@usace.army.mil)

Jeff Brandt  
California Department of Fish and Game  
[Jeff.Brandt@wildlife.ca.gov](mailto:Jeff.Brandt@wildlife.ca.gov)

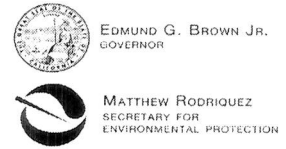
Karen Cleary-Rose  
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[Karen\\_Cleary-Rose@fws.gov](mailto:Karen_Cleary-Rose@fws.gov)

David Barker  
San Diego Water Board  
[David.Barker@waterboards.ca.gov](mailto:David.Barker@waterboards.ca.gov)

U.S. EPA, OWOW, Region 9  
[R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov)

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)

File No.	R9-2016-0060
WDID	9000001174
Reg. Measure ID	404665
Place ID	241915
Party ID	47607
Violation ID	1003167
Inspection ID	202089



San Diego Regional Water Quality Control Board

March 1, 2016

**NOTICE OF VIOLATION  
No. R9-2016-0060**

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U.S. Army Corps of Engineers  
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Los Angeles, CA 90017

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Riverside County Flood Control and Water Conservation District  
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Riverside, CA 92501

Murrieta Creek Flood Control,  
Environmental Restoration, and  
Recreation Project, Phase II

**Violations of Clean Water Act Section  
401 Water Quality Certification  
No. 03C-046**

The U.S. Army Corps of Engineers (USACE) and Riverside County Flood Control and Water Conservation District (RCFCWCD) (collectively, Permittees) are in violation of Clean Water Act Section 401 Water Quality Certification No. 03C-046 (Certification) for the Murrieta Creek Flood Control, Environmental Restoration and Recreation Project (Project).

Such violations subject the Permittees to possible enforcement action by the San Diego Regional Water Quality Control Board (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 in amounts of up to \$10,000 per day per violation in accordance with Water Code § 13308 for the USACE and Water Code § 13385 for the RCFCWCD; and referral to the State Attorney General for injunctive relief.

## A. Summary of Violations

### Violations of CWA Section 401 Water Quality Certification 03C-046:

#### 1. Failure to submit monitoring reports.

- a. **Condition II.A.3.h of the Certification states in part:** “During construction activities there shall be no net increase in sediment from the project site. The applicants shall establish a water quality monitoring program to measure sediment above and below the construction sites. An increase greater than 5 percent above background (upstream site) shall result in work stoppage and installation of appropriate best management practices (BMPs). Water quality monitoring shall occur after every significant rainfall and results shall be reported to the Regional Board within 5 working days of the sampling event.”
- b. **Observation:** A review of San Diego Water Board files indicates that the water quality monitoring results have not been submitted by the Permittees during construction of Phase II of the Project, as required by Condition II.A.3.h of Certification No. 03C-046.

#### 2. Failure to install appropriate BMPs.

- a. **Condition III.1 of the Certification states:** “The project shall not cause a discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in California Water Code Section 13050.”
- b. **Observation:** During the January 7, 2016 inspection, San Diego Water Board inspectors did not observe any evidence of erosion controls that provided effective soil cover on any slopes within the project boundaries. Evidence of significant rilling and sediment transport on several slopes that appeared to be inactive was observed. This was a clear indication that no erosion control BMPs had been implemented. Evidence of erosion and sediment transport due to inadequate or ineffective erosion control measures for inactive areas was observed throughout the site during the inspection. (See attached January 7, 2016 Facility Inspection Report Photos 1 through 11). Excess sediment discharged from the site threatens to cloud the waters of the State, which reduces the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas and transport transports other pollutants such as nutrients, metals, and oils and greases. Accordingly the lack of appropriate BMP controls to control excess sediment discharges at the site threatens to create pollution or nuisance conditions in waters of the State.

**3. Failure to prevent discharges of pollutants or dredged or fill material to waters of the United States.**

- a. **Condition III.2 of the Certification states:** “The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or this water quality certification is prohibited.”
- b. **Observation:** The San Diego Water Board inspector observed unauthorized sediment-laden storm water discharges from the site. See attached January 7, 2016 Facility Inspection Report, Photo 11.

**4. Failure to prevent the discharge of sand, silt, clay, or other earthen materials from inactive areas.**

- a. **Condition III.6 of the Certification states:** “The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.”
- b. **Observation:** During the January 7, 2016 inspection, the San Diego Water Board inspectors observed several areas on the site that appeared inactive, or could have been scheduled to be inactive, without effective soil cover or other BMPs to prevent erosion. Evidence of erosion and sediment transport due to inadequate or ineffective erosion control measures for inactive areas was observed throughout the site during the inspection. See attached January 7, 2016 Facility Inspection Report Photos 1 through 11.

**B. Summary of Potential Enforcement Options**

Failure to address these violations may subject the Permittees to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of \$10,000 per day of violation (Water Code section 13308 or 13385) and/or any of the following enforcement actions:

<b>Other Potential Enforcement Options</b>	<b>Applicable Water Code Section</b>
Technical or Investigative Order	Sections 13267
Cleanup and Abatement Order	Section 13304 (Amendment of existing CAO No. R9-2005-0259)
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

In addition, the San Diego Water Board may consider revising or rescinding applicable waste discharge requirements, if any, referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and/or referral to the municipal or District Attorney for criminal prosecution.

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Eric Becker, P.E.  
Senior Water Resources Control Engineer  
San Diego Water Board

EB:DB:dlb

Attachments: Facility Inspection Report dated January 7, 2016  
Clean Water Act section 401 Water Quality Certification No. 03C-046

Tech Staff Info & Use	
File No.	03C-046
WDID	900001174
Reg. Measure ID	404665
Place ID	241915
Party ID	47607
Violation ID	1003167
Inspection ID	202089