

## California Regional Water Quality Control Board

### San Diego Region

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA



9174 Sky Park Court, Suite 100, San Diego, California 92123-4353 (858) 467-2952 • Fax (858) 571-6972 http://www.waterboards.ca.gov/sandiego

-July 15, 2008

CERTIFIED MAIL
7008 0150 0003 7457 7578
Dr. Josephine Axt, Ph.D.
Chief, Planning Division
U.S. Army Corps of Engineers, Los Angeles District
911 Wilshire Blvd., #14007
Los Angeles, CA 90017

In reply refer to: NWP:R920080086:mmills

CIWQS Place ID: 241915

CERTIFIED MAIL
7008 0150 0003 7457 7585
Mr. Warren Williams
General Manager, Chief Engineer
Riverside County Flood Control and Water Conservation District
1995 Market Street
Riverside, CA 92501

RE: NOTICE OF VIOLATION NO. R9-2008-0086 & REQUIRED TECHNICAL REPORT

Subject Site: Murrieta Creek Flood Control, Environmental Restoration, and Recreation Project, Phase I.

Dear Dr. Axt and Mr. Williams,

Enclosed is **Notice of Violation (NOV) No. R9-2008-0086** for the subject site in the City of Temecula, Riverside County, CA. The Murrieta Creek Flood Control, Environmental Restoration, and Recreation Project was issued Clean Water Actional Section 401 Certification No. 03C-046 (Certification) on August 15, 2003. Violations specified in the NOV were identified during file review and correspondence with United States Army Corps of Engineers (Corps) in June 2008 and during a site inspection on July 2, 2008.

Regional Water Quality Control Board, San Diego Region (Regional Board) directs you to submit a **Required Technical Report (RTR)** received at the Regional Board no later than **5:00 PM, August 22, 2008**. The RTR is required due to the violations noted in the enclosed NOV. The RTR will be reviewed to access the need for further possible enforcement actions. The RTR shall include the following Sections:

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Dr. Axt Mr. Williams R9-2008-0086

- 1. An explanation as to why the Corps and the Riverside County Flood Control and Water Conservation District (RCFCWCD) failed to monitor and maintain the Phase I mitigation area.
- 2. Documentation to demonstrate that the mitigation area as implemented by the Phase I repairs meets the requirements of Condition B.2 of the Certification.
- 3. A detailed mitigation maintenance and monitoring schedule that includes exact dates for future maintenance and monitoring activities. This schedule may be included in the Final Mitigation and Monitoring Plan. The results of the monitoring must be submitted in the Semi-Annual Progress Reports per condition IV.2.e. of the Certification.
- 4. A Final Mitigation and Monitoring Plan that fulfills Condition IV.4.c of the Certification.

The submitted Required Technical Report shall include the following signed certification:

I certify 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 manage the system, or those persons 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.

Failure to submit the above information by the date requested may result in the imposition of administrative civil liability pursuant to CWC sections 13268 and 13385.

Questions pertaining to this Required Technical Report and the enclosed Notice of Violation should be directed to Mariah Mills at 858-627-3977 or mmills@waterboards.ca.gov. Written correspondence should be directed to the following address:

Michael P. McCann, Assistant Executive Officer Attn: Mariah Mills California Regional Water Quality Control Board, San Diego Region 9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340

July 15, 2008

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Dr. Axt Mr. Williams R9-2008-0086

Michael P. McCann

Assistant Executive Officer

Attachments:

Notice of Violation R9-2008-0086

cc by e-mail:

Randy Tabije, U.S. Army Corps of Engineers, Roland R. Tabije@usace.army.mil Zully Smith, Riverside County Flood Control and Water Conservation District, zsmith@rcflood.org

David Van Dorpe, U.S. Army Corps of Engineers,

David M. Van Dorpe@usace.army.mil

Erin Hardison, U.S. Army Corps of Engineers, <a href="mailto:Erin.L.Hardison@usace.army.mil">Erin.L.Hardison@usace.army.mil</a>
Tiffany Kayama, U.S. Army Corps of Engineers, <a href="mailto:Tiffany.R.Kayama@usace.army.mil">Tiffany.R.Kayama@usace.army.mil</a>
Jeff Brandt, California Department of Fish and Game, <a href="mailto:JBrandt@dfg.ca.gov">JBrandt@dfg.ca.gov</a>

### CIWQS:

13267: 348755 NOV: 348753 Place No.: 241915

Violations: 773897, 773898, 773899, 773900, 773902

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401 Certification: 214223

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	July 15, 2008	
IN THE MATTER OF:	)	
	) NOTICE OF VIOLATION	
Dr. Josephine Axt, Ph.D.	) NO. R9-2008-0086	
Chief, Planning Division	)	
U.S. Army Corps of Engineers	) CIWQS Place No. 241915	
Los Angeles District	)	
911 Wilshire Blvd., #14007	) in reply refer to:	
Los Angeles, CA 90017	NWU:R920080086:mmills	
Mr. Warren Williams	•	
General Manager, Chief Engineer		
Riverside County Flood Control and Water		
Conservation District		
1995 Market Street	•	
Riverside, CA 92501	•	

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

Subject Sites: Murrieta Creek Flood Control, Environmental Restoration, and Recreation Project, Phase I.

#### YOU ARE HEREBY NOTIFIED THAT:

Linda S. Adams

Secretary for

**Environmental Protection** 

Your respective agencies 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 you to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (Regional Board), including administrative enforcement existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

In a letter dated May 15, 2008, the United States Army Corps of Engineers (Corps) and the Riverside County Flood Control and Water Conservation Districts (RCFCWCD) county Flood Control and Water Conservation Districts (RCFCWCD) county Flood Control submitted a semi-annual progress report for the Project, as required by Certification Condition IV.2.e, and requested termination of Cleanup and Abatement Order R9-2005-0018 (CAO). The violations described below were identified from a site inspection on July 2, 2008 and during review of the May 15, 2008 letter, the Regional Board files and correspondence with Corps staff regarding the Project. Please note that

California Environmental Protection Agency

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Dr. Josephine Axt Mr. Warren Williams R9-2008-0086

the CAO will not be rescinded until the Corps and RCFCWCD achieves full compliance with the Certification.

## **Summary of Violations:**

#### I. FAILURE TO CONTROL EXOTIC SPECIES IN THE PROJECT AREA

- > Pursuant to Certification Condition II.B.6:
  - Exotic Species Control. The applicants shall implement the following mitigation measures for control of exotic species that threaten beneficial uses of the post-construction project area:
    - a) Giant Reed (Arundo donax) shall be absent from the channel;
    - b) Salt Cedar (*Tamarix spp.*) shall comprise no more than two percent of the vegetation present in the channel bottom and sideslopes;
    - c) Total non-native vegetation shall comprise no more than five percent of the vegetation present in the channel bottom and sideslopes;
    - d) The applicants shall implement a bullfrog control program intended to facilitate colonization of Arroyo Toads;
    - e) Ornamental vegetation planted on the levees (only native vegetation shall be planted within the channel and sideslopes) shall not include species listed on the California Exotic Pest Plant Council (CalEPPC) Pest Plan Lists (current lists include "List A", "List B", "Red Alert", "Annual Grasses", and "Need More Information." Updated lists are available at http://groups.ucanr.org/ceppc/Pest\_Plant\_List/).

**Observation:** Corps staff stated via email on June 24, 2008 that the mitigation site has become infested with exotic plants. During the site inspection on July 2, 2008, Regional Board staff confirmed that exotic vegetation in the channel comprised more than five percent of the vegetation present.

### II. FAILURE TO INCLUDE MITIGATION MONITORING RESULTS IN THE SEMI-ANNUAL PROGRESS REPORT.

- Pursuant to Certification Condition IV.2.e:
  - The reports shall include the results and description of the monitoring surveys of mitigation sites conducted within the previous six months and in accordance to the schedule in the Final Revegetation and Monitoring Plans for each phase.

**Observation:** The May 15, 2008 Semi-Annual Progress Report did not contain the results of the mitigation monitoring surveys, nor did it contain any execute other information regarding mitigation implementation.

- III. FAILURE TO SUBMIT A FINAL MITIGATION AND MONITORING PLAN
  - > Pursuant to Certification Condition IV.4:

California Environmental Protection Agency

July 15, 2008

i. Final Specific Project Plan Reports: The applicants shall submit Specific Plan Reports to the Regional Board for review and comment by December 1, 2003 for Phase 1 and prior to 120 days of initiating impacts for each subsequent phase (Phases 2, 3 and 4). These reports shall consist of Construction Specific Plans, Draft or Final Maintenance Plans, and Final Restoration, Mitigation and Monitoring Specific Plans.

**Observation:** The Corps and RCFCWCD did not submit the Final Mitigation and Monitoring Plan until it was requested via email on June 26, 2008.

## IV. FAILURE TO SUBMIT A FINAL MITIGATION AND MONITORING PLAN THAT MEETS THE REQUIREMENTS OF THE CERTIFICATION

- > Pursuant to Certification Condition IV.4.c.i-iii:
  - i. Final specific mitigation plans for each phase of construction shall clearly identify the precise location of mitigation areas to facilitate future compliance inspections.
  - ii. The Final Mitigation and Monitoring Plans for each phase shall include construction plans and specifications that include, but are not limited to, the following:
    - a) Proposed channel designs and earthwork for all mitigation areas, including appropriate cross sections and plan views;
    - A detailed planting plan, including species lists, plant sizes and quantities, planting designs, densities and maintenance requirements;
    - c) Detailed implementation schedules, including but not limited to, dates for initiation and completion of mitigation installation, recordation of conservation easements, initiation of monitoring period, reporting dates, etc.;
    - d) An irrigation plan;
- e) Specific details regarding hydrologic, habitat and biochemical monitoring, including function-based performance standards, மாக்கிக்காக மாக்கிக்கிக்கில் கொளியில் மென்றில் locations, periodicity, and qualitative and quantitative indicators; and
  - f) All other information as appropriate and requested by the Regional Board based on review of previous submittals.

Angeles District; 1999), or equivalent functional analysis. Functional

iii. Hydrogeomorphic (HGM) Functional Success Criteria: The Final
Revegetation and monitoring Plan for each phase shall include

Conservation Distriction based success criteria! Criteria may be based on Function
Based Performance Standards for Evaluating the Success of Riparian
and Depressional/Emergent Mitigation Sites (Prepared by PCR
Services Corporation for the U.S. Army Corps of Engineers, Los

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Dr. Josephine Axt Mr. Warren Williams R9-2008-0086

analysis shall include functions for Habitat, Biogeochemical/water quality, and Hydrologic functions.

a) Success criteria for each mitigation phase shall only be considered met following at least 12 months without irrigation of mitigation areas.

**Observation:** In response to the email request on June 26, 2008, the Corps submitted a Final Mitigation and Monitoring Plan on July 1, 2008 via the Corps ftp site. This Final Mitigation and Monitoring Plan submitted did not contain all of the information required by Condition IV.4.c. Specifically, the Final Mitigation and Monitoring Plan did not fulfill Conditions IV.4.c.ii.a, -c, -e and IV.4.c.iii. Furthermore, the Final Mitigation and Monitoring Plan did not contain any of the figures referenced in the document.

# V. FAILURE TO MONITOR AND MAINTAIN THE MITIGATION AREA AS DESCRIBED IN THE FINAL MITIGATION AND MONITORING PLAN.

- Pursuant to the sections 2.6 and 4.3.2 of the Final Mitigation and Monitoring Plan (August 2003):
  - Section 2.6: Weeding Schedule Weeding will be performed on each site
    on a weekly basis for the first 90 days after planting. Weeding will then
    occur once a month for the next nine months and quarterly for the next
    two years. Biannual weeding visits will then be performed for the next two
    years.
  - Section 4.3.2: Restoration Monitor Schedule The restoration monitor shall conduct a monthly site inspection for the first three months, then one site visit every six months for three years. After the third year the restoration monitor shall conduct a yearly inspection of the project area. At the completion of the third and fifth years, the restoration monitor will conduct an HGM analysis of the project site and make any recommendations for additional plantings to fulfill the revegetation and restoration of the site.

Observation: Corps staff stated via email on June 24, 2008 that the mitigation site has become infested with exotic plants. During the site state of the vegetation vegetation in the channel comprised more than five percent of the vegetation present. There was no evidence that the site had been weeded in the recent past. Corps staff stated via email on June 24, 2008 that monitoring surveys for the mitigation area have not been performed.

Questions pertaining to the issuance of this Notice of Violation should be directed to Mariah Mills at 858-627-3977 or mmills@waterboards.ca.gov. Written correspondence pertaining to this Notice of Violation should be directed to the following address:

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John H. Robertus, Executive Officer

Attn: Mariah Mills

California Regional Water Quality Control Board, San Diego Region

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340

David Barker

Supervising Engineer

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Mr. Warren Williams	·
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