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Secretary for  
Environmental Protection

# California Regional Water Quality Control Board

## San Diego Region

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-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 Act 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.

Pursuant to California Water Code (CWC) section 13267 and 13383, the California 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 assess the need for further possible enforcement actions. The RTR shall include the following Sections:

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](mailto: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

RF

Dr. Axt  
Mr. Williams  
R9-2008-0086

July 15, 2008



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](mailto:Roland.R.Tabije@usace.army.mil)  
Zully Smith, Riverside County Flood Control and Water Conservation District,  
[zsmith@rcflood.org](mailto:zsmith@rcflood.org)

David Van Dorpe, U.S. Army Corps of Engineers,  
[David.M.VanDorpe@usace.army.mil](mailto:David.M.VanDorpe@usace.army.mil)

Erin Hardison, U.S. Army Corps of Engineers, [Erin.L.Hardison@usace.army.mil](mailto:Erin.L.Hardison@usace.army.mil)

Tiffany Kayama, U.S. Army Corps of Engineers, [Tiffany.R.Kayama@usace.army.mil](mailto:Tiffany.R.Kayama@usace.army.mil)

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

CIWQS:

13267: 348755

NOV: 348753

Place No.: 241915

Violations: 773897, 773898, 773899, 773900, 773902

401 Certification: 214223



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/](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 other information regarding mitigation implementation.

### III. FAILURE TO SUBMIT A FINAL MITIGATION AND MONITORING PLAN

#### ➤ Pursuant to Certification Condition IV.4:

- 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;
  - b) 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, sample 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.
- iii. Hydrogeomorphic (HGM) Functional Success Criteria: The Final Revegetation and monitoring Plan for each phase shall include function-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 Angeles District; 1999), or equivalent functional analysis. Functional

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 inspection on July 2, 2008, Regional Board staff confirmed that exotic 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](mailto:mmills@waterboards.ca.gov). Written correspondence pertaining to this Notice of Violation should be directed to the following address:

*California Environmental Protection Agency*





