Santa Ana Regional Water Quality Control Board

August 28, 2015

Mr. Craig Wentworth
California Department of Transportation
464 4th Street, 6th Floor, MS 822
San Bernardino, CA 92401

craig.wentworth@dot.ca.gov

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR STATE ROUTE 138 REALIGNMENT PROJECT, COUNTY OF SAN BERNARDINO, CALIFORNIA (ACOE REFERENCE NO. SPL-2012-00137-VCL) (SARWQCB PROJECT NO. 362015-09)

Dear Mr. Wentworth,

On February 11, 2015, we received from the California Department of Transportation (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to establish a new alignment for a two-mile portion of State Route 138 (SR-138) located east of Interstate 15 in the Cajon Pass area. The Applicant submitted a filing fee of $90,900 with the Certification application materials, which satisfies the Project fee requirement for consideration of a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the most current iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, Section 2200 (a) (3).

This letter responds to your request for Certification that the proposed Project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) (Basin Plan) and subsequent Basin Plan amendments:

Project Description: The Project entails construction of a new alignment for 2.2 miles of SR-138 easterly of the intersection of SR-138 and I-15. The new highway will be forty feet wide, with one 12-foot wide lane in each direction and an 8-foot wide paved shoulder on each side. Three bridges will be constructed along the new alignment crossing Hog Ranch Creek, Miner's Shack Creek, and Double Drain Creek. The Project includes

removal of the sections of SR-138 and associated drainage structures no longer in use.

The work will take place within Sections 24 and 25 of Township 3 North, Range 6 West, of the U.S. Geological Survey *Cajon* 7.5 minute topographic quadrangle map (33° 19.809' N/ -117° 26.552 W).

Receiving water: Hog Ranch Creek, Miner's Shack Creek, Double Drain Creek and unnamed tributaries of Crowder Canyon, which is tributary to Cajon Creek. Cajon Creek has beneficial use designations (existing or potential) that include: municipal and domestic supply (MUN), groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), cold fresh water habitat (COLD), wildlife habitat (WILD), and Rare, Threatened or Endangered Species (RARE).

Fill area:

Temporary Impact to Waters of the United States	0.477 acres
Permanent Impact to Waters of the United States	2.69 acres

Dredge/Fill volume: Not Applicable

Federal permit: U.S. Army Corps of Engineers Individual Permit Reference Number SPL-2012-00137-VCL

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Standard water quality related best management practices (BMPs) will be employed during construction activities.
- In lieu of traditional rip-rap protection, native vegetation will be interspersed throughout placed rock ('vegetated rip-rap') along 0.241 acres of the Project.
- Stream restoration of 0.51 acres will be accomplished by removing old roadway and drainage structures, re-grading to original stream contours, and then replanting native riparian vegetation.

- Streambed enhancement will be accomplished by installing native riparian plantings over 1.223 acres of the streambed. Locations include around the abutments of the new Hog Wash Bridge and from the bridge approximately 300 feet downstream. Also at the abutments of the new Miner's Creek Bridge and to 425 feet downstream of the bridge. At the new Double Creek Bridge riparian plants will be installed adjacent to area of temporary impacts.
- Temporary impacts will be mitigated by re-grading stream segments to their original site contours, and replanting with appropriate native riparian vegetation.

Offsite Water Quality Standards Mitigation Proposed:

- The Project Applicant will mitigate 2.69 acres of permanent impacts through the purchase of 3.93 acres of rehabilitation mitigation credit at a 1:1.5 mitigation ratio or 5.67 acres of enhancement mitigation credit at a 1:2.1 mitigation ratio in the Riverside-Corona Resource Conservation District (RCRCD) In-Lieu Fee Program.

Should the proposed Project have the potential to impact State- or federally-listed endangered species or their habitat, the Applicant will ensure that the Project implements measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife to mitigate those impacts to an acceptable level.

Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State per the requirements of SWRCB Order No. 2012-0011-DWQ (NPDES Permit No. CAS000003), commonly known as the State of California Department of Transportation Storm Water Permit, and subsequent iterations thereof.

This 401 Certification is subject to the acquisition of all local, regional, State, and federal permits and approvals as required by law. Failure to meet any conditions contained herein, or any conditions contained in any other permit or approval for this Project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including imposition of administrative civil liability.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a Responsible Agency, the Regional Board is required to consider a Mitigated Negative Declaration (MND) prepared by the lead agency in determining whether to approve an application submitted by a project to receive 401 Water Quality Certification. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project, which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the MND prepared for the proposed Project by the California Department of Transportation that was filed with the State Clearinghouse on September 29, 2014, and subsequent information provided in the Applicant's application, in approving this Certification. More specifically, the Regional Board has considered those sections of the MND pertaining to impacts to water quality standards. Based upon the mitigation proposed in the MND, and the conditions set forth in this Certification, potentially adverse impacts to water quality will be reduced to a less than significant level and beneficial uses protected if all stated mitigation and conditions are performed. Thus, the Regional Board independently finds that these changes or alterations have been incorporated into the Project that should avoid or mitigate impacts to water quality to a less than significant level.

This 401 Certification is contingent upon the execution of the following conditions:

1) The Applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.

2) This Order does not authorize emergency repair activities. The Applicant is required to apply for separate authorization to perform emergency repairs should they be necessary.

3) The Applicant shall ensure that all fees associated with this Project shall be paid to each respective agency prior to conducting any on-site construction activities.

4) A copy of this Certification and any subsequent amendments must be maintained on-site for the duration of work as a denoted element of any Project Storm Water Pollution Prevention Plan (SWPPP), Water Quality Management Plan (WQMP) and/or Habitat Mitigation and Management Plan (HMMP).

5) A HMMP for all onsite mitigation shall be provided to this office for approval prior to the discharge of fill to, or the dredging or excavation of material from, waters of United States (U.S.) or waters of the State of California.

6) The Applicant shall complete the post-construction restoration of temporary impacts and onsite streambed enhancement and stream restoration to waters of the U.S. within 30 days following completion of construction activities. Upon consideration of a written request, this period may be extended by Regional Board authorization to accommodate proper planting times. If restoration is not initiated within one year of impacts, additional mitigation may be required to offset temporal loss of waters of the U.S.

7) All materials generated from construction activities associated with this Project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this Project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified. Additionally no materials shall be stored within waters of the U.S. or waters of the State of California.

8) The Project proponent shall utilize BMPs during Project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the State and of the United States.

9) Substances resulting from Project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the State. All waste concrete shall be removed from the Project site.

10) Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the State on-site, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.

11) This 401 Water Quality Certification is subject to the acquisition of all local, regional, State, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.

12) Construction de-watering discharges, including temporary stream diversions necessary to carry out the Project, are subject to regulation by Regional Board Order No. R8-2015-0004, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at www.waterboards.ca.gov/santaana/

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

(a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

(b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

(c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the Applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the Applicant to submit a Report of Waste Discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this 401 Water Quality Certification, the holder of any permit or license subject to this Certification shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of Section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. Violations of the conditions of this Certification may subject the Applicant to civil liability pursuant to Water Code Section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby certify that any discharge from the referenced Project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law.

This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at: www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo 2003-0017.pdf

Should there be any questions, please contact Jason Bill at (951) 782-3295 or Jason.Bill@waterboards.ca.gov, or Wanda Cross at (951) 782-4468 or wanda.cross@waterboards.ca.gov.

Sincerely,

Kurt V. Berchtold
Executive Officer

cc (via electronic mail):
Department of Transportation – Josh Jaffery – josh.jaffery@dot.ca.gov
U. S. Army Corps of Engineers, Los Angeles Office - Veronica Chan
CA Department of Fish and Wildlife – Kim Freeburn-Marquez
State Water Resources Control Board, Office of Chief Counsel - David Rice
State Water Resources Control Board DWQ - Water Quality Certification Unit
U.S. EPA -Supervisor of the Wetlands Section – Jason A. Brush