TO: Water Board Advisory Team and the California Department of Transportation, District 8 (Caltrans)

FROM: Lauri Kemper
Assistant Executive Officer

DATE: June 6, 2016

SUBJECT: RESPONSE TO THE WATER BOARD ADVISORY TEAM’S MAY 24, 2016 EMAIL REQUESTING ADDITIONAL INFORMATION REGARDING THE REVISED DRAFT SHEEP CREEK CLEANUP AND ABATEMENT ORDER

On June 2, 2016, the State Water Resources Control Board (State Water Board) issued Caltrans a Notice of Applicability of Water Quality Order 2004-0004-DWQ General Waste Discharge Requirements (General WDRs) for the State Route – 138 Widening Project. In light of this development, the California Regional Water Quality Control Board, Lahontan Regional (Water Board) Prosecution Team intends to recommend changes to the revised draft Cleanup and Abatement Order (CAO) as some of the requirements of the revised draft CAO are now moot or covered by the General WDRs. For example, the “Sheep Creek Abutment and Creek Restoration Project” is now covered by the General WDRs and some of the items listed under “Information Required for Completion of Individual Waste Discharge Requirements” are no longer necessary or have already been provided to the State Water Board.

The Water Board Prosecution Team believes a CAO is still necessary given that the General WDRs permit Caltrans’ project activities on a going-forward basis but do not address past impacts to Sheep Creek nor Drainage Systems 1, 2, 3, 4, and 6 for unauthorized activities that caused or permitted waste to be discharged to waters of the state.

The Water Board Prosecution Team provides the following responses to the Water Board Advisory Team’s May 24, 2016 email:

1) What sort of communications have the parties had since the responses to comments and revised proposed CAO were issued on April 8, 2016? Are the parties in agreement on the terms of the CAO?

Please see the enclosed “Sheep Creek Communication Timeline” for details of the communications between Caltrans and the Water Board Prosecution Team (collectively...
referred to as Parties) since the responses to comments and the revised draft CAO were issued on April 8, 2016.

The Water Board Prosecution Team will contact Caltrans to discuss changes to the revised draft CAO, will notify the Water Board Advisory Team of whether the Parties are in agreement on the terms, and will present the revised draft CAO to the Water Board Advisory Team for final approval.

2) **Does Caltrans understand what is expected of them in the CAO?**

On June 2, 2016, Jan Zimmerman of the Water Board Prosecution Team spoke with Caltrans Resident Engineer Elvira Lenart regarding Caltrans’ understanding of the revised draft CAO. Caltrans indicated it understood the requirements of the revised draft CAO.

The Water Board Prosecution Team will confirm that Caltrans understands subsequent changes to the revised draft CAO.

3) **How much compensatory mitigation is required? How will that be determined?**

The amount of compensatory mitigation required will be addressed in changes to the revised draft CAO. Compensatory mitigation requirements are likely to be similar to the requirements under the 401 Certification for waters of the United States and under the General WDRs for non-federal waters of the state, meaning the Mitigation Ratio is likely to be 3:1 for compensatory mitigation involving restoration and enhancement and 5:1 for compensatory mitigation involving preservation only.

4) **The draft CAO does not contain a narrative chronology of events, such as Water Board communication and Caltrans actions, since the Water Board field inspections on September 29, 2015, and February 24, 2016. Please provide a succinct summary of relevant Caltrans and Water Board communication and actions since September 29, 2015.**

Please see the enclosed “Sheep Creek Communication Timeline” for details of the communications between the parties.

5) **The draft CAO describes the project as occurring in federal Waters of the US and in non-federal waters of the state. Please include a narrative description of the project to explain which portions are within the jurisdiction of the Santa Ana Water Board and which portions are in the Lahontan Water Board jurisdiction, and include an aerial map delineating the two jurisdictions relative to the project area.**

See “Attachment D Project Impact Details” for jurisdictional delineation maps of waters of the United States covered by the 401 Certification issued to Caltrans by the State Water Board for activities taking place in and impacting waters of the United States. Page D-4 contains a map for Phases I and II of the project. Drainage IDs 1 – 41 and
Cajon Creek are within the Santa Ana Regional Water Quality Control Board’s jurisdiction. Drainage IDs 41a – 57 are within the Lahontan Water Board’s jurisdiction. Drainage IDs 1 – 41, Cajon Creek, and Drainage IDs 41a – 57 are all jurisdictional waters of the United States and covered under the 401 Certification issued to Caltrans by the State Water Board.

See the enclosed “Updated Jurisdictional Delineation Map Figures 2E & 2F” for maps of non-federal waters of the state within the Water Board’s jurisdiction. Drainage IDs 58-62, as labeled in this document, and Sheep Creek are non-federal waters of the state that are covered by the revised draft CAO and the General WDRs. Please note there is a discrepancy between the numbering system used in the Jurisdictional Delineation Report (Drainage IDs 58-62) and the numbering system used in Caltrans Plan Sheets (Drainage Systems 1, 2, 3, 4, and 6). To make the process easier for Caltrans, the revised draft CAO uses the drainage numbering system in the Caltrans Plan Sheets. Also included for reference are maps submitted by Caltrans with the NOI for the General WDRs which show Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6.

The Water Board Prosecution Team will be in contact with Caltrans and the Water Board Advisory Team in the near future regarding changes to the revised draft CAO. In the interim, if you have questions or comments regarding this matter, please contact me at (530) 542-5436 or Jan Zimmerman at (760) 241-7376.

Enclosures: Sheep Creek Communication Timeline
Attachment D Project Impact Details
Updated Jurisdictional Delineation Map Figures 2E & 2F
General WDRs NOI Maps

cc (via email):
Elvira Lenart, Caltrans
Scott Quinnell, Caltrans
Patty Kouyoumdjian, Executive Officer, Lahontan Water Board
Doug Smith, Advisory Team Member, Lahontan Water Board
Kimberly Niemeyer, Office of Chief Counsel, State Water Board
Mike Plaziak, Lahontan Water Board
Patrice Copeland, Lahontan Water Board
Jan Zimmerman, Lahontan Water Board
Mayumi Okamoto, Office of Enforcement, State Water Board
Kailyn Ellison, Office of Enforcement, State Water Board
Bill Orme, State Water Board
Brian Dailey, State Water Board
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Attachment D
Project Impact Details
Maps and Information are provided by Caltrans

Table 1 – Project Impacts by Drainage ID

Figure 1 – Regional Location Map

Figure 2A – Jurisdictional Delineation Map

Figure 2B – Jurisdictional Delineation Map

Figure 2C – Jurisdictional Delineation Map

Figure 2D – Jurisdictional Delineation Map

Figure 2E – Jurisdictional Delineation Map

Figure 3A – Impact Assessment Map – Cajon Creek
### Table 1

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Regional Location
SR-138 Widening Project
Phases I and II
California Department of Transportation
Impact Assessment Map-Cajon Creek
SR-138 Widening Project
California Department of Transportation

Legend
- Permanent Impact
- Temporary Impacts
- Survey Area
- Access Road
- USACE WUS
- CDFG Jurisdiction

Map Notes:
Aerial Image - Bing Map
Survey Area - AMEC (2011)
Limit of Impact - Caltrans/SR-691-e-VIP-Cajon Creek-wk-d.dgn

1 inch = 58 feet
Jurisdictional Delineation Map
SR-138 Widening Project
California Department of Transportation

Map A
Map B

1 inch = 417 feet

Survey Area: AMEC (2011)
Projection: NAD_1983_StatePlane_California_V_FIPS_0405_Feet
Limit of Pavement: Caltrans (D-LAYOUT_4ENVIR_Rev_new.DGN & LA.dgn & 3401U D-cut-fil)

FIGURE 2 F
Attachment 3: Drainage System Design Plans & Aerial Map Photos
PERMANENT FILL DISCHARGES:
AREA OF EXIST COLUMN = 0.00069 ACRES
NUMBER OF COLUMNS = 18
TOTAL AREA = 0.0125 ACRES
AREA OF COLUMN = 0.0033 ACRES
NUMBER OF COLUMNS = 8
TOTAL AREA = 0.0264 ACRES
SHEEP CREEK PERMANENT FILL DISCHARGE:
= 0.0264 ACRES - 0.0125 ACRES = 0.0139 ACRES
PERMANENT EXCAVATION DISCHARGE LENGTH: 48 FEET