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## Lahontan Regional Water Quality Control Board

April 8, 2016

Ms. Elvira Lenart  
California Department of Transportation  
District 8  
Resident Engineer's Office  
850 Via Lata, Suite 104  
Colton, California 92324

**PROPOSED CLEANUP AND ABATEMENT ORDER, REQUIRING THE CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 8 TO CLEAN UP AND ABATE THE EFFECTS OF THE DISCHARGE OF DREDGE AND FILL MATERIAL TO WATERS OF THE STATE AT THE CALIFORNIA HIGHWAY 138 WIDENING PROJECT AT SHEEP CREEK, SAN BERNARDINO COUNTY**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) intends to issue a Cleanup and Abatement Order (CAO) naming the California Department of Transportation, District 8 (Caltrans) as the responsible party for unauthorized discharges of waste to waters of the state from Phase I of the California Highway 138 Widening Project at Sheep Creek. The activities conducted at Sheep Creek, a water of the state, were undertaken without first obtaining individual Waste Discharge Requirements.

Caltrans submitted comments on the draft CAO on February 12, 2016. Enclosed are the Water Board's responses to those comments and the September 29, 2015 Inspection Report. I have also enclosed the Prosecution Team's suggested revisions to the CAO (in redlined, strike-out and a clean copy) developed in light of Caltrans' comments, a subsequent site inspection of the area subject to the CAO on February 24, 2016 and the March 17, 2016 materials received from Caltrans. The substance of the CAO remains the same as in the original version. The Prosecution Team's revisions are meant to clarify the requirements of the CAO and acknowledge updated information received from Caltrans. The Prosecution Team recommends the Executive Officer issue the Revised Draft CAO.

If you have questions or comments regarding this matter, please contact me at (530) 542-5436 or Jan Zimmerman at (760) 241-7376.



LAURI KEMPER, P.E.  
ASSISTANT EXECUTIVE OFFICER

Enclosures:

Water Board's Response to Comments  
September 29, 2015 Inspection Report  
Revised Draft CAO (redlined, strike-out)  
Revised Draft CAO (clean copy)

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## Lahontan Regional Water Quality Control Board

### **RESPONSE TO COMMENTS – PROPOSED CLEANUP AND ABATEMENT ORDER, REQUIRING THE CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 8 TO CLEAN UP AND ABATE THE EFFECTS OF THE DISCHARGE OF DREDGE AND FILL MATERIAL TO WATERS OF THE STATE AT THE CALIFORNIA HIGHWAY 138 WIDENING PROJECT AT SHEEP CREEK, SAN BERNARDINO COUNTY**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) staff is responding to February 12, 2016 comments from the California Department of Transportation District 8 (Caltrans) on the draft Cleanup and Abatement Order (CAO) referenced above. The Draft CAO was posted for public comment on January 14, 2016. Caltrans submitted the only comments regarding this matter. This memorandum represents the Prosecution Team’s response to the received comments.

#### **Caltrans Comment No. 1:**

Background Item #2 states in part that “[t]he 401 certification notes that “this Water Quality Certification applies to all aspects of the Project except for impacts to Sheep Creek and non-federal waters of the state in that vicinity. Impacts to those non-federal waters will be addressed separately through Waste Discharge Requirements.”

Comment/Inquiry: Does the exception noted here include all work within these limits or only work in Sheep Creek and the drainage systems? Please clarify the limits excluded in the 401 certification.

#### **Water Board Response No. 1:**

By law, the California Water Code section 401 Water Quality Certification (401 certification) can only apply to waters of the United State (i.e. federal waters). Therefore, it does not apply to Sheep Creek or any other non-federal waters. Impacts to non-federal waters of the state, such as Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6, must be covered by Waste Discharge Requirements (WDRs).

#### **Caltrans Comment No. 2:**

Background Item #3 states in part that “Caltrans was subsequently enrolled under the Construction General Permit on March 10, 2015. Similar to the 401 certification, the Construction General Permit applies to all aspects of the Project except for discharges from construction activities to Sheep Creek and non-federal waters of the state in that vicinity.”

Comment/Inquiry: WDID#8 36C372 was activated for the project on March 10, 2015. Please see attached email. The activation notification did not state an exception. The issuance of the WDID#, as provided, indicates that we can begin work on the project under the Construction General Permit. Therefore, Caltrans was not notified of any exceptions in this WDID#.

**Water Board Response No. 2:**

Caltrans submitted a Notice of Intent to enroll under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009-DWQ and as amended by Order 2010-0014-DWQ (Construction General Permit). The activation notification did not need to state an exemption because the Construction General Permit only applies to waters of the United States (i.e. federal waters). See Construction General Permit, Order, section I(A)(3) (“This General Permit regulates discharges of pollutants in storm water associated with construction activity (storm water discharges) to waters of the United States from construction sites that disturb one or more acres of land surface, or that are part of a common plan of development or sale that disturbs more than one acre of land surface.”). Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6 are non-federal waters of the state; therefore, the Construction General Permit does not apply. WDRs are needed to authorize any work in these non-federal waters, including storm water discharges from construction activity.

**Caltrans Comment No. 3:**

Background Item #5 states in part that “[s]taff also observed an absence of adequate best management practice (BMPs) along the banks of the creek and debris accumulation upstream of footings from previous storm events.”

Comment/Inquiry: Debris accumulation at the BMPs in place were a collection of debris that washed downstream and passed through the project site with the exception of wood forms which are anchored to the column foundations, (IMG 7/false work start-up). These forms are in place and have not moved. Is the Water Board referring to these forms as “debris” and do they need to be removed?

**Water Board Response No. 3:**

Please see attached inspection report and note the multiple BMP violations observed during the inspection.

The wood forms observed around the piers during the September 29, 2015 inspection were identified as being part of the work area within Sheep Creek that had not been protected from in-stream flows and storm water run-on. Without protection, the wood forms act to capture sediment and debris moving downstream during storm events. Debris accumulation in and around the wood forms was observed during the September 29, 2015 inspection. Staff has observed that Caltrans has removed the debris accumulated in and around the wood forms and installed a temporary k-rail diversion system around each form and associated pier. The k-rail diversion system appears to be adequate to protect this portion of the work area from in-channel flows within Sheep Creek. The k-rail diversion should remain in place and be maintained until all pier work within the channel is complete.

**Caltrans Comment No. 4:**

Background Item #9 states in part that “[t]he Water Quality Control Plan for the Lahontan Region (Basin Plan) contains policies that the Water Board uses with other Laws and regulations to protect the quality of the waters of the state within the Lahontan Region.”

Comment/Inquiry: There is no indication of these measures or guidelines in the activation of the WDID# for this project. The Water Board instead refers to the Basin Plan; clarify the intent with this newly provided information.

**Water Board Response No. 4:**

The activation of the WDID# for the project is irrelevant to the CAO, because the Construction General Permit does not apply to non-federal waters of the state such as Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6.

Background paragraph 9 is not new information, but rather sets the basis for how the Regional Boards and the State Water Resources Control Board (State Water Board) (collectively Water Boards) use water quality standards to protect the quality of waters of the state. A water quality standard is a two-part standard that includes a designated beneficial use(s) and a water quality objective (either narrative or numerical) that must be maintained or attained to protect that beneficial use(s). For waters of the state in the Lahontan Region, the water quality standards are spelled out in the Water Quality Control Plan for the Lahontan Region (Basin Plan). All permits and authorizations issued by the Water Boards, including issuance of 401 certifications, WDRs, and adoption of the Construction General Permit, take into consideration these water quality standards and include mitigations, monitoring requirements, and prohibitions for discharges in each of these permitting actions to protect beneficial uses. The Basin Plan is a publically available document that is easily accessible to Caltrans and is referenced repeatedly in Caltrans'401 certification.

**Caltrans Comment No. 5:**

Comment/Inquiry: Caltrans understands the provisions of Order Section 2 (and all related subsections) to apply only to Sheep Creek and that Order Section 2 does not apply to Drainage

Systems 1, 2, 3, 4, and 6, since Order Section 2 refers to the "Sheep Creek Abutment and Creek

Restoration Project Work Plan", not the "Sheep Creek project", which was an explicitly defined phrase in Background Section 4. Under the provisions of the Draft CAO, only the phrase "Sheep

Creek project" incorporates Drainage Systems 1, 2, 3, 4, and 6.

**Water Board Response No. 5:**

Order section 2 is limited to abutment and creek restoration work in Sheep Creek, upstream (south) of Highway 138. Order section 2 does not apply to Drainage Systems 1, 2, 3, 4, and 6 or work downstream of Highway 138. The Draft CAO has been revised for clarification.

**Caltrans Comment No. 6:**

Comment/Inquiry: The Draft CAO does not adequately describe the "Sheep Creek project site" and employs inconsistent and ambiguous terminology to describe the scope of the Draft CAO. These deficiencies deprive Caltrans of adequate notice of the alleged violations. Caltrans is willing to consult with the Water Board to clarify the

intended scope of the Draft CAO's provisions in order to achieve requisite notice. Such consultation should be undertaken before the CAO is adopted.

**Water Board Response No. 6:**

The Water Board believes the scope of the Draft CAO is clear and further consultation is unnecessary. The scope of the Draft CAO is Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6. The only exception to this scope is Order section 2, as outlined above in Water Board Response No. 5. Order section 2 has been revised for clarification.

**Caltrans Comment No. 7:**

Order Item #1. Comment/Inquiry: Attached please find pictures (see IMG\_6313,6315, 6318, 6320, 6323, 6325, 6328, and 6329) depicting BMPs as per Sections 500.3 and 500.4 of the Project's SWPPP in Sheep Creek and its vicinity.

**Water Board Response No. 7:**

Thank you for providing photographs of the Best Management Practices (BMPs) implemented at Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6. Lahontan Water Board staff inspected these areas on February 24, 2016 and verified that sediment and erosion control BMPs are being implemented and maintained at Sheep Creek and in associated Drainage Systems 1, 2, 3, 4, and 6. The CAO requires Caltrans to continue to implement and maintain BMPs in these areas in accordance with the specifications outlined in Caltrans' Storm Water Pollution Prevention Control Plan (SWPPP) and associated Water Pollution Control Plan drawings.

**Caltrans Comment No. 8:**

Order Item #1. Comment/Inquiry: This section requires implementation "[e]ffective immediately upon issuance of this Order." This language should be modified to require implementation within a reasonable time upon notice of issuance of the order.

**Water Board Response No. 8:**

The Water Boards have repeatedly informed Caltrans of the need for BMPs, and as evident by the photographs submitted with Caltrans Comment No. 7 and the Water Board's February 24, 2016 inspection, Caltrans has already implemented some BMPs. Caltrans also began work in Sheep Creek without the required WDRs, which would have required Caltrans to implement BMPs immediately upon initiating construction activities. Therefore, it is not appropriate to revise the Draft CAO to allow additional time for Caltrans to implement BMPs.

**Caltrans Comment No. 9:**

Order Item #2.1.2. Comment/Inquiry: Please note the Draft CAO Comments depicting Sheep Creek Abutment and Creek Restoration Work Plan. This document depicts the work to take place in Sheep Creek in an effort to comply with the Water Board's requirements. Advise should this not be sufficient.

**Water Board Response No. 9:**

The plan sheet titled “DRAFT – CALTRANS CAO COMMENTS” partially fulfills the requirement for CAO Order 2.1.2. This plan sheet depicts some of the remaining work in Sheep Creek, but does not identify the pier work needed to support the new bridge deck. Please provide a complete plan, to scale, that identifies **all** remaining work needed to complete the Sheep Creek abutment and bridge on the upstream side of State Route 138. Furthermore, the plan sheet does not include a **narrative description** of the construction and design work depicted in the plan. Please provide an accompanying narrative description of all work depicted in the complete plan.

**Caltrans Comment No. 10:**

Order Item #2.1.4 & 2.1.5. Comment/Inquiry: Please find attached the flow diversion plan (see 08-3401U4-SWPPP Amend #4) currently implemented on site and depicted in Amendment #4 of the Project’s SWPPP (see IMG\_6328 and 6329/08-3401U4Amend#4). Advise if the submitted documents do not satisfy the Draft CAO Order Items # 2.1.4 & 2.1.5.

**Water Board Response No. 10:**

The plan included in Amendment No. 4 of the Project’s SWPPP identifies the sediment and erosion control BMPs and the flow diversion BMPs that will be implemented within the channel of Sheep Creek. This plan partially fulfills the requirement of CAO Order No. 2.1.4 and 2.1.5. To fully satisfy CAO Order 2.1.4 and 2.1.5, please provide a **narrative description** of the procedures that Caltrans and its contractors will follow to protect water quality in Sheep Creek prior to and during a storm event. These procedures shall be followed until construction in the channel is complete and permanent BMPs are in place and functioning. At a minimum, the narrative shall describe the conditions for when equipment and construction materials will be removed from the channel, conditions for when equipment and construction materials can go back into the channel following a storm event, timing of pre- and post-storm inspections, timing of BMP maintenance, and the conditions for when dewatering will be required.

**Caltrans Comment No. 11:**

Comment/Inquiry: Drainage Plans D-1, D-2 & D-3 depict drainage systems (DS) 1-5. Please confirm that Caltrans can install the flared-end sections for DS#1g, DS#2e, DS#3f and install pipe for DS#5C and inlet for DS#5d. Drainage plans are attached.

**Water Board Response No. 11:**

Drainage Systems 1, 2, 3, 4, and 6 are non-federal waters of the state and are, in part, the subject of the CAO. The installation of the flared-end sections for Drainage Systems 1, 2, and 3 (Drainage Plans D-1 and D-2) will be authorized when the WDRs are adopted by the State Water Board. Until then, the sediment and erosion control BMPs currently implemented in these drainages must be maintained. The Draft CAO requires Caltrans to continue to implement and maintain BMPs in these areas in accordance with the specifications outlined in Caltrans’ SWPPP and associated Water Pollution Control Plan drawings.

What Caltrans refers to as “drainage system 5” is not a jurisdictional water of the state (please refer to the October 2009 Delineation Report prepared for the State Route 138 Widening Project). Therefore, the installation of the storm water collection and conveyance system depicted on Drainage Plan D-3, specifically the installation of pipe (DS#5c) and inlet (DS#5d), does not require WDRs. However, as required by the Draft CAO, Caltrans must implement and maintain sediment and erosion control BMPs throughout the Sheep Creek project area, including that area depicted on Drainage Plan D-3, in accordance with the specifications outlined in Caltrans’ SWPPP and associated Water Pollution Control Plan drawings.

**Caltrans Comment No. 12:**

Order Item #2.1.5. Comment/Inquiry: A Flow Diversion Plan for in-water work occurring in Sheep Creek, including details for isolating work areas from in-stream flows and storm water run-on. Please provide clarification and guidance for when the diversion “for in-water work” be in-place. Due to the perennial nature of Sheep Creek and surface water flows, is the Board expecting that the diversion be constructed and functioning prior to and during all work activities or only when flows (storm water run-on and in creek flows) are anticipated or present?

**Water Board Response No. 12:**

The Flow Diversion Plan (SWPPP Amendment No. 4) for in-channel work within Sheep Creek shall be implemented at all times during construction in anticipation of a flow event. The types and placement of BMPs in the channel will be dependent upon the type of work and the size of the work area and may change over time as work progresses, which shall be reflected in amendments to the Flow Diversion Plan, as needed. All BMPs that are implemented must be maintained. Should flow in the channel of Sheep Creek occur, all work in the channel must stop and the equipment and construction materials moved to upland areas. In-channel work shall not recommence until all flows through the work area have ceased. We recommend that the in-channel work area be the minimum area possible so that it *is feasible* to remove all equipment quickly from the channel of Sheep Creek should a flow event occur.

**Caltrans Comment No. 13:**

Order Item #3.1. Comment/Inquiry: Caltrans Environmental Planner Adam Compton previously submitted information and project plans multiple times to Robert Solecki (and others) of the Board to satisfy Items 3.1.1, 3.1.2, and 3. 1.3. Some of the information was in direct response to previous requests for information from the Board needed to make the WDR application complete. Is the information Caltrans has previously submitted to the Board still on file and if so, is it sufficient for processing of the WDR, or is additional or new information required to process the WDR? Please identify what documentation remains to be submitted to the Water Board.

**Water Board Response No. 13:**

As has been repeatedly communicated to Caltrans, past documentation submitted by Caltrans is not sufficient for processing the WDRs. The following additional information



is needed in order for Caltrans to obtain WDRs. Caltrans must include the following information if a Notice of Intent (NOI) to enroll under and comply with the terms of Water Quality Order No. 2004-004-DWQ, Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (General WDRs) is submitted for the remaining temporary and permanent impacts to waters of the state associated with Sheep Creek project activities.

*3.1.1 Details on the construction plans and design for the Sheep Creek project, including a timeline for completion of the Sheep Creek project, and a detailed description, in narrative form, of project milestones and activities to be completed at the end of each milestone;*

What has been provided by Caltrans:

- Construction plan drawings have been provided with the SWB#1 Caltrans Comments on Draft CAO 02-12-2016.pdf. Specifically, the designs on pages 15, 17, 18, and 19 appear to be drawings of the remaining work on the Sheep Creek project.
- Construction plan drawings have been provided with the SR-138 Widening Project WDR Report Requirements and Mitigation Monitoring Plan for Drainage Systems #1-6 & Sheep Creek Bridge dated March 17, 2016 (March 17, 2016 Plan). Specifically, the designs in Attachments 2, 3, & 4 of the March 17, 2016 Plan show the details for construction work at Drainage Systems 1, 2, 3, 4, and 6.
- A GANTT chart showing a timeline and brief description for the completion of the remaining activities at the Sheep Creek Bridge has been provided. Specifically, the GANTT was included as Attachment 8 of the March 17, 2016 Plan.

Yet to be provided by Caltrans:

- Written narrative, to accompany the provided construction plan drawings for the Sheep Creek project that 1) describes the activities that have already occurred and 2) describes the remaining activities that need to occur to complete the project. The description must include a table showing the quantity of unpermitted, and remaining, temporary and permanent impacts to waters of the state associated with Sheep Creek project activities. The written narrative should include a timeline (e.g. GANTT chart or similar) for completion of the remaining activities at Drainage Systems 1, 2, 3, 4, and 6.

*3.1.2 An Erosion and Sediment Control Plan for work occurring in Sheep Creek and the six drainages of Sheep Creek, including but not limited to procedures Caltrans will follow to protect water quality in Sheep Creek prior to and when a storm event occurs during active and inactive construction;*

What has been provided by Caltrans:

- An erosion and sediment control plan drawing has been provided with the SWB#1 Caltrans Comments on Draft CAO 02-12-2016.pdf. Specifically, page 16

appears to provide drawn details on temporary erosion and sediment controls to be deployed at Sheep Creek; Drainage Systems 1, 2, 3, 4, and 6 are not shown.

Yet to be provided by Caltrans:

- An erosion and sediment control plan drawing for Drainage Systems 1, 2, 3, 4, and 6. Written procedures that Caltrans and its contractors will follow to protect water quality in Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6 prior to and when a storm event occurs during active and inactive construction. The Plan must include written procedures Caltrans and its contractors will follow to protect all exposed portions of the site within 48 hours of any likely rain event forecast of 50 percent or greater probability.
- As described in the March 17, 2016 Plan, a Storm Water Pollution Prevention Plan that will detail all construction measures for the project.

*3.1.3 A Flow Diversion Plan for in-water work occurring in Sheep Creek, including details for isolating work areas from in-stream flows and storm water run-on.*

What has been provided by Caltrans:

- A flow diversion plan drawing has been provided with the SWB#1 Caltrans Comments on Draft CAO 02-12-2016.pdf. Specifically page 16 appears to provide drawn details on temporary flow diversion to isolate work areas within Sheep Creek. Additionally, IMG\_6328 and IMG\_6329 show k-rails installed near the temporary access roads and around piers and sandbags installed parallel to abutments to isolate work areas.
- Additional narrative plan and written procedures that Caltrans and its contractors will follow to isolate work areas from in-stream flows and protect in-stream work areas from storm water run on during construction has been provided with the March 17, 2016 Plan. Specifically, NS-5 Clear Water Diversion plan from the Caltrans Storm Water Quality Handbook Construction Site BMP Manual at Sheep Creek.

*3.1.4 Proposed mitigation for the Sheep Creek project and the Sheep Creek Abutment and Creek Restoration Project for impacts to waters of the state. Proposed mitigation shall include estimated quantity in acres or linear feet that will be created, restored, enhanced, purchased from a mitigation bank or conservation bank, or set aside for protection or other compensatory mitigation such as in lieu. The proposed mitigation should also consider increased ratios, where appropriate, to account for temporal losses, including prior activities conducted without Board approval and length of duration of the impacts.*

What has been provided by Caltrans:

- Phone and email correspondence with State Water Board staff, Brian Dailey.

Yet to be provided by Caltrans:

- Specific details on fulfilling the mitigation requirements for all unpermitted, and remaining, permanent impacts to waters of the state associated with Sheep Creek project activities through Transition Habitat Conservancy to include at a minimum:
  - Transition Habitat Conservancy point of contact information to include: name and title, phone number, email address, and mailing address.
  - A detailed map and delineation of the waters of the state proposed for preservation.
  - A copy of the proposed land protection instrument, e.g. a deed restriction or conservation easement.
  - A long-term management plan for the proposed mitigation lands.
  - The quantity and cost of the mitigation lands proposed for purchase, including funding of long-term management.
- If Caltrans does not intend to obtain mitigation through the Transition Habitat Conservancy the following shall be required:
  - A compensatory mitigation plan for the Sheep Creek project and the Sheep Creek Abutment and Creek Restoration Project including all plan elements as outlined in 40 CFR § 230.94(c).
  - If Caltrans proposes to fulfill their compensatory mitigation obligations by securing credits from an approved mitigation bank or in-lieu fee program, the compensatory mitigation plan need only include the items described in 40 CFR § 230.94(c)(5)-(6), and the name of the specific mitigation bank or in-lieu fee program to be used.

Order section 3.1 has been revised for clarification. The information required under Order section 3 is critical information State Water Board staff needs in order to complete Caltrans' WDRs to ensure that Caltrans' activities are protective of water quality. Any delay in submitting these documents will result in further delaying the issuance of the WDRs. Without the WDRs, work in Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6 continues to be unpermitted and could subject Caltrans to discretionary administrative civil liability.

**Caltrans Comment No. 14:**

Comment/Inquiry: Order Item #4 states that the Water Board must approve "all plans required by this Order." The Draft CAO should be more explicit about what "plans" are required by the Draft CAO and should also include an unambiguous definition of "plan." This clarity is necessary because the Draft CAO makes any "violation of an approved plan" a violation of the CAO.

**Water Board Response No. 14:**

The reference to approval of "[a]ll plans required by this Order" in Order section 4 refers to all plans identified in Order sections 2 and 3.

**Caltrans Comment No. 15:**

Order Item #5 states in part that “[s]ediment, turbidity, and oil and grease are some of the pollutants of concern which pose a threat to waters of the state due to unpermitted Sheep Creek project activities.”

Comment/Inquiry: The Draft CAO does not provide any evidence (for instance, measurements or other relevant testing) of any discharges of any such “pollutants of concern” as a result of “project activities.” If this Order Item asserts actual damage, please provide evidence to support that claim.

**Water Board Response No. 15:**

Water Board staff believes Caltrans’ comment is directed at Background paragraph 5, not Order section 5. As indicated in Background paragraph 5, “[s]ediment, turbidity, and oil and grease are some of the pollutant of concern which pose a threat to waters of the state due to unpermitted Sheep Creek project activities.” See September 29, 2015 inspection report. Unpermitted Sheep Creek project activities threaten to cause or permit a discharge of waste into waters of the state. This threat is sufficient for the issuance of this CAO under Water Code section 13304.

**Caltrans Comment No. 16:**

Order Item #7. Comment/Inquiry: The Draft CAO seeks to impose, pursuant to Water Code section 13304, “reasonable costs associated with site investigation, oversight, and cleanup.” Water Code section 13304 does not authorize the Water Board to seek reimbursement from Caltrans for investigation or oversight costs. The Draft CAO should be modified to remove this and any other language regarding cost recovery not explicitly authorized by section 13304. Moreover, the Water Board has not incurred any “cleanup” costs at this time, nor does any documentation provided to Caltrans indicate that the Water Board intends engage in abatement or remedial actions at the project site. Indeed, Caltrans has been cooperating in good faith with the Water Board to address the alleged deficiencies. As such, the entire text of Order Item #7 should be removed or modified to reflect the cost recovery provisions of section 13304.

**Water Board Response No. 16:**

Water Code section 13304 does authorize the Water Boards to seek reimbursement from Caltrans for investigation and/or oversight costs. Removal of this language from the CAO does not change the fact that Water Code section 13304 applies. This is boilerplate language and serves as notice to Caltrans of the Water Board’s rights concerning reimbursement for investigation and oversight costs. At this time, the Water Board does not intend to engage in abatement or remedial actions at the project site. However, the Water Board reserves the right to exercise this option, should such actions become necessary. The Water Board agrees that Caltrans has cooperated in good faith to address the issues with the project and the Water Board appreciates Caltrans continuing efforts to resolve these issues. The Water Board is hopeful that it will not need to exercise the option of undertaking cleanup and abatement work at the site.

**California Department of Transportation State Route 138 Widening Project –  
Phase 1, San Bernardino, California (Project) (WDID SB13004IN)**

Project Inspection: September 29, 2015

Inspection Report by State Water Board staff: Brian Dailey and Ann Marie Ore

Inspection Attendees	
<b>Brian Dailey</b>	State Water Resources Control Board (SWRCB)
<b>Ana Maria Saenz</b>	SWRCB
<b>Ann Marie Ore</b>	SWRCB
<b>Jan Zimmerman</b>	Lahontan Regional Water Quality Control Board
<b>Jason Bill</b>	Santa Ana Regional Water Quality Control Board
<b>Elvira Lenart</b>	California Department of Transportation (Caltrans)
<b>Dave Meress</b>	Caltrans
<b>Ron Lamaster</b>	CLM Professional Services

Project File Numbers	
<b>WDID</b>	SB13004IN
<b>Regulatory Measure ID</b>	394308
<b>Stormwater WDID</b>	8 36C372366
<b>USACE File Number</b>	SPL-2009-00607

### Project Description

The Project consists of widening State Route 138 from two lanes to four lanes with a median left turn lane and realignment of portions of the mainline to improve traffic operation and safety. The Project location includes the highway segment from the Interstate 15/State Route 138 interchange, in San Bernardino County to the State Route 138/Acorn Road interchange near the City of Phelan. The Project is approximately 13 miles long and extends from Post Mile (PM) 15.2 to PM 2.2. Project activities involve horizontal realignment, pavement rehabilitation, drainage improvements, turning lanes, traffic system management, wildlife crossings, bridge improvements, structure widening, and an addition of a vista point.

The Project occurs within three watersheds: the Mojave Hydrologic Unit (HU), the El Mirage Hydrologic Area (HA), and the Santa Ana River HU. The watersheds are located within the Lahontan Regional Water Quality Control Board's (Lahontan Regional Water Board) and the Santa Ana Regional Water Quality Control Board's (Santa Ana Regional Water Board) jurisdiction. Due to the Project affecting waters within multiple Regional Water Board jurisdictions the State Water Board has responsibility for the Project.

Water bodies impacted by the Project include Cajon Creek, Sheep Creek, and multiple unnamed ephemeral streams. The Water Quality Certification applies to all aspects of the Project except for impacts to Sheep Creek and non-federal waters of the state in that vicinity. Impacts to those non-federal waters will be addressed separately through Waste Discharge Requirements.

Impacts related to construction and operations of the Project that has been certified include permanent fill impacts to 1.486 acres of waters of the U.S. and temporary fill impacts of 0.200 acres of waters of the U.S.

# California Department of Transportation State Route 138 Widening Project – Phase 1, San Bernardino, California (Project) (WDID SB13004IN)

Project Inspection: September 29, 2015

## Inspection Description

This inspection was conducted as a follow up to inspections conducted by Santa Ana Regional Water Quality Control Board staff in June 2015. Project construction activities were observed for compliance with conditions of the Clean Water Act Section 401 Water Quality Certification (WDID SB13004IN) issued by the State Water Resources Control Board January 15, 2014. Additionally, Project activities occurring in waters of the state without approved waste discharge requirements (WDRs) were observed.

Ann Marie Ore arrived at the Caltrans office in Colton at approximately 0830 hours to conduct a preliminary records review with the Caltrans and CLM staff referenced above. Brian Dailey and Ana Maria Saenz arrived at the Caltrans office in Colton, CA at approximately 1000 hours to begin the inspection of Project related documents with Ann Marie Ore. Following a review of Project related documents and a discussion of the Project status, SWRCB and Caltrans inspection attendees departed the Colton, CA office and arrived on the Project site near Sheep Creek in San Bernardino, County at approximately 1245 hours. All inspection attendees were onsite to inspect Project activities near Sheep Creek. Field inspection continued at multiple locations along the entire Project until approximately 1645 hours.

## File Review Findings

Selected records from the following categories were reviewed: Stormwater Site Inspection Reports, Stormwater Site Inspection Follow-up Actions, Rain Event Action Plans, and Notice of Discharge Reports. Project documentation was thorough and only one area was noted to have a deficiency: In the Weekly Inspection Reports from June 22, 2015 through the date of the inspection (September 29, 2015), the same stormwater deficiency was noted in each weekly report (the first and last reports are included as Attachment 1). The Project is a Risk Level 2 project. The Construction General Permit requires Risk Level 2 dischargers to implement erosion controls for inactive areas. Inactive areas at the Gramacy Avenue section of the Project should have been covered with erosion control measures. However a review of Caltrans' records shows on page 4 of the stormwater reports for the Gramacy Avenue location, the boxes for "Inactive areas covered?" and "100% coverage of required areas" repeatedly checked "No" for 15 consecutive weeks.

Other deficiencies noted in some of the Stormwater Inspections Reports were typically corrected by the time of the subsequent weekly inspection.

Although rain events had occurred on project area, samples were not collected because rain events happened on weekend/non-working days.

Caltrans staff noted that that they only recently (since the July 31, 2015, Notice of Violation) became aware of the fact there was a Clean Water Act section 401 certification issued for the project and that they were not familiar with the content of the Certification.

**California Department of Transportation State Route 138 Widening Project –  
Phase 1, San Bernardino, California (Project) (WDID SB13004IN)**

Project Inspection: September 29, 2015

## Inspection Findings

### 1. Non-compliance with Certification Authorization.

#### *Certification Condition*

Impacts related to construction and operations of the Project include permanent fill impacts to 1.486 acres of waters of the U.S. and temporary fill impacts of 0.200 acres of waters of the U.S.

Details of anticipated project impacts are presented in Attachment D.

#### *Inspection Observations*

- a. Field verification of the location of temporary impacts at Cajon Creek as shown in Figure 3A of Attachment D showed that impacts occurred in an unpermitted location. (See pictures 1 through 3 below.)
- b. Unpermitted temporary impacts to Waters of the U.S. occurring throughout the Project at a temporary access road which bisects multiple Drainage IDs as shown in Table 1 of Attachment D has been installed parallel to SR 138. This access road has placed unpermitted temporary fill and severed the upstream and downstream hydrologic connectivity of numerous drainages throughout the Project. (See pictures 4, 5, and 6 below.)

### 2. Non-compliance with Administrative Condition 2

#### *Certification Condition*

A copy of this Certification, the application, and supporting documentation must be available at the Project site during construction for review by site personnel and agencies. All personnel performing work on the proposed Project shall be familiar with the content of this Certification and its posted location on the Project site.

#### *Inspection Observations*

- a. Caltrans inspection attendees repeatedly stated throughout the inspection that they did not know there was a Clean Water Act section 401 certification issued for the project and that they were not familiar with the content of the Certification.
- b. A copy of the application and Certification were not available at the Project site.

### 3. Non-compliance with Additional Condition 4. a)

#### *Certification Condition*

Appropriate BMPs shall be implemented and maintained throughout Project activities to minimize sediment disturbance to and suspension within surface waters as described in this Certification, the Project Storm Water Pollution Prevention Plans (SWPPPs), and the Project Initial Study and Addenda.

**California Department of Transportation State Route 138 Widening Project –  
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*Inspection Observations*

- a. Inadequate BMPs observed throughout the Project. (See picture 7 below.)
- b. Majority of Drainage IDs did not have any BMPs installed to minimize sediment disturbance and prevent sediment from areas disturbed during construction from entering a Water of the U.S. (See pictures 8, 9, and 10 below.)
- c. A single wattle was observed at Drainage I.D. 1b which provided insufficient coverage. (See picture 11 below.)

**4. Non-compliance with Additional Condition 4. b)**

*Certification Condition*

All BMP materials shall be on site prior to construction activity and ready for use throughout construction. BMPs shall be in full compliance with all specifications governing their proper design, installation, operation, and maintenance of such management practices throughout their useful life.

*Inspection Observations*

- a. BMPs were observed installed not per specifications governing their proper design, installation, and operation. (See pictures 12,13, and 14 below.)
- b. Silt fence observed installed perpendicular to the flow of Cajon Creek which would wash down the creek following a rain event. Caltrans staff stated that silt fence was installed for exclusion fencing as requested by California Department of Fish and Wildlife. (See pictures 13 and 14 below.)

**5. Non-compliance with Additional Condition 4. f):**

*Certification Condition*

Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall be outside of waters of the U.S., and shall not result in a discharge or a threatened discharge to waters of the U.S.

*Inspection Observations*

- a. Equipment fueling observed in Drainage I.D. 41b. (See picture 15 below.)
- b. Fuel stains on ground observed in Drainage I.D. 41b. (See picture 16 below.)

**6. Non-compliance with Additional Condition 4. g)**

*Certification Condition*

A daily log shall be maintained to note the presence and absence of waste releases from vehicles and equipment within or adjacent to waters of the U.S. Copies of the daily log shall be available on site. Daily visual inspections for waste releases of all vehicles and equipment parked or operating within 50 feet of waters of the U.S. shall be conducted before the vehicles or equipment are operated for the work day. Spillage and leaks shall be reported in the daily log when they occur. Presence of any spillage from leaks shall be reported in the daily log and contaminated soils shall be removed immediately from the site



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and disposed of at an approved area or facility. State Water Board and/or the appropriate Regional Water Board staff may request this information at any time.

*Inspection Observations*

- a. A daily log was not available on site.

**7. Non-compliance with Additional Condition 4. k)**

*Certification Condition*

All ground disturbance activities shall employ appropriate washout and erosion control BMPs to protect waters of the U.S.

*Inspection Observations*

- a. Inadequate erosion control BMPs to protect waters of the U.S. were observed throughout the many Project areas. (See pictures 7, 8, 9, 10, and 11 below.)

**8. Non-compliance with Attachment F Avoidance, Minimization, and/or Minimization Measure Bio-34**

*Certification Condition*

No debris, soil, silt, sand, bark, slash, RE/Biologist sawdust, rubbish, cement or concrete or washings thereof, oil or petroleum products or other organic or earthen material from any construction or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into washes or culverts that cross the project area.

*Inspection Observations*

Construction materials and soil, silt, and sand observed placed in washes. (See pictures 4, 5, 6, 7, 8, 9, and 11 below.)

**9. Unauthorized Impacts to Sheep Creek**

As of the date of the inspection, WDRs had not been obtained for work within Sheep Creek. According to the Resident Engineer (R.E.), work began within Sheep Creek (on the southern/up creek side of Hwy 138) on May 18, 2015. Bridge footings had been built, but construction had ceased approximately 1 month prior to the inspection. The R.E. stated that work is projected to begin again at the Sheep Creek Location in approximately 2 months' time.

In addition to performing construction within Waters of the State without WDRs, Caltrans' attempts to implement stormwater BMPs at Sheep Creek were neither adequate nor protective of water quality. (See pictures 17-31, below).

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Inspection Photos

**Picture 1: Unauthorized temporary impact in Cajon Creek (rough outline of area in yellow)**



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**Picture 2: Unauthorized temporary impact in Cajon Creek (rough outline of area in yellow)**



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**Picture 3: Unauthorized temporary impact in Cajon Creek (rough outline of area in yellow)**



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**Picture 4: View South East of unpermitted temporary impact at Drainage ID 54. Note fill from access road in the stream channel (rough outline of area in yellow).**



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**Picture 5: View South of timber mats stockpiled within the channel of Drainage I.D. 54  
(rough outline of area in yellow).**



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**Picture 6: View West of unpermitted temporary impact at Drainage ID 55. Note the access road parallel to road construction and fill within the stream channel. Flow path and direction shown with arrow.**



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**Picture 7: View North of Drainage ID 55. Note the inadequate BMPs and unconsolidated sediment and sandbags in the stream channel.**





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**Picture 8: View South East of Drainage ID 69. Note excavation in channel, spoils from excavation stockpiled adjacent to excavation and in channel (shown in yellow rectangle), and no erosion and sediment controls installed.**



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Picture 9: View West at Drainage ID 16. Note the un-stabilized stream banks and absence of erosion and sediment controls (approximate areas in yellow boxes). Additionally the stream has been completely disconnected from upstream flow with metal sheet pilings.



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**Picture 10: View East of Cajon Creek North East bank. Note the absence of erosion and sediment controls on the exposed bank (rough outline of area in yellow).**



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**Picture 11: View North West of Drainage ID 1b. Note the large stockpile of gravel adjacent to water body and overtopped wattle with gravel in streambed.**



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Picture 12: View of gap in wattles adjacent to Drainage ID 1b.



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Picture 13: View North of silt fence installed across Cajon Creek Channel.



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**Picture 14: View West of silt fence installed as wildlife exclusion fencing in the Cajon Creek stream channel. Note the road in the channel and rock rip rap along the southern banks of the channel (rough outline of channel area in yellow).**



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Picture 15: View North of fueling in Drainage I.D. 41b.





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**Picture 16: View of petroleum stained ground within Drainage I.D. 41b.**



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**Picture 17: View to the East, From Within Sheep Creek. Note the lack of BMPs and failing BMPs.**



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**Picture 18: View to the West, From East Bank of Sheep Creek. Note Construction Access Road Crossing Through Creek With Inadequate BMPs.**



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**Picture 19: View North Within Sheep Creek. Note Extensive in-channel work and inadequate BMPs.**



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**Picture 20: View North Within Sheep Creek. Note Inadequate BMPs.**



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**Picture 21: Facing East from Bank of Sheep Creek. Note construction debris and trash.**



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**Picture 22: Beneath the Sheep Creek Bridge. Note damaged construction fencing left in the creek.**



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**Picture 23: Construction fencing debris within Sheep Creek. Note that it is covered with sediment.**





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**Picture 24: View North West from eastern bank of Sheep Creek. Note Construction Access Road through the Creek with inadequate BMPs.**



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**Picture 25: View North within Sheep Creek. Note approximately 10 inches of unconsolidated sediment washed out from this location during last storm event.**



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**Picture 26: View North within Sheep Creek. Note lack of BMPs on creek banks and debris accumulation upstream of footings from last storm event.**



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**Picture 27: View West from within Sheep Creek. Note inadequate BMPs.**



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**Picture 28: View West from within Sheep Creek. Note inadequate BMPs and failing improperly installed silt fencing.**



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**Picture 29: View North from within Sheep Creek. Note that the k-rail does not extend far enough to the west to protect the toe of the access road.**



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**Picture 30: View South from the eastern bank of Sheep Creek.**



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**Picture 31: View facing north along construction access road (west of Sheep Creek) to active paving activity along the SR 138 alignment.**





## **ATTACHMENT 1**

### **Stormwater Site Inspection Reports**

**6/30/15 and 9/24/15**

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**STORMWATER SITE INSPECTION REPORT**  
 CEM-2030 (REV 3/2014)

PROJECT INFORMATION NAME AND SITE ADDRESS District 8, Route 138 Phelan Road to 15 Fwy		CONTRACT NUMBER/CO/RT/PM 08-3401U4	
		PROJECT IDENTIFIER NUMBER 080000608	
		WDID NUMBER 8 36C372366	
CONTRACTOR NAME AND ADDRESS  Flatiron Corp - LA 14850 Central Ave Chino, CA 91710		PROJECT SITE RISK LEVEL <input type="checkbox"/> Risk Level 1 <input type="checkbox"/> N/A. WPCP <input checked="" type="checkbox"/> Risk Level 2 <input type="checkbox"/> N/A. Project resides in The Lake Tahoe Hydrologic Unit and is regulated under Order No. R6T-2011-019, NPDES No. CAG616002 <input type="checkbox"/> Risk Level 3	
Submitted by contractor (print and sign name) NATHAN HASTON <i>Nathan Haston</i>		Date 6/30/15	
Water Pollution Control Manager name and company name  Tony Leite, Everest Environmental		Phone number 661-400-9886 Emergency (24/7) phone number 661-400-9886	

General Information

Inspector's Name Tony Leite	Accompanied by Caltrans staff? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO    If Yes, Name/Initials: Louise	Date of Inspection 6/22/2015
Weather Condition <input checked="" type="checkbox"/> Clear <input type="checkbox"/> Partly cloudy <input type="checkbox"/> Cloudy	Precipitation Condition <input checked="" type="checkbox"/> None <input type="checkbox"/> Misty <input type="checkbox"/> Heavy rain <input type="checkbox"/> Light rain <input type="checkbox"/> Hail <input type="checkbox"/> Rain <input type="checkbox"/> Snow	Wind Condition <input type="checkbox"/> None <input checked="" type="checkbox"/> Less than 5 mph <input type="checkbox"/> Greater than 5 mph

Construction Phase <input checked="" type="checkbox"/> Highway construction <input type="checkbox"/> Plant establishment <input type="checkbox"/> Suspension of work (inactive site)	Site Information Total project area: <u>298</u> acres Total project disturbed soil area: <u>152</u> acres Current phase disturbed soil area: <u>70</u> acres Current phase inactive disturbed soil: <u>5</u> acres
---	--

Inspection Type Check appropriate box(es) <input checked="" type="checkbox"/> Weekly <input type="checkbox"/> Quarterly non-stormwater  <input type="checkbox"/> Pre-storm  <input type="checkbox"/> During storm event  <input type="checkbox"/> Post storm	Storm Information	
	Time elapsed since last storm _____ days	Precipitation amount from last storm _____ inches
	Time storm is expected _____ (time) _____ (date)	Expected precipitation amount _____ inches
	Time elapsed since storm began _____ hours-minutes	Precipitation amount from storm recorded from site rain gauge _____ inches
	Time elapsed since storm _____ hours-minutes	Precipitation amount from storm recorded from site rain gauge _____ inches

Date	Daily Site Inspection of Best Management Practices (BMP) List Daily Inspections for previous calendar week. Do not include weekly inspection.	Daily Inspection performed by	Any corrective actions identified as completed or new?		If yes, were the actions added or verified on CEM-2035, as appropriate?		Date shown on corrective action form
			YES	NO	YES	NO	
6/22/15		Darren	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
6/23/15		Darren	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6/24/15		Darren	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6/25/15		Darren	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6/26/15		Darren	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

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PROJECT INFORMATION NAME AND SITE ADDRESS  District 8, Route 138 Phelan Road to 15 Fwy	CONTRACT NUMBER/CO/RTE/PM 08-3401U4
	PROJECT IDENTIFIER NUMBER 0800000608
	WDID NUMBER 8 36C372366

**Site Inspection of Best Management Practices**

*If this form will be completed by hand in the field, click on "Show Entire Form" button at the top of page one to expand the sections, then print the form to take to the field.  
 If the inspection form does not contain enough lines for all locations, use the "Add Item" button so that all BMP locations are inspected and reported.*

Preservation of Existing Vegetation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Right location?		Property installed?		Maintenance or repair necessary?		Photos?	Comments and Required Actions
	Yes	No	Yes	No	Yes	No	Yes	
Location 1 General	X		X			X		

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	WDID NUMBER 8 36C372366

**Site Inspection of Best Management Practices, continued**  
 For project specific BMPs, insert the BMP name and additional inspection requirements below.

Disturbed Soil Area (DSA) Management <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  List all potential DSAs by location	Has area been disturbed? If no, stop here.		Date DSA first disturbed?	Is the DSA inactive and listed as a location on both temporary soil stabilization and temporary linear sediment barriers? If yes, stop here.		Is there a storm event forecasted? If yes, stop here and take action.		Are there construction activities currently in progress within the DSA? If yes, stop here.		If no to previous question, what is the last day construction activities were in progress? Date	How many days has the DSA been active? If more than 14 days, take action. Days
	Yes	No		Yes	No	Yes	No	Yes	No		
				Date							
Location 1 Phelan Road Mailbox Cluster	X		04/09/2015		X		X	X			
Location 2 Beekley Road	X		04/09/2015		X		X				
Location 3 Hess Road Mailbox Cluster	X		04/09/2015		X		X				
Location 4 Vista Point Yard	X		04/09/2015		X		X				
Location 5 General 138 Right of Way	X		04/09/2015		X		X				
Location 6 Santa Fe Road	X		04/09/2015		X		X				
Location 7 Lone Pine Canyon Road	X		04/09/2015		X		X				
Location 8 Gramacy Avenue	X		5/7/2015		X		X				

- Notes:
1. If it has been 14 days since a DSA has had active construction activities, the DSA is inactive and must be reported as a location on temporary soil stabilization and temporary linear sediment barriers.
  2. DSAs must have erosion control and have temporary linear sediment barriers installed prior to a storm event.

Location Number	Comments / Corrective Actions	Action No.
1		
2		
3		
4		
5		
6		
7		
8		

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PROJECT INFORMATION NAME AND SITE ADDRESS  District 8, Route 138 Phelan Road to 15 Fwy	CONTRACT NUMBER/CO/RTE/PM 08-3401U4
	PROJECT IDENTIFIER NUMBER 0800000608
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Temporary Soil Stabilization <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Inactive areas covered?		100% coverage of required areas?		Stabilized areas free from visible erosion?		Photos?	Comments and Required Actions	Action No.
	Yes	No	Yes	No	Yes	No	Yes		
Location 1 Santa Fe Road	X		X		X				
Location 2 Oil Well Road	X		X		X				
Location 3 Hess Road Mailbox Cluster	X		X		X				
Location 4 Gramacy Avenue		X		X	X				
Temporary Linear Sediment Barriers <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Right location?		Properly installed or cross barriers installed?		Maintenance performed when 1/3 height or repair needed?		Photos?	Comments and Required Actions	Action No.
	Yes	No	Yes	No	Yes	No	Yes		
Location 1 Hess Road Mailbox Cluster	X		X			X			
Location 2 Santa Fe Road	X		X			X			
Location 3 Oil Well Road	X		X			X			
Location 4 Gramacy Avenue	X		X			X			
Storm Drain Inlet Protection <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	All inlets protected?		Properly installed?		Maintenance or repair needed?		Photos?	Comments and Required Actions	Action No.
	Yes	No	Yes	No	Yes	No	Yes		
Location 1 General	X		X		X			Lebec Rd. DS Maintenance Needed	1

PROJECT INFORMATION NAME AND SITE ADDRESS  District 8, Route 138 Phelan Road to 15 Fwy	CONTRACT NUMBER/CO/RTE/PM <b>08-3401U4</b>
	PROJECT IDENTIFIER NUMBER <b>080000608</b>
	WDID NUMBER <b>8 36C372366</b>

Stockpile Management <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date stockpile created	Is the stockpile listed as a location on stockpile management inactive stockpiles? If yes, stop here.		Is there a storm event forecasted? If yes, stop here and take action.		Is stockpile being actively used? If yes, stop here.		If no to previous question, what is the last day stockpile was actively used? Date	How long since stockpile actively used? Days	Has it been 3 days since the stockpile has been actively used? If yes, take action.	
		Yes	No	Yes	No	Yes	No			Yes	No
Location 1 Santa Fe Road	04/22/2015		×		×	×					
Location 2 Beekely Road	04/22/2015		×		×	×					
Location 3 Sheep Creek Wash	06/04/2015		×		×	×					

Notes:

1. If it has been 3 days (72 hours) since a stockpile has been active then the stockpile is inactive and must be reported as a location on stockpile management inactive stockpiles.
2. Stockpiles must be covered and have perimeter control installed prior to a storm event.

Location Number	Comments / Corrective Actions	Photos?	Action No.
		Yes	
1			
2			
3			

Inactive Stockpile Management <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Type of Material or Waste	Is the stockpile properly located?		Is the stockpile covered?		Does the stockpile have a perimeter control?		Does the stockpile need maintenance or repair?	
		Yes	No	Yes	No	Yes	No	Yes	No
		Location 1 Sheep Creek Wash	Sweeper Spoils		×		×		×

Location Number	Comments / Corrective Actions	Photos?	Action No.
		Yes	
1	Maintenance Spoils		2

Sediment and Desilting Basins <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed

Tracking Controls <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Do all entrances and exits have tracking controls?		Is pavement free from visible sediment tracking?		Does sediment need to be removed from rock or ribbed plates?		Is daily sweeping done?		Photos?	Comments and Required Actions	Action No.
	Yes	No	Yes	No	Yes	No	Yes				
	Location 1 Vista Point Yard	×		×			×	×			
Location 2 Sheep Creek Wash EB	×		×			×	×				

Wind Erosion Control <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed

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	PROJECT IDENTIFIER NUMBER 0800000608
	WDID NUMBER 8 36C372366

Dewatering Operations <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
--	------------

Temporary Stream Crossing <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
--	------------

Material Storage <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Located away from drainage courses and water courses?		Areas protected from run on and runoff?		Bagged and boxed materials stored on pallets?		Areas reasonably clean and free of spills, leaks, and other material?		Is material inventory up to date?		Liquid materials in secondary containment?		Photos?
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
Location 1 Vista Point Yard	X		X		X		X					X	
Location 2 Hwy 2 Hilltop	X		X		X		X					X	

Comments and Required Actions													Action No.
-------------------------------	--	--	--	--	--	--	--	--	--	--	--	--	------------

Location 1 Vista Point Yard	
Location 2 Hwy 2 Hilltop	

Waste Management Sanitation Facilities <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Located away from drainage courses and water courses?		Secured to ground or foundation?		Clean and has adequate capacity?		Ground checked for any spills or leaks?		Any spills or leaks found?		Photos?
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
Location 1 Vista Point Yard	X		X		X		X				X
Location 2 Hess Road Mailbox Cluster	X		X		X		X				X
Location 3 Sheep Creek Wash	X		X		X		X				X
Location 4 Lone Pine Canyon Rd.	X		X		X		X				X
Location 5 Santa Fe Rd.	X		X		X		X				X

Location Number	Comments / Corrective Actions	Action No.
1		
2		
3		
4		
5		

Project-specific BMP <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
---	------------

PROJECT INFORMATION NAME AND SITE ADDRESS  District 8, Route 138 Phelan Road to 15 Fwy	CONTRACT NUMBER/CO/RTE/PM 08-3401U4
	PROJECT IDENTIFIER NUMBER 080000608
	WDID NUMBER 8 36C372366

**Site Inspection of Best Management Practices, continued**  
*For project specific BMPs, insert the BMP name and additional inspection requirements below.*

Project-specific BMP  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
---	------------



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**STORMWATER SITE INSPECTION REPORT**  
 CEM-2030 (REV 3/2014)

PROJECT INFORMATION NAME AND SITE ADDRESS  District 8, Route 138 Phelan Road to 15 Fwy	CONTRACT NUMBER/CO/RTE/PM 08-3401U4
	PROJECT IDENTIFIER NUMBER 0800000608
	WDID NUMBER 8 36C372366

**Site Inspection Report General Comments**

Are the BMPs installed as required by the Stormwater Pollution Prevention Plan for the phase of construction?

Yes  No

Does the SWPPP need to be amended?

Yes  No

Does the SWPPP currently reflect the current site conditions and contractor operations?

Yes  No

Is hazardous waste stored on the jobsite?

Yes  No

Are there water pollution control concerns on the project site not addressed by the comments and required actions shown above for BMPs, based on the field review of the jobsite?

Yes  No

*If yes, provide details, comments, and required actions below for each location.*

Location	Water Pollution Control Concern	Comments and Required Actions	Action No.


STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
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**Stormwater Inspection Report Certification**

I certify under penalty of law that this Stormwater Inspection Report was performed in accordance with the General Permit. The information contained in this inspection report was gathered from a field site inspection. I am aware that Section 309 (c)(4) of the Clean Water Act provides for significant penalties, including fines and imprisonment for knowingly submitting a false material statement, representation, or certification.

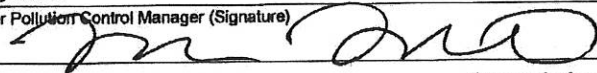
Stormwater Inspector (Name) Tony Leite	Date Report Completed 06/22/2015
---	-------------------------------------

Stormwater Inspector (Signature)  


I certify under penalty of law that this Stormwater Inspection Report was performed in accordance with the General Permit by me or under my direction or supervision. The information contained in this inspection report was gathered and evaluated by qualified personnel prior to submittal. Based on my review of the information and inquiry of those who gathered and evaluated the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I am aware that Section 309 (c)(4) of the Clean Water Act provides for significant penalties, including fines and imprisonment for knowingly submitting a false material statement, representation, or certification.

Water Pollution Control Manager (Name) Tony Leite	Date 06/22/2015
--	--------------------

Water Pollution Control Manager (Signature)  


**Stormwater Inspection Report Acceptance**

If hazardous waste is stored on the jobsite, the resident engineer should notify the district hazardous waste coordinator.

Was the District Hazardous Waste Coordinator notified?

- N/A, no hazardous waste stored on the jobsite
- YES, Date \_\_\_\_\_ Time \_\_\_\_\_
- NO

Accepted by Resident Engineer (Print Name)	Date
--	------

Resident Engineer (Signature)



STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
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PROJECT INFORMATION NAME AND SITE ADDRESS District 8, Route 138 Phelan Road to 15 Fwy		CONTRACT NUMBER/CO/RT/PM 08-3401U4	
		PROJECT IDENTIFIER NUMBER 080000608	
		WDID NUMBER 8 36C372366	
CONTRACTOR NAME AND ADDRESS  Flatiron Corp - LA 14850 Central Ave Chino, CA 91710		PROJECT SITE RISK LEVEL <input type="checkbox"/> Risk Level 1 <input type="checkbox"/> N/A. WPCP <input checked="" type="checkbox"/> Risk Level 2 <input type="checkbox"/> N/A. Project resides in The Lake Tahoe Hydrologic Unit and is regulated under Order No. R6T-2011-019, NPDES No. CAG616002 <input type="checkbox"/> Risk Level 3	
Submitted by contractor (print and sign name) NATHAN HASTON <i>Nathan Haston</i>		Date 6/30/15	
Water Pollution Control Manager name and company name  Tony Leite, Everest Environmental		Phone number 661-400-9886 Emergency (24/7) phone number 661-400-9886	

General Information

Inspector's Name Tony Leite	Accompanied by Caltrans staff? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO    If Yes, Name/Initials: Louise	Date of Inspection 6/22/2015
Weather Condition <input checked="" type="checkbox"/> Clear <input type="checkbox"/> Partly cloudy <input type="checkbox"/> Cloudy	Precipitation Condition <input checked="" type="checkbox"/> None <input type="checkbox"/> Misty <input type="checkbox"/> Heavy rain <input type="checkbox"/> Light rain <input type="checkbox"/> Hail <input type="checkbox"/> Rain <input type="checkbox"/> Snow	Wind Condition <input type="checkbox"/> None <input checked="" type="checkbox"/> Less than 5 mph <input type="checkbox"/> Greater than 5 mph

Construction Phase <input checked="" type="checkbox"/> Highway construction <input type="checkbox"/> Plant establishment <input type="checkbox"/> Suspension of work (inactive site)	Site Information Total project area: <u>298</u> acres Total project disturbed soil area: <u>152</u> acres Current phase disturbed soil area: <u>70</u> acres Current phase inactive disturbed soil: <u>5</u> acres
---	--

Inspection Type Check appropriate box(es)	Storm Information	
<input checked="" type="checkbox"/> Weekly <input type="checkbox"/> Quarterly non-stormwater	Time elapsed since last storm _____ days	Precipitation amount from last storm _____ inches
<input type="checkbox"/> Pre-storm	Time storm is expected _____ (time) _____ (date)	Expected precipitation amount _____ inches
<input type="checkbox"/> During storm event	Time elapsed since storm began _____ hours-minutes	Precipitation amount from storm recorded from site rain gauge _____ inches
<input type="checkbox"/> Post storm	Time elapsed since storm _____ hours-minutes	Precipitation amount from storm recorded from site rain gauge _____ inches

Date	Daily Site Inspection of Best Management Practices (BMP) List Daily Inspections for previous calendar week. Do not include weekly inspection.	Daily Inspection performed by	Any corrective actions identified as completed or new?		If yes, were the actions added or verified on CEM-2035, as appropriate?		Date shown on corrective action form
			YES	NO	YES	NO	
6/22/15		Darren	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
6/23/15		Darren	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6/24/15		Darren	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6/25/15		Darren	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6/26/15		Darren	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 654-6410, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

PROJECT INFORMATION NAME AND SITE ADDRESS  District 8, Route 138 Phelan Road to 15 Fwy	CONTRACT NUMBER/CO/RTE/PM 08-3401U4
	PROJECT IDENTIFIER NUMBER 0800000608
	WDID NUMBER 8 36C372366

**Site Inspection of Best Management Practices**

*If this form will be completed by hand in the field, click on "Show Entire Form" button at the top of page one to expand the sections, then print the form to take to the field.  
 If the inspection form does not contain enough lines for all locations, use the "Add Item" button so that all BMP locations are inspected and reported.*

Preservation of Existing Vegetation <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Right location?		Property installed?		Maintenance or repair necessary?		Photos?	Comments and Required Actions
	Yes	No	Yes	No	Yes	No	Yes	
Location 1 General	X		X			X		

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**Site Inspection of Best Management Practices, continued**  
 For project specific BMPs, insert the BMP name and additional inspection requirements below.

Disturbed Soil Area (DSA) Management <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  List all potential DSAs by location	Has area been disturbed? If no, stop here.		Date DSA first disturbed?	Is the DSA inactive and listed as a location on both temporary soil stabilization and temporary linear sediment barriers? If yes, stop here.		Is there a storm event forecasted? If yes, stop here and take action.		Are there construction activities currently in progress within the DSA? If yes, stop here.		If no to previous question, what is the last day construction activities were in progress? Date	How many days has the DSA been active? If more than 14 days, take action. Days
	Yes	No		Yes	No	Yes	No	Yes	No		
				Date							
Location 1 Phelan Road Mailbox Cluster	X		04/09/2015		X		X	X			
Location 2 Beekley Road	X		04/09/2015		X		X				
Location 3 Hess Road Mailbox Cluster	X		04/09/2015		X		X				
Location 4 Vista Point Yard	X		04/09/2015		X		X				
Location 5 General 138 Right of Way	X		04/09/2015		X		X				
Location 6 Santa Fe Road	X		04/09/2015		X		X				
Location 7 Lone Pine Canyon Road	X		04/09/2015		X		X				
Location 8 Gramacy Avenue	X		5/7/2015		X		X				

- Notes:
1. If it has been 14 days since a DSA has had active construction activities, the DSA is inactive and must be reported as a location on temporary soil stabilization and temporary linear sediment barriers.
  2. DSAs must have erosion control and have temporary linear sediment barriers installed prior to a storm event.

Location Number	Comments / Corrective Actions	Action No.
1		
2		
3		
4		
5		
6		
7		
8		

STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**STORMWATER SITE INSPECTION REPORT**  
 CEM-2030 (REV 3/2014)

PROJECT INFORMATION NAME AND SITE ADDRESS  District 8, Route 138 Phelan Road to 15 Fwy	CONTRACT NUMBER/CO/RTE/PM 08-3401U4
	PROJECT IDENTIFIER NUMBER 0800000608
	WDID NUMBER 8 36C372366

Temporary Soil Stabilization <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Inactive areas covered?		100% coverage of required areas?		Stabilized areas free from visible erosion?		Photos?	Comments and Required Actions	Action No.
	Yes	No	Yes	No	Yes	No	Yes		
Location 1 Santa Fe Road	X		X		X				
Location 2 Oil Well Road	X		X		X				
Location 3 Hess Road Mailbox Cluster	X		X		X				
Location 4 Gramacy Avenue		X		X	X				
Temporary Linear Sediment Barriers <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Right location?		Properly installed or cross barriers installed?		Maintenance performed when 1/3 height or repair needed?		Photos?	Comments and Required Actions	Action No.
	Yes	No	Yes	No	Yes	No	Yes		
Location 1 Hess Road Mailbox Cluster	X		X			X			
Location 2 Santa Fe Road	X		X			X			
Location 3 Oil Well Road	X		X			X			
Location 4 Gramacy Avenue	X		X			X			
Storm Drain Inlet Protection <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	All inlets protected?		Properly installed?		Maintenance or repair needed?		Photos?	Comments and Required Actions	Action No.
	Yes	No	Yes	No	Yes	No	Yes		
Location 1 General	X		X		X			Lebec Rd. DS Maintenance Needed	1

PROJECT INFORMATION NAME AND SITE ADDRESS  District 8, Route 138 Phelan Road to 15 Fwy	CONTRACT NUMBER/CO/RTE/PM
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Stockpile Management <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Date stockpile created	Is the stockpile listed as a location on stockpile management inactive stockpiles? If yes, stop here.		Is there a storm event forecasted? If yes, stop here and take action.		Is stockpile being actively used? If yes, stop here.		If no to previous question, what is the last day stockpile was actively used?	How long since stockpile actively used?	Has it been 3 days since the stockpile has been actively used? If yes, take action.	
		Yes	No	Yes	No	Yes	No			Date	Days
Location 1 Santa Fe Road	04/22/2015		X		X	X					
Location 2 Beekely Road	04/22/2015		X		X	X					
Location 3 Sheep Creek Wash	06/04/2015		X		X	X					

Notes:

1. If it has been 3 days (72 hours) since a stockpile has been active then the stockpile is inactive and must be reported as a location on stockpile management inactive stockpiles.
2. Stockpiles must be covered and have perimeter control installed prior to a storm event.

Location Number	Comments / Corrective Actions	Photos?	Action No.
		Yes	
1			
2			
3			

Inactive Stockpile Management <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Type of Material or Waste	Is the stockpile properly located?		Is the stockpile covered?		Does the stockpile have a perimeter control?		Does the stockpile need maintenance or repair?	
		Yes	No	Yes	No	Yes	No	Yes	No
Location 1 Sheep Creek Wash	Sweeper Spoils		X		X		X	X	

Location Number	Comments / Corrective Actions	Photos?	Action No.
		Yes	
1	Maintenance Spoils		2

Sediment and Desilting Basins <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
--	------------

Tracking Controls <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Do all entrances and exits have tracking controls?		Is pavement free from visible sediment tracking?		Does sediment need to be removed from rock or ribbed plates?		Is daily sweeping done?		Photos?	Comments and Required Actions	Action No.
	Yes	No	Yes	No	Yes	No	Yes	No			
Location 1 Vista Point Yard	X		X		X	X	X				
Location 2 Sheep Creek Wash EB	X		X		X	X	X				

Wind Erosion Control <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
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STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
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Page 6 of 10

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Dewatering Operations <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
--	------------

Temporary Stream Crossing <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
--	------------

Material Storage <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Located away from drainage courses and water courses?		Areas protected from run on and runoff?		Bagged and boxed materials stored on pallets?		Areas reasonably clean and free of spills, leaks, and other material?		Is material inventory up to date?		Liquid materials in secondary containment?		Photos?
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
Location 1 Vista Point Yard	X		X		X		X					X	
Location 2 Hwy 2 Hilltop	X		X		X		X					X	

Comments and Required Actions													Action No.
-------------------------------	--	--	--	--	--	--	--	--	--	--	--	--	------------

Location 1 Vista Point Yard	
Location 2 Hwy 2 Hilltop	

Waste Management Sanitation Facilities <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Located away from drainage courses and water courses?		Secured to ground or foundation?		Clean and has adequate capacity?		Ground checked for any spills or leaks?		Any spills or leaks found?		Photos?
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes
Location 1 Vista Point Yard	X		X		X		X				X
Location 2 Hess Road Mailbox Cluster	X		X		X		X				X
Location 3 Sheep Creek Wash	X		X		X		X				X
Location 4 Lone Pine Canyon Rd.	X		X		X		X				X
Location 5 Santa Fe Rd.	X		X		X		X				X

Location Number	Comments / Corrective Actions	Action No.
1		
2		
3		
4		
5		

Project-specific BMP <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
---	------------

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**Site Inspection of Best Management Practices, continued**  
*For project specific BMPs, insert the BMP name and additional inspection requirements below.*

Project-specific BMP  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Not Needed
---	------------

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
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**Site Inspection Report General Comments**

Are the BMPs installed as required by the Stormwater Pollution Prevention Plan for the phase of construction?

Yes  No

Does the SWPPP need to be amended?

Yes  No

Does the SWPPP currently reflect the current site conditions and contractor operations?

Yes  No

Is hazardous waste stored on the jobsite?

Yes  No

Are there water pollution control concerns on the project site not addressed by the comments and required actions shown above for BMPs, based on the field review of the jobsite?

Yes  No

*If yes, provide details, comments, and required actions below for each location.*

Location	Water Pollution Control Concern	Comments and Required Actions	Action No.


STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
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**Stormwater Inspection Report Certification**

I certify under penalty of law that this Stormwater Inspection Report was performed in accordance with the General Permit. The information contained in this inspection report was gathered from a field site inspection. I am aware that Section 309 (c)(4) of the Clean Water Act provides for significant penalties, including fines and imprisonment for knowingly submitting a false material statement, representation, or certification.

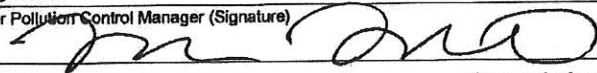
Stormwater Inspector (Name) Tony Leite	Date Report Completed 06/22/2015
---	-------------------------------------

Stormwater Inspector (Signature)  


I certify under penalty of law that this Stormwater Inspection Report was performed in accordance with the General Permit by me or under my direction or supervision. The information contained in this inspection report was gathered and evaluated by qualified personnel prior to submittal. Based on my review of the information and inquiry of those who gathered and evaluated the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.

I am aware that Section 309 (c)(4) of the Clean Water Act provides for significant penalties, including fines and imprisonment for knowingly submitting a false material statement, representation, or certification.

Water Pollution Control Manager (Name) Tony Leite	Date 06/22/2015
--	--------------------

Water Pollution Control Manager (Signature)  


**Stormwater Inspection Report Acceptance**

If hazardous waste is stored on the jobsite, the resident engineer should notify the district hazardous waste coordinator.

Was the District Hazardous Waste Coordinator notified?

- N/A, no hazardous waste stored on the jobsite
- YES, Date \_\_\_\_\_ Time \_\_\_\_\_
- NO

Accepted by Resident Engineer (Print Name)	Date
--	------

Resident Engineer (Signature)



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**CLEANUP AND ABATEMENT ORDER  
NO. R6V-2016-PROP**

**REQUIRING THE CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 8  
TO CLEAN UP AND ABATE THE EFFECTS OF THE DISCHARGE OF DREDGE AND  
FILL MATERIAL TO WATERS OF THE STATE AT THE CALIFORNIA HIGHWAY 138  
WIDENING PROJECT AT SHEEP CREEK**

\_\_\_\_\_ San Bernardino County \_\_\_\_\_

The California Regional Water Quality Control Board, Lahontan Region (Water Board), finds:

**BACKGROUND**

1. The California Department of Transportation (Caltrans) is responsible for the design, construction, management, and maintenance of the State's highway system, including freeways, bridges, maintenance facilities, and related properties. Phase I of the State Route 138 Widening Project (Project) consists of widening State Route 138 from two lanes to four lanes with a median left turn lane and realignment of portions of the mainline to improve traffic operation and safety. The Project location in San Bernardino County includes the highway segment from the Interstate 15/State Route 138 interchange to the State Route 138/Acorn Road interchange near the City of Phelan. The Project is approximately 13 miles long and extends from Post Mile (PM) 15.2 to PM 2.2. Project activities involve horizontal realignment, pavement rehabilitation, drainage improvements, turning lanes, traffic system management, wildlife crossings, bridge improvements, structure widening, and an addition of a vista point.
2. On January 15, 2014, the State Water Resources Control Board (State Water Board) issued Caltrans a *Clean Water Act Section 401 Water Quality Certification for California Department of Transportation State Route 138 Widening Project Phase 1, San Bernardino, California* (401 certification) for project-related activities taking place or impacting waters of the United States. Because the Project affects waters within multiple regions, the State Water Board has responsibility for the Project. The 401 certification notes that "this Water Quality Certification applies to all aspects of the Project except for impacts to Sheep Creek and non-federal waters of the state in that vicinity. Impacts to those non-federal waters will be addressed separately through Waste Discharge Requirements."

3. On February 24, 2015, Caltrans submitted a Notice of Intent to enroll under the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, Order No. 2010-0014-DWQ (Construction General Permit). Caltrans was subsequently enrolled under the Construction General Permit on March 10, 2015. Similar to the 401 certification, the Construction General Permit applies to all aspects of the Project except for discharges from construction activities to Sheep Creek and non-federal waters of the state in that vicinity.
4. Staff of the Santa Ana Regional Water Quality Control Board conducted two inspections of the Project on June 5, 2015 and June 16, 2015. On September 29, 2015, staff from the State Water Board's Office of Enforcement and Division of Water Quality conducted a follow-up inspection of the Project accompanied by staff of the Lahontan and Santa Ana Regional Water Quality Control Boards (collectively referred to as "Board staff") and Caltrans. All inspection attendees were onsite to inspect Project activities near Sheep Creek, a non-federal water of the state. As of the September 29<sup>th</sup> inspection, individual waste discharge requirements (WDRs) had not been obtained for the work within Sheep Creek and ~~its associated~~ Drainage Systems 1, 2, 3, 4, and 6 (collectively referred to as "Sheep Creek project"). According to the Resident Engineer of the Project, Sheep Creek project activities began along the southern upstream side of Highway 138, on May 18, 2015.
5. Staff observed that extensive in-channel work had been conducted within the creek bed and along banks of Sheep Creek. Staff also observed an absence of adequate best management practices (BMPs) along the banks of the creek and debris accumulation upstream of footings from previous storm events. Sediment, turbidity, and oil and grease are some of the pollutants of concern which pose a threat to waters of the state due to unpermitted Sheep Creek project activities. Furthermore, the Sheep Creek project is neither covered by the 401 certification nor the Construction General Permit as the activities are taking place in non-federal waters of the state. At the time of the September 29<sup>th</sup> inspection, Caltrans was not engaging in active construction in Sheep Creek. Rather, Caltrans indicated to Board staff that Sheep Creek project activities ceased in August 2015.
6. Subsequent to Board staff's inspection, Caltrans sent a letter to its contractor, Flatiron/Hardy & Harper A Joint Venture, on October 16, 2015. The letter acknowledges that partial work took place in five out of six drainages of Sheep Creek (Drainage Systems 1, 2, 3, 4, and 6) between June 29, 2015 and July 14, 2015. Additionally, the letter notes that all work in Sheep Creek ceased on August 26, 2015.

7. The Sheep Creek activities conducted without first obtaining individual WDRs are unauthorized and activities conducted by Caltrans prior to August 26, 2015 caused or permitted waste to be discharged to waters of the state. Though Caltrans directed its contractor to cease Sheep Creek project activities, sediment from previously disturbed areas (in Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6) remain a threat to water quality and create or threaten to create a condition of pollution, particularly during the rainy season, due to an absence of adequate erosion and sediment control BMPs as observed by Board staff during the September 29, 2015 inspection.
8. Caltrans is responsible for Phase I of the State Route 138 Widening Project. Additionally, pursuant to the Construction General Permit, the Caltrans District Director is the Legally Responsible Person (LRP) for the Project. Caltrans is also the applicant for individual WDRs which would establish requirements and authorize the Sheep Creek project activities.
9. The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains policies that the Water Board uses with other laws and regulations to protect the quality of the waters of the state within the Lahontan Region. The Basin Plan sets forth water quality standards for surface water and groundwater's of the Region, which include designated beneficial uses as well as narrative and numerical objectives that must be maintained or attained to protect those uses. The Basin Plan can be accessed via the Water Board's website at [http://www.waterboards.ca.gov/lahontan/water\\_issues/programs/basin\\_plan/references.shtml](http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.shtml). ~~The Sheep Creek Project~~ is located within the Mojave Hydrologic Unit 628.00, El Mirage Hydrologic Area 628.10. The designated beneficial uses of surface waters within the ~~Unit~~ El Mirage Hydrologic Area are provided in Chapter 2 of the Basin Plan and include MUN, AGR, GWR, FRSH, REC-1, REC-2, WARM, WILD, and RARE. ~~Drainage Systems 1, 2, 3, 4, and 6 are located within the Antelope Hydrologic Unit 626.00, Rock Creek Hydrologic Area 626.80. The designed beneficial uses of surface waters within the Rock Creek Hydrologic Area are MUN, AGR, GWR, REC-1, REC-2, WARM, and WILD.~~

## **LEGAL REQUIREMENTS - AUTHORITY**

10. California Water Code section 13304, subdivision (a) states in part:

*Any person...who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is...discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste...*



11. California Water Code section 13267, subdivision (b) states in part:

*In conducting an investigation [of the quality of any waters of the state within its region] the regional board may require any person who has discharged waste within its region...[to] furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*

Water Code section 13267, subdivision (b) authorizes the Water Board to require technical and monitoring reports to investigate the quality of waters of the state within its region. The information required by this Order, including technical and/or monitoring reports, are necessary to ensure that Caltrans' activities are protective of water quality in Sheep Creek and ~~its associated~~ Drainages 1, 2, 3, 4, and 6 and to obtain any necessary information for the timely completion of individual WDRs for the Sheep Creek project. Based on the nature and possible consequences of the discharges described in Findings No. 1 through 9 above, the burden of providing the required reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

12. Pursuant to Water Code section 13304, the Water Board is entitled to, and may seek, reimbursement for all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of wastes or to oversee cleanup of waste, abatement of the effect thereof, or other remedial action pursuant to this Order.
13. This Order requires Caltrans to submit information required to expedite the issuance of individual WDRs for the Sheep Creek project. In addition, this Order requires Caltrans to take necessary remedial and preventative measures to ensure that further discharges of sediment and/or sediment laden storm water from the disturbed Sheep Creek project area to Sheep Creek, a non-federal water of the state, do not occur. These remedial and preventative measures required by this Order are designed to protect water quality in Sheep Creek until the State Water Board issues individual WDRs for the Sheep Creek project. This Order does not authorize Caltrans, or its contractor, to engage in construction work without first obtaining individual WDRs from the State Water Board.
14. **California Environmental Quality Act (CEQA) Compliance:** The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of CEQA pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations.

Implementation of the required corrective action activities outlined by this Order are considered to be minor actions performed to assure the maintenance, restoration, enhancement, or protection of the environment and therefore generally be exempt pursuant to California Code of Regulations, Title 14, section 15308. Furthermore, Caltrans previously conducted the required environmental review for the State Route 138 Widening Project. On June 20, 2012, Caltrans completed its Initial Study with Mitigated Negative Declaration and Environmental Assessment. On January 17, 2014, the State Water Board, as Responsible Agency, approved the project and filed its Notice of Determination stating that it would not have a significant effect on the environment.

### **ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that pursuant to Water Code sections 13267 and 13304, Caltrans (also referred to hereafter as the “Discharger”) shall take necessary remedial action to prevent discharges and threatened discharges of sediment, sediment-laden stormwater, and other construction-related constituents of concern, to waters of the state, and shall comply with the provisions of this Order:

1. Implementation of Best Management Practices:

1.1 Effective immediately upon issuance of this Order, Caltrans shall implement and maintain the erosion and sediment controls described in Section 500.3 “BMP Selection for Erosion and Sediment Control” of its *Storm Water Pollution Prevention Plan (SWPPP) for Widening Highway, Bridges and Construction Retaining Walls on Route 138* at the Sheep Creek project site during periods of active and inactive construction as described in Attachment D to Order 2009-0009-DWQ and as amended by Order 2010-0014-DWQ.

1.2 Effective immediately upon issuance of this Order, Caltrans shall continuously implement effective handling, storage, use, and disposal practices described in Section 500.4 “BMP Selection for Construction Site Management” of its *Storm Water Pollution Prevention Plan (SWPPP) for Widening Highway, Bridges and Construction Retaining Walls on Route 138* at the Sheep Creek project site during periods of active and inactive construction as described in Attachment D to Order 2009-0009-DWQ and as amended by Order 2010-0014-DWQ.

2. Sheep Creek Abutment and Creek Restoration Project:

2.1 Within 15 days of the effective date of this Order, Caltrans shall submit the *Sheep Creek Abutment and Creek Restoration Project Work Plan*. This plan is specific to the remedial and preventative measures that are designed to protect water quality in Sheep Creek. **The Sheep Creek Abutment and Creek Restoration Project is limited to abutment and creek**

restoration work in Sheep Creek, upstream (south) of Highway 138. The Sheep Creek Abutment and Creek Restoration Project does not apply to Drainage Systems 1, 2, 3, 4, and 6 or work downstream of Highway 138. The plan shall include:

- 2.1.1 A timeline for completion of the *Sheep Creek Abutment and Creek Restoration Project*;
  - 2.1.2 Details, in narrative form, on the construction and design plans for the *Sheep Creek Abutment and Creek Restoration Work Plan*;
  - 2.1.3 A detailed description, in narrative form, of project milestones and activities to be completed at the end of each milestone deadline;
  - 2.1.4 An Erosion and Sediment Control Plan for work occurring in Sheep Creek, including but not limited to **written** procedures Caltrans **and its contractors** will follow to protect water quality in Sheep Creek prior to and when a storm event occurs during implementation of this project. **At a minimum, the Erosion and Sediment Control Plan narrative shall include the following information: ;and**
    - 2.1.4.1 **Timing of pre- and post-storm inspections; and**
    - 2.1.4.2 **Timing of BMP maintenance.**
  - 2.1.5 A Flow Diversion Plan for in-water work occurring in Sheep Creek, including **a narrative plan and written procedures with** details for isolating work areas from in-stream flows and stormwater run-on. **At a minimum, the Flow Diversion Plan narrative shall include the following information:**
    - 2.1.5.1 **Conditions for when equipment and construction materials will be removed from the Sheep Creek channel;**
    - 2.1.5.2 **Conditions for when equipment and construction materials can re-enter the Sheep Creek channel following a storm event; and**
    - 2.1.5.3 **Conditions for when dewatering will be required.**
- 2.2 Within 90 days of workplan acceptance by Water Board staff, complete implementation of the *Sheep Creek Abutment and Creek Restoration Project Work Plan*.
- 2.3 Caltrans shall conduct weekly inspections and submit reports to the Water Board (including photos) **during implementation to document progress** of the *Sheep Creek Abutment and Creek Restoration Project* each Monday by 5pm after the commencement of implementation.

3. Information Required for Completion of Individual Waste Discharge Requirements:

3.1 Within 30 days of the effective date of this Order, Caltrans shall submit information necessary to facilitate the State Water Resources Control Board's timely completion and issuance of individual WDRs. The information shall be submitted in narrative form in written report and may contain plan drawings or schematics as attachments to the written report. The report shall include:

~~3.1.1 Written narrative, to accompany the provided construction plan drawings for the Sheep Creek project that 1) describes the activities that have already occurred, and 2) describes the remaining activities that need to occur to complete the project. The description must include a table showing the quantity of unpermitted, and the remaining, temporary and permanent impacts to waters of the state associated with Sheep Creek project activities. The written narrative should include a timeline (e.g. GANTT chart or similar) for completion of the remaining activities at Drainage Systems 1, 2, 3, 4, and 6. Details on the construction plans and design for the Sheep Creek project, including a timeline for completion of the Sheep Creek project, and a detailed description, in narrative form, of project milestones and activities to be completed at the end of each milestone;~~

3.1.2 An Erosion and Sediment Control Plan for work occurring in Sheep Creek and ~~the six drainages of Sheep Creek~~ Drainage Systems 1, 2, 3, 4, and 6, including but not limited to written procedures Caltrans and its contractors will follow to protect water quality in Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6 prior to and when a storm event occurs during active and inactive construction;

3.1.2.1 The Plan shall include written procedures Caltrans and its contractors will follow to protect all exposed portions of the site within 48 hours of any likely rain event forecast of 50 percent or greater probability.

3.1.2.2 Information provided pursuant to Paragraph 2.1.4 above is not required to be re-submitted. and

~~3.1.3 A Flow Diversion Plan for in-water work occurring in Sheep Creek, including details for isolating work areas from in-stream flows and stormwater run-on.~~

**3.1.3** Proposed **compensatory** mitigation for the Sheep Creek project and the Sheep Creek Abutment and Creek Restoration Project for impacts to waters of the state.

**3.1.3.1** If Caltrans intends to satisfy the compensatory mitigation requirement through Transition Habitat Conservancy, it must submit the following minimum information:

**3.1.3.1.1** Transition Habitat Conservancy point of contact information to include: name and title, phone number, email address, and mailing address;

**3.1.3.1.2** A detailed map and delineation of the waters of the state proposed for preservation;

**3.1.3.1.3** A copy of the proposed land protection instrument, e.g. a deed restriction or conservation easement;

**3.1.3.1.4** A long-term management plan for the proposed mitigation lands; and

**3.1.3.1.5** The quantity and cost of the mitigation lands proposed for purchase, including funding of long-term management.

**3.1.3.2** If Caltrans does not intend to satisfy the compensatory mitigation requirement through the Transition Habitat Conservancy, it must submit a comprehensive plan as outlined and required by 40 CFR § 230.94, subdivision (c) or 40 CFR 230.94, subdivision (c)(5) and (6) only for mitigation bank or in-lieu fee plans. ~~Proposed mitigation shall include estimated quantity in acres or linear feet that will be created, restored, enhanced, purchased from a mitigation bank or conservation bank, or set aside for protection or other compensatory mitigation such as in lieu.~~

**3.1.3.3** The proposed mitigation should also consider increased ratios, where appropriate, to account for temporal losses, including prior activities conducted without **Water** Board approval and length of duration of the impacts.

4. Plan Approval and Implementation

All plans required by this Order require the Water Board staff's approval, and shall be incorporated and implemented as part of this Order whether expressly stated above or not. Any violation of an approved plan required by this Order shall be considered a violation of this Order.

5. Certifications for all Plans and Reports

All technical and monitoring plans and reports required in conjunction with this Order are required pursuant to Water Code section 13267 and shall include a statement by an authorized representative of Caltrans, certifying under penalty of perjury the following:

*I certify under penalty of perjury under the laws of the State of California 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.*

Engineered plans shall be prepared or directly supervised by, and signed and stamped by a Professional Geologist or Civil Engineer, ~~respectively~~, registered in California. It is expected that all interpretations and conclusions of data in these documents to be truthful, supported with evidence, with no attempts to mislead by false statements, exaggerations, deceptive presentation, or failure to include essential information.

6. **Submission of Documents**

All reports, workplans, etc., shall be submitted electronically via email to [Lahontan@waterboards.ca.gov](mailto:Lahontan@waterboards.ca.gov) and reference the Cleanup and Abatement Order Number. In addition, all reports, work plans, etc., must be submitted in hardcopy to both the Victorville office of the Lahontan Regional Water Quality Control Board and the State Water Resources Control Board's Division of Water Quality:

Jan Zimmerman  
Lahontan Regional Water Quality Control Board  
14440 Civic Drive, Suite 200  
Victorville, California 92392

Brian Dailey

Division of Water Quality  
State Water Resources Control Board  
1001 "I" Street, 15<sup>th</sup> Floor  
Sacramento, California 95814

7. Liability for Oversight Costs Incurred by the Water Board

Caltrans shall be liable, pursuant to Water Code 13304, to the Water Board for all reasonable costs incurred by the Water Board to investigate unauthorized discharges of waste, or to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, pursuant to this Order. Caltrans shall reimburse the Water Board for all reasonable costs associated with site investigation, oversight, and cleanup. Failure to pay any invoice for the Water Board's investigation and oversight costs within the time stated in the invoice (or within thirty days after the date of invoice, if the invoice does not set forth a due date) shall be considered a violation of this Order. If this site is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program.

8. No Limitation of Water Board Authority

This Order in no way limits the authority of this Water Board to institute additional enforcement actions or to require additional investigation or implementation of remedial or preventative measures consistent with the Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

9. Enforcement

Failure to comply with the requirements, terms, or conditions of this Order will result in additional enforcement action that may include the imposition of administrative civil liability pursuant to California Water Code sections 13268 and 13350, or referral to the Attorney General of the State of California for civil liability or injunctive relief. The Water Board reserves its rights to take any enforcement action authorized by law.

10. Permits or Approvals

This Order does not alleviate the responsibility of Caltrans to obtain necessary local, state, and/or federal permits to construct or operate facilities or take actions necessary for compliance with this Order. This Order does not prevent imposition of additional standards, requirements, or conditions by any other regulatory agency.

11. Right to Petition

Any person aggrieved by this action of the Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board shall receive the petition by 5:00 p.m., 30 days after the date this Order is issued, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition shall be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

Ordered by: \_\_\_\_\_ Dated: \_\_\_\_\_  
PATTY Z. KOUYOUMDJIAN  
EXECUTIVE OFFICER

Attachment: 1. September 29, 2015 Inspection Report



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**CLEANUP AND ABATEMENT ORDER  
NO. R6V-2016-XXXX**

**REQUIRING THE CALIFORNIA DEPARTMENT OF TRANSPORTATION DISTRICT 8  
TO CLEAN UP AND ABATE THE EFFECTS OF THE DISCHARGE OF DREDGE AND  
FILL MATERIAL TO WATERS OF THE STATE AT THE CALIFORNIA HIGHWAY 138  
WIDENING PROJECT AT SHEEP CREEK**

\_\_\_\_\_ San Bernardino County \_\_\_\_\_

The California Regional Water Quality Control Board, Lahontan Region (Water Board), finds:

**BACKGROUND**

1. The California Department of Transportation (Caltrans) is responsible for the design, construction, management, and maintenance of the State's highway system, including freeways, bridges, maintenance facilities, and related properties. Phase I of the State Route 138 Widening Project (Project) consists of widening State Route 138 from two lanes to four lanes with a median left turn lane and realignment of portions of the mainline to improve traffic operation and safety. The Project location in San Bernardino County includes the highway segment from the Interstate 15/State Route 138 interchange to the State Route 138/Acorn Road interchange near the City of Phelan. The Project is approximately 13 miles long and extends from Post Mile (PM) 15.2 to PM 2.2. Project activities involve horizontal realignment, pavement rehabilitation, drainage improvements, turning lanes, traffic system management, wildlife crossings, bridge improvements, structure widening, and an addition of a vista point.
2. On January 15, 2014, the State Water Resources Control Board (State Water Board) issued Caltrans a *Clean Water Act Section 401 Water Quality Certification for California Department of Transportation State Route 138 Widening Project Phase 1, San Bernardino, California* (401 certification) for project-related activities taking place or impacting waters of the United States. Because the Project affects waters within multiple regions, the State Water Board has responsibility for the Project. The 401 certification notes that "this Water Quality Certification applies to all aspects of the Project except for impacts to Sheep Creek and non-federal waters of the state in that vicinity. Impacts to those non-federal waters will be addressed separately through Waste Discharge Requirements."

3. On February 24, 2015, Caltrans submitted a Notice of Intent to enroll under the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, Order No. 2010-0014-DWQ (Construction General Permit). Caltrans was subsequently enrolled under the Construction General Permit on March 10, 2015. Similar to the 401 certification, the Construction General Permit applies to all aspects of the Project except for discharges from construction activities to Sheep Creek and non-federal waters of the state in that vicinity.
4. Staff of the Santa Ana Regional Water Quality Control Board conducted two inspections of the Project on June 5, 2015 and June 16, 2015. On September 29, 2015, staff from the State Water Board's Office of Enforcement and Division of Water Quality conducted a follow-up inspection of the Project accompanied by staff of the Lahontan and Santa Ana Regional Water Quality Control Boards (collectively referred to as "Board staff") and Caltrans. All inspection attendees were onsite to inspect Project activities near Sheep Creek, a non-federal water of the state. As of the September 29<sup>th</sup> inspection, individual waste discharge requirements (WDRs) had not been obtained for the work within Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6 (collectively referred to as "Sheep Creek project"). According to the Resident Engineer of the Project, Sheep Creek project activities began along the southern upstream side of Highway 138, on May 18, 2015.
5. Staff observed that extensive in-channel work had been conducted within the creek bed and along banks of Sheep Creek. Staff also observed an absence of adequate best management practices (BMPs) along the banks of the creek and debris accumulation upstream of footings from previous storm events. Sediment, turbidity, and oil and grease are some of the pollutants of concern which pose a threat to waters of the state due to unpermitted Sheep Creek project activities. Furthermore, the Sheep Creek project is neither covered by the 401 certification nor the Construction General Permit as the activities are taking place in non-federal waters of the state. At the time of the September 29<sup>th</sup> inspection, Caltrans was not engaging in active construction in Sheep Creek. Rather, Caltrans indicated to Board staff that Sheep Creek project activities ceased in August 2015.
6. Subsequent to Board staff's inspection, Caltrans sent a letter to its contractor, Flatiron/Hardy & Harper A Joint Venture, on October 16, 2015. The letter acknowledges that partial work took place in five out of six drainages of Sheep Creek (Drainage Systems 1, 2, 3, 4, and 6) between June 29, 2015 and July 14, 2015. Additionally, the letter notes that all work in Sheep Creek ceased on August 26, 2015.

7. The Sheep Creek activities conducted without first obtaining individual WDRs are unauthorized and activities conducted by Caltrans prior to August 26, 2015 caused or permitted waste to be discharged to waters of the state. Though Caltrans directed its contractor to cease Sheep Creek project activities, sediment from previously disturbed areas (in Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6) remain a threat to water quality and create or threaten to create a condition of pollution, particularly during the rainy season, due to an absence of adequate erosion and sediment control BMPs as observed by Board staff during the September 29, 2015 inspection.
8. Caltrans is responsible for Phase I of the State Route 138 Widening Project. Additionally, pursuant to the Construction General Permit, the Caltrans District Director is the Legally Responsible Person (LRP) for the Project. Caltrans is also the applicant for individual WDRs which would establish requirements and authorize the Sheep Creek project activities.
9. The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains policies that the Water Board uses with other laws and regulations to protect the quality of the waters of the state within the Lahontan Region. The Basin Plan sets forth water quality standards for surface water and groundwater's of the Region, which include designated beneficial uses as well as narrative and numerical objectives that must be maintained or attained to protect those uses. The Basin Plan can be accessed via the Water Board's website at [http://www.waterboards.ca.gov/lahontan/water\\_issues/programs/basin\\_plan/references.shtml](http://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/references.shtml). Sheep Creek is located within the Mojave Hydrologic Unit 628.00, El Mirage Hydrologic Area 628.10. The designated beneficial uses of surface waters within the El Mirage Hydrologic Area are provided in Chapter 2 of the Basin Plan and include MUN, AGR, GWR, FRSH, REC-1, REC-2, WARM, WILD, and RARE. Drainage Systems 1, 2, 3, 4, and 6 are located within the Antelope Hydrologic Unit 626.00, Rock Creek Hydrologic Area 626.80. The designed beneficial uses of surface waters within the Rock Creek Hydrologic Area are MUN, AGR, GWR, REC-1, REC-2, WARM, and WILD.

#### **LEGAL REQUIREMENTS - AUTHORITY**

10. California Water Code section 13304, subdivision (a) states in part:

*Any person...who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is...discharged into waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up the waste or abate the effects of the waste...*

11. California Water Code section 13267, subdivision (b) states in part:

*In conducting an investigation [of the quality of any waters of the state within its region] the regional board may require any person who has discharged waste within its region...[to] furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.*

Water Code section 13267, subdivision (b) authorizes the Water Board to require technical and monitoring reports to investigate the quality of waters of the state within its region. The information required by this Order, including technical and/or monitoring reports, are necessary to ensure that Caltrans' activities are protective of water quality in Sheep Creek and Drainages 1, 2, 3, 4, and 6 and to obtain any necessary information for the timely completion of individual WDRs for the Sheep Creek project. Based on the nature and possible consequences of the discharges described in Findings No. 1 through 9 above, the burden of providing the required reports bears a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

12. Pursuant to Water Code section 13304, the Water Board is entitled to, and may seek, reimbursement for all reasonable costs actually incurred by the Water Board to investigate unauthorized discharges of wastes or to oversee cleanup of waste, abatement of the effect thereof, or other remedial action pursuant to this Order.
13. This Order requires Caltrans to submit information required to expedite the issuance of individual WDRs for the Sheep Creek project. In addition, this Order requires Caltrans to take necessary remedial and preventative measures to ensure that further discharges of sediment and/or sediment laden storm water from the disturbed Sheep Creek project area to Sheep Creek, a non-federal water of the state, do not occur. These remedial and preventative measures required by this Order are designed to protect water quality in Sheep Creek until the State Water Board issues individual WDRs for the Sheep Creek project. This Order does not authorize Caltrans, or its contractor, to engage in construction work without first obtaining individual WDRs from the State Water Board.
14. **California Environmental Quality Act (CEQA) Compliance:** The issuance of this Order is an enforcement action taken by a regulatory agency and is categorically exempt from the provisions of CEQA pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations.

Implementation of the required corrective action activities outlined by this Order are considered to be minor actions performed to assure the maintenance, restoration, enhancement, or protection of the environment and therefore generally be exempt pursuant to California Code of Regulations, Title 14, section 15308. Furthermore, Caltrans previously conducted the required environmental review for the State Route 138 Widening Project. On June 20, 2012, Caltrans completed its Initial Study with Mitigated Negative Declaration and Environmental Assessment. On January 17, 2014, the State Water Board, as Responsible Agency, approved the project and filed its Notice of Determination stating that it would not have a significant effect on the environment.

### **ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that pursuant to Water Code sections 13267 and 13304, Caltrans (also referred to hereafter as the “Discharger”) shall take necessary remedial action to prevent discharges and threatened discharges of sediment, sediment-laden stormwater, and other construction-related constituents of concern, to waters of the state, and shall comply with the provisions of this Order:

1. Implementation of Best Management Practices:

1.1 Effective immediately upon issuance of this Order, Caltrans shall implement and maintain the erosion and sediment controls described in Section 500.3 “BMP Selection for Erosion and Sediment Control” of its *Storm Water Pollution Prevention Plan (SWPPP) for Widening Highway, Bridges and Construction Retaining Walls on Route 138* at the Sheep Creek project site during periods of active and inactive construction as described in Attachment D to Order 2009-0009-DWQ and as amended by Order 2010-0014-DWQ.

1.2 Effective immediately upon issuance of this Order, Caltrans shall continuously implement effective handling, storage, use, and disposal practices described in Section 500.4 “BMP Selection for Construction Site Management” of its *Storm Water Pollution Prevention Plan (SWPPP) for Widening Highway, Bridges and Construction Retaining Walls on Route 138* at the Sheep Creek project site during periods of active and inactive construction as described in Attachment D to Order 2009-0009-DWQ and as amended by Order 2010-0014-DWQ.

2. Sheep Creek Abutment and Creek Restoration Project:

2.1 Within 15 days of the effective date of this Order, Caltrans shall submit the *Sheep Creek Abutment and Creek Restoration Project Work Plan*. This plan is specific to the remedial and preventative measures that are designed to protect water quality in Sheep Creek. The Sheep Creek Abutment and Creek Restoration Project is limited to abutment and creek

restoration work in Sheep Creek, upstream (south) of Highway 138. The Sheep Creek Abutment and Creek Restoration Project does not apply to Drainage Systems 1, 2, 3, 4, and 6 or work downstream of Highway 138. The plan shall include:

- 2.1.1 A timeline for completion of the *Sheep Creek Abutment and Creek Restoration Project*;
  - 2.1.2 Details, in narrative form, on the construction and design plans for the *Sheep Creek Abutment and Creek Restoration Work Plan*;
  - 2.1.3 A detailed description, in narrative form, of project milestones and activities to be completed at the end of each milestone deadline;
  - 2.1.4 An Erosion and Sediment Control Plan for work occurring in Sheep Creek, including but not limited to written procedures Caltrans and its contractors will follow to protect water quality in Sheep Creek prior to and when a storm event occurs during implementation of this project. At a minimum, the Erosion and Sediment Control Plan narrative shall include the following information:
    - 2.1.4.1 Timing of pre- and post-storm inspections; and
    - 2.1.4.2 Timing of BMP maintenance.
  - 2.1.5 A Flow Diversion Plan for in-water work occurring in Sheep Creek, including a narrative plan and written procedures with details for isolating work areas from in-stream flows and stormwater run-on. At a minimum, the Flow Diversion Plan narrative shall include the following information:
    - 2.1.5.1 Conditions for when equipment and construction materials will be removed from the Sheep Creek channel;
    - 2.1.5.2 Conditions for when equipment and construction materials can re-enter the Sheep Creek channel following a storm event; and
    - 2.1.5.3 Conditions for when dewatering will be required.
- 2.2 Within 90 days of workplan acceptance by Water Board staff, complete implementation of the *Sheep Creek Abutment and Creek Restoration Project Work Plan*.
- 2.3 Caltrans shall conduct weekly inspections and submit reports to the Water Board (including photos) to document progress of the *Sheep Creek Abutment and Creek Restoration Project* each Monday by 5pm after the commencement of implementation.

3. Information Required for Completion of Individual Waste Discharge Requirements:

3.1 Within 30 days of the effective date of this Order, Caltrans shall submit information necessary to facilitate the State Water Resources Control Board's timely completion and issuance of individual WDRs. The information shall be submitted in narrative form in written report and may contain plan drawings or schematics as attachments to the written report. The report shall include:

3.1.1 Written narrative, to accompany the provided construction plan drawings for the Sheep Creek project that 1) describes the activities that have already occurred and 2) describes the remaining activities that need to occur to complete the project. The description must include a table showing the quantity of unpermitted, and remaining, temporary and permanent impacts to waters of the state associated with Sheep Creek project activities. The written narrative should include a timeline (e.g. GANTT chart or similar) for completion of the remaining activities at Drainage Systems 1, 2, 3, 4, and 6;

3.1.2 An Erosion and Sediment Control Plan for work occurring in Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6, including but not limited to written procedures Caltrans and its contractors will follow to protect water quality in Sheep Creek and Drainage Systems 1, 2, 3, 4, and 6 prior to and when a storm event occurs during active and inactive construction;

3.1.2.1 The Plan shall include written procedures Caltrans and its contractors will follow to protect all exposed portions of the site within 48 hours of any likely rain event forecast of 50 percent or greater probability.

3.1.2.2 Information provided pursuant to Paragraph 2.1.4 above is not required to be re-submitted.

3.1.3 Proposed compensatory mitigation for the Sheep Creek project and the Sheep Creek Abutment and Creek Restoration Project for impacts to waters of the state.

3.1.3.1 If Caltrans intends to satisfy the compensatory mitigation requirement through Transition Habitat Conservancy, it must submit the following minimum information:

3.1.3.1.1 Transition Habitat Conservancy point of contact information to include:

- name and title, phone number, email address, and mailing address;
- 3.1.3.1.2 A detailed map and delineation of the waters of the state proposed for preservation;
- 3.1.3.1.3 A copy of the proposed land protection instrument, e.g. a deed restriction or conservation easement;
- 3.1.3.1.4 A long-term management plan for the proposed mitigation lands; and
- 3.1.3.1.5 The quantity and cost of the mitigation lands proposed for purchase, including funding of long-term management.
- 3.1.3.2 If Caltrans does not intend to satisfy the compensatory mitigation requirement through the Transition Habitat Conservancy, it must submit a comprehensive plan as outlined and required by 40 CFR § 230.94, subdivision (c) or 40 CFR 230.94, subdivision (c)(5) and (6) only for mitigation bank or in-lieu fee plans.
- 3.1.3.3 The proposed mitigation should also consider increased ratios, where appropriate, to account for temporal losses, including prior activities conducted without Water Board approval and length of duration of the impacts.

## General Provisions

### 4. Plan Approval and Implementation

All plans required by this Order require the Water Board staff's approval, and shall be incorporated and implemented as part of this Order whether expressly stated above or not. Any violation of an approved plan required by this Order shall be considered a violation of this Order.

### 5. Certifications for all Plans and Reports

All technical and monitoring plans and reports required in conjunction with this Order are required pursuant to Water Code section 13267 and shall include a statement by an authorized representative of Caltrans, certifying under penalty of perjury the following:

*I certify under penalty of perjury under the laws of the State of California 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.*

Engineered plans shall be prepared or directly supervised by, and signed and stamped by a Professional Geologist or Civil Engineer, registered in California. It is expected that all interpretations and conclusions of data in these documents to be truthful, supported with evidence, with no attempts to mislead by false statements, exaggerations, deceptive presentation, or failure to include essential information.

6. Submission of Documents

All reports, workplans, etc., shall be submitted electronically via email to [Lahontan@waterboards.ca.gov](mailto:Lahontan@waterboards.ca.gov) and reference the Cleanup and Abatement Order Number. In addition, all reports, work plans, etc., must be submitted in hardcopy to both the Victorville office of the Lahontan Regional Water Quality Control Board and the State Water Resources Control Board's Division of Water Quality:

Jan Zimmerman  
Lahontan Regional Water Quality Control Board  
14440 Civic Drive, Suite 200  
Victorville, California 92392

Brian Dailey  
Division of Water Quality  
State Water Resources Control Board  
1001 "I" Street, 15<sup>th</sup> Floor  
Sacramento, California 95814

7. Liability for Oversight Costs Incurred by the Water Board

Caltrans shall be liable, pursuant to Water Code 13304, to the Water Board for all reasonable costs incurred by the Water Board to investigate unauthorized discharges of waste, or to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, pursuant to this Order. Caltrans shall reimburse the Water Board for all reasonable costs associated with site investigation, oversight, and cleanup. Failure to pay any invoice for the Water Board's investigation and oversight costs within the time stated in the invoice (or within thirty days after the date of invoice, if the invoice does not set forth a due date) shall be considered a violation of this Order. If this site is enrolled in a

State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program.

8. No Limitation of Water Board Authority

This Order in no way limits the authority of this Water Board to institute additional enforcement actions or to require additional investigation or implementation of remedial or preventative measures consistent with the Water Code. This Order may be revised by the Executive Officer as additional information becomes available.

9. Enforcement

Failure to comply with the requirements, terms, or conditions of this Order will result in additional enforcement action that may include the imposition of administrative civil liability pursuant to California Water Code sections 13268 and 13350, or referral to the Attorney General of the State of California for civil liability or injunctive relief. The Water Board reserves its rights to take any enforcement action authorized by law.

10. Permits or Approvals

This Order does not alleviate the responsibility of Caltrans to obtain necessary local, state, and/or federal permits to construct or operate facilities or take actions necessary for compliance with this Order. This Order does not prevent imposition of additional standards, requirements, or conditions by any other regulatory agency.

11. Right to Petition

Any person aggrieved by this action of the Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 and following. The State Water Board shall receive the petition by 5:00 p.m., 30 days after the date this Order is issued, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition shall be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

California Department of Transportation, District 8  
Cleanup and Abatement Order  
R6V-2016-XXXX

Ordered by: \_\_\_\_\_ Dated: \_\_\_\_\_

PATTY Z. KOUYOUMDJIAN  
EXECUTIVE OFFICER

Attachment: 1. September 29, 2015 Inspection Report