



# California Regional Water Quality Control Board San Diego Region



Matthew Rodriguez  
Secretary for  
Environmental Protection

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

Edmund G. Brown Jr.  
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340  
(858) 467-2952 • Fax (858) 571-6972  
[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

February 24, 2012

Chris Flynn  
California Department of Transportation, District  
12  
3337 Michelson Drive, Suite 380  
Irvine, CA 92612

In reply refer to:  
**771346: dbradford**

Dear Chris Flynn:


**SUBJECT: ACTION ON REQUEST FOR CLEAN WATER ACT SECTION 401  
WATER QUALITY CERTIFICATION APPLICATION NO. 11C-080.**

Enclosed find Clean Water Act Section 401 Water Quality Certification for discharges to Waters of the U.S. and acknowledgment of enrollment under State Water Resources Control Board Order No. 2003-017-DWQ for the Interstate 5/Ortega Highway Improvement Project (Project).

Any petition for reconsideration of this Certification must be filed with the State Water Resources Control Board within 30 days of certification action (23 CCR § 3867). If no petition is received, it will be assumed that you have accepted and will comply with all the conditions of this Certification. Failure to comply with all conditions of this Certification may subject you to enforcement actions by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

In the subject line of any response, please include the requested "In reply refer to:" information located in the heading of this letter.

Respectfully,

  
for James G. Smith, AEO  
DAVID W. GIBSON  
Executive Officer

California Environmental Protection Agency

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# California Regional Water Quality Control Board

## San Diego Region

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*Action on Request for*  
Clean Water Act Section 401 Water Quality Certification  
and Waste Discharge Requirements  
for Discharge of Dredged and/or Fill Materials

### PROJECT:

<b>Project:</b>	Interstate 5/Ortega Highway Improvement Project
<b>Certification No:</b>	11C-080
<b>WDID:</b>	90002355
<b>Place ID:</b>	771346

### APPLICANT:

<b>Representative:</b>	Chris Flynn
<b>Applicant:</b>	California Department of Transportation, District 12
<b>Street Address:</b>	3337 Michelson Drive, Suite 380
<b>City, State ZIP:</b>	Irvine, CA 92612

### ACTION:

<input type="checkbox"/> Order for Low Impact Certification	<input type="checkbox"/> Order for Denial of Certification
<input checked="" type="checkbox"/> Order for Technically-conditioned Certification	<input type="checkbox"/> Waiver of Waste Discharge Requirements
<input checked="" type="checkbox"/> Enrollment in SWRCB GWDR Order No. 2003-017 DWQ	<input type="checkbox"/> Enrollment in Isolated Waters Order No. 2004-004 DWQ

### I. STANDARD CONDITIONS:

The following three standard conditions apply to all Certification actions, except as noted under Condition 3 for denials.

- A. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
- B. This Certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility

*California Environmental Protection Agency*

requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- C. The validity of any non-denial Certification action must be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

## II. ADDITIONAL CONDITIONS: GENERAL

- A. This Clean Water Act Section 401 Water Quality Certification No. 11C-080 (Certification) is only valid if the project begins no later than 5 (five) years from the date of issuance. If the project has not begun within 5 years from the date of issuance, then this Certification expires.
- B. This Certification is not transferable in its entirety or in part to any person, except after notice to the San Diego Water Board in accordance with the following terms, including requirements under Section VI of this Certification:

Transfer of Property Ownership, Mitigation Responsibility and/or Post-Construction Best Management Practices (BMPs): California Department of Transportation, District 12 and transferee must notify the San Diego Water Board of any change in responsibility for implementation of the requirements of this Certification. Notification must include, but not be limited to, a statement that California Department of Transportation, District 12 has provided the transferee with a copy of the Certification and that the transferee understands and accepts the certification requirements and the obligation to implement them or be subject to liability for failure to do so; California Department of Transportation, District 12 and transferee must sign and date the notification and include a designated date of transfer. California Department of Transportation, District 12 must provide such notification to the Executive Officer of the San Diego Water Board **prior to the intended date of transfer.**

- C. California Department of Transportation, District 12 must comply with the requirements of State Water Resources Control Board Water Quality Order No. 2003-0017-DWQ, *Statewide General Waste Discharge Requirements for Discharges of Dredged or Fill Material That Have Received State Water Quality Certification*. These General Waste Discharge Requirements are accessible at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/generalorders/go\\_wdr401regulated\\_projects.pdf](http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf).

- D. California Department of Transportation, District 12 must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), to support this Certification and all subsequent submittals required as part of this Certification. The conditions within this Certification must supersede conflicting provisions within such plans submitted prior to the Certification action. Any modifications thereto, would require notification to the San Diego Water Board and reevaluation for individual Waste Discharge Requirements and/or Certification amendment.
- E. During construction, California Department of Transportation, District 12 must maintain a copy of this Certification at the Project site so as to be available at all times to site personnel and agencies.
- F. California Department of Transportation, District 12 must permit the San Diego Water Board or its authorized representative at all times, upon presentation of credentials:
1. Entry onto the project premises, including all areas on which fill and/or mitigation is located or in which records are kept.
  2. Access to copy any records required to be kept under the terms and conditions of this Certification.
  3. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
  4. Sampling of any discharge or surface water covered by this Order.
- G. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
- H. In response to a suspected violation of any condition of this Certification, the San Diego Water Board may pursuant to Water Code sections 13267 and 13383, require the holder of any permit or license subject to this Certification to investigate, monitor and report information on the violation. The only restriction is that the burden, including costs, of preparing the reports must bear a reasonable relationship to the need for and the benefits to be obtained from the reports.

- I. In response to any violation of the conditions of this Certification, or if the results of the project have unintended impacts to water quality, the San Diego Water Board may modify the conditions of this Certification as appropriate to ensure compliance.

### III. ADDITIONAL CONDITIONS: CONSTRUCTION BMPs

- A. Prior to the start of the project, and annually thereafter, California Department of Transportation, District 12 must educate all personnel on the requirements in this Certification, pollution prevention measures, spill response, BMP implementation, and BMP maintenance.
- B. California Department of Transportation, District 12 must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.
- C. If applicable, California Department of Transportation, District 12 must enroll in and comply with the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, NPDES No. CAS000002, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, and any subsequent reissuance as applicable.
- D. If applicable, California Department of Transportation, District 12 must enroll in and comply with the requirements of San Diego Water Board Order No. 2008-0002, *General Waste Discharge Requirements and NPDES Permit for discharges from groundwater extraction waste to surface waters within the San Diego Region except for San Diego Bay*, and any subsequent reissuance as applicable.
- E. The treatment, storage, and disposal of wastewater during the life of the project must be done in accordance with waste discharge requirements established by the San Diego Water Board pursuant to CWC § 13263.
- F. Discharges of concentrated flow during construction or after completion must not cause downstream erosion or damage to properties or stream habitat.
- G. Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or State or placed in locations that may be subjected to storm flows. Except as authorized by this Certification, substances hazardous to aquatic life that are discharged to areas within a stream diversion area

must be removed at the end of each work day or sooner if rain is predicted.

- H. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. Diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of downstream receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.
- I. All areas that will be left in a rough graded state must be stabilized no later than two weeks after completion of grading. California Department of Transportation, District 12 and subsequent owners, are responsible for implementing and maintaining BMPs to prevent erosion of the rough graded areas to prevent flow from this area from causing adverse effects to beneficial uses. After completion of grading, all areas must be revegetated with native species appropriate for the area. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at: <http://www.cal-ipc.org/ip/inventory/weedlist.php>.
- J. Substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or being discharged into waters of the United States and/or State except where authorized as fill and/or dredge material under this Certification. BMPs must be implemented to prevent such discharges during each project activity involving hazardous materials.
- K. Removal of vegetation must occur by hand, mechanically, or using United States Environmental Protection Agency approved herbicides deployed using applicable BMPs to prevent impacts to beneficial uses of waters of the United States and/or State. Use of aquatic pesticides must be done in accordance with State Water Resources Control Board Water Quality Order No. 2004-0009-DWQ, and any subsequent reissuance as applicable.

#### **IV. ADDITIONAL CONDITIONS: POST-CONSTRUCTION BMPs**

- A. California Department of Transportation, District 12 is prohibited from allowing post-construction discharges to cause onsite or offsite erosion, damage to properties or damage to habitats in receiving waters that will receive post-construction discharges from the project site.

- B. Any storm drain inlet structures within the project boundaries must be stamped and/or stenciled (or equivalent) with appropriate language prohibiting non-storm water discharges.
- C. Any post-construction treatment BMPs, including those described in the project application, must be sized to comply with the following numeric sizing criteria and treat 100 percent of the impervious surfaces associated with the project:
  - 1. Volume  
Volume-based BMPs must be designed to mitigate (infiltrate, filter, or treat) either:
    - a. The volume of runoff produced from a 24-hour 85<sup>th</sup> percentile storm event, as determined from the local historical rainfall record (e.g. 0.6 inch approximate average for the San Diego County area); or
    - b. The volume of runoff, as determined from the local historical rainfall record, that achieves approximately the same reduction in pollutant loads and flows as achieved by mitigation of the 85<sup>th</sup> percentile 24-hour runoff event; or
  - 2. Flow  
Flow-based BMPs must be designed to mitigate (infiltrate, filter, or treat) either:
    - a. The maximum flow rate of runoff produced from a rainfall intensity of 0.2 inch of rainfall per hour; or
    - b. The maximum flow rate of runoff produced by the 85<sup>th</sup> percentile hourly rainfall intensity, as determined from the local historical rainfall record, multiplied by a factor of two; or
    - c. The maximum flow rate of runoff, as determined from the same reduction in pollutant loads and flows as achieved by mitigation of the 85<sup>th</sup> percentile hourly rainfall intensity multiplied by a factor of two.
- D. Post-construction BMPs must be installed and functional prior to occupancy and/or planned use of development areas.
- E. All post-construction treatment BMPs and storm water discharge points must:
  - 1. Be regularly inspected and maintained for the life of the project per manufactures' specifications and industry standards;

2. Have all preventive and corrective maintenance performed;
3. Be inspected no less than one time per year, immediately prior to the commencement of the rainy season (October 1) and after every storm event exceeding 0.5 inches of precipitation; and
4. Be properly documented in a log containing all BMP inspections and maintenance activities.

## **V. ADDITIONAL CONDITIONS: COMPENSATORY MITIGATION**

- A. The mitigation for the project must fully comply with the latest habitat mitigation and monitoring plans, specifications, and technical reports submitted to the San Diego Water Board to support this Certification and all subsequent submittals required as part of this Certification. The conditions within this Certification must supersede conflicting provisions within such plans submitted prior to the Certification action. Any modifications thereto, would require notification to the San Diego Water Board and reevaluation for individual Waste Discharge Requirements and/or Certification amendment.
- B. California Department of Transportation, District 12 must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the United States and/or State. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species. California Department of Transportation, District 12 must implement all necessary BMPs to control erosion and runoff from areas associated with this project.
- C. Mitigation must be concurrent with project grading if possible, with mitigation completed and fully stabilized no later than one growing season following the completion of work within on-site waters. Delays in completing the mitigation must be compensated for by performing additional enhancement mitigation at a cumulative rate of 10 percent of the area impacted for each month of delay.
- D. If feasible, California Department of Transportation, District 12 must salvage leaf litter, coarse woody debris, and upper soil horizons from impacted jurisdictional water sites that are relatively free of invasive exotic species for use in on-site restoration areas. If available, large cuttings from appropriate native tree species at the impact site should be used as pole plantings for the restoration of temporary impacts.
- E. Mitigation areas must be maintained free of perennial exotic plant species in perpetuity including, but not limited to, pampas grass, giant reed,



tamarisk, sweet fennel, tree tobacco, castor bean, and pepper tree. Annual exotic plant species must not occupy more than 5 percent of the on-site restoration area(s).

- F. Any maintenance activities that do not contribute to the success of the mitigation site(s) and enhancement of beneficial uses and ecological functions and services are prohibited. Maintenance activities are limited to the removal of trash and debris, removal of exotic plant species, replacement of dead native plant species and remedial measures deemed necessary for the success of the restoration program. Mitigation shall be considered acceptable once it has met the pre-determined success criteria for that site, and shall be maintained, in perpetuity, in a manner that consistently meets the final success criteria identified.
- G. If at any time during the mitigation implementation, a catastrophic natural event (e.g., fire, flood) occurs and impacts the restoration area, California Department of Transportation, District 12 is responsible for repair and replanting of the damaged area(s).
- H. For the purpose of determining mitigation credit for the removal of exotic/invasive plant species, only the actual area occupied by exotic/invasive plant species must be quantified to comply with mitigation requirements.
- I. For purposes of this Certification, establishment is defined as the creation of vegetated or unvegetated waters of the United States and/or State where the resource has never previously existed (e.g. conversion of nonnative grassland to a freshwater marsh). Restoration is divided into two activities, re-establishment and rehabilitation. Re-establishment is defined as the return of natural/historic functions to a site where vegetated or unvegetated waters of the United States and/or State previously existed (e.g., removal of fill material to restore a drainage). Rehabilitation is defined as the improvement of the general suite of functions of degraded vegetated or unvegetated waters of the United States and/or State (e.g., removal of a heavy infestation or monoculture of exotic plant species from jurisdictional areas and replacing with native species). Enhancement is defined as the improvement to one or two functions of existing vegetated or unvegetated waters of the United States and/or State (e.g., removal of small patches of exotic plant species from an area containing predominantly natural plant species). Preservation is defined as the acquisition and legal protection from future impacts in perpetuity of existing vegetated or unvegetated waters of the United States and/or State (e.g., conservation easement).

## VI. NOTIFICATION REQUIREMENTS:

- A. California Department of Transportation, District 12 must report to the San Diego Water Board any noncompliance that may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time California Department of Transportation, District 12 becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time California Department of Transportation, District 12 becomes aware of the circumstances. The written submission shall contain a written description of the incident and its cause, the period of the noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The San Diego Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours.
- B. California Department of Transportation, District 12 must notify the San Diego Water Board in writing **at least 5 days prior to** the actual commencement of dredge, fill, and discharge activities.
- C. California Department of Transportation, District 12 must notify the San Diego Water Board in writing within **5 days** following the completion of mitigation.
- D. California Department of Transportation, District 12 must submit a Final Project Report within **60 days** of completion of the project, including mitigation construction. The Final Project Report must include:
  1. Stream photodocumentation in accordance with:  
[http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/401\\_certification/docs/StreamPhotoDocSOP.pdf](http://www.waterboards.ca.gov/sandiego/water_issues/programs/401_certification/docs/StreamPhotoDocSOP.pdf)
  2. GIS shapefiles of the mitigation site.
  3. A demonstration of project and mitigation completion.
  4. Any mitigation site monitoring, including for success criteria, required under V.A. of this Certification.

## VII. REPORTING REQUIREMENTS:

- A. The submittal of information under this Certification is required pursuant to California Water Code (CWC) sections 13267 and 13283. Civil liability may be administratively imposed by the San Diego Water Board for failure to submit required information pursuant to CWC section 13268 or 13385.

- B. All reports and information submitted to the San Diego Water Board must be submitted in both hardcopy and electronic format. The preferred electronic format for each report submission is one file in PDF format that is also Optical Character Recognition (OCR) capable.
- C. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:
1. For a corporation, by a responsible corporate officer of at least the level of vice president.
  2. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
  3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.
  4. A duly authorized representative may sign applications, reports, or information if:
    - a. The authorization is made in writing by a person described above.
    - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
    - c. The written authorization is submitted to the San Diego Water Board Executive Officer.
- D. All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:
- "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."
- E. California Department of Transportation, District 12 must submit reports required under this Certification, or other information required by the San Diego Water Board, to:

Executive Officer  
California Regional Water Quality Control Board  
San Diego Region

Attn: 401 Certification No.11C-080,  
Place ID No. 771346  
9174 Sky Park Court, Suite 100  
San Diego, California 92123

**VIII. CEQA FINDINGS:**

- A. The San Diego Water Board has reviewed the CEQA documentation for the project and finds that the issuance of this Certification is consistent with the project's CEQA documentation.


**IX. PUBLIC NOTIFICATION OF PROJECT APPLICATION:**

- A. The receipt of the project application was posted on the San Diego Water Board web site for a minimum of 21 days to serve as appropriate notification to the public. No public comments were received.

**X. WATER QUALITY CERTIFICATION:**

I hereby certify that the proposed discharge from the Interstate 5/Ortega Highway Improvement Project (Project No.11C-080) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "*Statewide General Waste Discharge Requirements for Dredged or Fill Discharges That Have Received State Water Quality Certification (General WDRs)*," which requires compliance with all conditions of this Water Quality Certification. Please note that enrollment under Order No. 2003-017-DWQ is conditional and, should new information come to our attention that indicates a water quality problem, the San Diego Water Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Water Quality Control Plan for the San Diego Basin Region (9) (Basin Plan).

  
 for James G. Smith, AEO  
 DAVID W. GIBSON  
 Executive Officer  
 Regional Water Quality Control Board

24 Feb 2012  
 Date

## Electronic Distribution:

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Consultant:	n/a