



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT CORPS OF ENGINEERS
REGULATORY DIVISION
CARLSBAD FIELD OFFICE
6010 HIDDEN VALLEY ROAD, SUITE 105
CARLSBAD, CA 92011

February 25, 2013

Regulatory Division

Mr. Rob Rundle
San Diego Association of Governments
401 B Street, Suite 800
San Diego, California 92101

PROVISIONAL DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION

Dear Mr. Rundle:

This letter of verification is in response to your application (SPL-2012-00155-CMS) for a Department of the Army permit for the proposed modification to the San Onofre to Pulgas Double Track Project (project). The project includes the construction of approximately 4.3 miles of a second mainline track parallel to the existing mainline track, within the existing rail corridor. The project would result in a discharge of fill material into waters of the United States (U.S.). Therefore, pursuant to section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344; 33 C.F.R. parts 323 and 330), your proposed project requires a Department of the Army permit. The project is located in the City of Oceanside, San Diego County, California. The northern terminus of the proposed work would be located within the existing railroad corridor adjacent to the San Onofre truck and weigh station at Mile Post (MP) 212.2 (Latitude 33.3524, Longitude -117.5266) and would extend south 4.3 miles, ending approximately 0.5 mile south of the Old Pacific Highway Overcrossing at MP 216.5 (Latitude 33.3007, Longitude -117.4633) (as shown on the attached map, Figure 2-11).

The U.S. Army Corps of Engineers (Corps) has determined construction of San Onofre to Pulgas Double Track Project complies with Nationwide Permit (NWP) No. 14, Linear Transportation Projects, if conducted as described in your application.

Specifically, you are authorized to conduct the following activities:

1. Construct a second mainline track from MP 212.2 to MP 216.65, east of the existing mainline track within the railroad right-of-way. The new double track would connect to an existing double track section at the north end of the project. The project would involve total permanent impacts to 0.167 acre of jurisdictional waters of the U.S.

2. Reconstruct approximately 0.103 acre of waters of the U.S. parallel to the new mainline track.
3. Permanently fill approximately 0.096 acre of jurisdictional waters of the U.S. through the extension of the existing culverts and the associated fill and rip rap at drainages 3, 5, 6, 7, and 10b to accommodate the second mainline track.
4. Temporarily impact approximately 0.008 acre jurisdictional waters of the U.S. during the construction of the longer culverts at drainages 3, 5, 6, 7, and 10b.
5. Replace one railroad bridge at MP 215.3 with a Corps approved structure per Special Condition 1. The existing 44-foot-long timber-pile bridge at this location would be removed and replaced with the approved structure to support the existing and second mainline track.
6. Revegetate all temporary upland and waters impact areas with a native hydroseed mix within 60-days following completion of the construction.
7. Construct temporary access and staging areas at various locations along the construction corridor in the uplands, employ proper best management practices (BMPs) that inhibit any trespassing by vehicles or construction crews into waters of the U.S. and limit any runoff of sediment or other contaminants from entering waters of the U.S. Use existing access roads to the maximum extent practicable.

While this activity meets the general terms and conditions for authorization under NWP No. 14, Linear Transportation Projects [Federal Register, February 21, 2012, pages 10184-10290, as corrected by Federal Register notices dated March 19, 2012, page 16021, and September 21, 2012, pages 58532-58533], we note that you do not have section 401 water quality certification from the California Regional Water Quality Control Board (RWQCB). According to 33 C.F.R. 330.4, a water quality certification pursuant to section 401 of the CWA, or waiver thereof, is required prior to authorization of your project. You must therefore obtain section 401 water quality certification or waiver. Be aware that any conditions on your section 401 certification will become conditions on your NWP authorization.

Enclosed is a provisional NWP authorization letter. This provisional permit authorization letter is NOT VALID and does not constitute authorization for you to do work. This provisional permit authorization letter describes the work that will be authorized, including general and special conditions which will be placed on your final NWP authorization letter, if you receive a section 401 water quality certification from the RWQCB. No work is to be performed until you have received a validated copy of the NWP authorization letter.

When you receive your section 401 certification or waiver, you should contact the Corps Project Manager for this project, Courtney Stevens at 760-602-4841 or via email at Courtney.M.Stevens@usace.army.mil. Please reference application SPL-2012-00155-CMS in your letter. Your authorization could then be issued without further delay or processing.

Furthermore, you must comply with the following non-discretionary Special Conditions listed below:

1. **Construction Designs:** Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division for review and approval an updated hydraulic analysis and a complete set of final detailed construction plans showing all work and structures in waters of the U.S. The design of each crossing shall comply with General Condition 2 which requires that NWP activities be constructed to maintain aquatic life movements and General Condition 9 which requires that high water flows and natural sediment transport is maintained. Plans for each crossing shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated September 21, 2009 (http://www.spl.usace.army.mil/regulatory/pn/SPL-RG_map-drawing-standard_final_w-fig.pdf). All plan sheets shall be signed, dated, and submitted on paper no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.

2. **Restoration of Temporary Impact Areas:** All temporary fill shall be removed and the area shall be restored to pre-construction conditions (elevations, contours and vegetated condition) within 60-days of completion of the project. The Permittee shall hydroseed the disturbed portions of the earthen stream banks with native vegetation of primarily facultative upland (FACU) or wetter species, as appropriate. The Permittee shall submit the proposed planting palette for review and approval by the Corps Regulatory Division prior to initiation of construction. The Permittee shall ensure the hydroseeded areas are maintained and monitored for a period of two years after completing the seeding activities, such that less than 10 percent of the areas disturbed by the project are vegetated by annual non-native plant species and zero perennial weeds are present.

3. **Endangered Species Act:** This Corps permit does not authorize you to take any threatened or endangered species, in particular the coastal California gnatcatcher (*Poliophtila californica*). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). A programmatic BO was developed by the U.S. Fish and Wildlife Service, however the Corps Regulatory Division has determined that your activity would have no affect to the above species within the Corps' scope of analysis. Your authorization under

this Corps permit is conditional upon your implementation of all of the proposed avoidance and minimization measures within your project description and permit application package, which are incorporated by reference in this permit. Failure to comply with the required avoidance and minimization measures would constitute non-compliance with your Corps permit.

4. **Cultural Resources:** Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff within 24 hours (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861) and the Regulatory Division (Courtney Stevens at 760-602-4841). The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

5. As proposed by the permittee, a tribal and archeological monitor shall be present during any earth-moving activities involving any previously undisturbed areas within the project boundary.

6. **RWQCB 401 Certification:** Upon issuance, the Permittee shall implement and abide by the amended section 401 Water Quality Certification (Cert No. 010C-029). The conditions of this permit have been integrated into this letter of verification by reference.

7. **Coastal Consistency Certification:** The Permittee shall abide by all conditions of the California Coastal Management Program (CCMP). The project was determined to be consistent with the CCMP by the attached letters dated August 14, 2012 and February 5, 2013.

Your verification is valid through February 21, 2015. All NWP's will expire on March 18, 2017. It is incumbent upon you to remain informed of changes to the NWP's. A public notice of the change(s) will be issued when any of the NWP's are modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date on which the relevant NWP is reissued, modified, or revoked, you will have twelve (12) months from the date of the reissuance, modification, or revocation of the NWP to complete the activity under the present terms and conditions of the relevant NWP.

A preliminary jurisdictional determination (JD) was verified on August 17, 2012, to determine the extent of Corps geographic jurisdiction, upon which this NWP verification is based. A preliminary JD is advisory in nature and is a written indication that Corps geographic jurisdiction may be present on a particular site, but is not appealable. An

approved JD is an official Corps determination of the precisely identified limits of Corps geographic jurisdiction on a particular site, and is appealable. Should you wish to appeal an approved JD, you may request an administrative appeal under Corps regulations at 33 C.F.R. part 331. Please refer to the enclosed Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form for more information.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed federal project. Furthermore, it does not obviate the need to obtain other federal, State, or local authorizations required by law.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at:
<http://per2.nwp.usace.army.mil/survey.html>.

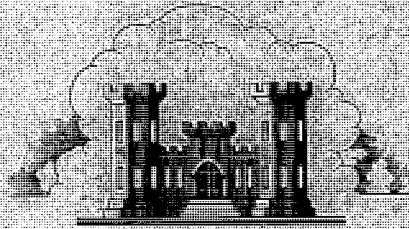
"Building Strong and Taking Care of People!"

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Smith", written in a cursive style.

Robert R. Smith, P.E.
Senior Project Manager

Enclosures



**LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS**

**CERTIFICATE OF COMPLIANCE WITH
DEPARTMENT OF THE ARMY NATIONWIDE PERMIT**

Permit Number: *SPL-2012-00155-CMS*

Name of Permittee: *Mr. Rob Rundle, San Diego Association of Governments*

Date of Issuance: *February 25, 2013*

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it to the following address:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Division
ATTN: CESPL-RG-SPL-2012-00155-CMS
6010 Hidden Valley Road, Suite 105
Carlsbad, California 92011

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this Nationwide Permit, you may be subject to permit suspension, modification, or revocation procedures as contained in 33 C.F.R. § 330.5 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

Signature of Permittee

Date



Existing Vegetation and Jurisdictional Delineation/Project Impacts

CP SAN ONOFRE TO CP LAS PULGAS DOUBLE TRACK PROJECT



Existing Vegetation and Jurisdictional Delineation/Project Impacts

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