



DEPARTMENT OF THE ARMY  
LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
915 WILSHIRE BOULEVARD, SUITE 930  
LOS ANGELES, CALIFORNIA 90017

February 20, 2014

Regulatory Division

Jason Yeung  
District Project Engineer  
California Department of Transportation  
3347 Michelson Dr. Suite 100,  
Irvine California, 92612

**DEPARTMENT OF THE ARMY NATIONWIDE PERMIT VERIFICATION**

This correspondence is in reply to your application (SPL-2013-00833-DPS), dated December 11, 2013, seeking verification of Nationwide Permit (NWP) 32 to authorize, after-the-fact, pursuant to section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) the discharge of fill material placed into 0.002 acre of waters of the U.S. in the form of rock rip rap. The work occurred in April 2013 at the northbound State Route 73 off-ramp to Laguna Canyon Road (State Route 133) in the City of Laguna Beach, Orange County, California (33.593897° N, - 117.758764° W).

The U.S. Army Corps of Engineers has determined the 0.002 acre of fill material discharged into an unnamed blue-line stream tributary to Laguna Canyon and remaining in place is authorized, after-the-fact, under NWP 32, *Completed Enforcement Actions*. For this NWP verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the non-discretionary Special Condition listed below:

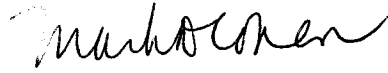
1. You must comply with all terms, conditions, and obligations of the Settlement Agreement effective December 30, 2013. A copy of the executed Settlement agreement is attached to this NWP verification letter for your reference.

This verification is valid through **March 18, 2017**. In the event I discover noncompliance or new unauthorized activities associated with the permitted activity I may exercise discretionary authority and thereby modify, suspend, or revoke this specific verification at an earlier date in accordance with procedures in 33 C.F.R. § 330.4(e) and 33 C.F.R. §§ 330.5(c) or (d). At the national level, the Chief of Engineers at any time prior to the expiration of a NWP may choose to modify, suspend, or revoke the nationwide use of a NWP after following procedures set forth in 33 C.F.R. § 330.5. It is incumbent upon you to comply with all of the terms and conditions of this NWP verification and to remain informed of any change to the NWPs.

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.

If you have any questions, please contact Sophia Ma at 213-452-3357 or via e-mail at Sophia.C.Ma@usace.army.mil. Please complete the customer survey form at <http://per2.nwp.usace.army.mil/survey.html>, which would help me to evaluate and improve the regulatory experience for others.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Cohen". The signature is fluid and cursive, with the first name "Mark" and last name "Cohen" clearly distinguishable.

Mark D. Cohen  
Deputy Chief, Regulatory Division

Enclosure(s)

## SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into by California Department of Transportation (hereinafter "**Department**") and the U.S. Army Corps of Engineers, Los Angeles District (hereinafter the "**Corps**"), collectively referred to as the "**Parties**."

### RECITALS

WHEREAS, the Corps asserts it discovered an unauthorized discharge in violation of §§ 301(a), 309, and 404 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a,) 1319, and 1344, at a site located at the northbound State Route 73 off-ramp to Laguna Canyon Road (State Route 133), Orange County, California (33.593897° N, -117.758764° W) (the "**Discharge Site**");

WHEREAS, the Corps asserts the Department is a "person" as defined in the CWA § 502(5), 33 U.S.C. § 1362(5), and for purposes of this Settlement Agreement only, is the person responsible for the discharge;

WHEREAS, the Corps asserts rock (the "**Fill Material**") was placed below the Ordinary High Water Mark ("**OHWM**") of an unnamed blue-lined stream tributary to Laguna Canyon (hereafter "**Waterway**") at the Discharge Site;

WHEREAS, the Corps asserts the Fill Material is a "discharge" as defined in CWA § 502(12), 33 U.S.C. § 1362(12);

WHEREAS, the Corps asserts the discharge was from heavy equipment, a point source as defined in the CWA § 502(14), 33 U.S.C. § 1362(14);

WHEREAS, the Corps asserts the discharge was performed by or for the Department along and within approximately 0.002 acre of Waterway, which is a jurisdictional "water of the United States" within the meaning of 33 C.F.R. § 328.3(a), and "navigable waters" within the meaning of CWA § 502(7), 33 U.S.C. § 1362(7);

WHEREAS, the Corps asserts the Department did not obtain a permit from the Corps prior to performing the discharge;

WHEREAS, the Corps issued a Notice of Violation of the Clean Water Act, Enforcement Case Number SPL-2013-00833-SCH, to Department dated December 9, 2013 (the "**Notice**");

WHEREAS, the Corps initiated this Settlement Agreement under authority of sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, for use in conjunction with Nationwide Permit 32; and

WHEREAS, the Parties agree settlement of this matter is in the public interest and that this Settlement Agreement and the applicability of Nationwide Permit 32 is the most appropriate means of resolving this matter.

NOW, THEREFORE, without admitting the assertions which charge violations of federal law, without adjudication of any issues of fact or law, and upon consent of the Parties hereto, it is hereby AGREED as follows:

#### I. APPLICABILITY AND SCOPE

1. The undersigned signatories certify they are authorized to execute this Settlement Agreement and legally bind such parties.

2. The provisions of this Settlement Agreement shall apply to and be binding upon the Department, its agents, employees, contractors, consultants, successors, or assigns. In any action to enforce this Settlement Agreement against the Department, the Department shall not raise the failure to take any actions necessary to comply with the provisions hereof by any person, firm or corporation who acquires the Discharge Site, or who is an agent, successor, assign, employee, contractor, or consultant of the Department with responsibility for the matters addressed in this Settlement Agreement as a defense or excuse for non-performance.

3. This Settlement Agreement shall constitute a complete and final settlement of all claims alleged in the Notice against the Department.

4. It is the express purpose of the Parties in entering this Settlement Agreement to further the objectives set forth in CWA § 101, 33 U.S.C. § 1251. All plans, studies, construction, remedial maintenance, compensatory mitigation, and other obligations in this Settlement Agreement or resulting from the activities required by this Settlement Agreement shall have the objective of causing the Department to achieve and maintain full compliance with, and to further the purposes of, the CWA.

5. This Settlement Agreement is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to section 404 of the Clean Water Act, 33 U.S.C. § 1344, nor does this Settlement Agreement relieve the Department of any obligation to apply for, obtain, and comply with the requirements of any new or existing CWA section 404 permit, or with any other federal, state, or local law or regulation.

6. This Settlement Agreement in no way affects or relieves the Department of its responsibility to comply with any applicable federal, state, or local law, regulation or permit.

7. Nothing in this Settlement Agreement shall constitute an admission of fact or law by any party.



8. The Corps does not waive any rights or remedies available to it for any violation or non-compliance by the Department of federal or State laws, regulations, or permit conditions except for its rights and remedies related to the allegations in the Notice.

9. The Parties agree it is the responsibility of the Department to achieve and maintain complete compliance with all applicable federal and state laws, regulations and permits. Nothing herein shall be construed to limit the authority of the Corps to act under sections 308 and 504 of the CWA, 33 U.S.C. §§ 1318 and 1364.

10. The Parties acknowledge that Nationwide Permit 32, found at 72 Fed. Reg. 10277 (February 21, 2012), authorizes any fill that was placed as of September 2, 2011 at the Discharge Site, to remain in place, subject to the conditions provided in the Nationwide Permit, the Corps' letter of verification, and this Settlement Agreement. The Parties further acknowledge that Nationwide Permit 32 authorizes the discharge of dredged or fill material insofar as such discharge is necessary to complete the work required to be performed pursuant to this Settlement Agreement. Any such discharge of dredged or fill material necessary for work required by this Settlement Agreement shall be subject to the conditions of the Nationwide Permit, the Corps' letter of verification, and this Settlement Agreement.

## II. SPECIFIC PROVISIONS

### ***IN-LIEU FEE MITIGATION***

11. Within thirty (90) days of execution of this Settlement Agreement, the Department shall purchase 0.006 acre of rehabilitation credit from the Riverside-Corona Resource Conservation District's ("RCRCD") In-Lieu Fee Mitigation Program.

12. The Department shall provide a copy of the RCRCD's credit purchase receipt evidencing proof of purchase of the enhancement credit to the Corps at the address set forth in Section V below.

13. Upon completion of the terms and conditions of the Settlement Agreement, Nationwide Permit, and the Corps' letter of verification, the Department shall not mow, cut, clear, cultivate, dredge, excavate, farm, fill, dewater, drain or otherwise disturb in any manner the Waterway at the Discharge Site except as approved by the Corps.

## III. RETENTION OF RECORDS AND RIGHT OF ENTRY

14. Until six years after execution of this Settlement Agreement, the Department shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the tasks in Section II above, regardless of any corporate retention policy to the contrary. Until six years after execution of this Settlement Agreement, the Department shall also instruct its contractors and

agents to preserve all documents, records, and information of whatever kind, nature, or description relating to the performance of the tasks in Section II.

15. At the conclusion of the document retention period, the Department shall notify the Corps at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the Corps, the Department shall deliver any such records or documents to the Corps. In response to a request for records or documents, the Department may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Department asserts such a privilege, it shall provide the Corps with the following information, except where such information itself is privileged: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of the author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by the Department. However, no document, report or information that a provision of this Settlement Agreement requires to be created shall be withheld on the grounds that it is privileged.

#### IV. ENFORCEMENT AND COMPLIANCE

16. In the event the Department does not comply with the terms of this Settlement Agreement, Nationwide Permit, the Corps' letter of verification, and/or any modifications thereto, the Corps has the right to enforce the this Settlement Agreement, Nationwide Permit, the Corps' letter of verification, and/or any modifications thereto, pursuant to 33 U.S.C. § 1319(g) and 33 C.F.R. § 326.6.

17. In the event of non-compliance with this Settlement Agreement, Nationwide Permit, and the Corps' letter of verification, and/or any modifications thereto, the Corps has the right to issue a proposed order to assess Class 1 civil penalties pursuant to 33 U.S.C. § 1319(g) and 33 C.F.R. § 326.6. The Department will have thirty (30) days from the date the proposed order is issued to respond to each allegation set forth therein. The response should deny or accept each proposed stipulation. If the Department denies any stipulation, it shall provide the factual basis for such denial and supporting evidence. The Department waives its right to a hearing on any proposed order. Following the close of the thirty (30) day public interest review period, the District Engineer for the Corps will issue a Final Order. This decision will be based on the administrative record, including any comments and/or evidence submitted by the Department, California Regional Water Quality Control Board, and members of the public. All evidence will be considered, and the decision will be based on a preponderance of the evidence.

18. Persons or entities commenting on the public notice shall be allowed an additional thirty days to request that the Final Order be set aside and a hearing be held in accordance with section 309(g)(8) of the CWA. Such a hearing shall only be granted if, in the opinion of the District Engineer, evidence to be presented is material and was not considered in the preparation of the Final Order.

## V. ADDRESSES

19. All notices and communications required under this Settlement Agreement shall be made to the parties through each of the following persons and addresses:

a. TO THE CORPS:

Regulatory Division  
U.S. Army Corps of Engineers  
ATTN: SPL-2013-00833-SCH  
P.O. Box 532711  
Los Angeles, CA 90053

and

District Counsel  
U.S. Army Corps of Engineers  
915 Wilshire Blvd., Suite 1535  
Los Angeles, CA 90017

b. TO DEPARTMENT:

California Department of Transportation, District 12  
ATTN: Ryan Chamberlain, District Director  
3347 Michelson Drive, Suite 100  
Irvine, California 92612

and

Legal Division  
California Department of Transportation  
1120 N Street, MS 57  
P.O. Box 1438  
Sacramento, CA 95812-1438

## VI. MODIFICATION

20. Any modification of this Settlement Agreement shall be in writing, and shall not take effect unless signed by both the Corps and the Department.



VII. SIGNATORIES

21. Each undersigned representative of a party to this Settlement Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind such party to this document.

VIII. EFFECTIVE DATE

22. This Settlement Agreement, and any future amendments, will become effective for all purposes as of the date last signed.

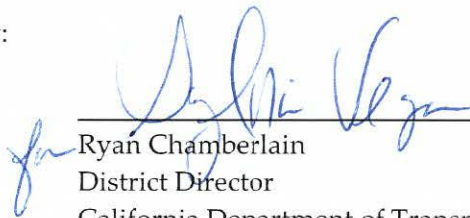
IN WITNESS THEREOF, the U.S. Army Corps of Engineers, acting by and through its authorized officer, Chief of the Regulatory Division, and the Department, have executed this Settlement Agreement on the dates set forth below. The signatures may be executed using counterpart original signatures.

Dated: 12/23/13 By:



\_\_\_\_\_  
Mark D. Cohen  
Deputy Chief, Regulatory Division  
U.S. Army Corps of Engineers  
Los Angeles District

Dated: 12/30/13 By:



\_\_\_\_\_  
Ryan Chamberlain  
District Director  
California Department of Transportation, District 12