



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

AUG 16 2013

Regulatory Division

CERTIFIED MAIL

SUBJECT: NOTICE OF NON-COMPLIANCE WITH PERMIT CONDITIONS
FILE NO. 1991-194740N

Mr. Charlie Fielder
District 1 Director
California Department of Transportation
P.O. Box 3700
Eureka, California 95502

Dear Mr. Fielder:

This letter is written in reference to Department of the Army Permit 1991-194740N, which authorized you to construct a new segment of U.S. Highway 101 (U.S. 101) that will bypass the City of Willits in Mendocino County California (Willits Bypass Project), beginning at Post Mile 43.1 and terminating at Post Mile 45.6, City of Willits, Mendocino County, California. Based on an onsite mitigation compliance inspection on June 25, 2013, and a follow up telephone conversation with Caltrans staff on August 2, 2013, the Corps has determined Caltrans is not in compliance with Corps Permit 1991-194740N, dated February 16, 2012. Caltrans has failed to complete mitigation site preparation actions in a timely manner as required in the Mitigation and Monitoring Plan (MMP), dated January 2012. Additionally, Corps staff is concerned that future required mitigation actions detailed in the MMP will be behind schedule because of Caltrans failure to retain a qualified contractor to accomplish the required work in a timely manner.

In accordance with our regulations at 33 C.F.R. § 326.1, enforcement policies and procedures for activities not in compliance with the terms and conditions of issued Department of the Army permits, and § 326.4, supervision of authorized activities, the district engineer may require corrective measures for projects that are not in compliance. These corrective measures are to assure future compliance with the permit conditions in a timely manner.

In order for the Willits Bypass Project to be brought into compliance with Corps Permit 1991-194740N, Caltrans will implement the following Corrective Measures:

1. By September 1, 2013, schedule a meeting between Corps staff and Caltrans hydrologists to discuss potential secondary effects from wick drains on wetland hydrology, specifically shallow epiaquic saturation and groundwater through-flow affecting wetland hydrology criteria and duration in existing wetlands;
2. Complete mitigation site preparation requirements (including cattle removal, fencing, and other requirements from Chapter 7 of the MMP) by October 1, 2013;

3. Complete revisions of all MMP chapters that have not met, or are likely to not meet, time deadlines in the January 2012, MMP, and chapters that have changed since the original MMP by October 1, 2013;
4. Complete the study and final report on baseline conditions of the relative percent cover of target species on the rehabilitation parcels by October 1, 2013; and
5. Select treatment types and final mitigation plan designs for the rehabilitation parcels by October 15, 2013.

You are advised to contact Ms. Sahrye Cohen before beginning these tasks to arrange for assistance and clarifications on the Corps's expectations. To avoid misunderstandings and unacceptable proposals to address the corrective measures, Corps staff will be available to clarify expectations and resolve thresholds of data requirements or other impediments to completing the tasks.

For rewritten portions of the MMP that cannot be proposed with specific work actions and timelines, Caltrans must acknowledge those portions of the plan that cannot be completed by the deadline and submit reasonable dates by which those details will be resolved. Failure to successfully accomplish goals, or provide acceptable reports within timelines established by the corrective measures, may result in additional mitigation requirements, administrative fines, or permit suspension. The Corps will utilize the SPD Mitigation Ratio Checklist to assess additional mitigation for failing to comply with the MMP timelines.

The Corps considers non-compliance as a serious breach of permit conditions. Per Special Condition 1, Caltrans is responsible for the mitigation acreage and the implementation of the mitigation plan. I look forward to meeting with your staff on Friday, September 6, 2013, from 11 A.M. - 1 P.M. at the Corps San Francisco District Office to discuss the specific tasks, order of work and timeframe that are required for mitigation compliance.

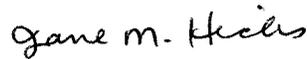
Failure to remain in compliance with the permit, including all Special Conditions, may result in permit suspension, revocation or modification and administrative penalties. Pursuant to section 309(g) of the Clean Water Act, the Corps of Engineers is able to levy Class I Administrative Penalties of up to \$11,000 per violation of a Special Condition of a permit, to a maximum of \$27,500. Among the other enforcement options available are actions in Federal District Court for fines and injunctions requiring work cessation and/or restoration. The court may also require that the restoration be performed by a third party and be funded through a money judgment against the permittee.

Within 7 days of the receipt of this letter, please provide a response indicating that you have reviewed the corrective measures outlined above, and any relevant information you have relating to

these non-compliance issues. You are required to submit the items described in the corrective measures by the due dates in this letter. Submit this information to the Chief, Regulatory Division, Attn: Sahrye Cohen, 1455 Market Street, San Francisco, California 94103. Failure to comply with this order may result in suspension of your permit or administrative penalties.

If you have any questions regarding this matter, please contact Sahrye Cohen in our Regulatory Division at 415-503-6779 or via e-mail at Sahrye.E.Cohen@usace.army.mil.

Sincerely,



Jane M. Hicks
Chief, Regulatory Division

Copies furnished:

Congressman Jared Huffman, California District 1
U.S. Attorney, San Francisco, CA
U.S. EPA, San Francisco, CA
California Department of Fish and Wildlife, Eureka, CA
North Coast Regional Water Quality Control Board, Santa Rosa, CA
National Marine Fisheries Service, Santa Rosa, CA
Malcolm Dougherty, Caltrans Director, Sacramento, CA