

The responses to bidders' inquiries are provided for the bidders' convenience only. In some instances, the question and answer may represent a summary of the matters discussed rather than a word-for-word recitation. The responses may be considered along with all other information furnished to prospective bidders for the purpose of bidding on the project. The availability or use of information provided in the responses to contractors' inquiries is not to be construed in any way as a waiver of the provisions of Section 2-1.03 of the Standard Specifications or any other provision of the contract, the plans, Standard Specifications or Special Provisions, nor to excuse the contractor from full compliance with those contract requirements. Bidders are cautioned that subsequent responses or contract addenda may affect or vary a response previously given. Inquiries along with responses may be posted at the website only when the inquiries are submitted in any of the acceptable manner prescribed under the Notice to the Contractors and when the responses have already been communicated to the individual inquirers. Bidders' inquiries received over the phone must be followed-up and submitted in writing for an official response.

The Bidders' inquiries and Responses may be updated from time to time and bidders are enjoined to check the website regularly and immediately prior to the scheduled bid opening.

Caltrans District 8 Office is located at 464 W. Fourth Street, San Bernardino, CA 92401-1400.

Send Contractor Inquiries via email to d8_pbi@dot.ca.gov

The mailing address is 655 2nd Street, San Bernardino, CA 92402.

Phone (909) 383-4050

Fax (909) 383-6739.

All inquiries must include the contract number.

08-483304	
Inquiry No.	Inquiry/Response
1.0	<p>Question_1.0: An agreement regarding a stream or lake has been entered into by the Department of Transportation and the Department of Fish and Game. Copies of this agreement may be obtained at the Department of Transportation. Can we get a copy of this agreement?</p> <p>Response: Please find the attached file of the agreement below.</p>
1.1	<p>Question_1.1: Relations with California Regional Water Quality Control Board The location of the Seismic Retrofit on Bridge No. 54-0307, on SR 18 crossing Mojave River, is within an area controlled by the Regional Water Quality Control Board. Regional Water Quality Control Board Order No. 20Q4-004-DWQ has been issued covering work to be performed under this contract. The contractor shall be fully informed of rules, regulations, and conditions that may govern the Contractor's operations in the areas and shall conduct the work accordingly. Copies of the order may be obtained at the Department of Transportation. Can we get copies of this order?</p> <p>Response: Please find the attached file of the order below.</p>
2.0	<p>Question_2.0: Can you please provide copies of the project related Federal & State Permits...(Fish & Game, RWQCB, etc....)</p> <p>Response: Please find the attached files of agreement/order below.</p>
3.0	<p>Question_3.0: Number of working days not listed in this section (Section 4) as is usual. Interpretation_1: Reference is made to 160 days in Section 3 and on advertised listing.</p> <p>Response: This contract is advertised as an A + B contract. The working days (B) shall be determined by the contractor's bid. The maximum allowed days have been specified as 160 days.</p>
4.0	<p>Question_4.0: Has the State obtained a Form 'B' (right of way entry permit) with the rail road(UP)? What are estimated track and time windows?</p> <p>Response: Attached below please find the documents of <u>"Railroad Service Contract"</u> and the <u>"Temporary Occupancy Permit"</u>. These two documents provide information for the above questions.</p>

*TOP Agreement - Executed
Attached.

Betty Bobosik
07/28/2006 10:36 AM
To: "Cathy Benton"
<Cathy.Benton@Staubach.com>Megan.McIntyre@bnsf.com,
cc:
"Betty Bobosik" <betty_bobosik@dot.ca.gov>,
<Megan.McIntyre@bnsf.com>
Subject: RE: Fully Executed TOP Agreement for Mojave River on Rte 18-
06-30734

Thank you Cathy!,
I can now clear and Certify the project for Construction.

Betty Bobosik, Chief
Right of Way Railroad Coordinator
Southern Region
(909) 383-6817
(909) 383-6877 fax

"Cathy Benton" <Cathy.Benton@Staubach.com>



"Cathy Benton"
<Cathy.Benton@Staubach.com>
07/28/2006 08:50 AM
To: "Betty Bobosik" <betty_bobosik@dot.ca.gov>,
<Megan.McIntyre@bnsf.com>
cc:
Subject: RE: Fully Executed TOP Agreement for Mojave River on Rte 18-
06-30734

Betty
Attached please find one (1) fully executed Agreement for your file. A
copy of the executed Agreement must be available upon request at the job
site allowing authorization to do the work. Please contact Roadmaster
at telephone (909) 383-4737, five (5) days in advance of entry and
BEFORE YOU DIG, CALL 1-800-533-2891. If you need additional information
please contact me at (817) 230-2628

Cathy Benton
Sr. Contract Specialist

Staubach Global Services, Inc.-RR
THE STAUBACH COMPANY
3017 Lou Menk Dr., Ste. 100
Fort Worth, Texas 76131-2800
Fax Number 817 306-8265
Direct Line 817 230-2628
cathy.benton@staubach.com
www.staubach.com
<http://www.bnsf.com/tools/realestate/permitslicenses.html>

Be who you are and say what you feel, because those who mind don't
matter and those who matter don't mind.

-----Original Message-----

From: Betty Bobosik [mailto:betty_bobosik@dot.ca.gov]
Sent: Thursday, July 27, 2006 5:59 PM
To: Megan.McIntyre@bnsf.com

TEMPORARY OCCUPANCY PERMIT

THIS AGREEMENT ("Agreement"), made as of the 27th day of July, 2006, ("Effective Date") by and between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Railroad") and STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, a governmental agency ("Licensee").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Railroad hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, licenses, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to temporarily occupy the area of Railroad's property shown on the attached Drawings No.1-39229, attached hereto, marked Exhibit "A", and made a part hereof, situated at or near Victorville, County of San Bernardino, State of California, Line Segment 7600, Mile Post 37.11 ("Premises") for the purposes specified in Section 3 below.
2. Licensee shall not disturb any improvements of Railroad or Railroad's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use of such improvements.
3. Licensee shall use Premises exclusively as a site for ingress and egress to existing bridge for seismic retrofit project and storage of materials need at work site. Licensee shall not use the Premises for any other purpose. Licensee shall not use or store hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA") or petroleum or oil as defined by applicable Environmental Laws on the Premises.
4. In case of the eviction of Licensee by anyone owning or claiming title to or any interest in the Premises, Railroad shall not be liable to refund Licensee any compensation paid hereunder or for any damage Licensee sustains in connection therewith.
5. Any contractors or subcontractors performing work on the Premises, or entering the Premises on behalf of Licensee, shall be deemed agents of Licensee for purposes of this Agreement.

TERM

6. This Agreement shall commence on January 3, 2007 (the Effective Date) and shall continue until September 30, 2007, subject to prior termination as hereinafter described.

COMPENSATION

7. (a) Licensee shall pay to Railroad, prior to the Effective Date, the sum of the sum of Two Thousand Five Hundred dollars (\$2,500.00) as compensation for the use of the Premises.

- (b) Licensee agrees to reimburse Railroad (within forty-five (45) days after receipt of bills therefor) for all costs and expenses incurred by Railroad in connection with Licensee's use of the Premises, including but not limited to the furnishing of Railroad's Flagman (\$500.00 per eight hour day, \$95 00 per hour thereafter) and any vehicle rental costs incurred. Licensee acknowledges that a twelve-hour day is often required to support an eight-hour work day due to travel, placement, and removal of advance protection signage, safety briefings, and other duties as required.
- (c) All invoices are due forty-five (45) days after the date of invoice. In the event that Licensee shall fail to pay any monies due to Railroad within forty-five (45) days after the invoice date, then Licensee shall pay interest on such unpaid sum from forty-five (45) days after its invoice date to the date of payment by Licensee in accordance with the 1999 California Prompt Payment Act.

COMPLIANCE WITH LAWS

- 8. (a) Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants or restrictions ("Legal Requirements") relating to the use of the Premises.
 - (b) Prior to entering the Premises, Licensee shall and shall cause its contractor to comply with all Licensor's applicable safety rules and regulations. Prior to commencing any work on the Premises, Licensee shall complete and shall require its contractor to complete the safety training program at the Licensor's Internet Website "<http://www.contractororientation.com>". This training must be completed no more than one year in advance of Licensee's entry on the Premises.
9. Any activities performed by Licensee shall be in accordance with prudent standards of professional environmental practices exercised by the environmental engineering profession

DEFINITION OF COST AND EXPENSE

10. For the purpose of this Agreement, "cost" or "costs" "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.

RIGHT OF RAILROAD TO USE

11. Railroad excepts and reserves the right, to be exercised by Railroad and any other parties who may obtain written permission or authority from Railroad:
- (a) to maintain, renew, use, operate, change, modify and relocate any existing pipe, power, communication lines and appurtenances and other facilities or structures of like character upon, over, under or across the Premises;
 - (b) to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; or

- (c) to use the Premises in any manner as the Railroad in its sole discretion deems appropriate, provided Railroad uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in Section 3 above.

PERMITTEE'S OPERATIONS

- 12. (a) Licensee shall notify Railroad's Roadmaster Michael Edwards at 740 E. Carnegie Dr., San Bernardino, CA 92408, telephone (909) 383-4737, at least five (5) business days prior to entering the Premises. After completion of use of the Premises for the purpose specified in Section 3, Licensee shall notify Railroad in writing that such use has been completed.
- (b) In performing the work described in Section 3, Licensee shall use only public roadways to cross from one side of Railroad's tracks to the other.
- 13. Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Railroad. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to be a source of danger to or interference with the existence or use of present or future tracks, roadbed or property of Railroad, or the safe operation and activities of Railroad. If ordered to cease using the Premises at any time by Railroad's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Railroad, the parties agree that Railroad has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Railroad to exercise any rights granted in this Section will alter the liability allocation provided by this Agreement.
- 14. Upon completion of Licensee's work on the Premises or upon termination of this Agreement, whichever shall occur first, Licensee shall, at its sole cost and expense:
 - (a) remove all of its equipment from the Premises;
 - (b) report and restore any damage to the Premises arising from, growing out of, or connected with Licensee's use of the Premises;
 - (c) remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - (d) leave the Premises in the condition which existed as of the Effective Date of this Agreement
- 15. Licensee's on-site supervision shall retain/maintain a fully-executed copy of this Agreement at all times while on the Premises.

LIABILITY

16. (a) As a major inducement and in consideration of the license and permission herein granted, the Licensee, pursuant to Cal. Gov. Code § 14662.5 (hereinafter the "applicable law"), agrees to indemnify and hold harmless the Railroad from any Loss which arises from, in whole or in part, the work performed under this License, a breach of the License or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this License regardless of whether contributed to in part by the negligence or fault of Railroad. However, the Licensee shall not indemnify the Railroad when the Loss is proximately caused by the gross negligence or willful misconduct of the Railroad. Upon written notice from Railroad, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Agreement for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

(b). TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE SHALL AND CAUSE ITS CONTRACTOR TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND EXCEPTING COSTS WHOLLY UNRELATED TO LICENSEE'S PRESENCE ON THE PREMISES ("PREEXISTING CONDITIONS" COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):

- (i) THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,
- (ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,
- (iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,
- (iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, IN EXCESS OF ANY PREEXISTING CONDITIONS AS DEFINED ABOVE OR

LIABILITY

16. (a) As a major inducement and in consideration of the license and permission herein granted, the Licensee, pursuant to Cal. Gov. Code § 14662.5 (hereinafter the "applicable law"), agrees to indemnify and hold harmless the Railroad from any Loss which arises from, in whole or in part, the work performed under this License, a breach of the License or the failure to observe the health and safety provisions herein, or any activity, omission or negligence arising out of performance or nonperformance of this License regardless of whether contributed to in part by the negligence or fault of Railroad. However, the Licensee shall not indemnify the Railroad when the Loss is proximately caused by the gross negligence or willful misconduct of the Railroad. Upon written notice from Railroad, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Agreement for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnitee. Licensee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

(b). **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE SHALL AND CAUSE ITS CONTRACTOR TO RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD AND RAILROAD'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND EXCEPTING COSTS WHOLLY UNRELATED TO LICENSEE'S PRESENCE ON THE PREMISES ("PREEXISTING CONDITIONS" COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART):**

(i) THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,

(ii) ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS AGREEMENT,

(iii) LICENSEE'S OCCUPATION AND USE OF THE PREMISES,

(iv) THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED BY LICENSEE, IN EXCESS OF ANY PREEXISTING CONDITIONS AS DEFINED ABOVE OR

(v) ANY ACT OR OMISSION OF LICENSEE OR LICENSEE'S OFFICERS, AGENTS, INVITEES, EMPLOYEES, OR CONTRACTORS, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER,

EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH LICENSEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AN INDEMNITEE AND LIABILITY ATTRIBUTED TO PREEXISTING CONDITIONS, AS DEFINED IN THIS SECTION.

(c) FURTHER, TO THE FULLEST EXTENT PERMITTED BY LAW, NOTWITHSTANDING THE LIMITATION IN SECTION 16(a), LICENSEE SHALL AND SHALL CAUSE ITS CONTRACTOR TO NOW AND FOREVER WAIVE ANY AND ALL CLAIMS, UNLESS SUCH CLAIMS ARE DIRECTLY RELATED TO A PREEXISTING CONDITION AS DEFINED ABOVE, REGARDLESS WHETHER BASED ON THE STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, THAT RAILROAD IS AN "OWNER", "OPERATOR", "ARRANGER", OR "TRANSPORTER" WITH RESPECT TO THE SITE FOR THE PURPOSES OF CERCLA OR OTHER ENVIRONMENTAL LAWS. LICENSEE WILL INDEMNIFY, DEFEND AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS IN EXCESS OF PREEXISTING CONDITIONS AS DEFINED ABOVE REGARDLESS OF THE NEGLIGENCE OF THE INDEMNITEES. LICENSEE FURTHER AGREES THAT THE USE OF THE PREMISES AS CONTEMPLATED BY THIS AGREEMENT SHALL NOT IN ANY WAY SUBJECT RAILROAD TO CLAIMS IN EXCESS OF PREEXISTING CONDITIONS AS DEFINED ABOVE THAT RAILROAD IS OTHER THAN A COMMON CARRIER FOR PURPOSES OF ENVIRONMENTAL LAWS AND EXPRESSLY AGREES TO INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FOR ANY AND ALL SUCH CLAIMS. IN NO EVENT SHALL RAILROAD BE RESPONSIBLE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES IN EXCESS OF PREEXISTING CONDITIONS AS DEFINED ABOVE.

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, LICENSEE FURTHER AGREES, AND SHALL CAUSE ITS CONTRACTOR TO AGREE REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OF ANY INDEMNITEE, TO INDEMNIFY, AND HOLD HARMLESS THE INDEMNITEES AGAINST AND ASSUME THE DEFENSE OF ANY LIABILITIES ASSERTED AGAINST OR SUFFERED BY ANY INDEMNITEE UNDER OR RELATED TO THE FEDERAL EMPLOYERS' LIABILITY ACT ("FELA") WHENEVER EMPLOYEES OF LICENSEE OR ANY OF ITS AGENTS, INVITEES OR CONTRACTORS CLAIM OR ALLEGE THAT THEY ARE EMPLOYEES OF ANY INDEMNITEE OR OTHERWISE. THIS INDEMNITY SHALL ALSO EXTEND, ON THE SAME BASIS, TO FELA CLAIMS BASED ON ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL, STATE OR LOCAL LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL HEALTH AND SAFETY ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.

insurance must reflect waiver of subrogation endorsement. Contractor shall further waive its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of its owned or leased property or property under its care, custody or control

Contractor's insurance policies through policy endorsement, must include wording which states that the policy shall be primary and non-contributing with respect to any insurance carried by Licensor. The certificate of insurance must reflect that the above wording is included in evidenced policies

All policy(ies) required above (excluding Workers Compensation and if applicable, Railroad Protective) shall include a severability of interest endorsement and shall name Licensor and Staubach Global Services, Inc. as an additional insured with respect to work performed under this agreement. Severability of interest and naming Licensor and Staubach Global Services, Inc. as additional insureds shall be indicated on the certificate of insurance.

Licensee's Contractor is not allowed to self-insure without the prior written consent of Licensor. If granted by Licensor, any deductible, self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention, or other financial responsibility for claims.

Prior to commencing the Work, Contractor shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments and referencing the contract audit/folder number if available. The policy(ies) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision shall be indicated on the certificate of insurance. Upon request from Licensor, a certified duplicate original of any required policy shall be furnished.

Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

Contractor shall WARRANT that this License has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify Licensor herein.

Failure to provide evidence as required by this section shall entitle, but not require, Licensor to suspend this Agreement immediately, until the Contractor provides said evidence. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Licensee or Contractor including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

For purposes of this section, Licensor shall mean "Burlington Northern Santa Fe Corporation", "The Burlington Northern and Santa Fe Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

ENVIRONMENTAL

19. (a) Licensee shall strictly comply with all federal, state and local environmental laws and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA (collectively referred to as the "Environmental Laws"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances in excess of Preexisting Conditions, as defined by Environmental Laws on or about the Premises.
- (b) Licensee shall give Railroad immediate notice to Railroad's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on or from the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- (c) In the event that Railroad has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the site which occurred or may occur during the term of this Agreement, Railroad may require Licensee, at Licensee's sole risk and expense, to take timely measures in regard to conditions in excess of Preexisting Conditions, to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Railroad's right-of-way.
- (d) Licensee shall promptly report to Railroad in writing any conditions or activities upon the Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Licensee's reporting to Railroad shall not relieve Licensee of any obligation whatsoever imposed on it by this Agreement. Licensee shall promptly respond to Railroad's request for information regarding said conditions or activities.

ALTERATIONS

20. Licensee may not make any alterations of the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Railroad's prior written consent.

NO WARRANTIES

21. RAILROAD'S AND LICENSEE'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS AGREEMENT AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY RAILROAD OR LICENSEE OTHER THAN THOSE CONTAINED IN THIS AGREEMENT. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES WITH RESPECT TO THE PREMISES, EXPRESS OR IMPLIED, OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

QUIET ENJOYMENT

22. RAILROAD DOES NOT WARRANT ITS TITLE TO THE PROPERTY NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

DEFAULT

23. Railroad shall have the right to request that any Licensee employee, any Licensee contractor, or any employee of a Licensee contractor who performs any work within Railroad's right of way and which affects Railroad's operations or facilities, be removed from the Project for incompetence, neglect of duty, unsafe conduct or misconduct. In the event Licensee or its contractor elects not to honor such request, Railroad may stop work within its right of way until the matter has been fully resolved to Railroad's satisfaction. The party whose employee has been asked to leave the Project will indemnify the requesting party against any claims arising from such removal.

ASSIGNMENT

24. Neither Licensee, nor the heirs, legal representatives, successors or assigns of Licensee, or any subsequent assignee, shall assign or transfer this Agreement or any interest herein, without the prior written consent and approval of Railroad, which may be withheld in Railroad's sole discretion.

NOTICES

25. Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Staubach Global Services - RR, Inc
3017 Lou Menk Drive, Suite 100
Ft. Worth, TX 76131-2800
Attn: Licenses/Permits

with a copy to: The Burlington Northern and Santa Fe Railway Company
2500 Lou Menk Dr. – AOB3
Ft. Worth, TX 76131
Attn: Sr Manager Real Estate

If to Permittee: State of California, Department of Transportation
Betty Bobosik
464 W 4th St., 6th Floor MS "M"
San Bernardino, California 92401-1400

SURVIVAL

26. Neither termination nor expiration will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Premises are restored to its condition as of the Effective Date.

RECORDATION

27. It is understood and agreed that this Agreement shall not be placed on public record

APPLICABLE LAW

28. All questions concerning the interpretation or application of provisions of this Agreement shall be decided according to the substantive laws of the State of California.

SEVERABILITY

29. To the maximum extent possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this Agreement.

MISCELLANEOUS

30. In the event that Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
31. The waiver by Railroad of the breach of any provision herein by Licensee shall in no way impair the right of Railroad to enforce that provision for any subsequent breach thereof.

Staubach Global Services, Inc. is acting as representative for BNSF Railway Company

IN WITNESS WHEREOF, this License has been duly executed, in duplicate, by the parties hereto as of the day and year first above written.

BNSF RAILWAY COMPANY

P.O. Box 961050
Fort Worth, TX 76161-0050

By: Stephen M. Kuzma
Stephen M. Kuzma
Title: Manager – Land Revenue Management

**STATE OF CALIFORNIA, DEPARTMENT OF
TRANSPORTATION**

464 W. 4th St., 6th Floor MS "M"
San Bernardino, California
92401-3400

By: Donald E. Grebe
Donald E. Grebe, Chief
Title: HQ Office of Right of Way
Project Delivery Manager

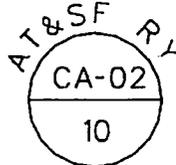
EXHIBIT "A"

ATTACHED TO CONTRACT BETWEEN
BNSF RAILWAY COMPANY

AND

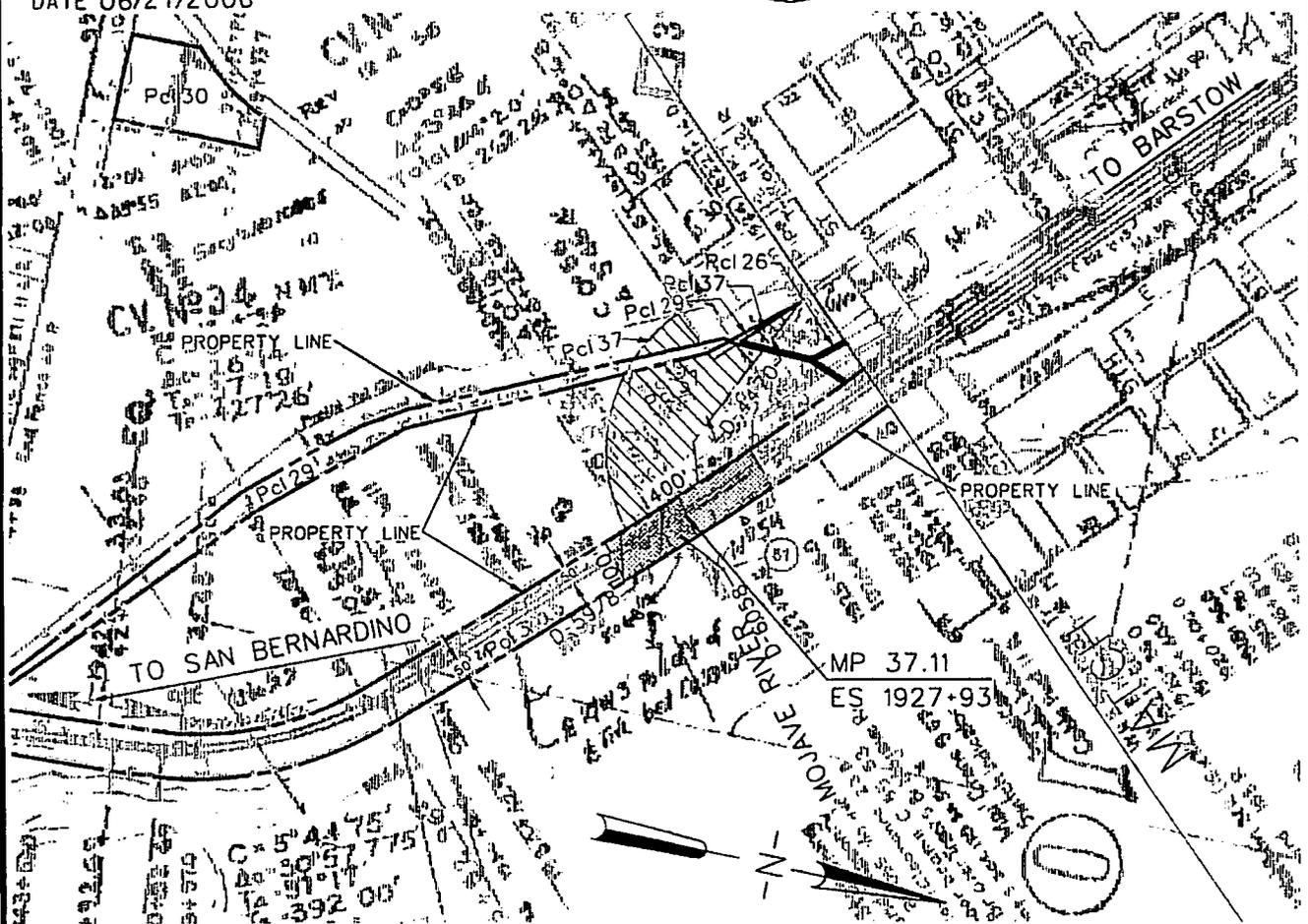
STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

SCALE: 1 IN. = 400 FT.
CALIFORNIA DIV.
CAJON SUBDIV. L.S. 7600
DATE 06/27/2006



SECTION: 10
TOWNSHIP: 5N
RANGE: 4W
MERIDIAN: SBM

MAP REF. 140409



DESCRIPTION:

A PARCEL OF LAND SHOWN SHADED TO BE USED FOR SEISMIC RETROFIT OF MOJAVE RIVER BRIDGE.

NOTE:

ANY WORK PERFORMED CLOSER THAN 25' FROM TRACKS REQUIRES BNSF APPROVAL.

NEAR VICTORVILLE
COUNTY OF SAN BERNARDINO

STATE OF CA

BCC

STATE OF CALIFORNIA
**DEPARTMENT OF
TRANSPORTATION**

SHEET 1 OF 3
SBD 18 95.4
CO. ROUTE P.M.

WHITE-COMPANY
GOLDEN ROD-AGREEMENTS
YELLOW-CONTROLLERS
GREEN-ACCOUNTING
BLUE- CONSTRUCTION
PINK- RIGHT OF WAY

SOURCE		CHARGE		EXP AUTH		SPECIAL DESIGNATION				OBJECT	AMOUNT DEBIT OR CREDIT	FISCAL YEAR	ENC CODE	ENCUMBRANCE DOCUMENT NO.
DIST.	UNIT	DIST.	UNIT	GEN. LED	SUB-ACCT	PRE FIX	SUB-JOB NO.- R/W PARCEL NO. LOCATION BRIDGE NO. ETC.							
	08 406		08 406 ⁵¹⁵		483304					6042	\$172,426.20	06	P	CC483304

ITEM 2660 CHAPTER 310 statutes 1995 FISCAL YEAR 2005/2006
802-0653

SERVICE CONTRACT NO. 08R125
THIS NUMBER IS TO BE PLACED ON ALL BILLS
Sacramento, CALIFORNIA
FEBRUARY 17, 2006

I HEREBY CERTIFY UPON MY OWN PERSONAL KNOWLEDGE THAT BUDGETED FUNDS ARE AVAILABLE FOR THE PERIOD AND PURPOSE OF THE EXPENDITURE STATED ABOVE.

SIGNATURE OF ACCOUNTING OFFICER Clifford C Carter DATE 07/13/06

RAILROAD BNSF RAILWAY COMPANY PHONE (909) 386-4472
ADDRESS 740 E. CARNEGIE DRIVE, SAN BERNARDINO, CA 92408-3571

The Railroad hereby agrees to do the work hereinafter set forth for the Department of Transportation in accordance with the provisions of this form and of the attached sheets if any and the Railroad agrees to receive and accept as full compensation therefore the payment provided herein

For work to be completed by BNSF which involves installation and removal of temporary crossing, flagging and inspection required for protection of BNSF Company facilities and operations, at Mojave River Bridge No. 54-0307, during Seismic Retrofit of Bridge No. 54-0307, on Rte 18, near cities of Apple Valley and Victorville, in San Bernardino County.

Total Estimate: \$172,426.20
See Page 3 of 3

It is expressly agreed that all persons engaged on this work are employees of the Railroad or its contractor, and that none are employees of the Department of Transportation of the State of California.

Further, Department of Transportation hereby agrees to the terms as above set forth, and hereby agrees to pay the same; provided, that by mutual consent this agreement may be modified or terminated at any time.

IN WITNESS WHEREOF, the parties to these presents have hereunto set their hand the year and date first above written.

DEPARTMENT OF TRANSPORTATION

ORIGINAL SIGNED BY

Approval Recommended - Agreements Engineer

[Signature]

Approved as to Form - Attorney

ORIGINAL SIGNED BY

DONALD E. GREBE, Chief
Office of Project Delivery

BNSF RAILWAY COMPANY

RAILROAD [Signature]

By Megan T. Melntyre

Manager Public Projects
TITLE OR POSITION

Mail three (3) copies of invoice to:
Please Reference: 08R125
DEPARTMENT OF TRANSPORTATION
DIVISION OF RIGHT OF WAY AND LAND SURVEYS, MS 37
P.O. Box 942873
Sacramento, CA 94273-0001

State agrees to reimburse BNSF for actual costs and expenses reasonably and necessarily incurred by BNSF in the performance of these items of work.

The estimated amount of cost and expense to be incurred by BNSF is summarized in estimate attached and made a part thereof. Any additional work incidental to that shown on attached estimate, but not specifically detailed thereon, may be included as part of this contract by written request or approval of State.

All work to be performed under this Service Contract shall be by BNSF employees working under Railroad Labor Agreements and shall be done on a force account basis, the cost hereof to be paid to BNSF by State in the manner herein set forth.

The parties hereto agree the BNSF is a qualified self-insurer.

Railroad Relations and Insurance Provisions required in connection with this project are attached herein as Exhibit C, and shall be included in the Contract Special Provisions for State's Contract SVC No. 08R125.

All applicable portions of Federal-Aid Policy Guide, Title 23, Code of Federal Regulations, Parts 646A, 646B and 140I are by reference incorporated herein and made a part hereof.

The records and accounts of the BNSF relating to the project shall be open for inspection and audit by State and/or Federal Government for a period of three years from the date final payment is received by the BNSF.

Under Federal Regulations there are no ascertainable net benefits to the BNSF and there shall be no required BNSF sharing of the costs.

All work under this contract is estimated to be completed by **June 30, 2008**, unless an extension of time is approved by the State in writing.

**BNSF RAILWAY COMPANY
ESTIMATE**

Location: Route 18, Mojave River Bridge PM 95.35
08-SBD-Cities of Apple Valley and Victorville.

Project: Seismic Retrofit Bridge # 54-0307

Project Duration: 15 days flagging required.

Estimate:

Work to be completed by Railroad Forces. Estimate attached was provided by BNSF Railroad.

Temporary crossing to be constructed and later removed	\$137,251.10
Work to be completed by Railroad	
Flagging @ \$800.00 per day x 15 days	\$ 12,000.00
Inspection @ \$500.00 per day x 15 days	\$ 7,500.00
10% Contingency	\$ 15,675.10

Total	<hr/> \$172,426.20
-------	--------------------

Note: This is an estimate only. Railroad shall bill on an actual cost basis.

EXHIBIT "C"

SECTION 13. RAILROAD RELATIONS AND INSURANCE REQUIREMENTS

13-1.01 GENERAL

The term "Railroad" shall mean the BNSF Railway Company.

It is expected that the Railroad will cooperate with the Contractor to the end that the work may be handled in an efficient manner. However, except for the additional compensation provided for hereinafter for delays in completion of specific unit of work to be performed by the Railroad, and except as provided in Public Contracts Code Section 7102, the Contractor shall have no claim for damages, extension of time, or extra compensation in the event his work is held up by work performed by the Railroad.

The Contractor must understand the Contractor's right to enter Railroad's property is subject to the absolute right of Railroad to cause the Contractor's work on Railroad's property to cease if, in the opinion of Railroad, Contractor's activities create a hazard to Railroad's property, employees, and operations.

The Contractor shall sign and submit to the Railroad the Contractor's Endorsement, in the form attached hereto.

13-1.02 RAILROAD REQUIREMENTS

The Contractor shall notify Ms Megan Mc Intyre, Manager Industry and Public Projects, 740 E. Carnegie Dr., San Bernardino, CA 92408-3571, 30 working days before performing any work on, or adjacent to the property or tracks of the Railroad.

The Contractor shall cooperate with the Railroad where work is over or under the tracks, or within the limits of Railroad property, to expedite the work and avoid interference with the operation of railroad equipment.

The Contractor shall comply with the rules and regulations of Railroad or the instructions of its representatives in relation to protecting the tracks and property of Railroad and the traffic moving on such tracks, as well as the wires, signals and other property of Railroad, its tenants or licensees, at and in the vicinity of the work during the period of construction. The responsibility of the Contractor for safe conduct and adequate policing and supervision of its work at the job site shall not be lessened or otherwise affected by the presence at the work site of Railroad representatives, or by the Contractor's compliance with any requests or recommendations made by Railroad representatives.

The Contractor shall perform work to not endanger or interfere with the safe operation of the tracks and property of Railroad and traffic moving on such tracks, as well as wires, signals and other property of Railroad, its tenants or licensees, at or in the vicinity of the work.

The Contractor shall take protective measures to keep railroad facilities, including track ballast, free of sand or debris resulting from his operations. Damage to railroad facilities resulting from Contractor's operations will be repaired or replaced by Railroad and the cost of such repairs or replacement shall be deducted from the Contractor's progress and final pay estimates.

The Contractor shall contact the Railroad's "Call Before You Dig" at least 48 hours prior to commencing work, at 1-800-336-9193 (a 24 hour number) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near railroad property, the Contractor will coordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad Property.

The Contractor shall not pile or store any materials nor park any equipment closer than 7.62-meter (25'-0") to the centerline of the nearest track, unless directed by Railroad's representative.

The Contractor shall also abide by the following temporary clearances during the course of construction:

3.66-meter (12'-0") horizontally from centerline of track

6.40-meter (21'-6") vertically above top of rail, with CPUC Approval.

The temporary vertical construction clearance above provided will not be permitted until authorized by the Public Utilities Commission. It is anticipated that authorization will be received not later than 15 days after the approval of the contract by the Attorney General. In the event authorization is not received by the time specified, and, if in the opinion of the Engineer, the Contractor's operations are delayed or interfered with by reason of authorization not being received by the said time, State will compensate the Contractor for such delay to the extent provided in Section 8-1.09. "Right of Way Delays," of the Standard Specifications and not otherwise.

Walkways with railing shall be constructed by Contractor over open excavation areas when in close proximity of tracks, and railings shall not be closer than 2.60-meter (8'-6") horizontally from centerline of the nearest track, if tangent, or 2.90-meter (9'-6") if curved.

Infringement on the above temporary construction clearances by the Contractor's operations shall be submitted to the Railroad by the Engineer, and shall not be undertaken until approved by the Railroad, and until the Engineer has obtained any necessary authorization from any governmental body or bodies having jurisdiction thereover. No extension of time or extra compensation will be allowed in the event the Contractor's work is delayed pending Railroad approval and governmental authorization.

When the temporary vertical clearance is less than 6.86-meter (22'-6") above top of rail. Railroad shall have the option of installing tell-tales or other protective devices Railroad deems necessary for protection of Railroad trainmen or rail traffic.

Four sets of plans, in U.S. Customary Units, 279mm x 432mm (11" x 17") format, and two sets of calculations showing details of construction affecting Railroad's tracks and property not included in the contract plans, including but not limited to shoring and falsework, shall be submitted to the Engineer for review prior to submittal to Railroad for final approval. Falsework shall comply with railroad guidelines. Demolition of existing structures shall comply with Railroad guidelines. Shoring shall be designed in accordance with Railroad's shoring requirement of drawing No. 106613 and guidelines for shoring and falsework, latest edition, issued by Railroad's Office of Chief Engineer. Shoring and falsework plans and calculations shall be prepared and signed by a professional civil engineer registered in the State of California. This work shall not be undertaken until such time as the Railroad has given such approval. Review by Railroad may take up to 6 weeks after receipt of all necessary information.

The Contractor shall notify the Engineer in writing, at least 25 calendar days but not more than 40 days in advance of the starting date of installing temporary work with less than permanent clearance at each structure site. The Contractor shall not be permitted to proceed with work across railroad tracks until this requirement has been met. No extension of time or extra compensation will be allowed if the Contractor's work is delayed due to failure to comply with the requirements in this paragraph.

Blasting will be permitted only when approved by the Railroad.

The Contractor shall, upon completion of the work covered by this contract to be performed by the Contractor upon the premises or over or beneath the tracks of Railroad, promptly remove from the premises of Railroad, Contractor's tools, implements and other materials, whether brought upon said premises by said Contractor or any subcontractor, employee or agent of said Contractor, and cause said premises to be left in a clean and presentable condition.

Under-track pipeline installations shall be constructed in accordance with Railroad's current standards which may be obtained from Railroad. The general guidelines are as follows:

Edges of jacking or boring pit excavations shall be a minimum of 6.10-meter (20 feet) from the centerline of the nearest track.

If the pipe to be installed under the track is 100 mm (4 inches) in diameter or less, the top of the pipe shall be at least 1.067-meter (42 inches) below base of rail.

If the pipe diameter is greater than 100 mm (4 inches) in diameter, it shall be encased and the top of the steel pipe casing shall be at least 1.60-meter (66 inches) below base of rail.

Installation of pipe or conduit under Railroad's tracks shall be done by dry bore and jack method.

Hydraulic jacking or boring will not be permitted.

Contractor Roadway Worker on Track Safety Program and Safety Action Plan

Each Contractor that will perform work within 15' of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the mob site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan as provided for on the web site WWW.contractororientation.com, which will be made available to Railway prior to commencement of any work on the Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Materials Safety Datasheets (MSDS) at the mob site.

13-1.03 PROTECTION OF RAILROAD FACILITIES

Upon advance notification of not less than 10 working days by the Contractor, Railroad representatives, conductors, flagmen or watchmen will be provided by Railroad to protect its facilities, property and movements of its trains or engines. Notice shall be made to Railway Roadmaster at (760) 255-7639. At the time of notification, the Contractor shall provide Railroad with a schedule of dates that flagging services will be needed, as well as times, if outside normal working hours. Subsequent deviation from the schedule shall require 10 working days advance notice from the first affected date. The Railroad will furnish such personnel or other protective devices:

- (a) When any part of any equipment is standing or being operated within 25 feet, measured horizontally, from centerline of any track on which trains may operate, or when any erection or construction activities are in progress within such limits, regardless of elevation above or below track .
- (b) For any excavation below elevation of track subgrade if, in the opinion of Railroad's representative, track or other Railroad facilities may be subject to settlement or movement.
- (c) During any clearing, grubbing, grading or blasting in proximity to Railroad which, in the opinion of Railroad's representative, may endanger Railroad facilities or operations.
- (d) During any of Contractor's operations when, in the opinion of Railroad's representatives, Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipe lines, may be endangered.

The cost of flagging and inspection provided by Railroad during the period of constructing that portion of the project located on or near Railroad property, as deemed necessary for the protection of Railroad's facilities and trains, will be borne by the State for a period of 15 working days beginning on the date work commences on or near property of Railroad. The Contractor shall pay to the State liquidated damages in the sum of \$500 per day for each day in excess of the above 15 working days the Contractor works on or near Railroad property, and which requires flagging protection of Railroad's facilities and trains.

13-1.04 WORK BY RAILROAD

The following work by Railroad will be performed by Railroad forces and is not a part of the work under this contract.

- (a) The Railroad will perform preliminary engineering inspection and flagging as specified in Section 13-1.03, "Protection of Railroad Facilities," of these special provisions.

- (b) The Railroad will construct, and later remove, a Temporary Crossing, as shown on the project plans. Cost Estimate for said crossing has been provided by BNSF Railway, and is attached as an exhibit to the Service Contract 08R125. .]

13-1.05 DELAYS DUE TO WORK BY RAILROAD

No delay due to work by the Railroad is anticipated.

If delays due to work by the Railroad occur, and the Contractor sustains loss which, in the opinion of the Engineer, could not have been avoided by the judicious handling of forces, equipment and plant, the amount of said loss shall be determined as provided in Section 8-1.09, "Right of Way Delays," of the Standard Specifications.

If a delay due to work by Railroad occurs, an extension of time determined pursuant to the provisions in Section 8-1.07, "Liquidated Damages," of the Standard Specifications will be granted.

No Construction activities with respect to the Project and/or future normal or routine maintenance Activity pertaining to said Structure, and which may be located in close proximity to BNSF's tracks, shall be permitted during the Fourth Quarter of each Calendar Year. Subject to prior notification to BNSF's NOC in Fort Worth, Texas, telephone number (817) 234-2334, emergency maintenance work will be permitted. It is mutually understood that trains cannot be subjected to delay during this time period.

13-1.06 LEGAL RELATIONS

The provisions of Section 13-1, "Relations with Railroad Company," and the provisions of Section 13-2, "Railroad Protective Insurance," of these special provisions shall inure directly to the benefit of Railroad.

13-2 RAILROAD PROTECTIVE INSURANCE

In addition to any other form of insurance or bonds required under the terms of the contract and specifications, the Contractor will be required to carry insurance of the kinds and in the amounts hereinafter specified.

Such insurance shall be approved by the Railroad before any work is performed on Railroad's property and shall be carried until all work required to be performed on or adjacent to the Railroad's property under the terms of the contract is satisfactorily completed as determined by the Engineer, and thereafter until all tools, equipment and materials have been removed from Railroad's property and such property is left in a clean and presentable condition.

The State of California is Self-Insured, except for RPLI Insurance, which will be purchased either by the State from the R/R, or the Contractor will provide.

Full compensation for all premiums which the Contractor is required to pay on all the insurance described hereinafter shall be considered as included in the prices paid for the various items of work to be performed under the contract, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

The following insurance coverage will be required:

- (a) **General Liability** insurance providing bodily injury including death, personal injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$4,000,000. This insurance shall contain broad form contractual liability with a separate general aggregate for the project (ISO Form CG 25 03 or equivalent). Exclusions for explosion, collapse and underground hazard shall be removed. Coverage purchased on a claims made form shall provide for at least a two (2) year extended reporting or discovery period if (a) the coverage changes from a claims made form to an occurrence form, (b) there is a lapse/cancellation of coverage, or (c) the succeeding claims made policy retroactive date is different for the expiring policy.

(b) **Automobile Liability** insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2,000,000 each occurrence or claim. This insurance shall cover all motor vehicles including hired and non-owned, and mobile equipment if excluded from coverage under the general public liability insurance.

(c) **Workers' Compensation** insurance covering Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement, and Employers' Liability. If such insurance will not cover the liability of Contractor in states that require participation in state workers' compensation fund, Contractor shall comply with the laws of such states. If Contractor is self-insured, evidence of state approval must be provided.

(d) **Railroad Protective Liability** insurance naming the Railroad as the insured with a combined single limit of \$2,000,000 per occurrence with a \$6,000,000 aggregate. The policy shall be broad form coverage for "Physical Damage to Property" (ISO Form CG 00 35 or equivalent) and include pollution arising out of fuels and lubricants brought to the job site (ISO Form CG 28 31 or equivalent). A binder of insurance for Railroad Protective Liability must be submitted to the Railroad and the original policy or a certified duplicate original policy must be forwarded to the Railroad when available.

Contractor and its insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against Railroad. Contractor and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under its care, custody and control. Contractor's insurance shall be primary with respect to any insurance carried by Railroad. The policy(ies) required under (a) and (b) above shall provide severability of interests and shall name Railroad as an additional insured.

Prior to commencing the Work, Contractor shall furnish to Railroad certificate(s) of insurance evidencing the required coverage and endorsements and upon request, a certified duplicate original of any required policy. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any material alteration including any change in the retroactive date in any "claims-made" policies or substantial reduction of aggregate limits, if such limits apply, or any cancellation at least thirty (30) days prior thereto.

The insurance policy(ies) shall be written by a reputable insurance company(ies) acceptable to Railroad or with a current Best's Insurance Guide Rating of B and Class VII or better, and authorized to do business in the state(s) in which the Work is located.

Contractor warrants that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who has been instructed by Contractor to procure the insurance coverage required by this Agreement.

If Contractor fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Contractor.

The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.

CONTRACTOR'S ENDORSEMENT

A. As a condition to entering upon Railroad's right-of-way to perform Work pursuant to this agreement, Licensee's contractor, _____ whose address is _____ (hereinafter "Contractor"), agrees to comply with and be bound by all the terms and provisions of this agreement relating to the Work to be performed and the insurance requirements set forth in Exhibit A-1. Contractor further acknowledges and agrees that the reference to Cal. Gov. Code §14662.5 in Sections 5.b) and 8.b) of Exhibit A to this agreement does not apply to Contractor and in no way limits the indemnities set forth in those provisions, to which Contractor agrees to be bound.

B. Before the Contractor commences any Work, the Contractor will provide the Railroad with (i) a binder of insurance for the Railroad Protective Liability Insurance described in paragraph (d) of Exhibit A-1, hereto attached, and the original policy, or a certified duplicate original policy when available, and (ii) a certificate issued by its insurance carrier providing the other insurance coverage required pursuant to Exhibit A-1 in a policy or policies which contains the following type endorsement:

BNSF RAILWAY COMPANY is named as an additional insured with respect to all liabilities arising out of Insured's performance of Work on behalf of the Licensee.

C. All insurance correspondence, binders or originals shall be directed to:

Folder No. _____
BNSF RAILWAY COMPANY
P.O. Box 12010 BN
Hemet, California 92546-8010
Fax 909 766-2299

D. Please note that fiber optic cable may be buried on Railroad's property. Prior to commencing any work, Contractor agrees to contact Railroad's Telecommunications Operation Center at 1-800-336-9193 to determine if any fiber optic cable is located on Railroad's property on or near the location where the work is to be performed. If there is, Contractor must comply with the terms and conditions of Section 5 of Exhibit A before commencing any work on Railroad's property.

E. Contractor agrees to also contact John Shurson, Assistant Director Public Projects, Railroad's Manager-Track Maintenance at (909) 386-4470 at least 48 hours prior to working on Railroad's property in order for Railroad to coordinate the Contractor's work with Railroad's operations and to make arrangements for flagging protection (if applicable).

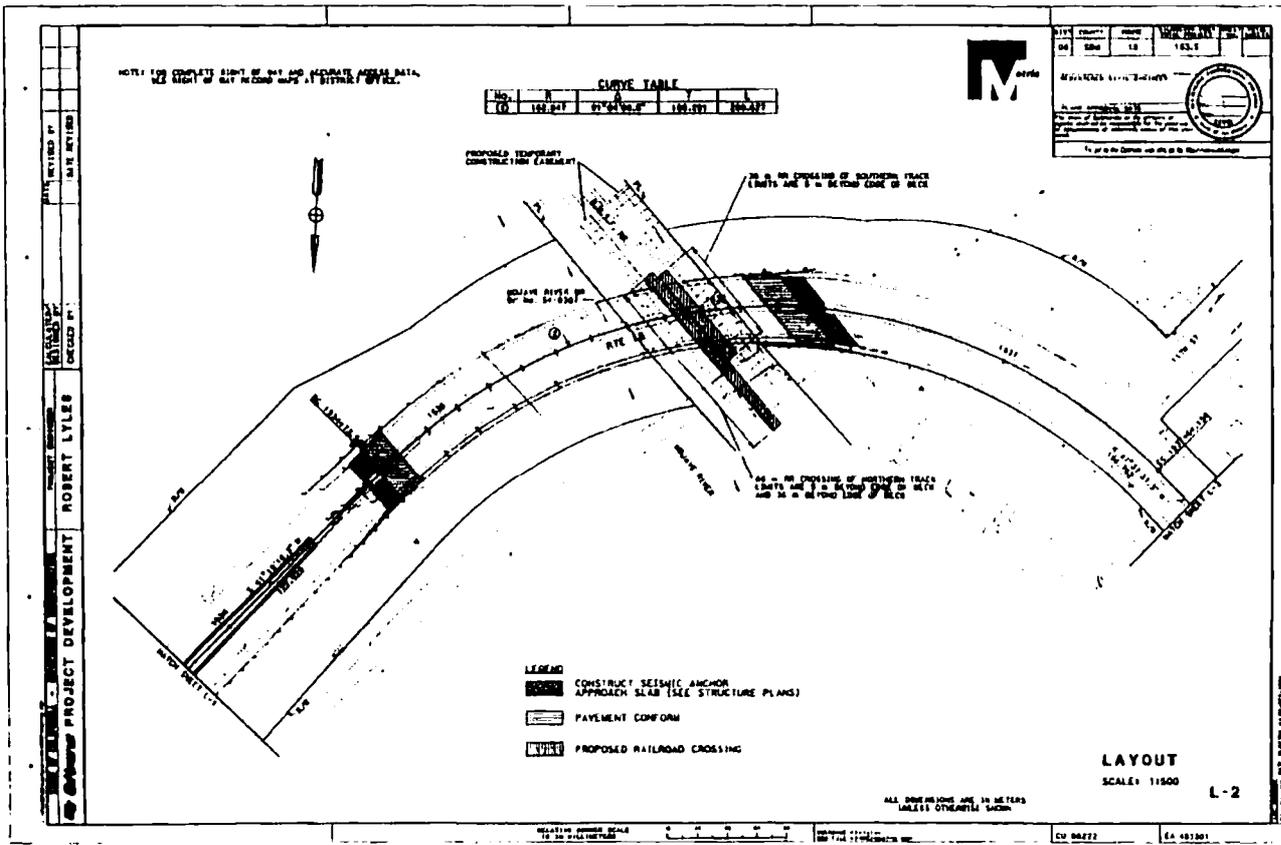
This endorsement shall be completed and directed to:

Mr. John Shurson
Assistant Director Public Projects
740 E. Carnegie Dr.
San Bernardino, CA 92408-3571

CONTRACTOR (print name on above line)

By: _____

Title: _____



PROJECT DEVELOPMENT
 ROBERT LYLES
 CHECKED BY:

DATE	NO.	BY	REVISION
10/10/10	10	EA	100.00

REGISTERED PROFESSIONAL ENGINEER

EA 101301

Section 404

Clean Water Act

Compliance

SSP

Relations w/ Army Corp of Engineers

Hi Laura,

Based on the project description below, if all work is done outside the Ordinary High Water Mark, with no equipment in the channel, no Corps CWA Section 404 permit will be required. Use of the existing access road is acceptable as no new fill would be required to construct another temporary access road in waters of the U.S.

Thanks,

-Stephanie

Stephanie Hall
Project Manager
Regulatory Branch
USACOE-Los Angeles District
213/452-3410

-----Original Message-----

From: Lara Memmott [mailto:lara_memmott@dot.ca.gov]
Sent: Tuesday, March 28, 2006 1:54 PM
To: Hall, Stephanie J SPL
Subject: RE: Mojave River Bridge Seismic Retrofit Project on State Route 18 in Victorville

Oh yes, that's fine-Lara

Environmental Planner (Natural Sciences)
Biological Studies and Permits Branch
California Department of Transportation
(909) 383-5927

"Hall, Stephanie J SPL"

<Stephanie.J.Hall@spl01.usac
Memmott" <lara_memmott@dot.ca.gov>
e.army.mil>

To: "Lara

cc:

Subject: RE:

Mojave River Bridge Seismic Retrofit Project on State Route 18 in

03/28/06 01:39 PM

Victorville

Hi Laura,

I don't have electronic signature capability. Can I just respond?

-Stephanie

-----Original Message-----

From: Lara Memmott [mailto:lara_memmott@dot.ca.gov]

Sent: Tuesday, March 28, 2006 1:17 PM

To: Hall, Stephanie J SPL

Subject: Mojave River Bridge Seismic Retrofit Project on State Route 18 in Victorville

Hi Stephanie,

I wrote the letter below per our phone conversation. If it looks good, will you electronically sign it below like I did and send it back. I think this will be good for RWQCB documentation because Tobi already thought that it wouldn't need a 404 permit. If there's anything that needs to be changed, let me know or you can change it and if you have any questions give me a call. FYI, I have the other Mojave River Bridge project, but that's a whole different story. We are proposing to build a new bridge, frontage road and upgrade the interchanges at Stoddard Wells and D Street exits off the 15. I think I need an Individual Permit for that because it's the Mojave River. I'll be writing a Biological Assessment for that after the surveys are completed this spring. I'd like to start working on the IP process now. Where can I find the application information?

Talk to you soon,

Lara

Stephanie Hall
US Army Corps of Engineers-Regulatory Branch
Los Angeles
(213) 452-3410

Lara Memmott
California Department of Transportation
Environmental Planner (Coordinator)
(909) 383-5927

Dear Stephanie,

I am sending this email to document our phone conversation for our files. This is in regards to the Mojave River Bridge Seismic Retrofit project at the State Route 18 crossing near Victorville in San Bernardino County, California. Below is a project description and discussion of the nature of the project as it relates to the Waters of the US and potential impacts.

The California Department of Transportation - District 8 (Caltrans) has proposed to seismically retrofit Mojave River Bridge (BR. NO. 54-0307)

and Overhead on State Route 18 (SR-18) at Post-Mile 95.4, in San Bernardino County, California (Expenditure Authorization 483300). Previous retrofit work was performed on this bridge in 1998 under contract 08-413414, however the planned retrofit work on the pier 3 footing was not completed under the contract due to unforeseen subsurface conditions that were encountered. The Division of Structures has identified this structure as likely to sustain damage during a major earthquake. The planned project is part of the legislatively mandated seismic retrofit program and has been estimated to cost \$3,674,000. This project is to be funded from the HA4S2 Seismic Retrofit program in the 2006 fiscal year. The proposed project includes construction of seismic anchor slabs and installation of steel braced frames.

Seismic anchor slabs will be placed on the roadway and steel braced frames are designed to fit in the bridge piers. The bridge piers will be accessed from either side of the Mojave River and work will not be conducted in the channel. There is an existing access road that was used previously where work on the East side of the River will be conducted. Temporary impacts will occur at this location. On the West side of the Mojave River the bridge piers will be accessed from the railway. The steel brace frames will be placed above the ordinary high water mark on the bridge piers and no dredge or fill is required for this project. The project construction is also limited in duration to approximately 2 months because work is being conducted outside the nesting season for several bird species.

Due to the limited scope and duration of the project only temporary impacts are projected to occur. The area that is temporarily impacted adjacent to the stream channel will be restored to existing condition. The project coordinator will work with Regional Water Quality Control Board to attain the necessary Waste Discharge Requirement permit and California Fish and Game Streambed Alteration Agreement. Although, the main channel, Mojave River is considered Waters of the US, this project does not require a 404 permit due to the nature of the work being performed. This was determined by consultation with Army Corps of Engineers on March 28, 2006 and this email serves as documentation to the nature of that communication.

Sincerely,

/s/ Lara Memmott
Environmental Planner (Natural Sciences)
Biological Studies and Permits Branch

/s/ _____
Stephanie Hall
US Army Corps of Engineers-Regulatory Branch

Environmental Planner (Natural Sciences)
Biological Studies and Permits Branch



DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>
Eastern Sierra - Inland Deserts Region (ESIDR)
407 West Line Street
Bishop, CA 93514
(760) 872-1171

Section 1600
Fish & GAME CODE



SSP - Relations
with Fish and
Game

June 8, 2006

Ms. Lara Pangburn
California Department of Transportation
464 W. 4th St, 6th floor - MS 822
San Bernardino, CA 92401-1400

Re: Streambed Alteration Agreement 1600-2006-0117-R6

Dear Ms. Pangburn:

The Department of Fish and Game (Department) has completed its review of the Notification of Lake and Streambed Alteration for impacts to the Mojave River within the City of Victorville, San Bernardino County. The proposed project involves the seismic retrofit of the State Route 18 Bridge at the Mojave River crossing that will impact approximately 0.346 acres of the Mojave River. The proposed project will occur outside of the bird nesting season because of the proximity to known occurrence of special status species with no removal of riparian habitat. The equipment required for the proposed project will not operate within the Mojave River channel.

Based on the information provided and compliance with the project as described in the Notification, the Department has determined that a Lake and/or Streambed Alteration Agreements under Fish and Game Code §1600 is NOT REQUIRED for this project. This letter shall remain in effect from September 1, 2006 to February 1, 2007, which upon request of the California Department of Transportation and at the discretion of the Department of Fish and Game, an extension of this letter may be granted. The Department recommends you keep a copy of this letter readily available at the work site at all times during periods of active work for presentation to Department Personnel upon request.

If your proposed project changes from the submitted information, you must re-notify the Department prior to initiating any activities, in writing, to ensure compliance with Fish and Game Code §1600. The Department reserves the right to cancel this letter for other reasons including, but not limited to, the following: a. The Department determines the information provided in support of the letter is incomplete or inaccurate; b. The Department obtains new information that was not known to it in preparing this letter; c. The project as described in the submitted information has changed; or d. The conditions affecting fish and wildlife resources change. If the Department cancels this letter or determines that an existing fish or wildlife resource is being substantially adversely affected by your project, you will be required to stop all activities and comply with Fish and Game Code §1600.

Caltrans- Hwy 18 Seismic Retrofit
June 8, 2006

Thank you for your consultation regarding this project. If you have any questions, please contact me at (760) 955-8139.

Sincerely,

A handwritten signature in black ink that reads "Tonya Moore". The signature is written in a cursive, flowing style.

Tonya Moore
Habitat Conservation Program

cc: Warden Michael Horn
Denyse Racine, CDFG

**STATE WATER RESOURCES CONTROL BOARD
WATER QUALITY ORDER NO. 2004-0004-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)**

I. FINDINGS

The State Water Resources Control Board (SWRCB) finds that:

Reasons for issuing these General WDRs

1. Section 13260(a) of the California Water Code (Water Code) requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, which could affect the quality of the waters of the State¹, file a report of waste discharge (ROWD). The discharge of dredged or fill material may constitute a discharge of waste that could affect the quality of waters of the State.
2. California has largely relied upon its authority under section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to California waters. That section requires an applicant to obtain “water quality certification” from California that the project will comply with State water quality standards before certain federal licenses or permits may be issued. The permits subject to section 401 include permits for the discharge of dredged or fill materials (CWA section 404 permits) issued by the U.S. Army Corps of Engineers (ACOE).
3. Given the regulatory process employed under section 401, waste discharge requirements under the Porter-Cologne Water Quality Control Act were typically waived for projects that required certification. Regional Water Quality Control Board (RWQCB) waivers also applied to discharges outside of ACOE jurisdiction. However, these waivers expired as of January 1, 2003 pursuant to the requirements of SB 390. These General WDRs regulate some of the activities for which WDRs were previously waived.
4. The certification process under section 401 only applies to those waters that are subject to the reach of the CWA. The CWA applies to “navigable waters,” which are defined in the CWA as “waters of the United States.” The term “waters of the United States” is defined expansively in 33 Code of Federal Regulations (CFR), part 328. In 2001, the U.S. Supreme Court issued a decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (“*SWANCC*”), which held that certain “isolated” waters are not subject to CWA jurisdiction merely because they are frequented by migratory birds that cross state lines. The full implications of *SWANCC* are yet to be determined in the federal courts, but as a result

¹ “Waters of the State” as defined in Water Code section 13050(e).

of the decision, many projects that previously would have required a section 404 permit now no longer need one. From January 1, 2001 to December 31, 2003, the ACOE disclaimed jurisdiction over 160 water bodies comprising 449 acres of waters of the state, including 251 acres of wetlands, 121 acres of riparian area, and 77 acres of other waters (these figures are under-reported because 24 percent of the jurisdictional disclaimers did not specify the sizes of the disclaimed waterbodies). The prospect of issuing waste discharge requirements for each of the now non-federal waters, especially in a time of budgetary contraction, is daunting. Many of the projects that were traditionally subject to certification requirements involved small discharges with few or no permanent impacts. It is the intent of these General WDRs to regulate a subset of the discharges that have been determined not to fall within federal jurisdiction, particularly those projects involving impacts to small acreage or linear feet and those involving a small volume of dredged material.

5. Wetlands, riparian areas, and headwaters are shallow waters of the state, which are by their nature affected most often and severely by filling and excavation. Regulatory attention to these water bodies is necessitated by the State "No Net Loss" Policy for wetlands (Executive Order W-59-93); the high habitat value of these waters; the basin-wide value of these waters for pollutant removal, floodwater retention, channel stability, and habitat connectivity; the high number of special-status species associated with these waters and their associated habitats; the high percentage of historic losses of these waters in California; the vulnerability of these waters to future impacts from projected population growth and land development; and the high level of public interest in these waters.
6. Water Code section 13263(a) requires that waste discharge requirements (WDRs) be prescribed as to the nature of any proposed discharge, existing discharge, or material change in an existing discharge. Such WDRs must implement any relevant water quality control plans, taking into consideration beneficial uses to be protected, the water quality objectives reasonably required for those purposes, other waste discharges, the need to prevent nuisance, and the provisions of section 13241 of the Water Code.
7. Water Code section 13263(i) authorizes the SWRCB to prescribe general WDRs for a category of discharges if the discharges are produced by the same or similar operations; the discharges involve the same or similar types of waste; the discharges require the same or similar treatment standards; and the discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.
8. The discharges authorized by these General WDRs meet the criteria for general WDRs set forth in Water Code section 13263(i) because they are all produced by dredging or filling operations; they all involve the discharge of earth, rock, or similar solid materials; they are all limited in size per the terms of the WDRs; they all require similar mitigation techniques to avoid, minimize, and/or compensate for their adverse impacts; and they are all relatively small surface water bodies or water body segments that have been deemed by ACOE to be "isolated," do not meet the federal wetland criteria, or are above the "line of ordinary high water" limit of federal jurisdiction. They are appropriately regulated under General WDRs because of their similar nature, large numbers, and amenability to being regulated through the use of similar discharge restrictions, as specified in these General WDRs. Regulation of

such discharges by these General WDRs will allow the SWRCB and RWQCBs to direct limited staff time to larger, more complex, and potentially more damaging discharges to waters deemed to be outside of federal jurisdiction.

Eligibility Criteria

9. These General WDRs are restricted to dredged or fill discharges of not more than two-tenths (0.2) of an acre and 400 linear feet for fill and excavation discharges, and of not more than 50 cubic yards for dredging discharges. Projects that may be covered under these General WDRs include land development, detention basins, disposal of dredged material, bank stabilization, revetment, channelization, and other similar projects. These size maximums help limit the potential environmental impact of the discharges and make them amenable to similar discharge restrictions, while permitting about half of the projects discharging to non-federal waters, as projected from historical data on discharge sizes. The size and volume restrictions are appropriate because larger projects involve a significantly greater risk to the environment and are more appropriately regulated by individual WDRs.

Absent a potential effect on the quality of waters of the state, no notification is required under these General WDRs.² The “quality of waters” refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affects its use.³ Because of the variability, complexity, and interactions of the factors affecting the quality of waters, it is not possible to provide advice on the kind, size, location, or duration of discharges that can affect water quality under all circumstances. Generally, discharges of dredged, fill, or excavated material to a wetland, or to the active channel or bed of a waterbody will require regulation. Discharges to a riparian area or to an area in proximity to a waterbody can affect the quality of the water if they directly or indirectly result in a discharge to the water (e.g., via stormwater flows, during flood events, or by generating pollutants or increased runoff); are associated with a change in the nature of vegetation that could affect water quality (e.g., by affecting pollutant removal, stream shading, or bank stability); or change the hydrologic or geomorphologic characteristics of the waterbody during some flow condition.

These General WDRs do not set a lower size limit below which a Notice of Intent is not required. Neither the Porter-Cologne Water Quality Control Act nor the federal CWA establish a lower size threshold for permitting. If a lower threshold were established in these General WDRs, discharges below that threshold would be subject to regulation under individual WDRs or an individual waiver of WDRs, thus defeating the purpose of these General WDRs. Moreover, size is not the sole factor dictating the value of a wetland or other water. Small, strategically placed waters, or segments of waters, can play important roles in supporting local habitat, habitat connectivity, pollutant removal, floodwater attenuation, and other beneficial uses. In addition, without a reporting requirement, there would be no way for the State to ensure that multiple small discharges will not have significant cumulative effects.

10. Discharges of fill can directly or indirectly destabilize the channel or bed of a receiving water by changing geomorphic parameters, including hydrologic characteristics, sediment characteristics, or stream grade. Such destabilization diminishes the ability of the water body

² Water Code section 13260

³ Water Code section 13050(g)

to support designated beneficial uses. Quantification and mitigation of such impacts may require detailed project-specific analyses. Therefore, these General WDRs do not authorize discharges that could destabilize the channel or bed of a receiving water.

11. In urbanizing basins or other situations, a large number of relatively small projects potentially eligible for these General WDRs, in their aggregate, may adversely impair the ability of the water body to support beneficial uses. Quantification and mitigation of such impacts may require basin-wide analyses. Therefore, these General WDRs do not authorize discharges that, when considered in conjunction with other potential discharges, could cause a significant cumulative effect on water quality or beneficial uses.
12. To the extent they are determined to fall within federal jurisdiction, it is likely that the SWRCB and RWQCBs will continue to regulate dredged or fill discharges primarily through their authority under section 401 of the CWA. Therefore, these General WDRs do not apply to discharges to federal waters that are subject to sections 401 and 404 of the CWA. These General WDRs likewise do not apply to discharges regulated under a section 402 storm water permit.
13. Discharges which could have a significant impact on rare, candidate, threatened, or endangered species require detailed project-specific analysis and individual regulation. Such discharges are therefore not authorized by these General WDRs.
14. Although a discharge may be eligible for coverage under these General WDRs, the RWQCB may elect to regulate the discharge under other WDRs or waivers thereof.
15. Discharges that would be exempt pursuant to section 404(f) of the CWA are waived from these WDRs. This waiver shall not affect a RWQCB's authority to issue individual WDRs or waivers for such discharges if it deems it appropriate.

Mitigation Plan

16. SWRCB Resolution No. 68-16, "Statement Of Policy With Respect To Maintaining High Quality Of Waters In California" ("Antidegradation Policy"), states that discharges to existing high quality waters will be required to meet WDRs which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur, and (b) the highest water quality consistent with maximum benefit to the people of the State will be maintained.
17. Executive Order W-59-93, dated August 23, 1993, establishes a California Wetlands Conservation Policy including an objective to ensure no overall net loss of and a long term net gain in the quantity, quality, and permanence of wetland acreage and value in California ("No Net Loss Policy").
18. Filling wetlands, riparian areas, headwaters, and other waters causes partial or complete loss of the beneficial uses provided by those waters. To reconcile such losses with the "No Net

Loss” requirements of Executive Order W-59-93 and the “Antidegradation” requirements of SWRCB Resolution No. 68-16, these General WDRs require mitigation plans to ensure that impacts are mitigated through avoidance and minimization and that unavoidable loss of beneficial uses is offset with appropriate compensatory mitigation, including creation, restoration, or (in exceptional cases) preservation of other waters of the state. These mitigation requirements are consistent with those adopted by the U.S. Environmental Protection Agency and the ACOE for regulation of dredged or fill discharges to federal waters under CWA section 404.

19. To comply with the objective of the State “No Net Loss Policy” to ensure the quantity, quality, and permanence of wetland acreage and values in California, and with the “Antidegradation” requirements of SWRCB Resolution No. 68-16, these General WDRs require that compensatory mitigation areas for permanent impacts be subject to a deed restriction or other legal instrument that ensures preservation of the mitigation in perpetuity. These General WDRs do not generally require compensatory mitigation for temporary impacts, because the SWRCB does not anticipate that projects eligible under this order would ordinarily create temporary impacts of a size, severity, and/or duration that would have a significant adverse impact on beneficial uses. The decision in this order to generally require compensatory mitigation only for permanent impacts is not meant to be a precedent for any other SWRCB or RWQCB order.
20. Consistent and equitable application of these General WDRs is in the interest of environmental protection and the applicants. These General WDRs therefore provide guidance to SWRCB and RWQCB staffs regarding factors to evaluate in considering the eligibility of these General WDRs and in evaluating mitigation plans.

Basin Plans

21. All WDRs must implement the RWQCB Water Quality Control Plan (Basin Plan) for the region affected by the discharge. These General WDRs require dischargers to comply with all applicable Basin Plan provisions, including maintaining the protection of beneficial uses and complying with any prohibitions and water quality objectives governing the discharge.

Beneficial Uses

22. Beneficial uses are the most fundamental of the State’s water quality standards. RWQCBs designate appropriate beneficial uses for waters in their regions’ Basin Plans. The beneficial uses for the waters of the State include, but are not limited to, domestic supply, municipal supply, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

Fees

23. Water Code section 13260(d)(1) requires that each person for whom WDRs have been prescribed pursuant to section 13263 shall submit an annual fee according to a reasonable fee

schedule established by the SWRCB. The schedule of fees for discharges of dredged or fill material is published at California Code of Regulations (CCR) 23 section 2200(a)(2). For activities covered by these General WDRs, the SWRCB anticipates that most of the discharges will be one-time and of short duration. Therefore, only a one-time fee usually will be charged.

California Environmental Quality Act (CEQA)

24. CEQA requires a government agency to comply with certain procedures when it approves or proposes to carry out an activity. (Cal. Code Regs., tit. 14, § 15002(e))
25. Private actions are subject to CEQA if they involve governmental participation, financing, or approval. (Cal. Code Regs., tit. 14, § 15002(c))
26. A Mitigated Negative Declaration in compliance with CEQA has been adopted for these General WDRs.
27. Potential dischargers and all other known interested parties have been notified of the intent to adopt these General WDRs.
28. All comments pertaining to the proposed discharges have been heard and considered in a public meeting.

II. ORDER

A. ELIGIBILITY

IT IS HEREBY ORDERED that only discharges that meet the following criteria shall be enrolled under these General WDRs:

1. The discharge shall not be subject to section 404 of the CWA or section 10 of the federal Rivers and Harbors Act. These General WDRs likewise do not apply to discharges regulated under a section 402 storm water permit.
2. The discharge shall be dredged or fill materials.
3. The discharge shall meet the following size criteria:
 - a. Excavation⁴ and fill activities must not excavate or fill an area greater than two-tenths (0.2) of an acre of waters of the state, and

⁴ “Excavation refers to moving sediment or soil in shallow waters or under no-flow conditions where impacts to beneficial uses are best described by the area of discharge. It typically is done for purposes other than navigation. Examples include trenching for utility lines, other earthwork preliminary to construction, removing sediment to increase channel capacity, and aggregate mining in fresh water.” (Cal. Code Regs., tit. 23, § 2200(a)(2).)

- b. Linear excavation and fill activities affecting drainage features and shorelines (e.g., bank stabilization, revetment, and channelization projects), must not excavate or fill more than 400 linear feet of waters of the state, measured parallel to the streambank or shoreline, and
 - c. Dredging⁵ activities must dredge not more than 50 cubic yards within waters of the state.
 - d. These size criteria apply to discharges, which could either permanently or temporarily affect the quality of waters of the state⁶.
 - e. These size criteria apply to complete projects and shall not be used to authorize “piecemealing” of larger discharges. In regulating recurring discharges, e.g., routine maintenance of sedimentation basins, forebays, or similar waters, these criteria shall be applied for each discharge episode.
4. For purposes of defining the size criteria specified in this section, determining fees as required by section II.B.3, and evaluating mitigation proposals as required by section II.B.4 of these General WDRs, the lateral extent of waters of the state shall be determined by the most expansive of the following:
- a. The federal criteria current on the date of adoption of these General WDRs⁷,
 - b. Headwaters, defined as intermittent and ephemeral drainages.
5. The discharge shall not directly or indirectly destabilize a channel or bed of a receiving water. In determining whether a discharge meets this criterion, the RWQCB Executive Officer⁸ will consider potential project-induced changes to:

⁵ “Dredging” refers to removing sediment in deeper water to increase the depth. Impacts to beneficial uses are best described by the volume of the discharge. It typically occurs to facilitate navigation and for aggregate extraction in marine waters.

⁶ Fill or dredged discharges can *permanently* affect the quality of waters of the state when the discharged material will be in place indefinitely and/or by its nature precludes a reasonable assurance that beneficial uses will be fully reestablished. Examples include filling of wetlands or other waters, streambank hardening, channelization, construction of bridge piers and abutments, and ongoing vegetation removal and channel maintenance. Fill or dredged discharges can *temporarily* affect the quality of waters of the state when the discharged material will be in place for a limited time and/or there is a reasonable assurance that beneficial uses will be fully reestablished once the discharge ceases. Examples include temporary fills, excavation for temporary access roads, and one-time vegetation removal or excavation of sediment. Mitigation measures or management practices may be needed to assure that impacts are “temporary” (e.g., reestablishment of natural grade, revegetation, reestablishment of soil permeability to allow vegetative growth, compaction of backfill to assure that utility trenches do not dewater wetlands).

⁷ 33 CFR 328.3(b)-(e), 33 CFR 328.4, 40 CFR 230.41.

⁸ For multi-region projects, the SWRCB Executive Director. The terms Executive Officer or Executive Director as used herein include any designees.

- a. Quantity, velocity, timing, and direction of flow;
 - b. Sediment characteristics;
 - c. Stream grade; and
 - d. Other relevant project-induced changes.
6. The discharge shall not cause in combination with other discharges a significant cumulative effect on water quality or beneficial uses of the waters of the State including, but not limited to, wetlands and headwaters.
 7. The discharge shall not adversely impact, either directly or through habitat modification, any plants or animals identified as candidate, sensitive, or special status species in local or regional plans, policies or regulations; or by the California Department of Fish and Game (DFG), the U.S. Fish and Wildlife Service (USFWS), or the National Marine Fisheries Service (NMFS). The project shall not , substantially reduce the habitat of fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, or reduce the number of or restrict the range of an endangered, rare or threatened species.
 8. The discharge shall not significantly conflict with any adopted and approved USFWS Habitat Conservation Plan (HCP) or DFG Natural Community Conservation Plan (NCCP).
 9. The discharge shall not adversely impact a significant historical or archeological resource, shall not directly or indirectly destroy a unique paleontological resource or site or unique geologic feature, shall not disturb any human remains, and shall not eliminate important examples of the major periods of California history or prehistory.
 10. The discharge shall not cause conflict with existing zoning for agricultural use or a Williamson Act contract.
 11. The discharge, as mitigated, shall not cause significant adverse environmental impacts.
 12. Discharges that would be exempt pursuant to section 404(f) of the CWA are waived from these WDRs. This waiver shall not affect a RWQCB's authority to issue individual WDRs or waivers for such discharges if it deems it appropriate.

B. APPLICATION REQUIREMENTS

IT IS FURTHER ORDERED that dischargers seeking enrollment under these General WDRs shall submit the following to the appropriate RWQCB Executive Officer or, in the case of multi-Region projects, to the SWRCB Water Quality Certification Program Manager at least 45 days prior to any discharge:

1. A Notice of Intent (NOI) to be enrolled under and to comply with these General WDRs.
2. Any CEQA documents that have been prepared for the project.

3. A fee pursuant to Title 23, section 2200 of the CCR.
4. A Mitigation Plan:

The Mitigation Plan shall demonstrate that the discharger will sequentially avoid, minimize, and compensate for the adverse impacts to the affected water bodies' beneficial uses (as defined in the applicable Basin Plan). The Mitigation Plan shall address the following:

- a. Avoidance: No discharge shall be permitted if there is a practicable alternative⁹ to the proposed discharge, which would have less adverse impact to the aquatic ecosystem, as long as the alternative does not have other significant adverse environmental consequences.
- b. Minimization: Unavoidable temporary impacts shall be mitigated by restoring water bodies and vegetation to pre-discharge conditions as quickly as practicable and by taking other practicable measures to reduce the severity and duration of such impacts.
- c. Compensatory mitigation: Discharges resulting in unavoidable permanent impacts to wetlands or headwaters shall ensure "no net loss" of area (acreage), functions, and beneficial use values by providing appropriate compensatory mitigation including creation, restoration, or (in exceptional cases) preservation. The RWQCB Executive Officer/SWRCB Executive Director will consider, at a minimum, the following when reviewing the adequacy of compensatory mitigation:
 - (1) Onsite habitat value
 - (2) Habitat connectivity value
 - (3) Floodwater retention value
 - (4) Pollutant removal value
 - (5) Ratio of area of proposed compensation to proposed loss
 - (6) Proposed revegetation and irrigation plans and success criteria
 - (7) Availability of suitable soils, hydrology, and natural vegetation at the compensation site
 - (8) Monitoring and reporting provisions
 - (9) Contingency plan for failure to achieve success criteria
 - (10) Any other information requested by the RWQCB or SWRCB.

The Mitigation Plan shall demonstrate that all potentially adverse environmental impacts have been mitigated to a less than significant level. The thoroughness of the alternatives analysis and the extent of the proposed mitigation shall be commensurate with the purpose of the discharge, the value and sensitivity of the receiving water(s), and the extent, severity, and duration of the effect on the quality of waters.

⁹ An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. If it is otherwise a practicable alternative, an area not presently owned by the applicant which could reasonably be obtained, utilized, expanded, or managed in order to fulfil the basic purpose of the proposed activity may be considered (this definition is the same as presented in federal regulations at section 230.10(a)(2) of Title 33 of the CFR).

5. Any other additional information requested by the SWRCB or RWQCB to evaluate the proposed dredged or fill discharge.

A discharge shall not be enrolled under these General WDRs unless the RWQCB Executive Officer or SWRCB Executive Director finds that the Mitigation Plan meets the requirements of this section and the discharge meets all other eligibility criteria. The RWQCB Executive Officer or SWRCB Executive Director shall independently determine eligibility, including the adequacy of the Mitigation Plan, but may consider findings and requirements included in other agencies' permits.

C. DISCHARGE REQUIREMENTS

IT IS FURTHER ORDERED that the discharger shall comply with the following:

Prohibitions:

1. The discharge of material is prohibited until the discharger has received a Notice of Applicability (NOA) from the RWQCB Executive Officer or the SWRCB Executive Director or until 45 days after submission of a complete and accurate NOI.¹⁰ If the RWQCB Executive Officer or the SWRCB Executive Director has not issued a Notice of Exclusion (NOE) within 45 days of receiving a complete and accurate NOI, the discharge may proceed.
2. No discharges are authorized under these General WDRs if the discharger has received a NOE from the RWQCB Executive Officer or the SWRCB Executive Director.
3. The discharge shall not cause pollution, contamination, or nuisance as defined in Water Code section 13050.
4. The discharge of material in a manner other than as described in the NOI, the Findings or conditions of these General WDRs, or in the RWQCB Executive Officer or SWRCB Executive Director-approved Mitigation Plan is prohibited.
5. The discharge of substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses therein, is prohibited.
6. The discharge of waste classified as "hazardous" or "designated" as defined in Title 22, section 66261 of the CCR, or Water Code section 13173 is prohibited.

Special Provisions:

7. The discharger shall discharge in a manner that is consistent with the information provided in the NOI.

¹⁰ The RWQCB Executive Officer or the SWRCB Executive Director, within 30 days from submittal of the NOI, may find a submittal to be incomplete or inaccurate.

8. The discharger shall comply with the eligibility criteria for these General WDRs.
9. The discharger shall implement the approved Mitigation Plan.
10. Requested amendments to the approved Mitigation Plan must be submitted in writing to the RWQCB Executive Officer and, for multi-region projects, to the SWRCB Water Quality Certification Program Manager. The discharger may not modify operations until the discharger has received written notification that the RWQCB Executive Officer or SWRCB Executive Director has approved the amendment. If the RWQCB Executive Officer or the SWRCB Executive Director does not disapprove the requested amendment within 45 days of receiving the written notification, the changes to the approved Mitigation Plan may be implemented as described in the requested amendment.
11. If mitigation measures do not meet their interim or ultimate success criteria, the discharger shall implement remedial measures that are acceptable to the RWQCB Executive Officer or SWRCB Executive Director.
12. All compensatory mitigation areas shall be subject to a conservation easement, deed restriction, or other legal instrument, which shall ensure preservation of the mitigation in perpetuity. Documentation of the easement, restriction, or other legal instrument shall be submitted to the RWQCB, or to the SWRCB for multi-region projects, before any discharge authorized by these General WDRs occurs.
13. The discharger, if requested by the RWQCB or SWRCB, shall provide certification that supervisory and other responsible operations personnel have received training regarding these General WDRs.
14. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to water bodies. At no time shall the discharger use vehicles or equipment that leak any substance that might impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of water bodies.
15. Except in compliance with the terms of an NOA for this order, no construction material, spoils, debris, or other substances associated with this project, that may adversely impact water quality, shall be located in a manner which may result in a discharge or threatened discharge to water bodies.
16. Upon completion of the project, the discharger shall complete a Notice of Termination (NOT) requesting to be un-enrolled from these General WDRs.

Standard Provisions:

17. A copy of these General WDRs shall be kept at the project site for reference by project personnel. Personnel shall be familiar with its contents.

18. The discharger shall take all reasonable steps to prevent any discharge in violation of these General WDRs.
19. The discharger shall report promptly to the RWQCB or SWRCB any proposed material change in the character, location, area, and/or volume of the discharge. The discharger shall obtain confirmation from the RWQCB or SWRCB that such proposed modifications do not disqualify the discharger from coverage under these General WDRs. Confirmation or new WDRs shall be obtained before any modifications are implemented. If the RWQCB Executive Officer or the SWRCB Executive Director does not disapprove the proposed change within 45 days of receiving a written report describing the proposed change, the discharge may proceed in accordance with the proposed modifications.
20. These General WDRs do not convey any property rights or exclusive privileges. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property, do not protect the discharger from liability under federal, State, or local laws, and do not create a vested right to continue to discharge waste.
21. These General WDRs do not relieve the discharger from the responsibility to obtain other necessary local, State, and federal permits, nor do these General WDRs prevent imposition of additional standards, requirements, or conditions by any other regulatory agency.
22. The discharger shall allow the RWQCB or SWRCB, or an authorized representative, upon the presentation of credentials and other documents, as may be required by law, to do the following:
 - a. Enter upon the premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of these General WDRs,
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of these General WDRs,
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under these General WDRs, and
 - d. Sample, photograph, and monitor at reasonable times, for the purpose of assuring compliance with these General WDRs.
23. After notice and opportunity for a hearing, coverage of an individual discharge under these General WDRs may be terminated or modified for cause, including, but not limited to, the following:
 - a. Violation of any term or condition of these General WDRs.
 - b. Obtaining these General WDRs by misrepresentation or failure to disclose all relevant facts.

- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
24. The filing of a request by the discharger for an order modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any condition of these General WDRs.
 25. Where the discharger becomes aware that it failed to submit any relevant facts in an NOI or submitted incorrect information in an NOI to the RWQCB or SWRCB, it shall promptly submit such facts or information.
 26. The discharger shall furnish, within a reasonable time, any information the RWQCB or SWRCB may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the discharger coverage under these General WDRs. The discharger shall also furnish to the RWQCB or SWRCB, upon request, copies of records required to be kept by these General WDRs.
 27. The Water Code provides that any person failing or refusing to furnish technical or monitoring program reports, as required under these General WDRs, or falsifying any information provided in the monitoring reports, is subject to civil liability for each day in which the violation occurs.
 28. The discharger shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with these General WDRs, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.
 29. All reports, notices, or other documents required by these General WDRs or requested by the RWQCB or SWRCB shall be signed by a person described below or by a duly authorized representative of that person.
 - a. For a corporation: by a responsible corporate officer such as (1) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function; (2) any other person who performs similar policy or decision-making functions for the corporation; or (3) the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
 - b. For a partnership or sole proprietorship: by a general partner or the proprietor.
 - c. For a municipality, State, federal, or other public agency: by either a principal executive officer or ranking elected official.
 30. Any person signing a document under Provision II.C.29 shall make the following certification, whether written or implied:

“I certify under penalty of law 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 gathered and evaluated 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 there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

31. The discharger shall report any discharge of waste that may endanger public health or the environment. Any information shall be provided orally to the RWQCB within 24 hours from the time the discharger becomes aware of the occurrence. A written report shall also be submitted to the RWQCB Executive Officer within five (5) consecutive days of the time the discharger becomes aware of the occurrence. The written report shall contain (a) a description of the noncompliance and its cause; (b) the period of the noncompliance event, including dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and (c) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
32. The discharger shall report all instances of noncompliance not reported under Provision II.C.31 within seven (7) consecutive days of the time the discharger becomes aware of the occurrence. The report shall contain any applicable information listed in Provision II.C.31.
33. The discharger shall comply with all of the conditions of these General WDRs. Any noncompliance with these General WDRs constitutes a violation of the Water Code and is grounds for an enforcement action.
34. The discharger must comply with all applicable Basin Plan provisions, including maintaining the protection of beneficial uses and complying with any prohibitions and water quality objectives governing the discharge. In the event of a conflict between the provisions of these General WDRs and the applicable Basin Plan, the more stringent provisions prevails.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the SWRCB held on May 4, 2004.

AYE:

NO:

ABSENT:

ABSTAIN:

Debbie Irvin
Clerk to the Board

**ATTACHMENT 1
TO WQ ORDER NO. 2004-004-DWQ**

STATE WATER RESOURCES CONTROL BOARD

NOTICE OF INTENT (NOI)

TO ENROLL UNDER AND COMPLY WITH THE TERMS OF WATER QUALITY ORDER NO. 2004-004 DWQ (GENERAL WDRs), 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

Mark Only One Item	1. <input checked="" type="checkbox"/> New Discharge 2. <input type="checkbox"/> Change of Information-WDID # _____
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I. Owner of the Land

Name: California Department of Transportation			
Mailing Address: 464 West 4th Street, 6th Floor, MS 822			
City: San Bernardino	County: San Bernardino	State: CA	Zip: 92401
Contact Person: Lara Pangburn Biological Studies and Permits Branch (909)383-5927			

II. Billing Address

Name: State of California Department of Transportation District 8				
Mailing Address: 464 West 4th Street, 6th Floor, MS 822				
City: San Bernardino		State: CA	Zip: 92401	Phone
Contact Person				

III. Discharger (if different from owner of the land)

Name				
Mailing Address				
City	County	State	Zip	Phone
Contact Person				

STATE USE ONLY

WDID: □□□□□□□□□□	Regional Board Office: □□	Date NOI Received: _____	
		Check #: _____	

IV. Site Location

Street (including address, if any): State Route 18 Mojave River Bridge 54-0307	
Nearest Cross Street(s) D Street (SR 18) and Stoddard Wells	
County: San Bernardino	Total Size of Site (acres): 0.346
<p>Latitude/Longitude (Center of Discharge Area) in degrees/minutes/seconds (DMS) to the nearest ½ second or decimal degrees (DD) to four decimals (0.0001 degree)</p> <p>DMS: N. Latitude Deg. _____ Min. _____ Sec. _____</p> <p>W. Longitude Deg. _____ Min. _____ Sec. _____</p> <p>DD: N. Latitude _3821365_ UTM 11 (WGS84/NAD83) _____</p> <p>E. Longitude _473612_ _____</p> <p>Attach a map of at least 1:24000 (1" = 2000') detail of the proposed discharge site (e.g., USGS 7.5 minute topographic map).</p>	

V. Discharge Information

Subject: Seismic Retrofit of SR18 Mojave River Bridge		
Name(s) and type(s) of receiving waters: Mojave River		Receiving water types are: river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland
Eligibility of receiving water. Provide evidence that the water affected by this discharge is deemed to be out side of federal jurisdiction: Please see attached Email...		U.S. Army Corps of Engineers jurisdictional disclaimer letter, or explanation why such a disclaimer is not needed
Identify all regulatory agencies having jurisdiction over this project. Attach copies of all federal and State license/permit applications or issued copies of licenses/permits from government agencies: Fish and Game (California) Streambed Alteration Permit		For example: Dept. of Fish and Game Streambed Alteration Agreement, Coastal Commission permit
Proposed project start date: 09/01/06	Expected date of completion: 02/28/07	

Project description:Steel Bracing Beams will be placed on existing bridge piers.		For example: Discharge of riprap; discharge of fill; excavation for a utility line		
Purpose of the entire activity:Seismic Retrofit.		For example: Stream-bank erosion control; flood management; residential development		
Characterization of discharges:Sediment		What types of constituents will be discharged? Is the sediment contaminated?		
Fill and Excavation Discharges: For each water body type listed below indicate in ACRES the area of the proposed discharge to waters of the state, and identify the impacts(s) as permanent and/or temporary. For linear discharges to drainage features and shorelines, e.g., bank stabilization, revetment, and channelization projects, ALSO specify the length of the proposed discharge to waters of the state IN FEET. ¹				
Water Body Type	Permanent Impact		Temporary Impact	
	Acres	Linear Feet	Acres	Linear Feet
Wetland				
Streambed			0.346	160
Lake/Reservoir				
Ocean/Estuary/Bay				
Riparian				
Dredging Discharges: Volume (cubic yards) of <u>dredged</u> material to be discharged into waters of the United States. NO DREDGING IS PROPOSED				

¹ For guidance in determining the extent of impacted waters, see General WDRs, section II.A.4

VI. **California Environmental Quality Act**

Will an environmental impact report or a negative declaration be adopted for this project or has one been adopted?

YES NO

If yes, what is the current status of the environmental impact report or negative declaration?

- Not yet issued for public review.
- In public review.
- Adopted.

Name of lead agency _____

If an environmental impact report or a negative declaration is in public review or has been adopted, enclose the document with this NOI.

Will the discharge occur in, or in immediate proximity to, an area covered by a U.S. Fish and Wildlife Service (USFWS) Habitat Conservation Plan (HCP) or a Department of Fish and Game Natural Community Conservation Plan (NCCP)?

YES NO

Will the discharge occur in, or in immediate proximity to, any habitat of a plant or animal species that has been classified by the Department of Fish and Game, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service as candidate, sensitive, endangered, rare, or threatened?

YES NO

Will the discharge occur in, or in immediate proximity to, a significant historical or archeological resource, a unique paleontological resource or site, a unique geologic feature, or any human remains?

YES NO

Will the discharge occur in, or in immediate proximity to, land under existing zoning for agricultural use or under a Williamson Act contract?

YES NO

Will the discharge, as mitigated, cause any other significant adverse environmental impact?

YES NO

If you answered "yes" to any of the previous five questions, provide a detailed explanation demonstrating why the discharge is eligible to be enrolled under the General WDRs.

VII. **Additional Submittals.** In accordance with provisions of State Water Resources Control Board (SWRCB) Water Quality Order No. 2004-0004 DWQ, please submit the following with this NOI to the appropriate Regional Water Quality Control Board or, for multi-Region projects, to the SWRCB.

- a. A fee pursuant to California Code of Regulations, Title 23 Section 2200.
- b. A Mitigation Plan, as described in the General WDRs.

VIII. CERTIFICATION

“I certify under penalty of law that this document and all attachments were prepared under my direction and 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. In addition, I certify that the provisions of these General WDRs will be complied with.”

Signature of Discharger	Title
Printed or Typed Name:	Date

STATE WATER RESOURCES CONTROL BOARD

NOTICE OF TERMINATION

**OF DREDGED OR FILL DISCHARGES
TO WATERS DEEMED BY THE U.S. ARMY CORPS OF ENGINEERS
TO BE OUTSIDE OF FEDERAL JURISDICTION
(WATER QUALITY ORDER NO. 2004-0004 DWQ)**

WDID # _____

III. Owner of the Land

Name				
Mailing Address				
City	County	State	Zip	Phone
Contact Person				

III. Discharger (if different from owner of the land)

Name				
Mailing Address				
City	County	State	Zip	Phone
Contact Person				

III. Site Location

Street (including address, if any)
Nearest Cross Street(s)
County:

IV. Reason For Notice of Termination

Indicate why the discharge should no longer be regulated under WQ Order No. 2004-0004-DWQ.
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STATE USE ONLY

WDID: <input type="checkbox"/> <input type="checkbox"/>	Regional Board Office: <input type="checkbox"/> <input type="checkbox"/>	Date NOT Received: _____ —	Date NOT Processed: _____ —
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V. CERTIFICATION

<p>“I certify under penalty of law that this document and all attachments were prepared under my direction and 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.”</p>	
Signature of Discharger	Title
Printed or Typed Name	Date

DEPARTMENT OF TRANSPORTATION

DISTRICT 8

ENVIRONMENTAL PLANNING (MS 822)

464 WEST 4TH STREET, 6TH FLOOR

SAN BERNARDINO, CA 92401-1400

PHONE (909) 383-6387

FAX (909) 383-6494

TTY (909) 383-6300

*Flex your power!
Be energy efficient!*

Section 401
My Copy

EA 483300

May 4, 2006

SSP → Relations with
Regional Water
Quality Control Board

Lahontan Southern Region
14440 Civic Drive, Suite 200
Victorville, California 92392

Subject: general Waste Discharge Requirement

Dear Regional Water Quality Control Board Representative:

Attached you will find the information and check necessary for the requirements of the statewide general Waste Discharge Requirements. California Department of Transportation has proposed to seismically retrofit the State Route 18 Bridge in Victorville at the Mojave River crossing. There are two aspects to this project, anchor slabs that will be placed on the overhead and roadway and steel beam bracing bars that will be anchored into the bridge piers. I have included a sketch of what the steel beam bracing bars will look like. Construction of the steel beam bracing bars will require heavy equipment to operate adjacent to the Mojave River. There is an existing road that accesses the Mojave River under the older bridge. This area adjacent to the river on the East side of the Mojave River will be used to access Bridge Piers 2 and 3 (see photo sketches and design plans). The equipment will not operate within the Mojave River channel bed. Bridge Piers 4 and 5 will be accessed from the railroad access. This project is both limited in scope and duration and is high on the list of priorities here at CalTrans because of the safety issue. The seismic retrofit of most other bridges in California were completed approximately 2 years ago and the SR 18 Mojave River Bridge is only one of 2 that was not completed. The project was not completed prior because of technical difficulties. There is a considerable amount of public awareness of this factor and CalTrans has worked diligently to design and get this project implemented in a reasonable time frame.

The proposed work in the stream channel will occur outside of breeding season because of the proximity to known occurrence of special status species. No special status species have been observed nesting directly at the project site. CalTrans continues active surveys to document the presence of these species. There are bat boxes underneath the SR 18 Bridge, but they have not been observed using the bat boxes. These bat boxes were built as part of the Interstate 15 Seismic Retrofit project. Unfortunately, this mitigation does not appear to have been successful. In my

discussions with design and construction, they have indicated that the amount of noise and vibration from this proposed project will not be any greater than the approximate 180 trains that run next to the bat boxes every day. We will continue to monitor and survey for species in the area throughout the life of the project.

As part of the permitting process with both the Regional Water Quality Control Board and California Department of Fish and Game and early consultation, CalTrans is aware that a requirement of the permit may include non-native invasive species removal and decommissioning of the road access under the bridge. We look forward to continuing our work with you and welcome your response and questions to this proposed project.

If you need any additional information or any other request, please contact Lara Pangburn, Environmental Planner, at (909) 383-5927, or I can be reached at (909) 383-6936.

Sincerely,

RUSSELL WILLIAMS
Office Chief
Biological Studies and Permits Branch