



Colorado River Basin Regional Water Quality Control Board

Certified Mail: **7018 0680 0002 0232 7255**

May 18, 2021

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NOTICE OF APPLICABILITY FOR COVERAGE UNDER ORDER 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, CALTRANS I-40 REGRADE MEDIAN CROSS SLOPES 0R141 PROJECT (WDID 7A363031001), SAN BERNARDINO COUNTY

On May 11, 2021, the California Department of Transportation (Caltrans or Permittee) submitted a Notice of Intent (NOI) to enroll under and comply with State Water Resources Control Board (State Water Board) Order 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. The California Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board) has reviewed your enrollment materials and finds that the dredge/fill discharges associated with the I-40 Regrade Median Cross Slopes 0R141 Project (Project) meet the requirements for enrollment. You are hereby enrolled under Order 2004-0004-DWQ and may proceed with the Project in accordance with the Order. A copy of [Order 2004-0004-DWQ](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf) (https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf) can be found on the State Water Board's Adopted Orders webpage.

Please familiarize yourself with the requirements of Order 2004-0004-DWQ. You are responsible for complying with all applicable Order requirements. Failure to comply with Order 2004-0004-DWQ constitutes a violation of the California Water Code and may result in enforcement action or termination of enrollment under the Order.

NANCY WRIGHT, CHAIR | PAULA RASMUSSEN, EXECUTIVE OFFICER

PROJECT DESCRIPTION, IMPACTS, AND MITIGATION:

The Project involves the regrade of the median cross slopes on a segment of Interstate 40 (I-40) in San Bernardino County, California. A segment of I-40 from Post Mile (PM) 100.0 to PM 125 has experienced several “overturn” accidents in recent years in the median. Flattening the existing median cross slope would improve the safety of the traveling public. Project work will take place within the thirty-foot clear recovery zone (CRZ) on I-40.

Caltrans will regrade the median cross slopes from the existing 6:1 or steeper gradient to 10:1 or flatter. This will require moving soil from other areas in the median to create the proper gradient and modification of existing drainage facilities within the median. Drainage modifications and improvement work will consist of adjusting existing inlets and extending existing culverts within the median. Exclusionary fencing for the desert tortoise (*Gopherus agassizii*) will be installed between PM 100.0 to PM107.5, where it is not currently in place. In addition, the existing metal beam guardrails within the median at various locations along the Project alignment will be replaced with Midwest Guardrail System.

The Project crosses seventeen unnamed ephemeral washes and drainages, all waters of the state. The ephemeral washes and drainages do not have any connectivity to federal waters. The Project will permanently impact three ephemeral drainages in the median as a result of fill, for a total of 0.037 acres/361 linear feet. No temporary impacts were identified.

As compensatory mitigation for the permanent impacts to waters of the state, Caltrans is required to purchase 0.074 acres of stream channel rehabilitation credits (concurrence with California Department of Fish and Wildlife mitigation requirement) at a Colorado River Basin Water Board-approved mitigation bank or in-lieu fee program. Caltrans will purchase mitigation preservation credits from the Black Mountain Conservation Bank.

PROJECT LOCATION:

The Project is located on I-40, approximately 35 miles west of the City of Needles in San Bernardino County, California. The Project begins at the Essex Road Overcrossing (PM 100) and ends 4.5 miles east of Homer Wash Bridge (PM 125). The latitude and longitude at each unnamed ephemeral wash or drainage crossing the Project are listed below. Maps showing the Project location and photographs are found in Attachment A of this Order.

Drainage Feature Number	Latitude	Longitude
1	34.801682° N	-115.309884° W
2	34.80192° N	-115.307461° W

Drainage Feature Number	Latitude	Longitude
3	34.8032° N	-115.292281° W
4	34.804425° N	-115.277525° W
5	34.8062° N	-115.25613° W
6	34.807415° N	-115.241897° W
7	34.808448° N	-115.229883° W
8	34.80994° N	-115.211645° W
9	34.81209300° N	-115.19122300° W
10	34.81338400° N	-115.18105000° W
11	34.83910100° N	-114.99203500° W
12	34.84305300° N	-114.97797700° W
13	34.84439200° N	-114.97134100° W
14	34.84483100° N	-114.96900600° W
14	34.84765900° N	-114.96147100° W
16	34.85526400° N	-114.89299500° W
17	34.85574200° N	-114.88508100° W

APPLICATION FEE RECEIVED:

A fee of \$ 2,066 was received on February 8, 2021. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3), and was calculated as category A – Fill and Excavation Discharges (fee code 84) with the dredge and fill fee calculator.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

On November 23, 2020, Caltrans, as lead agency, adopted an initial study/mitigated negative declaration (IS/MND) (State Clearinghouse [SCH] Number 2020090475) for the Project and filed a Notice of Determination (NOD) at the SCH on November 25, 2020.

As a responsible agency, the Colorado River Basin Water Board has reviewed and considered the environmental document prepared by Caltrans and finds that it addresses the Project's water resource impacts. (California Code of Regulations, title 14, § 15096, subd. (h).) Pursuant to CEQA, the Colorado River Basin Water Board has made Findings of Facts (Findings) which support the issuance of this Order and are included in Attachment B.

AVOIDANCE AND MINIMIZATION MEASURES:

The Permittee must implement the avoidance and erosion control methods as proposed in the Avoidance and Minimization Measures section of the Project application, as well as comply with all applicable requirements in Order 2004-0004-DWQ.

TERMINATION OF COVERAGE:

Upon completion of the Project, the Permittee shall submit a complete Notice of Termination (NOT) requesting to be disenrolled under Order 2004-0004-DWQ. Attachment 2 to Order 2004-0004-DWQ contains the NOT form.

If you have questions concerning this matter, please contact Kai Dunn, 401 Water Quality Certification Program Manager, at (760) 776-8986 or at Kai.Dunn@waterboards.ca.gov.

Sincerely,

Original Signed By _____
Paula Rasmussen
Executive Officer
Colorado River Basin
Regional Water Quality Control Board

Enclosures: 1) Attachment A Project Maps
2) Attachment B CEQA Findings
3) Order No. 2004-0004-DWQ

KD/

cc via email: Sara Gallimore, Caltrans, Sara.Gallimore@dot.ca.gov
Wade Caffrey, VCS Environmental, wcaffrey@vcsenvironmental.com

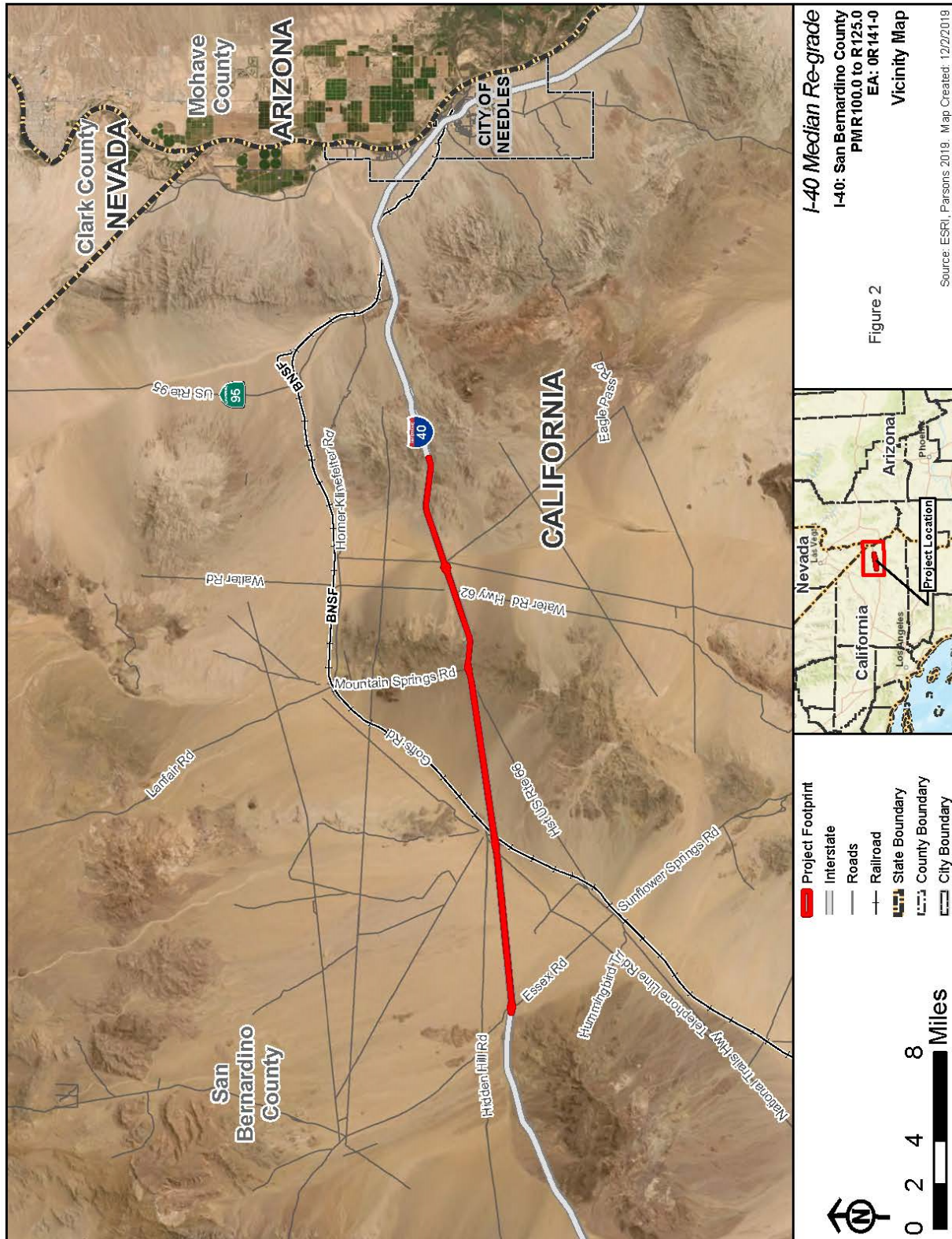
File: 7A363031001, RM 442405, Caltrans I-40 Median Regrade 0R141, Order 2004-0004-DWQ

Attachment A
Project Maps

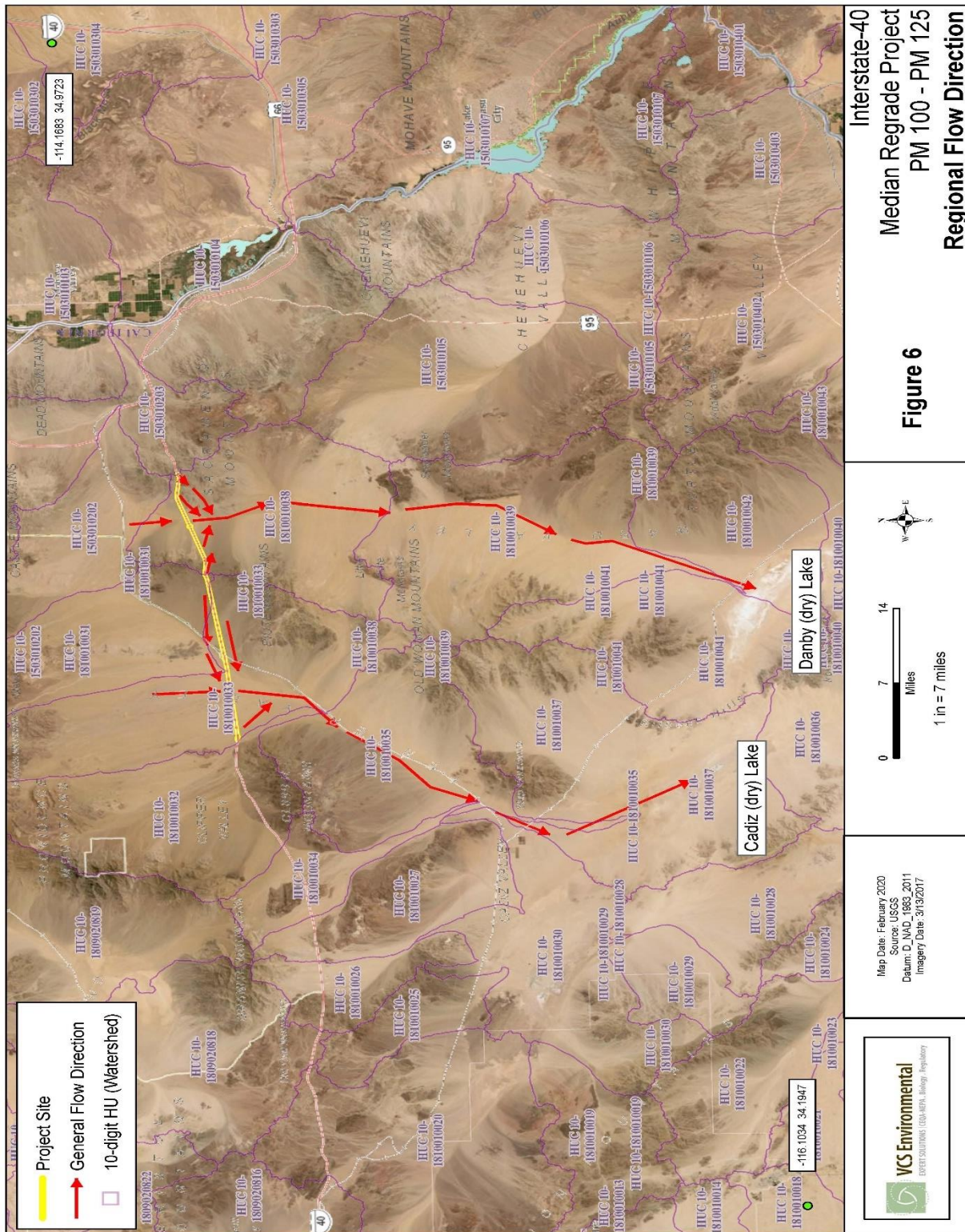


(Caltrans, 2020)¹

¹ California Department of Transportation, June 2020. Interstate-40 Median Regrade Project Delineation of Jurisdictional Waters West of the City of Needles, In Unincorporated San Bernardino County, California. Post Miles 100.0 to 125.0



(Caltrans, 2020)



(Caltrans, 2020)



Photo 1: Culvert with no jurisdictional features. Westbound lanes in the background, facing north.



Photo 2: Culvert within the median between I-40 eastbound lanes and on-ramp, facing southwest.

(Caltrans, 2020)



Photo 3: View within the median between I-40 eastbound lanes and on-ramp, facing west.



Photo 4: General view of the Project site, facing east.

(Caltrans, 2020)



Photo 5: Proposed CDFW/RWQCB jurisdictional earthen wash (Feature 6), facing south.



Photo 6: General view of the Project site, facing east.

(Caltrans, 2020)



Photo 7: View of a proposed CDFW/RWQCB jurisdictional earthen wash (Feature 8), facing west.



Photo 8: View of non-jurisdictional man-made v-ditch, facing north.

(Caltrans, 2020)



Photo 9: Proposed CDFW/RWQCB jurisdictional earthen drainage (Feature 9), facing west.



Photo 10: Proposed CDFW/RWQCB jurisdictional earthen drainage (Feature 10) leading into riser, facing west.

(Caltrans, 2020)



Photo 11: General view of Project site, facing west.



Photo 12: General view of Project site, facing west.

(Caltrans, 2020)



Photo 13: View of a culvert draining north underneath the freeway, facing north.



Photo 14: General view of Project site, facing west.

(Caltrans, 2020)



Photo 15: View of proposed non-jurisdictional rock ditch, facing west.



Photo 16: View of drain within Project limits and adjacent east-bound I-40 lanes, facing east.
(Caltrans, 2020)



Photo 17: General view from within Project limits and non-jurisdictional concrete-lined v-ditch, facing west.



Photo 18: Non-jurisdictional concrete-lined v-ditch, facing east.

(Caltrans, 2020)



Photo 19: View of low point within Project limits, facing west.



Photo 20: View of low point from within Project limits, facing east.

(Caltrans, 2020)



Photo 21: General view of the Project site, facing east.



Photo 22: View of primarily unvegetated area, facing west.

(Caltrans, 2020)



Photo 23: Proposed CDFW/RWQCB jurisdictional earthen wash (Feature 12) from the top of the slope, facing northwest.



Photo 24: Proposed CDFW/RWQCB jurisdictional earthen drainage (Feature 13), facing east.

(Caltrans, 2020)



Photo 25: Proposed non-jurisdictional concrete-lined v-ditch, facing west.



Photo 26: General view from within Project limits, facing west.
(Caltrans, 2020)



Photo 27: General view from within Project limits, facing west.



Photo 28: Proposed CDFW/RWQCB jurisdictional earthen drainage (Feature 16), facing south.
(Caltrans, 2020)



Photo 29: Proposed CDFW/RWQCB jurisdictional earthen drainage (Feature 17), facing southeast.
(Caltrans, 2020)

Attachment B CEQA Findings

A. Environmental Review

On November 23, 2020, Caltrans, as lead agency, adopted an initial study/mitigated negative declaration (IS/MND) (State Clearinghouse [SCH] Number 2020090475) for the Project and filed a Notice of Determination (NOD) at the SCH on November 25, 2020.

The Colorado River Basin Water Board is a responsible agency under CEQA (Pub. Resources Code, § 21069) and in making its determinations and findings, must presume that the Permittee's adopted environmental document comports with the requirements of CEQA and is valid (Public Resources Code, §§ 21080.1(a), 21167.2). The Colorado River Basin Water Board has reviewed and considered the environmental document and finds that the environmental document prepared by the Permittee addresses the Project's water resource impacts. (Cal. Code Regs., tit. 14, § 15096, subd. (f).) The environmental document includes the mitigation measures developed by the Permittee that have been adopted for the Project to reduce potential significant impacts. (Pub. Resources Code, § 21081.6, subd. (a)(1); Cal. Code Regs., tit. 14, § 15091, subd. (d).)

B. Incorporation by Reference

Pursuant to CEQA, these Findings of Facts (Findings) support the issuance of this Order based on the approved IS/MND, MMRP, and the application for this Order.

All CEQA project impacts are analyzed in detail in the IS/MND which is incorporated herein by reference. The IS/MND is available at: 464 West Fourth Street, San Bernardino, California, 92401.

The Permittee's application for this Order, including all supplemental information provided, is incorporated herein by reference.

C. Findings and Determination

The IS/MND describes the potential significant environmental effects to water resources that were mitigated in the IS/MND. Having considered the whole of the record, the Colorado River Basin Water Board has determined that there is no substantial evidence that the Project or any of its aspects could result in significant adverse impacts to water resources, when implemented in accordance with the mitigation measures required in MMRP and the conditions in this Order. (Cal. Code Regs., tit. 14, § 15096, subd. (h).)