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8  
 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11  
 12 **CALIFORNIA REGIONAL WATER  
 QUALITY CONTROL BOARD, LOS  
 13 ANGELES REGION,**

14 Plaintiff,

15 **V.**

16 **UNITED STATES ARMY CORPS  
 OF ENGINEERS; LIEUTENANT  
 17 GENERAL THOMAS P. BOSTICK,  
 IN HIS OFFICIAL CAPACITY,**

18 Defendants.  
 19

Case No. 2:16-cv-01091

**COMPLAINT FOR  
 DECLARATORY AND  
 INJUNCTIVE RELIEF (CLEAN  
 WATER ACT, 33 U.S.C. § 1251  
 et seq.)**

20  
 21 Plaintiff California Regional Water Quality Control Board, Los Angeles  
 22 Region, alleges as follows:

23 **INTRODUCTION**

24 1. Plaintiff the California Regional Water Quality Control Board, Los  
 25 Angeles Region (“Regional Water Board”), is an agency of the State of California  
 26 and one of nine regional water boards whose mission is to preserve, protect,  
 27 enhance and restore the quality and beneficial uses of California’s water resources  
 28 for the benefit of present and future generations. Cal. Water Code §§ 13001,

1 13160, 13200, 13201(a) and 13377. The Regional Water Board brings this action  
2 to ensure that Defendants United States Army Corps of Engineers and Lieutenant  
3 General Thomas P. Bostick (together referred to herein as “Defendants or “Army  
4 Corps”) comply with their obligation under the Federal Water Pollution Prevention  
5 and Control Act (“Clean Water Act”) to seek and obtain certification from the  
6 Regional Water Board that the Army Corps’ dredge and fill operations in waters of  
7 the United States will comply with water quality standards as required by Clean  
8 Water Act Section 401, 33 U.S.C. § 1341.<sup>1</sup>

9 2. This matter specifically involves two dredge and fill operations  
10 undertaken by Defendants. These operations occurred within the Los Angeles  
11 River and its tributaries, which are waters of the United States. The first occurred  
12 at Verdugo Wash in late 2011; and the second occurred at Sepulveda Basin in late  
13 2012. Both activities violated Clean Water Act Sections 401 and 404, 33 U.S.C. §§  
14 1341 and 1344 (hereafter “Section 401” and “Section 404,” respectively) resulting  
15 in violations of Section 301, 33 U.S.C. § 1311 (hereafter “Section 301”).

16 **A. Verdugo Wash**

17 3. Verdugo Wash is a tributary of the Los Angeles River in Glendale,  
18 California, a city situated north of downtown Los Angeles. This section of the Los  
19 Angeles River is commonly known as “Glendale Narrows.” The Army Corps  
20 dredged vegetation and sediment from a 6.5 acre area of Verdugo Wash, including  
21 at the confluence of Verdugo Wash and the Los Angeles River, between October 24  
22 and November 7, 2011, without first seeking or obtaining certification from the  
23 Regional Water Board in compliance with Sections 401 and 404 and the Army  
24 Corps’ own regulations.

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<sup>1</sup> This action will not affect the Army Corps’ ability to undertake emergency  
27 maintenance projects pursuant to existing state water quality certifications in  
28 preparation for El Niño-related storm events.

1 4. Specifically, the Army Corps failed to obtain a state certification under  
2 Section 401, which is the Congressionally-mandated mechanism by which a state  
3 can ensure that its water quality requirements are met during a dredging operation.

4 5. The Regional Water Board, in fact, did not learn of the project until after  
5 it was completed when it received an Army Corps document describing the project.

6 **B. Sepulveda Basin**

7 6. The Sepulveda Basin (“Basin”) is a 2,000 acre flood management basin  
8 and wildlife reserve located on the upper portion of the Los Angeles River in the  
9 San Fernando Valley in Los Angeles County. It includes a dam and other  
10 infrastructure. It was built in 1941 as a flood control infrastructure for the Los  
11 Angeles River after serious flooding occurred in 1938. The Basin contains the 225  
12 acre “Sepulveda Basin Wildlife Reserve” operated by the City of Los Angeles  
13 Department of Recreation and Parks which provides for recreation and preservation  
14 of natural resources. Los Angeles River Revitalization Master Plan, April 2007, pp.  
15 3-11.

16 7. On December 29, 2012, the Army Corps removed approximately 43  
17 acres of vegetation from the Basin. Several site inspections revealed that  
18 significant heavy equipment was used to remove vegetation (that served as habitat  
19 for numerous species) from a large portion of the Basin, including the Los Angeles  
20 River and its tributaries.

21 8. The Army Corps failed to seek or obtain a Section 401 certification from  
22 the Regional Water Board for this dredge and fill operation in the Los Angeles  
23 River and its tributaries. As with the Verdugo Wash project, the Regional Water  
24 Board only learned of the Army Corps’ uncertified activity at the Basin after the  
25 fact.

26 9. Failing to obtain Regional Water Board certification for the Verdugo  
27 Wash and Sepulveda Basin operations constitute significant violations of the Clean  
28 Water Act. It is well-known that dredge and fill activities can negatively impact

1 water quality. Potential impacts to water quality include introduction of sediment  
2 to downstream waters, which is a significant water quality problem. Suspended  
3 sediments limit the passage of sunlight into waters, which in turn inhibits the  
4 growth of aquatic plants. Excessive deposition of sediments can destroy spawning  
5 habitat, blanket benthic (bottom dwelling) organisms, and abrade the gills of larval  
6 fish. Also, construction equipment often releases oil, grease and other chemicals  
7 into the water body if they are not appropriately managed.

8 10. The Section 401 certification process would have allowed the Regional  
9 Water Board to impose conditions on these operations to guard against these  
10 potential water quality impacts, including water quality monitoring, which is  
11 standard practice and specifically authorized by Clean Water Act Section 401.  
12 These conditions would have avoided, minimized, or mitigated water quality  
13 impacts and required monitoring, if appropriate, and would have confirmed  
14 implementation of such conditions. Had the Army Corps sought certification, the  
15 Regional Water Board would have had the opportunity to impose conditions on the  
16 Army Corps that would have allowed the projects to proceed, but would have  
17 included measures to protect water quality.

18 11. Along the main reaches of the Los Angeles River, the only areas that  
19 presently support significant riparian habitat are Glendale Narrows and the  
20 Sepulveda Basin. The dredge and fill operations in the Verdugo Wash and  
21 Sepulveda Basin are just two examples of the Army Corps' practice of ignoring its  
22 statutory requirement to obtain the Regional Water Board's certification prior to  
23 conducting dredge and fill operations. Based upon a history of non-compliance, it  
24 is clear these violations are continuing and will recur. The Army Corps operates six  
25 flood risk management facilities (5 dams and 1 debris basin) and approximately 34  
26 miles of flood control channels and levees within Los Angeles County. There is a  
27 reasonable likelihood that the Army Corps will violate Section 401 as it engages in  
28

1 the following activities in these waters of the United States, including but not  
2 limited to:

- 3 A) Mechanized clearing activities;
- 4 B) Debris, sediment, and vegetation removal from areas along the  
5 Los Angeles River below the ordinary high water mark;
- 6 C) Channel bed and bank repair activities; and
- 7 D) Water diversion structures for in-water work.

8 The Regional Water Board has the statutory authority to certify the Army  
9 Corps' dredge and fill operations within its jurisdiction; accordingly, the Regional  
10 Water Board seeks declaratory and injunctive relief to ensure Defendants' future  
11 compliance with Sections 401 and 404.

## 12 JURISDICTION

13 12. This action arises under the Clean Water Act. This Court has  
14 jurisdiction over the subject matter of this action pursuant to the Clean Water Act's  
15 citizen suit provision, 33 U.S.C. § 1365(a), and federal question jurisdiction, 28  
16 U.S.C. § 1331. Defendants have waived sovereign immunity to the claims asserted  
17 in this Complaint. Clean Water Act §§ 313 and 505(a), 33 U.S.C. §§ 1323,  
18 1365(a).

19 13. The Regional Water Board has provided the Army Corps with notice of  
20 the Clean Water Act violations alleged in this Complaint and has otherwise  
21 complied with any and all procedural prerequisites necessary for filing this  
22 Complaint. A copy of the Regional Water Board's October 31, 2013 notice letter is  
23 attached hereto as Exhibit 1 and incorporated herein by this reference. The  
24 Regional Water Board transmitted the notice letter to the Army Corps via certified  
25 mail, return receipt requested. In addition to the Army Corps, copies of the notice  
26 were sent to the Administrator of the United States Environmental Protection  
27 Agency, the United States Attorney General, the United States Department of the  
28

1 Interior, the United States Department of Commerce and the California State Water  
2 Resources Control Board, Office of Enforcement.

3 **VENUE**

4 14. Venue in this Court is proper pursuant to Clean Water Act Section  
5 505(c)(1), 33 U.S.C. § 1365(c)(1), because the Army Corps' dredge and fill  
6 operations at the Verdugo Wash and Sepulveda Basin from which dredge and fill  
7 materials have been and will continue to be discharged in violation of an effluent  
8 standard or limitation of the Clean Water Act, are located in this judicial district.  
9 Venue also is proper under 28 U.S.C. § 1391(e)(2), because the events or omissions  
10 giving rise to the Regional Water Board's claims have occurred, are occurring and  
11 will continue to occur in this judicial district.

12 **PARTIES**

13 15. Plaintiff Regional Water Board is an agency of the State of California,  
14 and one of nine regional water quality control boards. Cal. Water Code §§ 13001,  
15 13160, 13200, 13201(a) and 13377. The California Water Code vests the State's  
16 Regional Water Quality Control Boards with primary responsibility for regulating  
17 state water quality. Cal. Water Code §§ 13001, 13050(a)-(b), 13200. The Los  
18 Angeles River, its tributaries and the Pacific Ocean drainages from this watershed,  
19 fall within the jurisdiction of the Plaintiff, the California Regional Water Quality  
20 Control Board, Los Angeles Region. *Id.* at § 13200(d).

21 16. The Regional Water Board is a "citizen" within the meaning of Clean  
22 Water Act Section 505(g), 33 U.S.C. § 1365(g), because the unlawful discharges of  
23 dredge and fill material by the Army Corps has adversely affected and continues to  
24 adversely affect the Regional Water Board's interests in ensuring compliance with  
25 the Clean Water Act, in protecting water quality and in preventing pollution and  
26 contamination to waters of the State and of the United States, and in protecting the  
27 designated beneficial uses (including aquatic life and wildlife habitat) of waters of  
28 the State and of the United States.

1 17. This Complaint alleges violations of the Clean Water Act and seeks  
2 relief against the Army Corps. The first Defendant is the United States Army  
3 Corps of Engineers, which is an agency of the United States and a sub-division of  
4 the United States Army within the United States Department of Defense. The  
5 Army Corps has responsibility for permitting and undertaking dredge and fill  
6 operations in waters of the United States as alleged in this Complaint. Clean Water  
7 Act § 404(a), 33 U.S.C. § 1344(a); 40 C.F.R. Part 230.

8 18. The second Defendant is Lieutenant General Thomas P. Bostick, who is  
9 the United States Army Chief of Engineers and Commanding General of the United  
10 States Army Corps of Engineers, the federal official responsible for the operations  
11 of the Army Corps. Lieutenant General Bostick is named in his official capacity.

#### 12 **THE CLEAN WATER ACT**

13 19. Congress passed the Clean Water Act to “restore and maintain the  
14 chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C. §  
15 1251(a), and with the “interim goal” that wherever attainable, “water quality which  
16 provides for the protection and propagation of fish, shellfish, and wildlife and  
17 provides for recreation in and on the water be achieved by July 1, 1983.” 33 U.S.C.  
18 § 1251(a)(2).

19 20. To achieve these ambitious goals, the Clean Water Act establishes  
20 distinct roles for the Federal and State Governments. Section 303 of the Clean  
21 Water Act for example requires each State, subject to federal approval, to institute  
22 comprehensive water quality standards establishing water quality goals for all  
23 intrastate waters. 33 U.S.C. §§ 1311(b)(1)(C), 1313.

24 21. A state water quality standard “shall consist of the designated uses of the  
25 navigable waters involved and the water quality criteria for such waters based upon  
26 such uses.” 33 U.S.C. § 1313(c)(2)(A). In setting standards, the State must comply  
27 with the following broad requirements: “Such standards shall be such as to protect  
28 the public health or welfare, enhance the quality of water and serve the purposes of

1 this chapter. Such standards shall be established taking into consideration their use  
2 and value for public water supplies, propagation of fish and wildlife, recreational  
3 [and other purposes.]” *Id.*

4 22. The Clean Water Act and California Water Code require California’s  
5 Regional Boards, including the Regional Water Board, to adopt water quality  
6 control plans for the waters in their regions. Cal. Water Code § 13240. Water  
7 quality control plans must include water quality objectives designed to protect the  
8 waters’ beneficial uses, which may include recreation; preservation and  
9 enhancement of fish, wildlife, and other aquatic resources; and domestic or  
10 municipal water supply. *Id.* at §§ 13421, 13050(f).

11 23. The Los Angeles Region Basin Plan for the Coastal Watersheds of Los  
12 Angeles and Ventura Counties (“Basin Plan”) is the water quality control plan for  
13 the Los Angeles region. The Regional Water Board is, therefore, the government  
14 entity that creates and implements the Basin Plan for the Los Angeles River and its  
15 tributaries under the Clean Water Act and is responsible for maintaining the water  
16 quality objectives and protecting the beneficial uses of the Los Angeles River.

17 24. Further, Clean Water Act Section 303(d) requires the Regional Water  
18 Board to list all the impaired water bodies within its jurisdiction. Pursuant to  
19 Section 303(d), the Regional Water Board has identified the Verdugo Wash and  
20 Sepulveda Basin segments of the Los Angeles River as impaired water bodies  
21 under the Clean Water Act, entitling them to enhanced protection.

22 25. Given these protections, the Clean Water Act prevents the dredging and  
23 filling of waters of the United States, except as allowed by permit. Section 404, 33  
24 U.S.C. § 1344.

25 26. Before receiving any Section 404 permit, however, a permittee,  
26 including the Army Corps, must seek and obtain a “Section 401 certification” from  
27 the state in which the work is being conducted certifying that the project is  
28 compliant with local water quality control plans and water quality objectives.

1 Section 401, 33 U.S.C. § 1341.<sup>2</sup> For the Los Angeles Region, the Regional Water  
2 Board issues these certifications ensuring that the activities of all permittees will  
3 not violate the Basin Plan and will not detrimentally affect water quality objectives.

4 27. Any Section 404 permit issued by the Army Corps is required to  
5 incorporate conditions imposed by a state’s Section 401 certification. Typical  
6 Section 401 certification conditions include requiring the permittee to use standard  
7 sediment control measures, to use good housekeeping efforts, best management  
8 practices and to monitor the water body to ensure that the conditions are indeed  
9 protecting water quality and the natural environment.

10 28. The Clean Water Act also provides that federal agencies engaging in  
11 dredge and fill activities, including the Army Corps, “shall comply” with state  
12 regulations “to the same extent that any person is subject to such requirements,”  
13 including seeking and complying with a Section 401 certification. Clean Water Act  
14 § 404(t), 33 U.S.C. § 1344(t).

15 29. The Army Corps has itself adopted regulations governing its operations.  
16 33 C.F.R. § 336.1(a). The regulations provide that although the Army Corps does  
17 not issue itself Section 404 permits for its own dredging activities, the Army Corps  
18 nonetheless must comply with all substantive legal requirements of Sections 401  
19 and 404, including seeking and obtaining Section 401 certification and complying  
20 with any conditions imposed by the state in the certification process. 33 C.F.R. §  
21 336.1(a).

22 30. The Army Corps’ regulations acknowledge that “Section 401 of the  
23 CWA requires the Corps to seek state water quality certification for dredged

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24 <sup>2</sup> The Army Corps has two roles with respect to dredge and fill activities: 1)  
25 The Army Corps issues permits to third parties who seek to conduct dredge and fill  
26 work, known as a “Section 404 permit” (regulatory function); and, 2) The Army  
27 Corps undertakes dredge and fill work itself, which activities are the subject of this  
28 lawsuit (operations function).

1 material disposal into waters of the U.S.” 33 C.F.R. § 336.1(b)(8). Violations of  
2 Sections 301, 401 and 404 result in unauthorized discharges and constitute a  
3 violation of an effluent standard or limitation pursuant to Clean Water Act Section  
4 505(a)(1).

### 5 **FACTUAL ALLEGATIONS**

6 31. Two Army Corps dredge and fill operations violated the Clean Water  
7 Act as follows:

#### 8 **A. Verdugo Wash**

9 32. The Verdugo Wash is a tributary of the Los Angeles River in Glendale,  
10 California (north of downtown Los Angeles), and is a water of the United States.  
11 This section of the Los Angeles River that Verdugo Wash is tributary to is  
12 commonly known as “Glendale Narrows,” and the sections of the Los Angeles  
13 River immediately upstream and downstream of Verdugo Wash are naturally soft-  
14 bottom sections of the river. Soft-bottomed sections of the river are sections where  
15 the river maintains its natural bottom without concrete lining the bottom of the  
16 riverbed. The Army Corps dredged vegetation and sediment from Verdugo Wash  
17 between October 24, 2011 and November 7, 2011, without seeking and obtaining  
18 certification from the Regional Water Board under Section 401 of the Clean Water  
19 Act (“Verdugo Wash Operation”).

20 33. The Regional Water Board learned of the Verdugo Wash Operation on  
21 January 13, 2012, after the project had already been completed, when it received an  
22 Army Corps document entitled “Categorical Exclusion (CX) and Record of  
23 Environmental Consideration (REC) Verdugo Wash Operation and Maintenance  
24 Ramp Repair” that described an invert access ramp repair in order to implement the  
25 Verdugo Wash Operation.

26 34. The Army Corps’ Categorical Exclusion referenced the “Verdugo Wash  
27 Operation and Maintenance Ramp Repair” project and described vegetation and  
28

1 sediment removal to allow for the Army Corps and/or its contractor to access the  
2 Verdugo Wash channel.

3 35. After receiving the Categorical Exclusion document, Regional Water  
4 Board staff determined that the Army Corps should have, but did not, seek a  
5 Section 401 certification from the Regional Water Board prior to undertaking the  
6 Verdugo Wash Operation.

7 36. A substantial amount of established vegetation existed in and around the  
8 Verdugo Wash since at least 2006, particularly at the confluence of Verdugo Wash  
9 and the Los Angeles River that has been characterized as a wetland by the City of  
10 Los Angeles and the Army Corps. See City of Los Angeles Department of Public  
11 Works, Bureau of Engineering, and US Army Corps of Engineers Los Angeles  
12 District, Planning Division, Final Programmatic Environmental Impact  
13 Report/Programmatic Environmental Impact Statement for the Los Angeles River  
14 Revitalization Master Plan, April 2007, at 4-55.

15 37. The Army Corps used heavy machinery during the Verdugo Wash  
16 Operation and removed much of this established vegetation from waters of the  
17 United States in the Los Angeles River and Verdugo Wash.

18 38. On information and belief, the Army Corps undertook few, if any,  
19 precautionary measures to prevent the discharges of oil, grease and other pollutants  
20 from its machinery into the confluence area of the Verdugo Wash and Los Angeles  
21 River or to prevent suspended sediment and resultant turbidity created by the  
22 dredging activities and vegetation removal from being discharged to waters of the  
23 United States, in particular, downstream to the soft-bottom portion of the Los  
24 Angeles River.

25 39. The vegetation and sediment removal during the Verdugo Wash  
26 Operation caused harm to water quality attendant to the removal of established  
27 aquatic and wildlife habitat. This activity caused an unauthorized discharge of  
28

1 dredge or fill material into waters of the United States in violation of Clean Water  
2 Act Sections 301 and 404.

3 40. Subsequent site inspections and investigations indicate that the Army  
4 Corps engaged in significant vegetation and sediment removal of a 6.5 acre area  
5 during its Verdugo Wash Operation without seeking and obtaining a Section 401  
6 certification from the Regional Water Board in violation of Clean Water Act  
7 Sections 301 and 404.

8 **B. Sepulveda Basin**

9 41. The Sepulveda Basin (“Basin”) is a section of the Los Angeles River of  
10 over 2,000 acres located on the upper portion of the Los Angeles River in the San  
11 Fernando Valley in Los Angeles County, and includes a wildlife reserve. The Los  
12 Angeles River and its tributaries, including Haskell Creek and Encino Creek,  
13 traverse the Basin and are waters of the United States.

14 42. The Basin provides for recreation and the preservation of natural  
15 resources, including habitat for numerous species of birds and animals and is a vital  
16 part of the Los Angeles River watershed and its ecosystem. Sepulveda Basin also  
17 includes a dam and other infrastructure that was built in 1941 as a flood control  
18 measure for the Los Angeles River after serious flooding in 1938. The Basin  
19 contains the 225 acre “Sepulveda Basin Wildlife Reserve” operated by the City of  
20 Los Angeles Department of Recreation and Parks which provides for recreation and  
21 preservation of natural resources. Los Angeles River Revitalization Master Plan,  
22 April 2007, p. 3-11.

23 43. On December 29, 2012, the Regional Water Board learned that the  
24 Army Corps had removed approximately 43 acres of vegetation from the Basin  
25 (“Sepulveda Operation”). Specifically, during the month of December, 2012, the  
26 Army Corps, on several occasions, removed riparian vegetation along Haskell  
27 Creek, a soft-bottomed tributary of the Los Angeles River, below the ordinary high  
28 water mark. This activity caused an unauthorized discharge of dredge or fill

1 material into waters of the United States in violation of Clean Water Act Sections  
2 301 and 404 and likely impacted water quality in at least three ways.

3 44. The first potential impact to water quality was caused by the manner in  
4 which the Army Corps removed vegetation from a 0.5 acre area below the ordinary  
5 high water mark by using heavy machinery, along the nearly vertical banks of  
6 Haskell Creek, that caused direct sediment discharges to waters of the United  
7 States. The act of scraping riparian vegetation from the banks of Haskell Creek  
8 through the use of mechanized equipment is not merely fallback incidental to an act  
9 of excavation, but has the ability to, and in fact did, cause actual discharges and  
10 riparian alterations which could affect water quality and beneficial uses (including  
11 aquatic life and wildlife habitat) in the Los Angeles River and its tributaries.

12 45. The second potential impact to water quality was destabilization and  
13 erosion. With vegetation removed along both banks of Haskell Creek (stretching  
14 approximately 300 feet downstream of a footbridge overcrossing) destabilization  
15 and erosion is, and remains, a significant threat to water quality because, as the  
16 Army Corps itself concluded, the soils have a high runoff potential and a very slow  
17 infiltration rate. Suspended sediments limit the passage of sunlight into waters,  
18 which in turn inhibits the growth of aquatic plants. Excessive deposition of  
19 sediments can destroy spawning habitat, blanket benthic (bottom dwelling)  
20 organisms and abrade the gills of larval fish.

21 46. The third potential impact to water quality occurred as a result of the  
22 removal of vegetation along the banks of Haskell Creek by increasing direct  
23 sunlight exposure and water temperature in-stream. Several species of fish are  
24 common in the Los Angeles River including bass, carp, mosquito fish, sunfish,  
25 fathead minnow and various species of catfish. Several of these species prefer  
26 aquatic habitat with cover. The Army Corps removed the natural cover during the  
27 Sepulveda Operation, which again impaired riparian and aquatic habitat. Increased  
28 water temperature and sunlight in a river or stream have negative impacts on these

1 species and their aquatic habitat. Healthy riparian vegetation can help filter  
2 nutrients and pollutants, create a cool microclimate around and over a stream,  
3 provide food for aquatic organisms, provide cover for adult and juvenile aquatic  
4 life, maintain bank stability, and provide hard points around which pools are  
5 scoured. See Kier Associates & National Marine Fisheries Service, Guide to the  
6 Reference Values Used in South-Central/Southern California Coast Steelhead  
7 Conservation Action Planning (CAP) Workbooks 12 (2008).

8 47. In addition to the vegetation removal along the banks of Haskell Creek  
9 below the ordinary high water mark, the Army Corps also conducted dredge and fill  
10 operations in the Los Angeles River itself and in another of its tributaries, Encino  
11 Creek.

12 48. The Los Angeles River and its banks contained track marks indicating  
13 that the Army Corps used heavy construction equipment in the river channel from  
14 Burbank Boulevard south to the Sepulveda Dam during the Sepulveda Operation.  
15 During the Sepulveda Operation, the Army Corps modified islands within the Los  
16 Angeles river bed, and in some areas cleared vegetation and sediment. In fact,  
17 mounds of sediment and debris, cleared vegetation, or a combination of both  
18 remained in the Los Angeles River channel at least until January 15, 2013.

19 49. The Army Corps also used heavy equipment to make multiple bank cuts  
20 ranging from 1 to 4 feet in height, causing discharges to Encino Creek.

21 50. The Army Corps suspended its Sepulveda Operation after a series of  
22 newspaper articles in the *Los Angeles Times* and public comments from other  
23 entities publicly revealed the Army Corps' activities and the negative effects it was  
24 having on the Los Angeles River, Haskell Creek, Encino Creek and the riparian  
25 vegetation in and around those waters. The Regional Water Board conducted  
26 several site inspections that showed that indeed, as reported, a significant amount of  
27 heavy equipment was used to remove vegetation from a large portion of the Basin,  
28

1 including the Los Angeles River and its tributaries, Haskell Creek and Encino  
2 Creek.

3 51. The Army Corps failed to seek and obtain a Section 401 certification  
4 from the Regional Water Board for the above noted activities that discharged  
5 dredge and fill material and potentially impacted waters of the United States.

6 52. The Regional Water Board has not previously certified compliance for  
7 the specific type of activity covered by the dredge and fill of the Sepulveda  
8 Operations described herein, and has not received a request for such a certification  
9 from the Army Corps. Because the Army Corps failed to seek and obtain Section  
10 401 certification, it has violated the Clean Water Act.

11 53. On information and belief, the Regional Water Board understands that  
12 the Army Corps will continue to violate Sections 401 and 404 in the future at  
13 Sepulveda Basin without obtaining Section 401 certification from the Regional  
14 Water Board prior to undertaking dredge and fill operations.

15 **FIRST CLAIM FOR RELIEF**

16 (Violation of Sections 301, 401 and 404 of the Clean Water Act; 33 U.S.C. §§  
17 1311, 1341, 1344.)

18 54. The Regional Water Board re-alleges and incorporates herein by this  
19 reference the preceding paragraphs of this Complaint. The Los Angeles River and  
20 its tributaries Verdugo Wash, Haskell Creek and Encino Creek are waters of the  
21 United States as defined in Clean Water Act Section 502(7), 33 U.S.C. § 1362(7)  
22 and 40 C.F.R § 122.2.

23 55. In conducting its Verdugo Wash Operation, the Army Corps, from  
24 October 24 through November 7, 2011, dredged vegetation and sediment from the  
25 Verdugo Wash and Los Angeles River without seeking or obtaining Section 401  
26 certification from the Regional Water Board before commencing operations and  
27 without taking necessary precautionary measures to prevent the release of  
28 pollutants from heavy machinery and to prevent other harm to water quality

1 through sediment deposits and sediment and vegetation removal and  
2 disturbance. This activity caused an unauthorized discharge of dredge or fill  
3 material into waters of the United States in violation of Clean Water Act Sections  
4 301 and 404.

5 56. In conducting its Sepulveda Basin Operation, the Army Corps, during  
6 the month of December 2012, dredged sediment and removed vegetation and  
7 habitat from the Los Angeles River, Haskell Creek and Encino Creek without  
8 seeking or obtaining Section 401 certification from the Regional Water Board and  
9 without taking the necessary precautionary measures to prevent the release of  
10 pollutants from heavy machinery and to prevent other harm to water quality  
11 through discharging sediment, debris and removal of vegetation from these waters.  
12 This activity caused an unauthorized discharge of dredge or fill material into waters  
13 of the United States in violation of Clean Water Act Sections 301 and 404.

14 57. The Army Corps does not have, has never had, and has never applied for  
15 a Section 401 certification for the Verdugo Wash Operation and the Sepulveda  
16 Basin Operation from the Regional Water Board.

17 58. The Army Corps' ongoing and threatened future discharges of dredge  
18 and fill material and other pollutants from the Verdugo Wash Operation and  
19 Sepulveda Basin Operation constitute violations of Clean Water Act Sections 301,  
20 401, and 404, 33 U.S.C. §§ 1311, 1341, and 1344. The Army Corps has violated  
21 and continues to violate Section 401. There is a reasonable likelihood that the  
22 Army Corps will conduct future dredge and fill operations in the Los Angeles River  
23 and its tributaries without obtaining Section 401 certification from the Regional  
24 Water Board.

25 59. The Regional Water Board has provided the Army Corps and other state  
26 and federal officials with a sixty-day notice of the Clean Water Act violations  
27 alleged in this Complaint, pursuant to the Clean Water Act's requirements and all  
28 applicable law. Clean Water Act § 505(b)(1)(A), 33 U.S.C. § 1365(b)(1)(A). More

1 than 60 days have elapsed since the Regional Water Board provided its notice to  
2 Defendants of the Clean Water Act violations alleged in this Complaint and the  
3 violations remain unabated.

4 60. Upon information and belief, neither the U.S. Environmental Protection  
5 Agency nor a State has commenced and is diligently prosecuting an action for the  
6 Clean Water Act violations asserted in this Complaint.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the Regional Water Board requests this Court to enter a  
9 judgment:

10 1. Declaring that Army Corps' discharges of dredge and fill material and  
11 other pollutants from the Verdugo Wash Operation and Sepulveda Basin Operation  
12 without Section 401 certifications constitute violations of Clean Water Act Sections  
13 301, 401, and 404, 33 U.S.C. §§ 1311, 1341, and 1344.

14 2. Ordering the Army Corps to take all actions necessary to comply  
15 forthwith with the Clean Water Act, including ceasing all dredge and fill operations  
16 and discharges of pollutants in the Los Angeles River and its tributaries unless and  
17 until it obtains a valid Section 401 certification for each operation or otherwise  
18 demonstrates compliance with the Clean Water Act.

19 3. Awarding the Regional Water Board its costs of litigation, including  
20 reasonable attorneys' fees, incurred in prosecuting this action, pursuant to 28  
21 U.S.C. § 2412, and Clean Water Act Section 505(d), 33 U.S.C. § 1365(d) and all  
22 applicable law.

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4. For such other relief as the Court deems just and proper.

Dated: February 17, 2016

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
ERIC M. KATZ  
Supervising Deputy Attorney General

/s/ Noah Golden-Krasner  
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