

State of California  
California Regional Water Quality Control  
Board Santa Ana Region

Order No. R8-2020-0044

Waste Discharge Requirements  
for  
San Bernardino County Environmental Management Division, Flood Control District  
  
Cucamonga Basins Nos. 6, 7, and 8 Maintenance Project  
City of Upland, San Bernardino County

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Santa Ana Water Board) finds that:

1. This Order is for Waste Discharge Requirements (WDRs) for the San Bernardino County Environmental Management Division, Flood Control District (discharger) and its Cucamonga Basins Nos. 6, 7, and 8 Maintenance Project (Project). The discharger proposes to maintain and operate this 66.58-acre sequence of soft-bottomed basins and associated infrastructure for the stated purposes of runoff detention from Upland's 2,563-acre upper watershed, protection of life and property from 100-year floods, and groundwater recharge.

WDRs are necessary to address impacts of dredged and fill material on the beneficial uses of waters of the State (WOTS). On April 20, 2020, the discharger submitted an Application for a Clean Water Act Section 401 Water Quality Standards Certification (Certification) and Report of Waste Discharge (ROWD). The Project was assigned the Santa Ana Water Board WDID No. 362020-08. On April 30, 2020, Santa Ana Water Board staff determined that the proposed discharges of fill would be to waters of the United States (WOTUS), which are considered WOTS, and to non-federal WOTS. Therefore, these WDRs will serve as a Certification per Clean Water Act section 401.

An application fee of \$169,099.00 was received on April 20, 2020. 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.

On May 19, 2020, the Santa Ana Water Board found the Application to be incomplete and required the discharger to revise and submit a habitat maintenance guidebook to serve as a mitigation plan for the new work. On September 1, 2020, the discharger provided additional information and committed to submitting the guidebook. On September 11, 2020, the discharger was notified that the Application was complete.

2. This Order regulates the discharge of excavation from, and fill material to, both WOTUS and WOTS. Therefore, this Order will serve as a Certification for federal permitting by the U.S. Army Corps of Engineers (USACE) under Nationwide Permit Nos. 3 (“Maintenance”) and 31 (“Maintenance of Existing Flood Control Facilities”).
3. The three Cucamonga Basins and their connectors are located in northeastern Upland (Attachments A and B), south of State Route 210 and 19<sup>th</sup> Street, and west of the Cucamonga Creek Channel.
  - Basin 6 (Attachment C) is immediately east of the intersection of Campus Drive and the western continuation of 19<sup>th</sup> Street. Basin 6 is the largest, and most northern and upstream, of the Basin sequence (Finding 4). Basin 6 is divided into three successively lower Subbasins (A1, A2, and A3) and includes the curving Connector Channel (“Gooseneck”) toward Basin 7 as far as Colonies Parkway (County Basin ID No. 1-306-4B; Assessor Parcel No. (APN) 1044-641-58; Latitude 34.129231° N, Longitude 117.635128° W).
  - Basin 7 (Attachment D) is considered to include the rock-lined Connector Channel segment from Colonies Parkway to Califlora Street. Farther downstream of Califlora Street, Basin 7 itself is a vegetated depression northwest of the intersection of Tanglewood Avenue and Hummingbird Lane. A triple-box culvert beneath that intersection connects Basin 7 to downstream Basin 8 (County Basin ID No. 1-304-4B; APN 1044-641-22 and APN 1044-641-23; Latitude 34.125937° N, Longitude 117.626882° W).
  - Basin 8 (Attachment E) is the most southern of the three Basins and is situated between Hummingbird Lane and, to the south, Baseline Road. Basin 8 has armored slopes but an earthen bottom, and its outlet is positioned near the bottom of its eastern slope to convey water below the slope and through a box-channel wall into Cucamonga Creek Channel (designated as WOTUS) (County Basin ID No. 1-304-4C; APN 1044-641-61; Latitude 34.122667° N, Longitude 117.621297° W).

The Project site is located on the Cucamonga Creek alluvial fan, within Santa Ana Hydrologic Unit HUC 18070203, in an un-sectioned area of Township 1 North, Range 7 West of the U.S. Geological Survey’s Mount Baldy 7.5-minute topographic quadrangle map.
4. The proposed maintenance program is derived from the discharger’s operations conducted under previous WDRs issued to a different discharger. In 2003, the Santa Ana Water Board issued Order No. R8-2003-0025 to “The Colonies Partners LP” for “The Colonies at San Antonio Project.” This residential project created basins from of the site’s original gravel pits and their isolated wetlands (non-federal WOTS). However, the discharger acquired the basins through a 2006 settlement with The Colonies Partners LP and agreed to carry out redesign of facility structures, their construction, and compensatory mitigation using the original Order No. R8-2003-0025.

Basin 6 was established in two phases of construction and mitigation:

- Phase 1 construction (2008-2010) included a new box inlet and forebay at the western end of Basin 6 (to introduce watershed runoff collected by the 20<sup>th</sup> Street storm drain) and an adjacent inlet for the 19<sup>th</sup> Street storm drain. Wet- and dry-weather runoff consolidates in Subbasin A, flows eastward in stepwise descent through Subbasin A2 into Subbasin A3, and pools on the south side of A3 at the base of a concrete spillway and control tower constructed by the discharger. The spillway structure acts as a dam to detain open water for recharge and to regulate flows continuing downstream. A box outlet part way up the spillway receives water rising between elevations 1510.0 and 1516.0 feet and conveys it through the spillway structure to the Connector Channel. The spillway top (elevation 1536.5 feet) would convey emergency overflow from Subbasin A3. The Connector Channel is lined with rock over its earthen bottom and slopes.
- Phase 2 mitigation (2010-2018) constituted the discharger's vegetative restoration of approximately 47 onsite acres of Basin 6, the Connector Channel, and Basin 7 under Order No. R8-2003-0025. A 2010 operations manual used for specific restoration procedures, "*Cucamonga Basin 6 Maintenance Guidebook November 2010*," was submitted with the Certification Application. The discharger installed recreational and aesthetic enhancements along a 1.6-mile trail system around much of Basin 6. These enhancements included overlook structures, interpretive signage, and protective fences and walls. Additional mitigation acres have been required offsite by the California Department of Fish and Wildlife (CDFW) as part of the discharger's continual Lake and Streambed Alteration Agreement (SAA) 6-2002-245.

In Basin 6, the discharger established and monitored success criteria for a combination of plant communities: wetland, open water, riparian, transitional, and to the rim of Basin 6, upland Riversidean Sage Scrub (RSS). Riparian plants and RSS were planted in the Connector Channel, Basin 7, and Basin 8. More riparian habitat developed facultatively. The discharger conducted irrigation until fall 2018, when Order No. R8-2003-0025 was found to be satisfied. Order No. R8-2003-0025 was rescinded by the Santa Ana Water Board on December 7, 2018.

5. Since completion of the Order No. R8-2003-0025 mitigation program, accumulated sediment and vegetational growth has generally obstructed flows through Basin 6 to the spillway base, and through the system downstream. Therefore, this Order would permit the following annual (or intermittent) maintenance operations to efficiently convey flows through all Basins and connectors: mechanized and hand clearing of native and non-native vegetation as needed; unclogging drainages; sediment and debris removal; herbicide treatments; and vector control.

Native and non-native vegetation and sediment would be cleared as necessary from flow pathways at the discharger's discretion. To promote recharge, some of this work would occur in unvegetated basin bottom. The discharger states that vegetation

removal in the Connector Channel and Basin 7 would be limited to non- native species outside of the original restoration. Vegetation removal in Basin 8 may be limited to the inlet area (north side). This Order would also allow limited grading of portions of the basin bottoms for any drop structure reconfiguration, as needed, or spillway or infrastructure repair.

The discharger owns and manages all of Basin 6 for the purposes of flood control and habitat restoration, though normally would not work in Subbasin A3. Subbasin A3 is leased from the discharger by the San Antonio Water Company (SAWCO) for the goal of surface water recharge into the Cucamonga Groundwater Management Zone (GMZ). SAWCO is permitted to grade 5.33 acres of Subbasin A3, remove sediment, and mitigate habitat disturbance up to elevation 1510 feet under a separate Certification (SARWQCB WDID No. 362017-32).

6. Both WOTUS and non-federal WOTS would be impacted by the annual removal of debris, sediment, and vegetation to clear pathways for flow. These are considered to be temporary, not permanent, impacts. A 2019 Jurisdictional Delineation, within survey area boundaries for each Basin (Attachments C, D, and E), determined existing acreages of WOTUS and non-federal WOTS, with corresponding acreages of proposed impacts. The discharger indicates that likely fewer acres would be affected. These reported acreages would accommodate the work:

- Basin 6 (56.68-acre footprint) – WOTUS (16.06 acres of jurisdictional area) consists of 15.37 non-wetland acres and 0.69 wetland acre. Impacts may occur to 10.02 acres of non-wetland WOTUS and to all of the 0.69 acre of wetland (10.71 acres of impacted WOTUS), in Subbasins A1 and A2 where the discharger would be working.

Of 20.34 acres of non-federal WOTS streambed, impacts may occur to 11.22 acres in Subbasins A1 and A2. Three small tributaries entering Basin 6 from the north are included in the total delineation but would not be affected.

- Basin 7 (4.70-acre footprint) – WOTUS (1.23 acres of jurisdictional area) consists of 1.23 acres of non-wetland waters. Of these acres, impacts may occur to 1.11 acres.

Of 2.34 acres of non-federal WOTS streambed, impacts may occur to 1.39 acres.

- Basin 8 (5.20-acre footprint) - WOTUS (1.42 acres of jurisdictional area) consists of 1.42 acres of non-wetland waters. Of these acres, impacts may occur to 1.35 acres.

Of 3.21 acres of non-federal WOTS streambed, impacts may occur to 1.64 acres.

In summary, of 18.02 onsite acres of non-wetland WOTUS, impacts by the discharger may occur to 12.48 acres of the Basin system (10.02 acres + 1.11 acres + 1.35 acres). Impacts may occur to all 0.69 acre of wetland waters. Therefore, total impacts to WOTUS may occur to 13.17 acres. Of 25.89 acres of non-federal WOTS, total impacts may occur to 14.25 acres of the Basin system (11.22 acres + 1.39 acres + 1.64 acres).

The 47 acres of created habitat among the Basins is differentiated into vegetational communities with reported ranges of acreages. Wetland habitat and open water, when grouped together, varies between 10.91 and 10.96 acres; however, 0.69 acre of specific wetland habitat was delineated in Basin 6, Subbasin A1 in 2019. Restored riparian habitat varies between 13.69 and 18.03 acres and includes 0.86 acre of southern willow scrub and 0.27 acre of southern cottonwood-willow riparian scrub. Mulefat scrub is transitional between riparian and upland communities and varies between 21.50 and 23.02 acres. Upland RSS was planted from the Basin 6 embankments to the rim and varies between 20.10 and 22.11 acres.

7. The discharger would provide compensatory mitigation for temporary impacts to the 13.17 acres of WOTUS and 14.25 acres of non-federal WOTS discussed in Finding 6. This mitigation would consist of ongoing maintenance in perpetuity and enhancement, where effective, for the restored habitat in Basin 6, the Connector Channel, Basin 7, and Basin 8.

The discharger's ROWD and Certification Application included the operations and maintenance plan used during the 2010-18 Basin 6 mitigation program, "*Cucamonga Basin 6 Maintenance Guidebook November 2010.*" This guidebook focuses on removal of invasive species in Basin 6. The discharger has committed to revise and submit an updated guidebook for continued habitat maintenance procedures, expanded to all three Basins and connectors. Some content intended for the revised guidebook was submitted on September 1, 2020 along with the commitment for the revision. The revised guidebook will emulate the "*2013 Habitat Mitigation and Monitoring Plan (HMMP)*" for the maintenance of the 47 acres of created habitat (Findings 4 and 6) in perpetuity. The discharger agreed to the HMMP as part of the CDFW SAA and record a conservation easement (HMMP p.1, 10) compatible with easements to SAWCO and the City of Upland.

Where habitat enhancement to reduce gaps appears necessary, beyond facultative regeneration, planting of native species may be conducted using any preferred method (onsite cuttings, seeds, etc.). This Order does not impose hydroseeding, irrigation, specific budgeting, or a mitigation ratio.

Wetland acreage in Subbasin A1 is subject to clearing but should reconstitute from episodes of bankfull inundation. Periods of submergence should yield hydric soils and no net loss of wetlands, satisfying the State Wetland Conservation Policy (Executive Order W-59-93, "No Net Loss" policy for wetlands).

An annual report summarizing each year's maintenance in all three Basins, including efforts to maintain habitat, would be submitted to the Santa Ana Water Board by each anniversary date of this Order's adoption. The destination and approximate cubic yards of excavated sediment removed from the Basins that year would be reported.

8. The WOTUS pond, riparian, and wetland bodies are considered WOTS. Marginal banks and tributaries have been delineated as non-federal WOTS subject to the jurisdiction of the CDFW and the Santa Ana Water Board. According to the tributary rule of the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan, 1995, as amended), the beneficial uses of Cucamonga Creek, Reach 1 are extended to the three Basins. The beneficial uses are Groundwater Recharge (GWR), Non-Contact Water Recreation (REC2), Limited Warm Freshwater Habitat (LWARM), and Wildlife Habitat (WILD). Five State special status bird species have been identified utilizing the Basins but are not listed as rare, threatened, or endangered (RARE).

In Basin 6, the Cucamonga GMZ underlies Subbasin A3, and the Chino North GMZ underlies Subbasins A2 and A1. The beneficial uses of the GMZs are Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), and Industrial Process Supply (PROC). No impairment of the above beneficial uses would result from Project activities.

9. The Santa Ana Water Board has the authority to regulate the discharge of excavated and filled materials (considered a waste under the California Water Code, or CWC) through the issuance of WDRs, pursuant to CWC section 13263. The Santa Ana Water Board has determined that WDRs are necessary to adequately address the Project's ongoing temporary impacts on the beneficial uses of all WOTS, including WOTUS and non-federal WOTS.
10. CWC section 13263 authorizes the Santa Ana Water Board, after any necessary hearing, to prescribe requirements as to the nature of any proposed discharge with relation to the conditions existing in the excavation and fill areas or receiving waters into which the discharge is made. The requirements must implement any relevant water quality control plans that have been adopted and take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisances, and the provisions of CWC section 13241. In accordance with CWC section 13263, subdivision (g), all discharges of waste into WOTS are privileges, not rights, and the WDRs in this Order shall not create a vested right to discharge and are subject to modification or rescission.
11. Pursuant to CWC section 13267, the Santa Ana Water Board, in establishing or reviewing any WDRs or water quality control plans, or in connection with any action relating to any plan or requirement authorized by CWC Division 7, may investigate the quality of a WOTS within its region. In conducting such an investigation, the Santa Ana Water Board may require that any person who has discharged or who proposes to discharge waste within the region furnish, under penalty of perjury, technical or monitoring reports. The burden, including costs, of these reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports, which are necessary to ensure that the discharge of excavated and fill material complies with WDRs and is protective of the environment.

12. The WDRs in this Order are adopted pursuant to CWC sections 13263 and 13267 to regulate the discharge of fill material to WOTS. The WDRs set forth the requirements, prohibitions, and other conditions to implement the Basin Plan, as well as the discharger's responsibilities for monitoring and reporting. The discharger is responsible for ensuring compliance with the WDRs.
13. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring that discharges not exceed maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.
14. Pursuant to California Code of Regulations (CCR) Title 14, Chapter 3, section 15096, the Santa Ana Water Board as a responsible agency is required to consider documents prepared by the lead agency in compliance with the California Environmental Quality Act (CEQA) to determine whether a Project should receive WDRs. A responsible agency has the responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the Project that it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by CCR section 15091, and if necessary, section 15093 for each and every significant impact of the Project.
15. On February 14, 2018, the discharger, as lead agency, adopted an Initial Study and Mitigated Negative Declaration (IS/MND, SCH No. 2017081006) for the Project, and on the same day filed a Notice of Determination with the Clerk of the San Bernardino County Board of Supervisors. As required by CCR section 15096, in approving these WDRs, the Santa Ana Water Board has considered the IS/MND adopted by the discharger and considered those sections of the IS/MND pertaining to impacts to water quality standards (April 4, 2018 letter). Based on additional mitigation and the conditions set forth in these WDRs, potentially adverse impacts to water quality standards should be reduced to a less than significant level and beneficial uses protected, if all stated mitigation and conditions are performed.
16. The Santa Ana Water Board has considered antidegradation pursuant to State Water Resources Control Board (State Water Board) Resolution No. 68-16 and Title 40, Code of Federal Regulations section 131.12 and finds that the discharge permitted under this Order is consistent with those provisions. State Water Board Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on special findings. Minimal water quality degradation may be allowed only if any change in water quality is consistent with the maximum benefit to the people of the State; the degradation will not unreasonably affect present and anticipated beneficial uses; and the degradation will not result in violation of any applicable water quality control plan. Discharges must meet requirements that will result in the best practicable treatment or control to avoid pollution or a condition of nuisance.

Consistent with the antidegradation policy, any degradation resulting from the discharges authorized by this Order provides the maximum benefit to the people of the State. Flood protection is critical to the safety of the public. Moreover, this Order contains WDRs to ensure present and future beneficial uses are maintained or enhanced through compensatory mitigation (habitat maintenance) for authorized impacts to WOTS. The WDRs ensure that the highest level of water quality is maintained consistent with the maximum benefit to the people of the State by prohibiting certain discharges, requiring the implementation of best management practices (BMPs), and requiring the discharger to submit an annual report summarizing operations to maintain the Basins and maintenance of non-cleared habitat in all Basins.

17. The Santa Ana Water Board has notified the discharger and other interested agencies and persons of its intent to prescribe WDRs for the discharge and has provided them with an opportunity to submit their written views and recommendations.

**IT IS HEREBY ORDERED** that the discharger, in order to meet the provisions contained in Division 7 of the CWC and regulations adopted thereunder, shall comply with the following:

**A. Discharge Specifications**

1. No activities associated with the Project shall cause or threaten to cause a nuisance or pollution as defined in CWC section 13050.
2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited. Herbicide or pesticide discharges from application treatments shall comply with State Water Board General NPDES Permits CAG990005 (Order No. 2013-0002-DWQ) and CAG990007 (Order No. 2011-0004-DWQ).
3. The groundwater beneath and in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.
4. The discharger shall comply with the local regulations associated with the Santa Ana Water Board's Municipal Stormwater Permit ("MS4") issued to San Bernardino County and co-permittees under NPDES No. CAS618036 and WDR Order No. R8-2010-0036, and subsequent iterations thereof. BMPs shall be conducted and inspected. If water is pumped from Subbasin A3 over the spillway for decanting purposes, then water clarity shall meet the regionwide Basin Plan objective of 75 mg/l for total suspended solids in both the MS4 permit and *De Minimis* permit Order No. R8-2020-0006 (pp.45-49). SAWCO is permitted to transfer untested silty water from Subbasin A3 to Subbasin A2 in order to dry the Subbasin A3 bottom.
5. The discharge of fill material shall be limited to the placement of native soil fill excavated from the basins and inert materials that may be needed for

infrastructure repairs, as defined in Division 2, Title 27 of CCR section 20230, unless authorized by the Santa Ana Water Board.

**B. Discharger Prohibitions**

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes, into basins and channels and any place where they would contact or be eventually transported to surface waters is prohibited.
2. The discharge of oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate NPDES permit are prohibited.
5. During operations, there shall be no onsite fueling, lubrication, changing of oil or other equipment fluids and their filters, or any other maintenance or storage of construction equipment within or next to basins, channels, or other surface runoff conveyances.

**C. Provisions**

1. Prior to the onsite resumption of Project activities, the discharger shall revise its operational Guidebook for Basin 6 habitat creation, "*Cucamonga Basin 6 Maintenance Guidebook November 2010*," into an updated plan for expanding habitat maintenance to all Basins, including 6, 7, 8, and connectors.
2. The discharger shall maintain a copy of this Order at the Project site whenever episodes of maintenance are conducted, so that it is always available to operating personnel, who shall be familiar with the Order's content.
3. The discharger shall comply with all of the requirements of this Order. Any violation of this Order:
  - a) constitutes a violation of the CWC;
  - b) may constitute a violation of the Clean Water Act and its regulations; and

- c) is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order, or a combination thereof.
4. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
5. The provisions of this Order are severable and, if any provision of this Order or the application of any provisions of this Order to any circumstance is held valid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
6. The filing of a request by the discharger for modification, revocation, and re-issuance, or termination of this Order, or a notification of planned discharges or anticipated non-compliance does not stay any requirements of this Order.
7. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, State, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
8. This Order does not convey any property rights of any sort, or any exclusive privilege.
9. This Order is not transferable in its entirety or in part to any person or organization, except after notice to the Santa Ana Water Board in accordance with the following terms:
  - a. The discharger shall notify the Santa Ana Water Board by submitting a Transfer of Property Ownership Report of any change in ownership or interest in ownership of the Project area. The discharger and purchaser shall sign and date the notification and provide such notification to the Santa Ana Water Board at least ten (10) days prior to the transfer of ownership. The purchaser shall also submit a written request to the Santa Ana Water Board to be named as the discharger in a revised order.
  - b. Until such time as this Order has been modified to name the purchaser as the discharger, the discharger identified in this Order shall continue to be responsible for all requirements set forth in this Order.

10. In the event of any change in control or ownership of land presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Santa Ana Water Board.
11. The discharger shall submit an Annual Report each year on the anniversary of this Order, summarizing each year's Basin maintenance, vegetation clearing, ground disturbance and any construction, efforts to maintain habitat in the Project area, and the implementation status of BMPs.
12. The discharger shall submit a monthly notification to the Santa Ana Water Board by the first working day of the month identifying location, activities, and planned dates of activities permitted by this Order planned in the month. Compliance with any location specific special conditions shall be included with the monthly notification.
13. In the event that ongoing maintenance by the discharger ceases, the discharger shall submit a "Request for Notice of Project Complete Letter" when maintenance and any required post-maintenance monitoring is complete and no further Project activities will occur. This request shall be submitted to Santa Ana Water Board staff following completion of all Project activities. Upon approval of the request, Santa Ana Water Board staff will issue to the discharger a "Notice of Project Complete Letter," which will end the post-discharge monitoring period and associated annual fees.
14. The discharger shall notify the Santa Ana Water Board at least forty-eight (48) hours prior to initiating work in water or stream diversions. Notification may be via telephone, email, delivered written notice, or other verifiable means.
15. Upon occurrence of an accidental discharge of hazardous materials or a violation of compliance with a water quality standard, Santa Ana Water Board staff may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.
16. If surface water is present, continuous visual surface water monitoring shall be conducted to detect accidental discharge of construction related pollutants (e.g., oil, grease, turbidity plume, or uncured concrete).
17. In-Water Work or Diversions: During planned work in water or stream diversions any discharge(s) to waters of the State shall conform to the following water quality standards. The discharger shall follow the sampling types and frequency requirements as outlined in Table 1.

- a. Oil and Grease. Waste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations that result in a visible film or in coating objects in the water, or that cause a nuisance or adversely affect beneficial uses.
- b. Oxygen. The dissolved oxygen content of surface waters shall not be depressed below 5 mg/L for waters designated WARM, as a result of controllable water quality factors. In addition, waste discharge shall not cause the median dissolved oxygen concentration to fall below 85 percent of saturation or the 95th percentile concentration or fall below 75 percent of saturation within a 30-day period.
- c. pH. The pH of inland surface waters shall not be depressed below 6.5 or raised above 8.5 as a result of waste discharge.
- d. Turbidity. Increases in turbidity that result from controllable water quality factors shall comply with the following: where natural turbidity is between 0 and 50 Nephelometric Turbidity Units (NTU), increases shall not exceed 20 percent; where natural turbidity is between 50 and 100 NTU, increases shall not exceed 10 NTU; and where natural turbidity is greater than 100 NTU, increases shall not exceed 10 percent. Changes in turbidity shall not adversely affect beneficial uses. Measurements of turbidity shall be taken 100 feet downstream of Project activities.
- e. Temperature. The temperature of waters designated WARM shall not be raised above 90°F June through October or above 78°F during the rest of the year as a result of controllable water quality factors.

<b>Table 1: Sample Type and Frequency Requirements</b>			
Parameter	Unit of Measurement	Type of Sample	Minimum Frequency
Oil and Grease	N/A	Visual	Continuous
Dissolved Oxygen	mg/L & % saturation	Grab	Once per day during in-water work
pH	Standard Units	Grab	Once per day during in-water work
Turbidity	NTU	Grab	Once per day during in-water work
Temperature	°F (or as °C)	Grab	Once per day during in-water work

19. This Order does not authorize any act that results in the taking of a threatened, endangered, or candidate species, or any act that is now prohibited or becomes prohibited in the future under either the California Endangered Species Act (Fish and Game Code, sections 2050-2097) or the federal Endangered Species Act (Title 16 U.S. Code sections 1531-1544). If a “take” will result from any act authorized under this Order held by the discharger, the discharger shall obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The discharger is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.
20. The discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five (5) years from the date of the sample, measurement, report, or application. Records may be maintained electronically. This period may be extended during the course of any unresolved enforcement action or litigation regarding this discharge or when requested by the Santa Ana Water Board.
21. The Santa Ana Water Board and other authorized representatives shall be allowed:
- a. Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
  - b. Access to copy any records that are kept under the requirements of this Order;

- c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
- d. To photograph, sample, and monitor for the purpose of assuring compliance with this Order.

22. This Order becomes effective on the date of adoption by the Santa Ana Water Board and will remain valid for five years from the date of this Order.

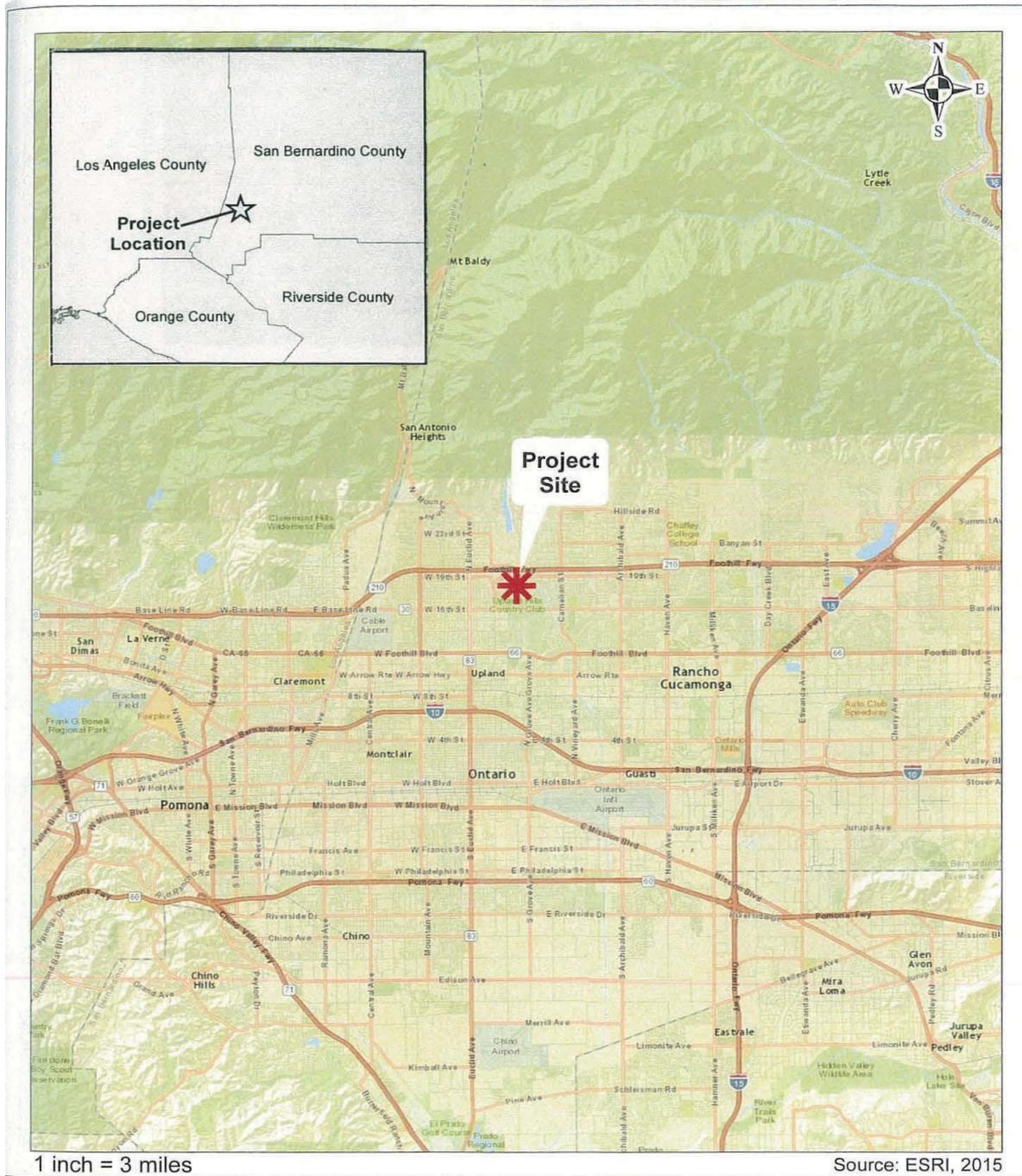
23. This Order certifies that any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), as long as all of the conditions listed in the Order are met.

I, Hope A. Smythe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on October 16, 2020.

**Jayne Joy**  Digitally signed by Jayne Joy  
Date: 2020.10.23 12:15:32  
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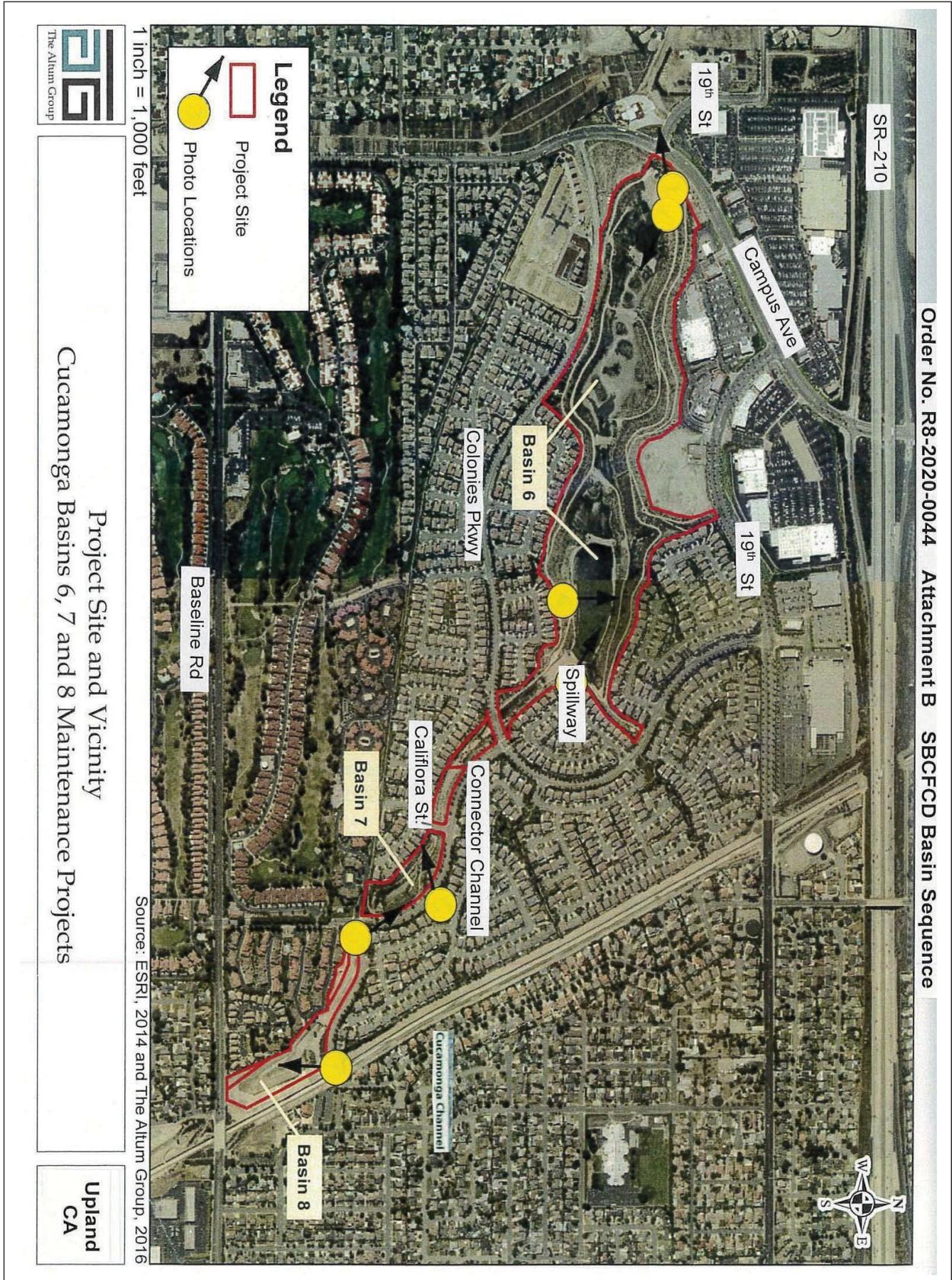
for  
Hope A. Smythe  
Executive Officer  
Santa Ana Regional Water Quality Control Board

Order No. R8-2020-0044 Attachment A Location Map



Regional Vicinity  
SBCFCD Cucamonga Basins 6, 7 and 8 and SAWCo Basin 6 Project Areas

Upland  
CA









California Regional Water Quality Control Board  
Santa Ana Region

October 16, 2020

STAFF REPORT

**ITEM: 8**

**SUBJECT:** San Bernardino County Environmental Management Division, Flood Control District, Cucamonga Basins Nos. 6, 7, and 8 Maintenance Project, City of Upland, San Bernardino County, Order No. R8-2020-0044

**DISCUSSION:**

California Water Code (CWC) section 13376 states that any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States (WOTUS) within the jurisdiction of this State shall file a report of the discharge in compliance with CWC section 13260. Section 13260(a) of the CWC requires a report of waste discharge (ROWD) be filed by any person discharging waste or proposing to discharge waste that could affect the quality of the waters of the State (WOTS). Under federal Clean Water Act (CWA) section 401, applicants for a federal permit or license for any activity that may result in a discharge of fill to WOTUS must obtain a state Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (USACE) CWA section 404 permits for dredged and fill material discharges. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations (CCR) Title 23, section 3830 et seq. Since November 2003, Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Board Order No. 2003-0017-DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that Have Received State Water Quality Certification."

Because of Supreme Court decisions that have limited the authority of the USACE to regulate discharges of dredged and fill material to WOTUS, certain discharges of dredged or fill material to surface WOTS are no longer subject to USACE jurisdiction (these waters are known as non-federal waters). As a result, these discharges are not subject to a CWA section 404 permit from the USACE and do not require Certification because federal waters have been redefined. In the absence of a project's need to obtain a Certification for waters now deemed only State waters, the State Water Board has asserted the State's authority to regulate discharges of dredged and fill materials to

WOTS under the Porter-Cologne Water Quality Control Act. Where discharges would occur to both WOTUS and non-federal WOTS, Waste Discharge Requirements (WDRs) can be issued to cover both impacts and act as a Certification for those impacts to WOTUS, in lieu of issuing a separate action.

On April 20, 2020, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board, SARWQCB) received from San Bernardino County Environmental Management Division, Flood Control District (discharger) an ROWD and a Certification Application (SARWQCB WDID # 362020-08) for the "Cucamonga Basins No. 6, 7, and 8 Maintenance Project" (Project). A fee of \$169,099.00 was submitted as part of the application materials. Supplemental information, consisting of the revision of an earlier habitat maintenance guidebook to use toward the proposed work, was required by Santa Ana Water Board staff. Therefore, the ROWD and Application were deemed incomplete on May 19, 2020. On September 1, 2020, the discharger committed to revising the guidebook and supplied additional information. The ROWD and Application were deemed complete on September 11, 2020.

The three earthen-bottom Cucamonga Basins and their connectors are located in northeast Upland (Attachments A and B of the Order), south of State Route 210 and 19<sup>th</sup> Street, and west of the Cucamonga Creek Channel:

- Basin 6 (56.68 acres, Attachment C of the Order) is immediately east of the intersection of Campus Avenue and the western continuation of 19<sup>th</sup> Street. Basin 6 is the most northern, upstream, and largest of the sequence of connected Basins. Basin 6 includes the curving Connector Channel ("Gooseneck") as far as Colonies Parkway.
- Basin 7 (4.70 acres, Attachment D of the Order) is considered to include the rock-lined Connector Channel segment from Colonies Parkway to Califlora Street. Farther downstream, Basin 7 itself is a vegetated depression northwest of the intersection of Tanglewood Avenue and Hummingbird Lane. Beneath that intersection, a triple-box culvert connects Basin 7 to downstream Basin 8.
- Basin 8 (5.20 acres, Attachment E of the Order) is situated between Hummingbird Lane and to the south, Baseline Road. The Basin outlet is positioned in the eastern concrete slope near the earthen bottom to convey flow below the slope and through a box-channel wall into Cucamonga Creek Channel.

Runoff from Upland's 2,563-acre upper watershed collects in stormdrains at 19<sup>th</sup> and 20<sup>th</sup> Streets and enters the west end of Basin 6 through constructed inlets. From west to east, flows descend in stairstep sequence through tiered Subbasins A1, A2, and A3. The Subbasins are bounded by "drop structure" checkdams. In Subbasin A3, water pools at the base of a spillway and control tower, built by the discharger to promote groundwater recharge and to regulate flows continuing downstream. Rising water in

Subbasin A3 enters a box outlet partway up the spillway, between elevations 1510.0 and 1516.0 feet, for conveyance to the Connector Channel. If the outlet were to be blocked, rising water would overtop the spillway at elevation 1536.5 feet. All flows enter the Connector Channel over rock-armored slopes and continue to Basins 7 and 8. Flows leave the system through the Basin 8 outlet to Cucamonga Creek (considered as WOTUS).

Through a 2006 agreement with residential site developer “The Colonies Partners, LP,” the discharger acquired the flood control portion of the site and built the infrastructure described above. The discharger performed onsite mitigation for facility creation. All work (2007-2018) satisfactorily accomplished the conditions required by the original WDRs issued to The Colonies Partners, LP (Order No. R8-2003-0025).

The discharger’s mitigation program created approximately 47 acres of wetland, open water, riparian, transitional, and upland (Riversidean Sage Scrub; RSS) plant communities in all Basins, focused in Basin 6 from basin bottom to rim. More habitat developed facultatively. The discharger irrigated habitat within its ownership boundaries (Attachment B) until fall 2018. Order No. R8-2003-0025 was found to be satisfied and was rescinded by the Santa Ana Water Board on December 7, 2018.

The discharger has submitted the ROWD and Certification Application to resume operations in the Basins as the solely responsible permittee. Aside from episodes of inundation in Basin 6, vegetative growth and accumulated sediment now generally impede normal flow to Subbasin A3 and through the downstream system. Therefore, the following annual (or intermittent) maintenance operations would be permitted by this Order to more efficiently convey flows through all Basins and connectors: mechanized clearing and hand-clearing of native and non-native vegetation, as needed; unclogging drainages; removing sediment and debris; controlling vegetation with herbicide treatments; and controlling vectors. Some of this work would occur in open bottom areas to promote recharge. Vegetation removal in the Connector Channel and Basin 7 would be limited to non-native species outside of the original restoration; removal in Basin 8 may be limited to the inlet (northern side). This Order would also allow limited grading of portions of the basin bottoms, including drop structure reconfiguration as needed, and any spillway or infrastructure repair.

Operations would achieve the discharger’s stated purposes of 100-year flood control protection for life and property; detention of regional runoff; and groundwater recharge. Surface water infiltrates to the Chino North groundwater management zone (GMZ) underlying Subbasins A1 and A2 and to the Cucamonga GMZ underlying Subbasin A3. The discharger’s lessee, the San Antonio Water Company (SAWCO), has water rights in Subbasin A3 and manages sediment removal and recharge in 5.33 acres of A3 under a separate Certification (SARWQCB WDID # 362017-32). The discharger would not usually operate in Subbasin A3 but is ultimately responsible for the entire Basin system. The impacted acres listed below would occur within Subbasins A1 and A2, in which the discharger would conduct work, as well as maintain habitat (acting as mitigation).

Both WOTUS and non-federal WOTS would be impacted by the clearing of sediment, debris, and vegetation in Basin bottoms. These are considered to be temporary, not permanent, impacts. A 2019 Jurisdictional Delineation (JD), within survey area boundaries for each Basin (Attachments C, D, and E), identified a total of 18.02 acres of non-wetland WOTUS and 0.69 acres of wetland WOTUS (all jurisdictional to USACE and the Santa Ana Water Board). The wetland is entirely in Basin 6 Subbasin A1 and exhibits all wetland attributes in USACE guidelines. The JD identified a total of 25.89 acres of non-federal streambed WOTS for all Basins (all jurisdictional to the California Department of Fish and Wildlife (CDFW) and to the Santa Ana Water Board). Three minor tributaries entering the north side of Basin 6 are included in non-federal WOTS.

The following are delineated acreages of WOTUS and non-federal WOTS for each basin and the corresponding acreages of proposed impacts. The discharger indicates that in practice, likely fewer acres would be affected. These reported acreages would accommodate all work:

Basin 6 (56.68 total acres) – WOTUS (16.06 acres) consists of 15.37 non-wetland acres and the 0.69 wetland acre noted above. Impacts may occur to 10.02 acres of non-wetland WOTUS and to all of the 0.69 acre of wetland (10.71 acres), in Subbasins A1 and A2 in which the discharger would be working. Periods of bankfull inundation in Basin 6 are expected to reconstitute wetlands in Subbasin A1, yielding no net loss of wetlands and satisfying the State Wetland Conservation Policy (Executive Order W-59-93, “No Net Loss” policy for wetlands). Of 20.34 acres of non-federal WOTS streambed, impacts may occur to 11.22 acres in Subbasins A1 and A2.

Basin 7 (4.70 total acres) – WOTUS (1.23 acres) consists of 1.23 acre non-wetland waters. Of that, impacts may occur to 1.11 acres. Of 2.34 acres of non-federal WOTS streambed, impacts may occur to 1.39 acres.

Basin 8 (5.20 total acres) - WOTUS (1.42 acres) consists of 1.42 acres non-wetland waters. Of that, impacts may occur to 1.35 acres. Of 3.21 acres of non-federal WOTS streambed, impacts may occur to 1.64 acres.

In summary, of 18.02 onsite acres of non-wetland WOTUS, impacts by this discharger may occur to 12.48 acres of the Basin system (10.02 acres + 1.11 acres + 1.35 acres). Impacts may occur to all 0.69 acre of wetland waters. Therefore, total impacts to WOTUS may occur to 13.17 acres. Of 25.89 acres of non-federal WOTS, impacts may occur to 14.25 acres of the Basin system (11.22 acres + 1.39 acres + 1.64 acres).

The tributary rule of the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan) allows the beneficial uses (BUs) of Cucamonga Creek, Reach 1 to be

applied to these tributary basins. These BUs are: Groundwater Recharge (GWR), Non-Contact Water Recreation (REC2), Wildlife Habitat (WILD), and Limited Warm Freshwater Habitat (LWARM). Water Contact Recreation (REC1) is not accessible, per discharger prerogative. Five State special-status bird species utilize the Basins but are not listed as rare, threatened, or endangered (RARE). The BUs of the Chino North and Cucamonga GMZs are: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), and Industrial Process Supply (PROC).

Pursuant to the California Environmental Quality Act (CEQA), the discharger as lead agency adopted an Initial Study/Mitigated Negative Declaration (IS/MND) for the Project on February 14, 2018. On that day, the discharger filed a Notice of Determination (NOD) with the Clerk of the County Board of Supervisors. The IS/MND included an analysis of operations and impacts for both the discharger and SAWCO.

Santa Ana Water Board staff has found that neither the IS/MND nor the ROWD proposed sufficient mitigation for future impacts to water quality standards of WOTS. At staff's request, the discharger has committed to the revision and submittal of the 2010 operations guidebook used for the 2010-18 Basin 6 mitigation program (*Cucamonga Basin No. 6 Maintenance Guidebook*), expanding it to habitat maintenance procedures for all three Basins in perpetuity. No mitigation ratio or hydroseeding is imposed. At minimum, the revised guidebook will emulate the "2013 *Habitat Mitigation and Monitoring Plan (HMMP)*" still in effect for the 47 acres of onsite habitat. The discharger agreed to the HMMP as part of the CDFW SAA and will record a conservation easement (HMMP p.1,10) compatible with adjacent easements to SAWCO and the City of Upland.

An annual report summarizing each year's maintenance in all three Basins, including efforts to maintain habitat, would be submitted by the anniversary date of this Order's adoption. The discharger would be required to report the destination and approximate cubic yards of any excavated sediment removed from the Basins that year.

Best Management Practices (BMPs) would be conducted and inspected under the local regulations associated with the Santa Ana Water Board's Municipal Stormwater Permit ("MS4") issued to San Bernardino County and co-permittees under NPDES No. CAS618036 and WDR Order No. R8-2010-0036, and subsequent iterations thereof.

Potentially adverse impacts to Water Quality Standards should be reduced to a less than significant level and Bus protected if all stated mitigation and conditions are performed.

#### RECOMMENDATION:

Adopt Order No. R8-2020-0044 as presented.

Comments were solicited from the following:

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