

California Regional Water Quality Control Board
Santa Ana Region

October 16, 2020

STAFF REPORT

ITEM: *

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 19th 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 19th 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 19th and 20th 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:

U.S. Environmental Protection Agency, Region 9-Wetland Section- Melissa Scianni - Scianni.Melissa@epa.gov

U.S. Army Corps of Engineers, Los Angeles Office – James Mace - James.E.Mace@usace.army.mil

U.S. Fish and Wildlife Service – James H. Thiede - James_Thiede@fws.gov

California Department of Fish and Wildlife- Eric Chan - Eric.Chan@wildlife.ca.gov and Carly Beck - Carly.Beck@wildlife.ca.gov

State Water Resources Control Board, Office of Chief Counsel - Teresita Sablan - Teresita.Sablan@waterboards.ca.gov

San Bernardino County Flood Control District – Harold Zamora - hzamora@dpw.sbcounty.gov and Linda Mawby - Linda.Mawby@dpw.sbcounty.gov

Tom Millington, Michael Baker International, consultant for San Bernardino County Flood Control District and San Antonio Water Company tommillington@mbakerintl.com