

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

October 15, 2021

STAFF REPORT

ITEM: 7

SUBJECT: I-15 Logistics, LLC, I-15 Logistics Project, City of Fontana within
Unincorporated San Bernardino County, Order No. R8-2021-0053

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 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 and U.S. Environmental Protection Agency's (USEPA's) periodic clarifications of WOTUS rules 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 not 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. 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 to WOTS under the Porter-Cologne Water Quality Control Act.

On May 14, 2021, Glen Lukos Associated, Inc. on behalf of I-15 Logistics, LLC, (discharger), submitted a Report of Waste Discharge (ROWD, application) for Discharges of Dredged or Fill Material to Waters of the State for a proposed industrial development, I-15 Logistics Project (hereinafter, Project). The Project was assigned the Santa Ana Regional Water Quality Control Board WDID No. 362021-03. An application fee of \$2,066.00 was submitted with the application. Additional Project impact fees totaling \$3,826.00 were submitted on September 13, 2021.

The discharger proposes to construct the Project, which encompasses the development and operation of a 1,175,720-square-foot logistics facility and the realignment of a segment of Lytle Creek Road. The logistics facility includes associated office space, parking, and site improvements. The onsite storm drain improvements include the installation of underground collection pipes and culverts along Lytle Creek Road. Surface runoff on the eastern and western ends of the Lytle Creek Road would be captured by four catch basins (two on the eastern side and two on the western side) and redirected to a detention basin. The discharger proposes to install a 3-acre on-site detention flood control basin on the southeast portion of the Project site. The detention basin would function to minimize surface runoff and downstream erosion as a result of newly developed impervious areas. The realignment of Lytle Creek Road includes the portion from the western Project boundary eastward to a new intersection with Sierra Avenue for improved traffic circulation. Maps showing the Project location are found in Attachment A of the tentative Order No. R8-2021-0053.

The Project would permanently impact a total of 0.32 acre (3,488 linear feet) of waters of the State, of which 0.01 acre consists of wetlands (158 linear feet) and 0.02 acre (635 linear feet) of riparian vegetation. Impacts to onsite WOTS would occur due to mass grading to prepare the site for construction of the logistic facility, debris basins, and Lytle Creek Road realignment, including culvert improvements.

The discharger determined that all of the WOTS represent non-federal waters, so no Certification would be required, and on July 30, 2020, the USACE issued an Approved Jurisdictional Delineation confirming that no WOTUS were present within the Project boundaries.

The discharger would provide compensatory mitigation for the permanent physical loss of 0.32 acre of WOTS through the purchase of 1.60 acres of enhancement credits from the Soquel Canyon Mitigation Bank in San Bernardino County. The mitigation purchase represents a 5:1 mitigation to impact ratio to offset Project impacts to the WOTS.

The Project activities would implement Best Management Practices (BMPs) to control and prevent discharges, such as sediment from erosion of soil surfaces and other pollutants that could impact surface waters. The discharger proposes that BMPs would be implemented as part of the storm water pollution prevention measures in accordance with appropriate stormwater permit requirements.

The City of Fontana, as the lead agency for compliance with the California Environmental Quality Act, certified an Environmental Impact Report (EIR) for the *I-15 Logistics and Zone Change* on June 23, 2020. The lead agency filed a Notice of Determination with the State Clearinghouse on June 26, 2020.

The Santa Ana Water Board staff has considered the EIR certified by the City of Fontana and subsequent information provided by the discharger. More specifically, the Santa Ana Water Board staff considered those sections of the EIR pertaining to impacts to water quality standards, the stormwater BMPs to be implemented, and the Conditions set forth in the tentative Order No. R8-2021-0053 and determined that 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. Compensatory mitigation includes the purchase of 1.60 acres of enhancement credits from the Soquel Canyon Mitigation Bank in San Bernardino County for impacts to 0.32 acre of WOTS (5:1 ratio of mitigation to impact).

For further information on the proposed Project, please contact Santa Ana Water Board staff Claudia Tenorio at Claudia.Tenorio@waterboards.ca.gov.

RECOMMENDATION:

Adopt Order No. R8-2021-0053 as presented.

Comments were solicited from the following:

U.S. Environmental Protection Agency (R9cwa401@epa.gov)
Deanna L. Cummings, U.S. Army Corps of Engineers, Los Angeles District
(Deanna.L.Cummings@usace.army.mil) (File No. SPL-2019-00863-DLC)
California Department of Fish and Wildlife, Region 6 (R6LSA@wildlife.ca.gov)
(LSA No. SBR-19376)
David Lancaster, State Water Board, Office of the Chief Counsel
(David.Lancaster@waterboards.ca.gov)
State Water Board, Division of Water Quality – Water Quality Certification Unit
(Stateboard401@waterboards.ca.gov)
Andrea Arcilla, I-15 Logistics, LLC (aarcilla@caprock-partners.com)
Lexi Kessans, Glenn Lukos Associates, Inc. (lkessans@wetlandpermitting.com)

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

Order No. R8-2021-0053

Waste Discharge Requirements
for
I-15 Logistics, LLC
I-15 Logistics Project
City of Fontana within Unincorporated 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 I-15 Logistics, LLC (hereinafter, discharger) for the I-15 Logistics Project (hereinafter, Project).
2. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent amendments (Basin Plan) and other plans and policies. The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the State, water quality objectives to protect those uses, and the State and federal antidegradation policies.
3. On January 23, 2020, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers (USACE) issued the Navigable Waters Protection Rule, which revised the definition of waters of the U.S. (WOTUS). On July 31, 2020, the USACE issued an Approved Jurisdictional Delineation that determined that no WOTUS were present within the Project boundaries.
4. WDRs are necessary to address impacts of dredged and fill material on the beneficial uses of waters of the State (WOTS).
5. This Order regulates the discharge of fill material to WOTS.
6. On May 14, 2021, Glen Lukos Associates, Inc., on behalf of the discharger, submitted a Report of Waste Discharge (ROWD; application) for the Project, and was assigned Santa Ana Water Board WDID No. 362021-03. An application fee of \$2,066.00 was received on May 14, 2021.
7. The ROWD was considered complete on June 14, 2021.

8. Additional Project impact fees totaling \$3,826.00 were submitted on September 13, 2021. The fee amount was determined as required by California Code of Regulations (CCR) title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as Category A - Fill & Excavation Discharges (fee code 84) with the dredge and fill fee calculator.
9. The discharger proposes to construct a 1,175,720-square-foot logistics facility on approximately 76 acres. The discharger also proposed to construct associated office space, parking, and site improvements. Additionally, the discharger proposed to realign a segment of Lytle Creek Road from the westernmost boundary of the Project site to the intersection with Sierra Avenue for improved traffic circulation.
10. The Project's storm drain improvements include the installation of underground collection pipes and culverts along Lytle Creek Road. Surface runoff on the eastern and western ends of the Lytle Creek Road would be captured by four catch basins (two on the eastern side and two on the western side) and redirected to a detention basin. The discharger proposes to install a 3-acre on-site detention flood control basin on the southeast portion of the Project site. The detention basin would function to minimize surface runoff and downstream erosion as a result of newly developed impervious areas.
11. The Project is located within the city of Fontana in unincorporated San Bernardino County (34.177676° N/ -117.447578° W). From Interstate 15 north, the site can be found by exiting Sierra Avenue and turning right, and then turning left on Lytle Creek Road. Maps showing the Project location are found in Attachment A of this Order.
12. The Project's onsite WOTS consist of seven unnamed drainages that flow towards the Hawker Crawford Channel via two reinforced concrete boxes and one reinforced concrete pipe. The Hawker Crawford Channel discharges to the Santa Ana River (Reach 3).
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 discharges to meet maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.
14. Santa Ana River (Reach 3) has the following designated beneficial uses (existing or potential):
 - i. Municipal and Domestic Supply (MUN)

- ii. Groundwater Recharge (GWR)
 - iii. Water Contact Recreation (REC 1)
 - iv. Non-contact Water Recreation (REC 2)
 - v. Warm Freshwater Habitat (WARM)
 - vi. Wildlife Habitat (WILD)
15. The Project would permanently impact a total of 0.32 acre (3,488 linear feet) of WOTS, of which 0.01 acre consists of wetlands (158 linear feet), and 0.02 (635 linear feet) consist of riparian vegetation. WOTS on-site would be impacted due to mass grading for site preparation and road realignment.
16. The discharger would provide compensatory mitigation for the permanent physical loss of 0.32 acre of WOTS through the purchase of 1.60 acres of enhancement credits at the Soquel Canyon Mitigation Bank in San Bernardino County. The mitigation purchase represents a 5:1 mitigation to impact ratio and would offset Project impacts to the WOTS.
17. The Santa Ana Water Board has the authority to regulate the discharge of dredged and fill materials through the issuance of WDRs pursuant to California Water Code (CWC) section 13263. The Santa Ana Water Board has determined that WDRs are necessary to adequately address the Project's potential impacts on the beneficial uses of WOTS.
18. 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 disposal area or receiving waters upon, or into which, the discharge is made or proposed. 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 nuisance, and the provisions of CWC section 13241. In accordance with subdivision (g) of CWC section 13263, all discharges of waste into WOTS are privileges, not rights, and the WDRs in this Order shall not create a vested right to continue to discharge and are subject to rescission or modification.
19. Pursuant to CWC section 13267, the Santa Ana Water Board, in establishing or reviewing any water quality control plan or WDRs, or in connection with any action relating to any plan or requirement authorized by CWC Division 7, may investigate the quality of any WOTS within its region. In conducting such an investigation, the Santa Ana Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, furnish, under penalty of perjury, technical or monitoring program 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. The WDRs contained in this Order incorporate requirements for water quality monitoring and Project reporting, which are necessary to ensure that the discharge of dredged and fill material complies with WDRs and is protective of the environment.

20. The WDRs in this Order are adopted pursuant to CWC sections 13263 and 13267. The WDRs set forth the requirements, prohibitions, and other conditions to implement the Basin Plan, and the discharger's responsibilities for monitoring and reporting. The discharger is responsible for ensuring compliance with the WDRs. In addition, this Order also regulates the discharge of fill material to WOTS.
21. Pursuant to CCR Title 14, Chapter 3, section 15096, as a responsible agency, the Santa Ana Water Board is required to consider California Environmental Quality Act (CEQA) documents prepared by the lead agency to determine a Project should receive WDRs. A responsible agency has 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.
22. The City of Fontana, as the lead CEQA agency, certified an Environmental Impact Report (EIR) for the I-15 Logistics and Zone Change on June 23, 2020. The lead agency filed a Notice of Determination with the State Clearinghouse (SCH No. 2018011008) on June 26, 2020.
23. As required by CCR section 15096, in approving this Order, the Santa Ana Water Board has considered the EIR certified by the City of Fontana and subsequent information provided by the discharger. More specifically, the Santa Ana Water Board considered those sections of the EIR pertaining to impacts to water quality standards. Based on the Conditions set forth in this Order, 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.
24. 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 specific 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.

25. 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 requirements 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, and requiring the discharger to submit an annual report.
26. 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 for public hearing and an opportunity to submit their written views and recommendations.

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

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.
3. The groundwater 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 conditions described in and required by the State Water Board's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ, as amended by Order No. 2012-0006-DWQ; NPDES No. CAS000002) and any subsequent iterations thereof.
5. The discharger shall comply with the local regulations associated with the Santa Ana Water Board's Municipal Stormwater Permit issued to San Bernardino County and co-permittees under NPDES No. CAS618036 and WDR Order No. R8-2010-0036, and subsequent iterations thereof.

6. If construction dewatering discharges, including temporary stream diversions, are necessary to carry out the Project, the discharger shall comply with Santa Ana Water Board Order No. R8-2020-0006, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality.
7. The discharge of fill materials shall be limited to the placement of native fill and inert materials, as defined in CCR Title 27, Division 2, section 20230. The discharge of fill material other than native soil is prohibited, unless authorized by the Santa Ana Water Board.

DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes, into channels, surface waters, or any place where they would contact or be eventually transported to surface waters, including flood plains, 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 the grading and filling operation, 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 drainage areas or other surface runoff conveyances.

PROVISIONS:

1. Prior to the start of Project grading activities, the discharger shall submit to the Santa Ana Water Board the receipt of the purchase of 1.6 acres of enhancement credits at the Soquel Canyon Mitigation Bank in San Bernardino County.
2. Low impact development features and construction and post-construction best management practices (BMPs) shall be implemented as described in the preliminary Water Quality Management Plan submitted with the application.

3. The discharger shall maintain a copy of this Order at the Project site so that it is always available to site operating personnel. Key operating personnel shall be familiar with the Order's content.
4. The discharger shall comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the CWC, may constitute a violation of the federal Clean Water Act and its regulations, and 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.
5. 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.
6. 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 invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
7. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.
8. 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.
9. This Order does not convey any property rights of any sort, or any exclusive privilege.
10. 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 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.
11. In the event of any change in control or ownership of land or waste discharge facility 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.
12. The discharger shall submit an annual report each year on the anniversary of this Order. Annual reporting shall continue until a *Notice of Project Complete Letter* is issued to the discharger. The contents of the annual report shall include a construction summary, Project status and schedule (including ground disturbance, site clearing and grubbing, and site construction), and the implementation status of Best Management Practices during the active discharge period. If the Project has not started, the discharger shall provide an estimated start date and reasons for delay.
13. The discharger shall submit a *Commencement of Construction Report* at least seven days prior to start of initial ground disturbance activities.
14. The discharger shall submit a *Request for Notice of Completion of Discharges Letter* following completion of active Project construction activities, including any required restoration and discharger-responsible mitigation. This request shall be submitted to the Santa Ana Water Board staff within thirty days following completion of all Project construction activities. Upon acceptance of the request, Santa Ana Water Board staff will issue to the discharger a *Notice of Completion of Discharges Letter*, which will end the active discharge period and, if appropriate, associated annual fees.
15. The discharger shall submit a *Request for Notice of Project Complete Letter* when construction and any required post-construction monitoring is complete and no further Project activities will occur. This request shall be submitted to Santa Ana Water Board staff within thirty days following completion of all Project activities. Upon approval of the request, the 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.
16. 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 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.

17. The Santa Ana Water Board and other authorized representatives shall be allowed to:

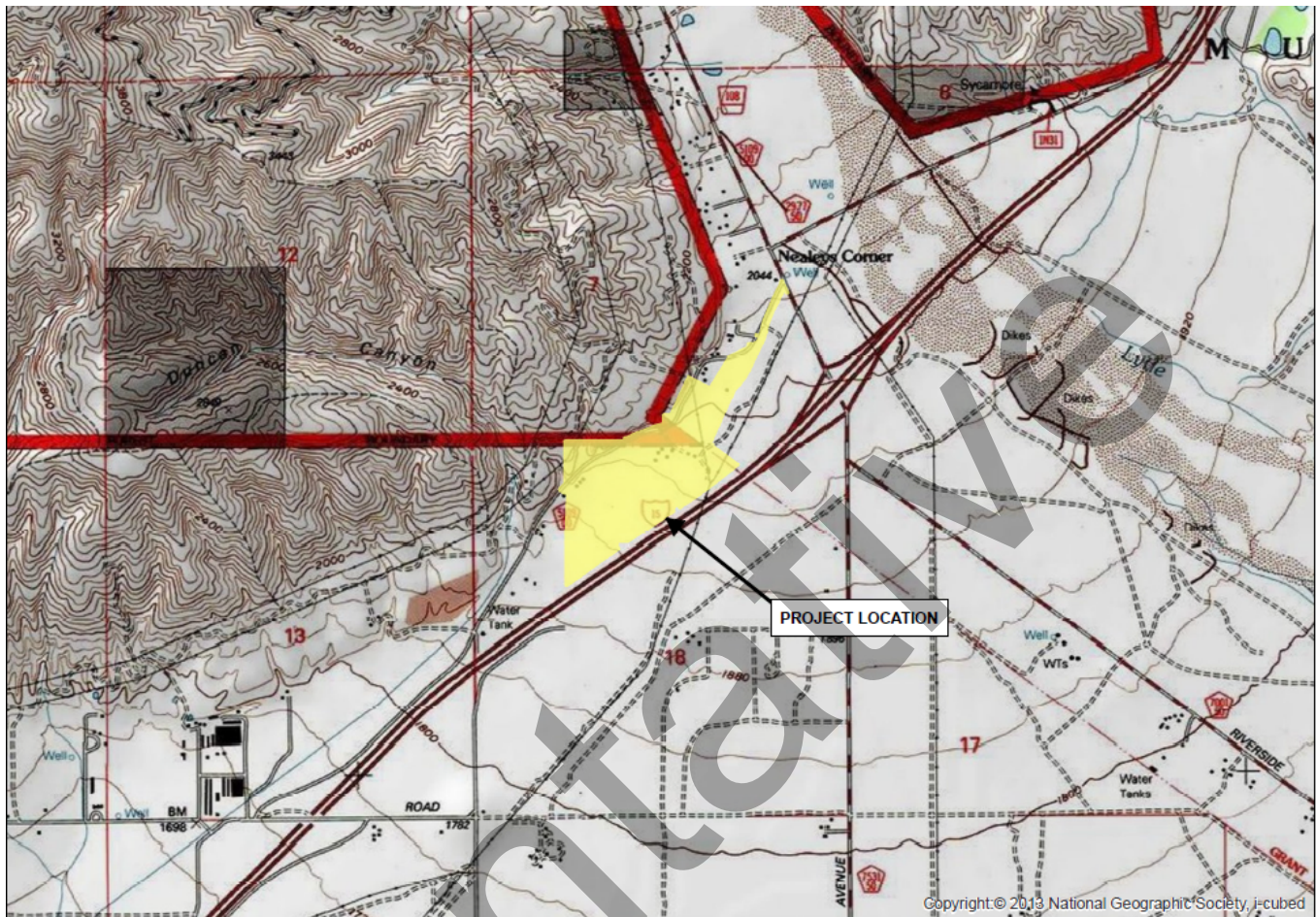
- a. Enter premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
- b. Access and copy any records that are kept under the requirements of this Order;
- c. Inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
- d. Photograph, sample, and monitor for the purpose of assuring compliance with this Order.

18. This Order becomes effective on the date of adoption by the Santa Ana Water Board.

19. This Order will remain valid for five years from the date of this Order.

I, Jayne Joy, 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 15, 2021.

JAYNE JOY, P.E.
Executive Officer



I-15 LOGISTICS PROJECT

Vicinity Map

GLENN LUKOS ASSOCIATES



Exhibit 2

