

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

June 3, 2022

STAFF REPORT

ITEM: *7

SUBJECT: Fontana Union Water Company (Discharger), Lytle Creek Diversion and Intake Facility (Project), Unincorporated San Bernardino County, Order No. R8-2022-0039

DISCUSSION:

Water Code section 13260, subdivision (a) 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 waters of the United States (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 (Regional Boards) (collectively, Water Boards) administer the Certification program in accordance with the requirements of California Code of Regulations 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"), unless there is a proposed surface water diversion to supplement surface water drinking supplies. These Certifications of water diversion activities are processed by the State Water Board's Division of Water Rights. However, the Water Boards retain their permitting authority under the Porter-Cologne Water Quality Control Act, Water Code section 13000 et seq. Permitting occurs in the form of Waste Discharge Requirements (WDRs) prescribed pursuant to Water Code section 13263, subdivision (a).

In October 2018, Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) staff visited the Project site and determined that the Project's ongoing maintenance activities have the potential to impacts the beneficial uses of Lytle Creek.

In an October 24, 2018 email, Santa Ana Water Board staff indicated that if the Discharger were not applying for a federal permit, the Discharger would be required to submit an ROWD for the maintenance operations to rebuild the berm and excavate the settling pond. The USACE was included in that email correspondence; however, USACE staff never responded, and on May 18, 2021, the Discharger submitted an ROWD for the Project. Santa Ana Water Board staff discussed the ROWD with staff of the State Water Board's Division of Water Rights, who determined that since no federal permit was involved, then they would not be able to issue a Certification. Furthermore, Division of Water Rights staff determined that they would not process an ROWD for the maintenance operations, i.e., that the ROWD needed to be reviewed by the Santa Ana Water Board staff.

The ROWD was deemed incomplete on June 17, 2021. The Discharger submitted supplemental information requested by Santa Ana Water Board staff, and the ROWD was deemed complete on August 12, 2021.

An application fee of \$59,188.00 was received on August 12, 2021. The fee amount was determined as per California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as A - Fill and Excavation Discharge (fee code 84) with the dredge and fill fee calculator. The fee amount is based on the total 3.12 acres of impacts to WOTS from the maintenance activities of the earthen berm, soft plug, and settling pond.

Project Location:

The Project is located at Lytle Creek, tributary to the Santa Ana River in San Bernardino County (34°12'17.38" N/-117°27'58" W). The diversion and intake facility are within the boundaries of the San Bernardino National Forest. Maps showing the Project location are found in Attachment A of the Order. The U.S. Forest Service, Department of Agriculture has issued an easement for the Project.

Project Description:

The Project's purpose is to maintain structures and facilities to capture and divert stream flows in Lytle Creek to provide a reliable local water supply to the public for municipal and domestic use. These WDRs are for the Project's regular and ongoing maintenance activities. The Discharger proposes continuing the existing maintenance activities for the Lytle Creek diversion facilities, consisting of four components: concrete spillway, earthen berm, soft plug, and settling pond.

- i. Concrete Spillway: This portion of the facility is used when defining the required elevation of the soft plug. The surveyed elevation of the concrete spillway is 2,286 feet.

- ii. Earthen Berm: The intent of the earthen berm is to hold stream flows in the settling pond and to redirect water into the spillway for power generation and public water supply.
- iii. Soft Plug: The dimensions of the soft plug are designed to allow for routine breaching to maintain downstream fluvial and sediment transport processes. The soft plug has been maintained at no more than one (1) foot higher than the concrete spillway (elevation of 2,286 feet) and is intended to erode from a flood flow equaling two (2)-year intervals or greater (as measured at USGS stream gauge number 11062000, Lytle Creek).
- iv. Settling Pond: The purpose of the settling pond is to capture native silts and sands from the stream flows being diverted. The maximum settling pond dimensions are 350 feet south to north by 450 feet west to east by 15 feet deep. The total capacity of the settling pond is approximately 50 acre-feet.

The Project itself includes two regular and ongoing maintenance activities: (1) removal of accumulated sediment from the settling pond; and (2) reconstruction of the earthen berm and soft plug. The routine maintenance occurs as needed to clear debris and sediment, repair erosional damage to the earthen berm and soft plug, and recontour the Lytle intake facilities to capture stream flow. The excavated sediment from the settling pond is used to reconstruct the earthen berm and soft plug.

The soft plug and earthen berm are typically repaired as part of routine maintenance when there are no flows in Lytle Creek. However, emergency repairs are sometimes required to restore public service facilities following significant storm events or natural disasters. The settling pond is typically cleaned annually but may be cleared more frequently, if necessary. Dirt, sand, and debris are moved with a loader or tracked dozer. Depending on the impacts of significant storm events, natural disasters and/or other disruptions or delays the process of performing emergency or routine maintenance can take several days and require multiple pieces of equipment, if cleaning is associated with reestablishing the soft plug.

During a flood flow equal to a 2-year return interval, the soft plug is designed to erode and allow surface flows to bypass the intake facilities. This feature is necessary to protect infrastructure due to the velocity, volume, and quality of the water during these flood flows. Following flood flows equal to a 2-year return interval or greater, dirt, sand, and debris are moved with a loader or tracked dozer to reestablish the soft plug.

The total area of direct impacts encompassed by the earthen berm, soft plug, and settling pond is 3.12 acres. In addition to direct Project impacts from the maintenance activities, there would be impacts to 3.5 acres of WOTS related to rehabilitation and stabilization activities as required by the California Department of Fish and Wildlife (CDFW).

The potential impacts to WOTS would result from the removal of debris and sediment and reconstruction of the earthen berm and soft plug due to land disturbances and temporary impacts to water quality. The Project's diversion activities could also indirectly impact WOTS due to changes in the channel resulting in increased scour and changes in sediment transport downstream of the Project site.

In January 2021, the Discharger and the California Department of Fish and Wildlife (CDFW) entered into a Streambed Alteration Agreement (SAA) for the Project. CDFW has incorporated specific requirements in the SAA to enhance downstream native sediment transport. The SAA identifies two additional work zones: an area upstream from the settling pond where excavated substrate may be placed (Stabilization Site), and another area downstream from the earthen berm where sediment and native vegetation would be managed (Habitat Rehabilitation Area). The SAA requires that excavated sediment be used to reconstruct the earthen berm and soft plug and placed downstream to mimic natural sediment transfer within the Habitat Rehabilitation Area. If the settling pond has sediment beyond the contouring needs of the earthen berm, soft plug, and the Habitat Rehabilitation Area, the remainder of natural sediment would be staged at the Stabilization Site for drying and future use.

In addition, the SAA requires the Discharger to conduct short-term soft plug and hydrology maintenance and monitoring to document the disposition of the soft plug under varying hydrologic events for the term of the SAA. If the soft plug were not to be breached naturally within twenty-four (24) months following the issuance of the SAA, the soft plug must be manually breached and remain breached until at least one surface flow with a minimum discharge volume of 300 cubic feet per second (cfs) passes through Lytle Creek to maintain the downstream fluvial and sediment transport processes.

Additional CDFW requirements include the submittal and approval of a Long-Term Soft Plug and Hydrology Study (SPHS) within 24 months of the issuance of the SAA. The SPHS shall use standard, accepted methods or models to verify the expected failure rate of the soft plug and demonstrate that the ongoing use and maintenance of the diversion facility are achieving the objective of the Discharger's Diversion and Intake Facilities Operations and Maintenance Plan.

Compensatory Mitigation:

Compensatory mitigation is not required for the Project. The proposed maintenance activities would result in temporary impacts to water quality. In addition, the placement of sediment upstream (Stabilization Area) and downstream (Habitat Rehabilitation Area) of the diversion facilities are intended to maintain the natural sediment transfer process in Lytle Creek and minimize impacts to WOTS from increased scour and changes in sediment transport.

RECOMMENDATION:

Adopt Order No. R8-2022-0039 as presented.

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

TENTATIVE

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

Order No. R8-2022-0039

Waste Discharge Requirements
for
Fontana Union Water Company
Lytle Creek Diversion and Intake Facility
Unincorporated San Bernardino County

Findings

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

1. This Order prescribes Waste Discharge Requirements (WDRs) for the Lytle Creek Diversion and Intake Facility (Project) for the Fontana Union Water Company (Discharger).
2. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the operative Water Quality Control Plan for the Santa Ana River Basin (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 and water quality objectives (WQO) to protect those uses and incorporates state and federal antidegradation policies.
3. The Santa Ana Water Board has the authority to regulate the discharge of dredged and fill materials through the issuance of WDRs pursuant to Water Code 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 waters of the state (WOTS).
4. This Order regulates the discharge of fill and excavation material to WOTS. The Order is issued in compliance with the State Water Resources Control Board's (State Water Board) *State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (Dredge or Fill Procedures), which was adopted on April 2, 2019, became effective on May 28, 2020, and was revised April 6, 2021.

5. On May 18, 2021, the Discharger submitted a Report of Waste Discharge (ROWD or Application) for the Project, which was assigned Santa Ana Water Board WDID No. 362021-04.
6. An application fee of \$59,188.00 was received on August 12, 2021. The fee amount was determined as per California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as A - Fill and Excavation Discharge (fee code 84) with the dredge and fill fee calculator.
7. The Application was considered complete on August 12, 2021.
8. The Project's purpose is to maintain structures and facilities to capture and divert stream flows in Lytle Creek to provide a reliable local water supply to the public.
9. The Discharger proposes to continue the existing maintenance activities for the Lytle Creek diversion facilities, which consist of four components: concrete spillway, earthen berm, soft plug, and settling pond.
 - i. Concrete Spillway: This portion of the facility is used when defining the required elevation of the soft plug. The surveyed elevation of the concrete spillway is 2,286 feet.
 - ii. Earthen Berm: The intent of the earthen berm is to hold stream flows in the settling pond and to redirect water into the spillway for power generation and public water supply.
 - iii. Soft Plug: The dimensions of the soft plug are designed to allow for routine breaching to maintain downstream fluvial and sediment transport processes. The soft plug has been maintained at no more than 1 foot higher than the concrete spillway (elevation of 2,286 feet) and is intended to erode from a flood flow equaling 2-year intervals or greater.
 - iv. Settling Pond: The purpose of the settling pond is to capture native silts and sands from the stream flows being diverted. The maximum settling pond dimensions are 350 feet south to north by 450 feet west to east by 15 feet deep. The total capacity of the settling pond is approximately 50 acre-feet.
10. The Project includes two regular and ongoing maintenance activities: 1) removal of accumulated sediment from the settling pond, and 2) reconstruction of the earthen berm and soft plug.
11. The routine maintenance occurs, as needed, to clear debris and sediment, repair erosional damage to the earthen berm and soft plug, and recontour the Lytle

Creek diversion and intake facilities to capture stream flow. The excavated sediment from the settling pond is used to reconstruct the earthen berm and soft plug.

12. The soft plug and earthen berm are typically repaired as part of routine maintenance when there are no flows in Lytle Creek. However, emergency repairs are sometimes required to restore public service facilities following significant storm events or natural disasters. The settling pond is typically cleaned annually but may be cleared more frequently, if necessary. Dirt, sand, and debris are moved with a loader or tracked dozer. This work normally takes two to three days. Depending on the impacts of significant storm events, natural disasters and/or other disruptions or delays the process of performing emergency or routine maintenance can take several days and require multiple pieces of equipment, if cleaning is associated with reestablishing the soft plug.
13. During a flood flow equal to a 2-year return interval, the soft plug is designed to erode and allow surface flows to bypass the intake facilities. This feature is necessary to protect infrastructure due to the velocity, volume, and quality of the water during these flood flows. Following flood flows equal to a 2-year return interval or greater, dirt, sand, and debris are moved with a loader or tracked dozer to reestablish the soft plug.
14. In addition to using the excavated material to reconstruct the earthen berm and soft plug, the excavated material would be placed downstream (identified as the Habitat Rehabilitation Area) to mimic natural sediment transfer, as required by the California Department of Fish and Wildlife (CDFW).
15. After the reconstruction of the earthen berm, soft plug, and the Habitat Rehabilitation Area, any remaining excess excavated sediment would be staged at the Stabilization Site for drying and future use, as required by CDFW.
16. The Project is located at Lytle Creek, tributary to the Santa Ana River in San Bernardino County (34°12'17.38" N/-117°27'.58" W). The diversion and intake facility are within the boundaries of the San Bernardino National Forest. Maps showing the Project location are found in Attachment A of this Order. The U.S. Forest Service has issued an easement for the maintenance activities.
17. The potential impacts to WOTS beneficial uses would result from the removal of debris and sediment and reconstruction of the earth berm and soft plug due to land disturbances and temporary impacts to water quality.

18. The Project's diversion activities could also indirectly impact WOTS due to changes in the channel resulting in increased scour and changes in sediment transport downstream of the Project site.
19. The total area of direct impacts encompassed by the earthen berm, soft plug, and settling pond is 3.12 acres. In addition to direct Project impacts from the maintenance activities from the earthen berm, soft plug, and settling pond there would be approximately 3.5 acres additional impacts of WOTS related to rehabilitation and stabilization activities as required by the California Department of Fish and Wildlife (CDFW).
20. In January 2021, the Discharger and CDFW entered into a Streambed Alteration Agreement (SAA) for the Project. CDFW has incorporated specific requirements in the SAA to enhance downstream native sediment transport. The SAA identifies two additional work zones: an area upstream from the settling pond where excavated substrate may be placed (Stabilization Site), and another area downstream from the earthen berm where sediment and native vegetation would be managed (Habitat Rehabilitation Area). The SAA requires that excavated sediment be used to reconstruct the earthen berm and soft plug and placed downstream to mimic natural sediment transfer within the Habitat Rehabilitation Area. If the settling pond has sediment beyond the contouring needs of the earthen berm, soft plug, and the Habitat Rehabilitation Area, the remainder of natural sediment would be staged at the Stabilization Site for drying and future use.
21. In addition, the SAA requires the Discharger to conduct short-term soft plug and hydrology maintenance and monitoring to document the disposition of the soft plug under varying hydrologic events for the term of the SAA. If the soft plug were not to be breached naturally within twenty-four (24) months following the issuance of the SAA, the soft plug must be manually breached and remain breached until at least one surface flow with a minimum discharge volume of 300 cubic feet per second (cfs) passes through Lytle Creek to maintain the downstream fluvial and sediment transport processes.
22. Additional CDFW requirements include the submittal and approval of a Long-Term Soft Plug and Hydrology Study (SPHS) within 24 months of the issuance of the SAA. The SPHS shall use standard, accepted methods or models to verify the expected failure rate of the soft plug and demonstrate that the ongoing use and maintenance of the diversion facility are achieving the objective of the Discharger's Diversion and Intake Facilities Operations and Maintenance Plan.
23. No compensatory mitigation is required for the Project, as the proposed maintenance activities would result in only temporary impacts to water quality

and no permanent loss of beneficial uses. In addition, the placement of sediment upstream (Stabilization Area) and downstream (Habitat Rehabilitation Area) of the diversion facilities are intended to maintain the natural sediment transfer process in Lytle Creek and minimize impacts to WOTS from increased scour and changes in sediment transport.

24. Lytle Creek has the following designated beneficial uses (existing or potential): Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Supply (IND), Industrial Process Supply (PROC), Groundwater Recharge (GWR), Hydropower Generation (POW), Water Contact Recreation (REC1), Non-contact Water Recreation (REC2), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Rare, Threatened, or Endangered Species (RARE), and Spawning, Reproduction, and Development (SPWN).
25. This Order is adopted pursuant to Water Code section 13263, subdivision (a), which provides that the Santa Ana Water Board may, after any necessary hearing, prescribe requirements (WDRs) 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 WDRs 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 Water Code section 13241.
26. This Order is also adopted pursuant to Water Code section 13267, subdivision (b)(1), which authorizes, the Santa Ana Water Board to require technical and monitoring program reports, submitted under penalty of perjury, from persons discharging or proposing to discharge waste within the Santa Ana Region, in connection with the issuance of WDRs. 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. In accordance with Water Code section 13267, the burden, including costs, of generating these reports bears a reasonable relationship to the need for the report and the benefits to be obtained from them.
27. The Santa Ana Water Board finds that the Project falls under both "Class 1" (Existing Facilities) and "Class 4" (Minor Alterations to Land) categorical exemptions from the California Environmental Quality Act (CEQA; Public Resources Code, section 21000 et seq.). "Class 1" categorical exemptions apply where a project "consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or

no expansion of existing or former use.” (Cal Code Regs., tit. 14, section 15301.) “Class 4” categorical exemptions apply a project “consists of minor public or private alterations in the condition of land, water, and/or vegetation” including “[m]inor trenching and backfilling where the surface is restored” and “[m]aintenance dredging where the spoil is deposited in a spoil area authorized by all applicable state and federal regulatory agencies.” (Cal Code Regs., tit. 14, section 15304.) Here, the Project requires ongoing maintenance and operational activities of existing facilities; the Project entails ongoing operation and maintenance of water diversion facilities that are more than one hundred (100) years old and were approved before CEQA was enacted. The Santa Ana Water Board finds that the issuance of this Order and the activities described herein meet the “Class 1” and “Class 4” categorical exemption criteria and concludes that no exceptions to the CEQA exemptions apply.

28. Cucamonga Valley Water District (District) also concluded that the Project is categorically exempt from review under CEQA and filed a Notice of Exemption (NOE) with the State Clearinghouse (SCH) on February 27, 2020. The District acquired a majority of Fontana Union Water Company, which oversees the operation of the water supply from Lytle Creek. This Order also incorporates by reference the NOE analysis (SCH No. 2020020511) of the District.
29. The Santa Ana Water Board has considered the federal and state antidegradation policies (State Water Board Resolution No. 68-16 and 40 C.F.R. section 131.12) and finds that the discharge permitted under this Order is consistent with those policies. Filling wetlands, riparian areas, headwaters, and other waters causes partial or complete loss of the beneficial uses provided by those waters. Impacts to WOTS are reduced through avoidance and minimization to the maximum extent practicable and unavoidable loss of beneficial uses is offset with compensatory mitigation, including the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, and/or preservation of other WOTS. There are, however, no permanent impacts to WOTS from the Project, and the Santa Ana Water Board has determined that no compensatory mitigation is required for temporary impacts related to maintenance of existing facilities. This determination is made in compliance with the State Water Board’s Dredge and Fill Procedures.
30. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and California Code of Regulations, title 23, section 2050 et seq. Additionally, the Santa Ana Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Discharger, if the Santa Ana Water Board determines that the Project fails to comply with any of the conditions

of this Order, or when necessary to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act (Water Code, 13000 et seq.).

31. 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.
32. 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.
33. 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.
34. This Order does not convey any property rights of any sort, or any exclusive privilege. The ability to discharge waste is a privilege, not a right; nothing in this Order shall create a vested right to continue any discharges authorized herein, which are subject to rescission or modification. (Water Code, section 13263, subd. (g).)
35. 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 to submit their written comments. The Santa Ana Water Board, in a public meeting, heard and considered all comments pertaining to this discharge.

Requirements

IT IS HEREBY ORDERED that the Discharger, in order to meet the provisions contained in Water Code section 13000 et seq. 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 condition of nuisance, contamination, or pollution as defined in Water Code section 13050.
2. 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.

3. The discharge of fill materials shall be limited to the placement of native fill and "inert waste," as defined in California Code of Regulations, title 27, section 20230. The discharge of fill material other than native soil is prohibited.
4. The Discharger shall monitor the disposition of the soft plug under varying hydrologic events to demonstrate that the current soft plug is functioning as intended.
5. The Discharger shall maintain the elevation of the soft plug at no more than one foot higher than the maximum elevation (2,286 feet) of the concrete spillway at the southern end of the earthen berm.
6. The Discharger shall monitor and manually breach the soft plug at least every two (2) years, unless the soft plug is naturally breached.
7. The Discharger shall implement effective best management practices (BMPs) at all times to control the discharge of pollutants from the Project site. BMPs shall be implemented to control erosion and pollutants from areas associated with the maintenance activities.
8. The Discharger shall identify the limits of disturbance prior to initiating maintenance activities within WOTS. Such identification shall be properly maintained until maintenance is complete. Equipment, materials, or any other substances or activities that may impact WOTS outside of the limits of Project disturbance are prohibited.
9. All construction waste shall be contained and protected against wind and exposure to storm water at all times, unless being actively handled. Chemical, fuel, and lubricant containers shall be kept closed and protected from damage or upset at all times, unless being actively used.
10. Substances resulting from Project-related activities and that could be harmful to aquatic life shall not be discharged to soils or WOTS. Such substances shall include, without limitation: petroleum lubricants and fuels; cured and uncured cements; and epoxies, paints, and other protective coating materials.
11. The Discharger shall clean all equipment prior to entering WOTS. Motorized equipment shall not be maintained or parked in or near any stream crossing, channel, or lake margin in such manner that petroleum products or other pollutants from the equipment might enter these areas under any flow conditions. Vehicles shall not be driven, or equipment shall not be operated onsite in WOTS, except as necessary to complete the proposed Project.

B. Discharge Prohibitions

1. Temporary impacts to WOTS shall not exceed quantities identified in Finding 17.
2. The discharge of waste, in a manner or location other than as described in the ROWD or findings of this Order and for which valid waste discharge requirements are not in force, is prohibited.
3. Except for authorized fill discharges to WOTS, 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.
4. 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.
5. 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.
6. Discharges to surface waters of wastes or pollutants that are not authorized by this Order or regulated by a separate permit are prohibited.
7. 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.

C. Provisions

1. 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.
2. 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.
3. This Order is not transferable to any person without written approval by the Santa Ana Water Board's Executive Officer. Prior to any change in ownership, the Discharger shall notify the Santa Ana Water Board's Executive Officer in writing at least 30 days in advance. The notice must include a

- written transfer agreement between the Discharger and the new owner or operator. At a minimum, the transfer agreement must contain a specific date for transfer of responsibility for compliance with this Order and an acknowledgment that the new owner or operator is liable for compliance with this Order from the date of transfer. The Santa Ana Water Board may require modification or revocation and reissuance of this Order to change the name of the discharger and incorporate other requirements as may be necessary under the Water Code.
4. The Discharger shall submit an annual report each year no later than the anniversary of the effective date 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.
 5. The Discharger shall submit a *Commencement of Construction Report* at least seven days prior to start of initial ground disturbance activities.
 6. 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.
 7. 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.
 8. 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.
9. The Discharger shall forward a copy of the required CDFW reporting and monitoring to the Santa Ana Water Board staff at the same time they are due to CDFW.
 10. The Discharger must allow the Santa Ana Water Board, or an authorized representative, upon presentation of credentials and other documents as may be required by law, 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, or monitor for the purpose of assuring compliance with this Order.
 11. This Order becomes effective on the date of adoption by the Santa Ana Water Board.
 12. This Order will remain valid for ten (10) years from the date of this Order. The Discharger must file a new dredge and fill application in accordance with California Code of Regulations, title 23, division 3, chapter 9 not later than 180 days in advance of this expiration date. The application, with filing fee, will be discussed between the Discharger and Santa Ana Water Board staff regarding any need for additional information and changes in fees prior to the issuance of new WDRs.

Any person aggrieved by this Santa Ana Water Board action may petition the State Water Board for review in accordance with Water Code section 13320 and California Code of Regulations, title 23, section 2050 et seq. The State Water Board must receive the petition by 5:00 p.m. on the 30th day after the date of this Order; if the 30th day falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the statutes and

regulations applicable to filing petitions are available on the State Water Board's website and can be provided upon request.

Attachments:

Attachment A – Maps

Attachment B – Reports and Notifications

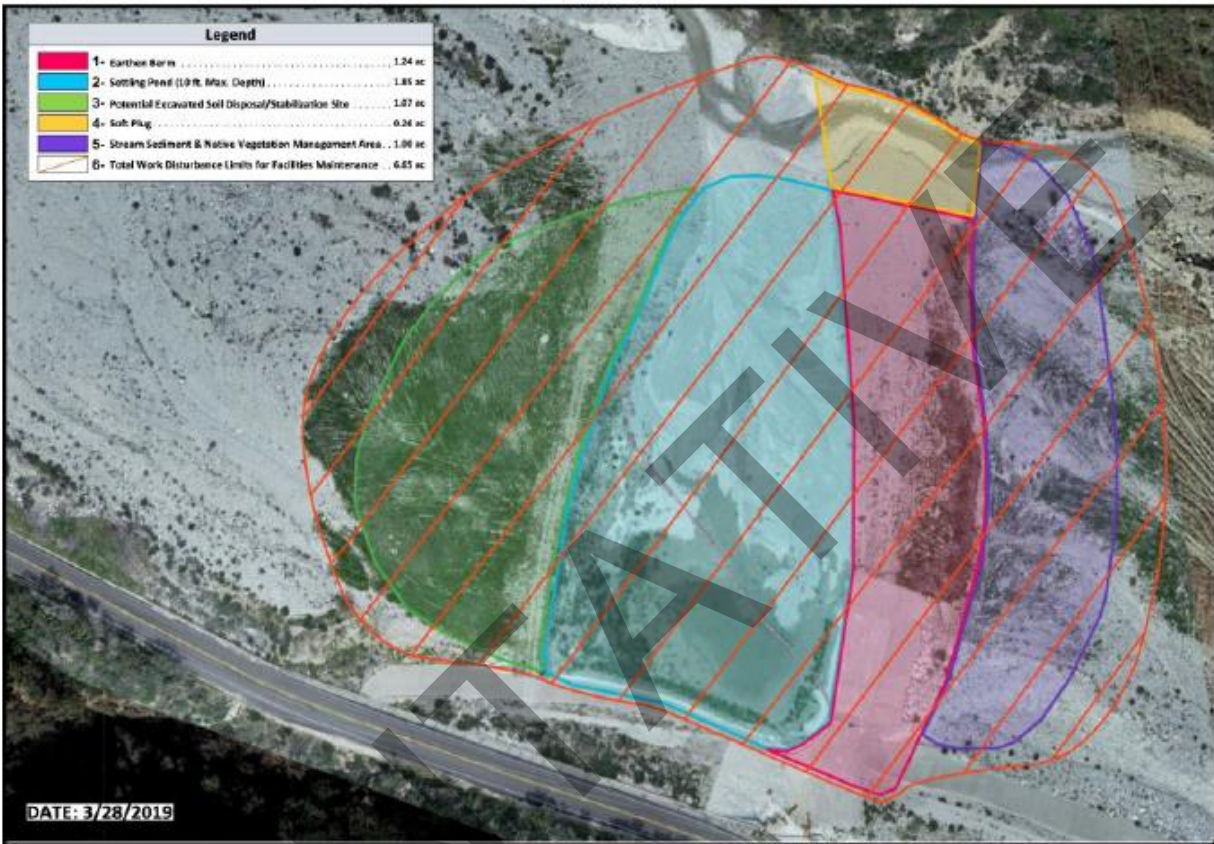
Attachment C – Signatory Requirements

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 June 3, 2022.

JAYNE JOY, P.E.
Executive Officer

Order No. R8-2022-0039
Fontana Union Water Company
Lytle Creek Diversion and Intake Facility
Attachment A

Maps



Copies of this Form

In order to identify your Project, it is necessary to include a copy of the Project-specific Report and Notification Cover Sheet below with your report (see page 3). Please retain a copy for your records.

Report Submittal Instructions

- 1) Check the box on the *Report and Notification Cover Sheet* next to the report or notification you are submitting.
 - a) Part A (Annual Report): Submitted annually from the anniversary of the Project effective date until a Notice of Project Complete Letter is issued.
 - b) Part B (Project Status Notifications): Used to notify the Santa Ana Water Board of the status of the Project schedule that may affect Project billing.
- 2) Sign the *Report and Notification Cover Sheet* and attach all information requested for the Report Type.
- 3) Electronic Report Submittal Instructions:
 - a) Submit signed *Report and Notification Cover Sheet* and required information via email to: RB8-401Reporting@waterboards.ca.gov
 - b) Include in the subject line of the email: Order R8-2022-0039 and Report Type Name

Definition of Reporting Terms

- 1) **Active Discharge Period:** The active discharge period begins with the effective date of this Order and ends on the date that the Discharger receives a Notice of Completion of Discharges Letter or, if no post-construction monitoring is required, a Notice of Project Complete Letter. The Active Discharge Period includes all elements of the Project, including site construction and restoration, and any Discharger-responsible compensatory mitigation construction.
- 2) **Request for Notice of Completion of Discharges Letter:** This request by the Discharger to the Santa Ana Water Board staff pertains to projects that have post construction monitoring requirements (e.g., if site restoration were required to be monitored for five (5) years following construction). Santa Ana Water Board staff will review the request and send a Completion of Discharges Letter to the Discharger upon approval. This letter will initiate the post-discharge monitoring period and a change in fees from the annual active discharge fee to the annual post-discharge monitoring fee.
- 3) **Request for Notice of Project Complete Letter:** This request by the Discharger to the Santa Ana Water Board staff pertains to projects that either have completed

Definition of Reporting Terms

post-construction monitoring and achieved performance standards, or have no post-construction monitoring requirements and no further Project activities are planned. Santa Ana Water Board staff will review the request and send a Project Complete Letter to the Discharger upon approval. Termination of annual invoicing of fees will correspond with the date of this letter.

Map/Photo Documentation Information

When submitting maps or photos, please use the following formats.

1. **Map Format Information:**

Preferred map formats of at least 1:24000 (1" = 2000') detail (listed in order of preference):

- **GIS shapefiles:** The shapefiles shall depict the boundaries of all Project areas and extent of aquatic resources impacted. Each shape should be attributed with the extent/type of aquatic resources impacted. Features and boundaries should be accurate to within 33 feet (10 meters). Identify datum/projection used and, if possible, provide map with a North American Datum of 1983 (NAD83) in the California Teale Albers projection in feet.
- **Google KML files** saved from Google Maps: My Maps or Google Earth Pro. Maps shall show the boundaries of all Project areas and extent/type of aquatic resources impacted. Include URL(s) of maps. If this format is used, include a spreadsheet with the object ID and attributed with the extent/type of aquatic resources impacted.
- **Other electronic format** (CAD or illustration format) that provides a context for location (inclusion of landmarks, known structures, geographic coordinates, or USGS DRG or DOQQ). Maps shall show the boundaries of all Project areas and extent/type of aquatic resources impacted. If this format is used, include a spreadsheet with the object ID and attributed with the extent/type of aquatic resources impacted.
- Aquatic resource maps marked on paper **USGS 7.5-minute topographic maps** or **Digital Orthophoto Quarter Quads (DOQQ)** printouts. Maps shall show the boundaries of all Project areas and extent/type of aquatic resources impacted. If this format is used, include a spreadsheet with the object ID and attributed with the extent/type of aquatic resources impacted.

- #### 2. **Photo-Documentation:**
- Include a unique identifier, date stamp, written description of photo details, and latitude/longitude (in decimal degrees) or map indicating location of photo. Successive photos should be taken from the same vantage point to compare pre/post-construction conditions.

| Report and Notification Cover Sheet |
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| Project: Fontana Union Water Company |
| Discharger: Lytle Creek Diversion and Intake Facility |
| Order No.: R8-2022-0039 |
| Order Effective Date: June 3, 2022 |

| Report Type Submitted |
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| <input type="checkbox"/> Report Type 1: Annual Report |
| <input type="checkbox"/> Report Type 2: Commencement of Construction Report |
| <input type="checkbox"/> Report Type 3: Request for Notice of Completion Discharges Letter |
| <input type="checkbox"/> Report Type 4: Request for Notice of Project Complete Letter |
| <input type="checkbox"/> Report Type 5: Transfer of Property Ownership Report |

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

STATEMENT OF AUTHORIZATION (include if authorization has changed since application was submitted)

I hereby authorize _____ to act in my behalf as my representative in the submittal of this report, and to furnish upon request supplemental information in support of this submittal.

| Report Type 1 | Annual Report |
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| Purpose: | Notify the Santa Ana Water Board staff of Project status during both the active discharge and post-discharge monitoring periods. |
| When to Submit: | Annual reports shall be submitted each year by the effective date. Annual reports shall continue until a Notice of Project Complete Letter is issued to the Discharger. |
| Report Contents: | <p>Part A:</p> <ol style="list-style-type: none">1. Project progress and schedule, including initial ground disturbance, site clearing and grubbing, road construction, site construction, and the implementation status of construction storm water BMPs. If construction has not started, provide estimated start date and reasons for delay. <p>Part B:</p> <ol style="list-style-type: none">1. Planned date of initiation of compensatory mitigation site installation.2. If installation is in progress, a map of what has been completed to date.3. If the compensatory mitigation site has been installed, provide a final map and information concerning attainment of performance standards contained in the compensatory mitigation plan.4. Mitigation Bank or In-Lieu Fee (ILF)5. Status or proof of purchase of credit types and quantities.6. Include the name of bank/ILF Program and contact information. |

| Report Type 2 | Commencement of Construction |
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| Purpose: | Notify the Santa Ana Water Board staff prior to the start of construction. |
| When to Submit: | Must be received at least seven (7) days to start of initial ground disturbance activities. |
| Report Contents: | <ol style="list-style-type: none">1. Date of commencement of construction.2. Anticipated date when discharges to waters of the State will occur.3. Project schedule milestones, including a schedule for onsite compensatory mitigation, if applicable. |

| Report Type 3 | Request for Notice of Completion of Discharger Letter |
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| Purpose: | Notify Santa Ana Water Board staff that post-construction monitoring is required and that active Project construction, including any mitigation and Discharger-responsible compensatory mitigation, is complete. |
| When to Submit: | Must be received by Santa Ana Water Board staff within thirty (30) days following completion of all Project activities. |
| Report Contents: | <ol style="list-style-type: none">1. Status of storm water Notice of Termination(s), if applicable.2. Status of post-construction storm water BMP installation.3. Pre- and post-photo documentation of all Project activity sites where the discharge of dredge and/or fill/excavation was authorized.4. Summary of Deviation discharge quantities compared to initial authorized impacts to waters of the State, if applicable.5. An updated monitoring schedule for mitigation for temporary impacts to waters of the State and Discharger-responsible compensatory mitigation during the post-discharge monitoring period, if applicable. |

| Report Type 4 | Request for Notice of Project Complete Letter |
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| Purpose: | Notify Santa Ana Water Board staff that construction and/or any post-construction monitoring is complete, or is not required, and no further Project activity is planned. |
| When to Submit: | Must be received by Santa Ana Water Board staff within thirty (30) days following completion of all Project activities. |
| Report Contents: | <p>Part A: Mitigation for Temporary Impacts (if applicable)</p> <ol style="list-style-type: none">1. A report establishing that the performance standards outlined in the restoration plan have been met for Project site upland areas of temporary disturbance that could result in a discharge to waters of the State.2. A report establishing that the performance standards outlined in the restoration plan have been met for restored areas of temporary impacts to waters of the State. Pre- and post-photo documentation of all restoration sites. <p>Part B: Discharger-Responsible Compensatory Mitigation (if applicable)</p> <ol style="list-style-type: none">1. A report establishing that the performance standards outlined in the compensatory mitigation plan have been met.2. Status on the implementation of the long-term maintenance and management plan and funding of endowment.3. Pre- and post-photo documentation of all compensatory mitigation sites.4. Final maps of all compensatory mitigation areas (including buffers). |

| Report Type 5 | Transfer of Property Ownership |
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| Purpose: | Notify Santa Ana Water staff of change in ownership of the Project or Discharger-responsible mitigation area. |
| When to Submit: | At least ten (30) working days prior to the transfer of ownership. |
| Report Contents: | <ol style="list-style-type: none"><li data-bbox="586 510 1406 825">1. A statement that the Discharger has provided the purchaser with a copy of this Order and that the purchaser understands and accepts:<ul style="list-style-type: none"><li data-bbox="634 625 1349 741">• the Order's requirements and the obligation to implement them or be subject to administrative and/or civil liability for failure to do so; and<li data-bbox="634 741 1398 825">• responsibility for compliance with any long-term BMP maintenance plan requirements in this Order.<li data-bbox="586 856 1406 1003">2. A statement that the Discharger has informed the purchaser to submit a written request to the Santa Ana Water Board to be named as the Discharger in a revised order. |

SIGNATORY REQUIREMENTS

All Documents Submitted In Compliance With This Order Shall Meet The Following Signatory Requirements

1. All applications, reports, or information submitted to the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) shall be signed and certified as follows:
 - a. For a corporation, by a responsible corporate officer of at least the level of vice-president.
 - b. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
 - c. For a municipality, or a State, federal, or other public agency, by either a principal executive officer or ranking elected official.
 2. A duly authorized representative of a person designated in items 1.a through 1.c above may sign documents if:
 - a. The authorization is made in writing by a person described in items 1.a through 1.c above.
 - b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
 - c. The written authorization is submitted to the Santa Ana Water Board staff contact prior to submitting any documents listed in item 1 above.
 3. Any person signing a document under this section shall make the following certification:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.”
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Response to Comments

Comment Deadline: May 16, 2021 by 5:00 p.m.

Tentative Waste Discharge Requirements (WDRs) for Dredged or Fill Discharges to Waters of the State
for
Fontana Union Water Company – Lytle Creek Diversion and Intake Facility, Unincorporated San Bernardino County
Order R8-2022-0039

The responses to comments received during the public comment period are set forth below. Please contact Claudia Tenorio at (951) 782-4963 or Claudia.Tenorio@waterboards.ca.gov with any questions.

| Comment Letter # | Date | Commenter | |
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| 1 | May 16, 2022 | Josh M. Swift, Fontana Union Water Company (FUWC) jmswift@fontanawater.com | |
| Comment # | Location in the WDRs | Comment | Staff Response |
| 1 | Finding No. 12 | Depending on the impacts of significant storm events, natural disasters, and/or other unforeseen disruptions or delays, the process of performing emergency and/or routine maintenance activities authorized by this Order can take longer than seven days. As such, FUWC request the SARWQCB recognize this possibility in the Order by removing the reference to seven days in Finding No. 12. | Finding No. 12 has been modified to acknowledge that the emergency and maintenance activities can take several days and has removed reference to seven days. The Order has been updated as shown below: <u>Depending on the impacts of significant storm events, natural disasters and/or other disruptions or delays the process of performing emergency or routine maintenance</u> However, the process can take several days up to seven days and require multiple pieces of equipment, if cleaning is associated with reestablishing the soft plug. |

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| 2 | Requirements A Discharge Specifications No. 5 | <p>FUCW believes the incorrect soft plug elevation is stated. FUWC believes that Requirements A Discharge Specifications No. 5 of the Oder should read:</p> <p style="padding-left: 40px;">The Discharger shall maintain the elevation of the soft plug at no more than one foot higher than the maximum elevation (2,286 feet) of the concrete spillway at the southern end of the earthen berm.</p> <p>The recommended language revision is consistent with project description <i>iii Soft Plug and Finding No. 9</i> of the Order. Additionally, the language revision is consistent with the project description in the California Department of Fish and Wildlife (CDFW) Streambed Alteration Agreement (SAA) (Notification No. 1600-2012-007-R6) issued to FUWC in January of 2021 for the Lytle Creek Diversion and Intake Facility.</p> | <p>Discharge Specification No. 5 has been modified to update the soft plug elevation. The Order has been updated as shown below:</p> <p>The Discharger shall maintain the elevation of the soft plug at <u>no more than one foot higher than</u> or below the maximum elevation (2,286 feet) of the concrete spillway at the southern end of the earthen berm.</p> |
| 3 | Requirements C Provisions No. 4 and Attachment B | <p>FUWC is required to submit an Operation and Maintenance Annual Report (Report) to CDFW pursuant to the SAA, annually for the term of the SAA that describes the operations and maintenance activities covered by the SAA during the previous calendar year. Report includes: (1) the location of the maintenance facility where maintenance activities were conducted; (2) a description of maintenance activities conducted; (3) information regarding emergency maintenance activities conducted, including a description of the type of maintenance activities conducted; (4) information regarding sensitive habitat and/or fish, plant, or wildlife species observed, including a summary of survey and/or habitat assessment results; and (5) a list of measures implemented during and after maintenance activities to avoid, minimize, and/or mitigate impacts to sensitive habitat and species, and Fish and Game Code sections 1602 resources.</p> | <p>The Discharger can satisfy the requirement to submit an annual report through submission of a copy of the CDFW Operation and Maintenance Annual Report, as long as the CDFW Operation and Maintenance Annual Report contains all of the required elements listed in Requirements Provision C.4 and Attachment B of the WDRs. The Discharger should indicate in a cover letter that it is submitting the CDFW Operation and Maintenance Annual Report in compliance with the annual report requirement in the WDRs and in lieu of a separate report to the Santa Ana Water Board. The</p> |

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| | | <p>FUWC is requesting that SARWQCB consider accepting a provided copy of the annual Report submitted to CDFW as meeting FUWC's compliance with Requirements C. Provisions No.4 of the Order.</p> <p>This request is consistent with other sections of the Order where the acceptance of CDFW monitoring and reporting is referenced, for example Requirements C. Provisions No.9 FUWC believes the annual Report submitted to CDFW, pursuant to the SAA, includes the required information in the Order's annual report, as well as, additional applicable maintenance activity information.</p> | <p>Discharger could also potentially submit a joint report addressed to both agencies. The Order has been modified as shown:</p> <p>The Discharger shall submit an annual report each year <u>no later than</u> on the anniversary <u>of the effective date</u> of this Order.</p> |
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