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SECRETARY FOR  
ENVIRONMENTAL PROTECTION

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## State Water Resources Control Board

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### WATER QUALITY ORDER NO. 2019-0008-EXEC CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

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**Effective Date:** April 2, 2019  
**Program Type:** Fill/Excavation  
**Project Type:** Routine Channel and Flood Control Maintenance Activities  
**Project:** Orange County Public Works (OCPW) County-Wide Long-Term Routine Maintenance Program – RGP 100 (Project)

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#### State Water Board Contact Person:

If you have any questions, please call State Water Resources Control Board (State Water Board) Staff listed above or (916) 341-5478 and ask to speak with the Water Quality Certification Unit Program Manager.

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**I. Order**

This Clean Water Act (CWA) section 401 Water Quality Certification action and Order (Order) and attachments A through G is issued at the request of Orange County Public Works (herein after Permittee) for the Project. This Order is for the purpose described in application and supplemental information submitted by the Permittee. The application was received on February 6, 2013. The application was deemed complete on November 4, 2018. Prior to receiving a complete application, State Water Board staff issued a notice of incomplete application and the Permittee responded to the request for application information on the following dates (Table 1).

<b>Table 1: Record of Notice(s) of Incomplete Application</b>	
Date of Notice of Incomplete Application	Date all requested information was received.
3/5/2015	11/4/2018

State Water Board staff requested additional information necessary to supplement the contents of the complete application and the Permittee responded to the request for supplemental information on the following dates (Table 2).

<b>Table 2: Record of Supplemental Application Information</b>	
Date of Request for Supplemental Information	Date all requested information was received.
10/29/2018	12/20/2018

Additionally, State Water Board Staff issued a Denial Without Prejudice on October 8, 2015.

**II. Public Notice**

The State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from December 27, 2013 to January 17, 2014. The State Water Board did not receive any comments during the comment period. Public notice regarding the IS/MND is described in Attachment C, CEQA Findings of Fact.

**III. Project Purpose**

The purpose of the project is to provide routine maintenance to Orange County Department of Public Works flood control facilities as authorized under U.S. Army Corps of Engineers (Corps) RGP 100.

**IV. Project Description**

This Order certifies Regional General Permit 100, issued by the Los Angeles District Army Corps of Engineers, which authorizes routine maintenance activities for 3,602 designated flood control facilities located within the Permittee’s right-of-way. Flood control maintenance activities include: channel, basin, and dam maintenance (i.e., vegetation and silt removal, slope maintenance and repair); landscape maintenance, vegetation control and removal; insect and rodent control; rip-rap installation and repair; structural inspection and cleaning; removal and replacement of concrete lining; and the repair and backfill of washouts.

Bridge maintenance activities include: maintenance of channel bed, and bank in the immediate vicinity of the affected bridges; repair and cleaning of concrete bridge elements within the channel (e.g., spalled and cracked wingwalls, abutments, piers, girders and underside of deck); and cleaning and painting of steel bridge members. Attachment B provides a complete list of authorized activities.

For all maintenance activities involving a discharge of fill authorized under this Order, the discharge of fill would be limited to no more than needed to restore the facilities to their maintenance baseline condition. Maintenance baseline is a description of the physical characteristics (e.g. depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally performed.

Attachment B provides a list of the facilities authorized by this Order, and information regarding those facilities.

#### **V. Project Location**

The Project will provide maintenance to facilities located throughout Orange County. Maps showing the Project location are found in Attachment A of this Order.

#### **VI. Project Impact and Receiving Waters Information**

The Project is located within the jurisdiction of the Santa Ana Regional Water Quality Control Board, and the San Diego Regional Water Quality Control Board (collectively Regional Water Boards). Project maintenance activities may occur throughout the thirteen (13) watersheds of Orange County identified in Attachment B. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the applicable water quality control plans (Basin Plan) for the regions and other plans and policies which may be accessed online at: [http://www.waterboards.ca.gov/plans\\_policies/](http://www.waterboards.ca.gov/plans_policies/). The Basin Plans include 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.

#### **VII. Description of Direct Impacts to Waters of the State**

Direct impacts to waters of the state will result from maintenance activities, including sediment and debris removal, mechanical vegetation removal, pesticide and herbicide applications, erosion repairs, side-slope tracking and/or reshaping, landscape maintenance, structure repair and/or replacement, rip-rap and grout repair, removal and replacement of concrete channel linings, washout backfill and repair and temporary surface water diversions to facilitate maintenance and repairs. Direct impacts from pesticide and herbicides are regulated under NPDES permits and shall comply with section XIII.H.5. Maintenance activities shall be restricted to the maintenance baseline and therefore will not result in a change to as-built dimensions as listed in Attachment B.

Direct impacts to waters of the state resulting from maintenance activities that occur within the maintenance baseline shall be considered temporary under this Order. The impacts are considered temporary because maintenance is restricted to as-built dimensions of existing facilities, and because it reoccurs in response to recurring needs, including channel sediment transport and accumulation processes, vegetation control, trash and debris removal and routine repairs. Maintenance activities are designed to restore the facility to the original maintenance baseline specifications. Project impact information can be found in Table 2 of Attachment B.

Direct impacts to waters of the state resulting from maintenance activities that occur outside of the maintenance baseline may be considered either temporary or permanent impacts.

Permanent impacts to waters of the state are not authorized by this Order. The following definitions apply:

**Permanent aquatic resource impacts** are the permanent loss of aquatic resource area or resource function resulting from a discharge of dredged or fill material that changes an aquatic area to dry land or changes the bottom elevation or dimensions of a waterbody or changes the surface elevation or dimensions of a wetland.

**Temporary aquatic resource impacts** are impacts to aquatic resources from maintenance activities within the maintenance baseline (e.g. impacts necessary to maintain conveyance of floodwaters as designed) and impacts to aquatic resources outside of the maintenance baseline that are short-term (e.g., waters temporarily filled, excavated, or drained where the area of the impacted aquatic resource, including the original contours and uses, is typically restored to pre-project conditions within one year of disturbance).

**Temporal loss** is the loss of resource functions and values not restored within one year of project activities.

### VIII. Avoidance and Minimization

As described in section VII, above, Project maintenance activities will avoid permanent impacts to aquatic resources. The Avoidance and Minimization Measures listed in the Mitigated Negative Declaration are to be conducted during all maintenance activities. These measures are incorporated by reference to this Order as described in Attachment C. All steps taken to first avoid, and then minimize, impacts to waters of the state to the maximum extent practicable shall be described by the Permittee in the NOI, (Attachment D).

In addition, facilities identified in this Order (Attachment B, Table 2) were specifically selected by the Permittee because they are not expected to impact threatened or endangered species or designated critical habitat, and/or historic properties/cultural resources that may be potentially eligible for listing on the National Register of Historic Places.

### IX. Compensatory Mitigation

No compensatory mitigation was required for permanent impacts because permanent impacts resulting in physical loss of waters are not authorized under this Order.

### X. California Environmental Quality Act (CEQA)

On May 21, 2013, the Permittee, as lead agency, adopted an initial study/mitigated negative declaration (IS/MND) (State Clearinghouse (SCH) No. [2012111011]) for the Project and filed a Notice of Determination (NOD) at the SCH on May 22, 2013. Pursuant to CEQA, the State Water Board has made Findings of Facts (Findings) which support the issuance of this Order and are included in Attachment C.

**XI. Petitions for Reconsideration**

Any person aggrieved by this action may petition the State Water Board to reconsider this Order in accordance with California Code of Regulations, title 23, section 3867. A petition for reconsideration must be submitted in writing and received within 30 calendar days of the issuance of this Order.

**XII. Fees Received**

An application fee of \$59,000 was received on May 20, 2013. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3), and was calculated as category A - Fill & Excavation Discharges (fee code 84) with the dredge and fill fee calculator. An additional fee of \$71,000 based on total Project impacts was received on February 12, 2019.

**XIII. Conditions**

The State Water Board has independently reviewed the record of the Project to analyze impacts to water quality and designated beneficial uses within the watersheds of the Project. In accordance with this Order, the Permittee may proceed with the Project under the following terms and conditions:

**A. Authorization**

Upon receipt of a Notice of Applicability (NOA) from the State Water Board, the Permittee is authorized to proceed with the maintenance activities in accordance with the terms and conditions of this Order, providing that the impacts to waters of the state within each maintenance facility shall not exceed as-built dimensions and grades of existing flood control facilities. These quantities are shown in Attachment B.

**Reporting and Notification Requirements**

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment E, including specifications for photo and map documentation during the Project. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment E, which must be signed by the Permittee or an authorized representative.

**1. Project Reporting**

- a. Annual Reporting:** The Permittee shall submit an Annual Monitoring Report each year on September 1 of each year in which an Annual Work Plan is completed. The Annual Report shall include all applicable ongoing maintenance activities and temporary impact restoration in the Project area, as described in Attachment E, including activities completed in the last twelve (12) months. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the Permittee.

## 2. Project Status Notifications

- a. Notice of Intent (NOI):** To obtain coverage under this Order, the Permittee shall:
- i. On an annual basis, submit a separate and complete Draft Annual Work Plan using the NOI (Attachment D) to the State Water Board with copies to the Regional Water Board(s) where the facilities are located at least 45 days before the start of maintenance but no later than the draft Annual Work Plan due date of May 1. The NOI for the Annual Work Plan will include a table of all the planned activities across the Water Quality Control Regions for the maintenance year so that all Regional Water Boards are notified of the full scope of the maintenance planned. The Water Boards will determine if the NOI is complete for their jurisdiction within 30 calendar days of receipt and notify the applicant of the determination. Additional NOIs may be submitted as necessary during the maintenance year to the appropriate Regional Water Board(s) and State Water Board
  - ii. The Permittee shall submit a Final Annual Work Plan no later than June 14 each year. Maintenance or stream category determinations for which the Water Boards' objections are unresolved within 30 days of receipt of the NOI shall be omitted from the Final Annual Work Plan.
  - iii. When the NOI is determined to be complete, the State Water Board will verify that the specific maintenance activities identified in the NOI comply with the terms and conditions of this Order.
  - iv. The State Water Board will issue either an NOA for the Final Annual Work Plan, informing the discharger that the proposed activity qualifies for authorization, or a Notice of Exclusion (NOE), which informs the discharger that the proposed activity does not qualify for Order authorization
  - v. The State Water Board will issue the NOA or NOE within 60 calendar days of the receipt of the Draft Annual Work Plan, or the Permittee may proceed with the activities submitted in the Final Annual Work Plan.
- b. Request for Notice of Project Complete Letter:** The Permittee shall submit a Request for Notice of Project Complete Letter when construction and/or any post-construction monitoring is complete,<sup>1</sup> and no further Project activities will occur. This request shall be submitted to State Water Board staff within thirty (30) days following completion of all Project activities. Upon approval of the request, the State Water Board staff shall issue a Notice of Project Complete Letter to the Permittee which will end the post discharge monitoring period and associated annual fees.

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<sup>1</sup> Completion of post-construction monitoring shall be determined by State Water Board staff and shall be contingent on successful attainment of restoration and mitigation performance criteria.

**3. Conditional Notifications and Reports:** The following notifications and reports are required as appropriate.

**a. Accidental Discharges of Hazardous Materials<sup>2</sup>**

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Wat. Code, § 13271):

- i. As soon as (A) Permittee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures then:
  - first call – 911 (to notify local response agency)
  - then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
  - Lastly follow the required OES procedures as set forth in:  
[http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill\\_Booklet\\_Feb2014\\_FINAL\\_BW\\_Acc.pdf](http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf)
- ii. Following notification to OES, the Permittee shall notify State Water Board, as soon as practicable (ideally within 24 hours). Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
- iii. Within five (5) working days of notification to the State Water Board, the Permittee must submit an Accidental Discharge of Hazardous Material Report.

**b. Violation of Compliance with Water Quality Standards:** The Permittee shall notify the State Water Board of any event causing a violation of compliance with water quality standards. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.

- i. Examples of noncompliance events include: lack of storm water treatment following a rain event, discharges causing a visible plume in a water of the state, and water contact with uncured concrete.
- ii. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.

**c. In-Water Work**

- i. The Permittee shall notify the State Water Board at least forty-eight (48) hours prior to initiating work in water or stream diversions. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.

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<sup>2</sup> "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Saf. Code, § 25501.)

- ii. Within three (3) working days following completion of work in water or stream diversions, an In-Water Work/Diversions Water Quality Monitoring Report must be submitted to State Water Board staff.

**d. Modifications to Project**

Project modifications may require an amendment of this Order. The Permittee shall give advance notice to State Water Board staff if Project implementation as described in the application materials is altered in any way or by the imposition of subsequent permit conditions by any local, state or federal regulatory authority by submitting a Modifications to Project Report. The Permittee shall inform State Water Board staff of any Project modifications that will interfere with the Permittee's compliance with this Order. Notification may be made in accordance with conditions in the certification deviation section of this Order.

- e. Transfer of Property Ownership:** This Order is not transferable in its entirety or in part to any person or organization except after notice to the State Water Board in accordance with the following terms:

- i. The Permittee must notify the State Water Board of any change in ownership or interest in ownership of the Project area by submitting a Transfer of Property Ownership Report. The Permittee and purchaser must sign and date the notification and provide such notification to the State Water Board at least 10 days prior to the transfer of ownership. The purchaser must also submit a written request to the State Water Board to be named as the permittee in a revised order.
- ii. Until such time as this Order has been modified to name the purchaser as the permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order.

- f. Transfer of Long-Term BMP Maintenance:** If maintenance responsibility for post-construction BMPs is legally transferred, the Permittee must submit to the State Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer or designer specifications. The Permittee must provide such notification to the State Water Board with a Transfer of Long-Term BMP Maintenance Report at least 10 days prior to the transfer of BMP maintenance responsibility.

**B. Water Quality Monitoring**

1. **General:** If surface water is present, continuous visual surface water monitoring shall be conducted to detect accidental discharge of construction related pollutants (e.g. oil and grease, turbidity plume, or uncured concrete).
2. **Accidental Discharges/Noncompliance:** Upon occurrence of an accidental discharge of hazardous materials or a violation of compliance with a water quality standard, State Water Board staff may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.
3. **In-Water Work or Diversions:** For projects involving planned work in water or stream diversions, a water quality monitoring plan shall be submitted to State Water Board staff

for acceptance at least 30 days in advance of any discharge to the affected water body. For discharges, within the Santa Ana Regional Water Board's jurisdiction, the applicant shall comply with the General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality (Order No., R8-2015-0004, NPDES No. CAG 998001) as issued by the Santa Ana Regional Water Board. Water quality monitoring shall be conducted in accordance with the approved plan.

4. **Post-Construction:** Visually inspect the Project site at least once during the rainy season (October 1 to April 30) until a Project Complete Letter is issued by the State Water Board to ensure excessive erosion, stream instability, or other water quality pollution is not occurring in or downstream of the Project site. If water quality pollution is occurring, contact the State Water Board staff member overseeing the Project within three (3) working days. The State Water Board may require the submission of a Violation of Compliance with Water Quality Standards Report. Additional permits may be required to carry out any necessary site remediation.

### C. Standard

1. 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, chapter 28, Article 6 commencing with section 3867. Additionally, the State Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Permittee, if the State 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 (Wat. Code, § 13000 et seq.) or federal Clean Water Act section 303 (33 U.S.C. § 1313). For purposes of Clean Water Act section 401(d), the condition constitutes a limitation necessary to assure compliance with water quality standards and appropriate requirements of state law.
2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations and owed by the Permittee.
4. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. For purposes of Clean Water Act, section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order.

#### D. General Compliance

1. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The Permittee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.
2. Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plans by any applicable Regional Water Board or any applicable State Water Board (collectively Water Boards) water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.
3. In response to a suspected violation of any condition of this Order, the State Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the Water Boards deem appropriate, provide that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The additional monitoring requirements ensure that permitted discharges and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.
4. The Permittee must, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support this Order; and all subsequent submittals required as part of this Order. The conditions within this Order and Attachments supersede conflicting provisions within Permittee submittals.
5. This Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project. For purposes of Clean Water Act, section 401(d), this condition constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements of state law.
6. The Permittee shall adhere to all requirements in the mitigation monitoring and reporting program (MMRP) (include title and date of MMRP) which is incorporated herein by reference and any additional measures as outlined in Attachment C, CEQA Findings of Fact.
7. **Construction General Permit Requirement:** The Permittee shall maintain compliance with conditions described in, and required by, NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002).

#### E. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment G of this Order.
2. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544).

If a "take" will result from any act authorized under this Order held by the Permittee, the Permittee must obtain authorization for the take prior to any construction or operation of the portion of the Project that may result in a take. The Permittee is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.

3. The Permittee shall grant State Water Board staff, Santa Ana and San Diego Regional Water Board staffs, or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
  - a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.
  - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.
  - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
  - d. Sample or monitor for the purposes of assuring Order compliance.
4. A copy of this Order, the NOI, and the NOA shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the Project site for the duration of this Order. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors.
5. A copy of this Order, the NOI, and the NOA must be available at the Project site(s) during construction for review by site personnel and agencies. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.

## **F. Construction**

Best Management Practices, including the Avoidance and Minimization measures listed in the Project MND, shall be followed to protect water quality from fill and/or excavation impacts. If applicable, the following conditions apply to each flood control facility authorized by the Order:

1. Construction material, debris, rubbish, spoils, soil, silt, sawdust, rubbish, steel, welding slag, welding rods, waste material, waste containers, other organic or earthen material, or any other substances which could be detrimental to water quality or hazardous to aquatic life that is discharged as a result of project related activities shall be prevented from entering waters of the state.
2. The limits of project disturbance must be clearly identified in the field prior to start of maintenance activities within a water of the state. Such identification must be properly maintained until maintenance is completed and the area has been stabilized. Equipment, materials, or any other substances or activities that may impact waters of the state outside of the limits of project disturbance are prohibited.
3. Environmentally sensitive areas and environmentally restricted areas must be delineated for exclusion prior to the start of maintenance activities.

4. Activities permitted under this Order shall not discharge substances in concentrations toxic to human, plant, animal, or aquatic life of that produce detrimental physiological responses.
5. Discharge of unset cement, concrete, grout, damaged concrete spoils, or water that has contacted uncured concrete or cement, or related washout to surface waters, ground waters, or land is prohibited. If concrete washout is necessary at a site, washout containment to prevent any discharge shall be used. Wastewater may only be disposed by delivery to a sanitary waste water collection system/facility (with authorization from the facility's owner or operator) or a properly licensed disposal or reuse facility
6. Maintenance activities involving sandblasting shall be conducted only with adequate means of containment in place to capture used blasting sand and prevent discharges of the sand to waters of the state. Sandblasting BMPs, including blast sand disposal methods, shall be described in the NOIs.
7. Maintenance activities involving pressure washing shall be conducted only with adequate means of containment in place to capture spent wash water and prevent discharges of spent wash water to waters of the state. Wash water treatment and disposal BMPs shall be described in the NOIs.
8. Appropriate BMPs must be implemented throughout project activities to prevent and control leaks/spills/drainage of potentially hazardous materials, such as: petroleum lubricants, fluids and fuels; non-petroleum lubricants, fluids and fuels such as non- petroleum hydraulic fluid; cured and uncured cements; epoxies, paints and other protective coating materials; cement, concrete or asphalt concrete, and washings and cuttings thereof.
9. Maintenance activities authorized under this Order shall not discharge waste classified as "hazardous" as defined in California Code of Regulations title 22, section 66261 and Water Code section 13173. Appropriate BMPs for hazardous substances shall be included in project plans provided in the NOI. These BMPs shall include, at a minimum:
  - a. All personnel handling fuels and other hazardous materials shall be properly trained.
  - b. Adequate spill prevention and cleanup equipment and materials shall be present on site at all times during maintenance implementation
  - c. All mechanized equipment shall be maintained in good operating order and inspected on a regular basis.
  - d. All on-site fuel trucks or fuel containers shall be stored in an area where risk of contamination of water bodies by leaks or spills is minimized.
  - e. All equipment shall be fueled, maintained, and/or parked overnight in an upland area outside of waters of the state.
  - f. Hazardous materials, including chemicals, fuels, and lubricating oils, shall not be stored within 100 feet of any waters of the state and shall be stored in appropriate containers with appropriate secondary containment.



**Category 3:** Channels that are in all respects defined under Category 2, except native vegetation exceeds the limitations of Category 1 and 2.

**Category 4:** Channels that support native riparian vegetation or other suitable habitat for sensitive species, or adjacent to suitable habitat for sensitive species are not authorized under this Order.

2. Vegetation removal within the maintenance baseline, after appropriate biological surveys, shall meet the following requirements:

**Category 1** channels may be cleared of all vegetation.

**Category 2** channels may be cleared of vegetation as follows:

- a. Vegetation removal in the Category 2 channels shall be conducted in a non-continuous manner, as feasible, allowing small patches of in-channel vegetation to persist provided it will not adversely affect conveyance capacity.
- b. When vegetation removal is deemed necessary, mowing and/or trimming of vegetation, or herbicide treatment if necessary, in this channel category shall be done whenever practicable to maintain soil stability.
- c. Permittee shall avoid removal of emergent herbaceous vegetation on the channel bottom that is rooted in or near the low flow channel or a pond to provide cover for aquatic wildlife, where feasible. Native non-woody vegetation that does not interfere with designed flood control capacity shall be allowed to grow between sediment removal activities within Category 2 channels. If necessary to alleviate flood risk between sediment removal activities, native non-woody vegetation may be cut down to a level above the water line or root zone.
- d. No living native vegetation with a diameter at breast height more than 3 inches above the maintenance baseline shall be removed or damaged without prior consultation and approval from the agencies to prevent loss of vegetation that could result in violation of water quality standards.

**Category 3** channels may be cleared of vegetation as follows:

- a. Vegetation removal requirements shall be in all respects like Category 2 with the additional requirements cited here.
  - b. Native vegetation removed from Class 3 channels shall not exceed the minimum necessary to complete the identified activities for each maintenance activity. Appropriate precautions shall be taken to avoid inadvertent damage to native vegetation by people or equipment.
  - c. Native vegetation removal shall be subject to appropriate restoration, maintenance, and monitoring requirements applicable to temporary impacts (i.e., see section G "Mitigation for Temporary Impacts").
3. No living native vegetation within the bed, bank, or channel above the maintenance baseline shall be permanently removed.

4. Maintenance activities consisting solely of vegetation mowing activity that does not discharge waste into a channel are not subject to coverage under this order.
5. Any herbicide spraying activity shall be conducted in compliance with the Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Aquatic Pesticide Discharges to Waters of the United States from Algae and Aquatic Weed Control Applications (Water Quality Order No. 2013-0002-DWQ; General Permit No. CAG990005) (Pesticide General Permit). If the Permittee wishes to continue an activity regulated by the Pesticide General Permit after the November 30, 2018 expiration date, the Permittee must apply for and obtain authorization as required by the new permit. (40 C.F.R. §122.41(b).)

#### H. Mitigation for Temporary Impacts

1. **The Permittee shall restore all areas of temporary impacts to waters of the state.** Permanent removal of native vegetation that does not comply with the definition of sparse native vegetation in section XIII.H.1 is not authorized under this Order. Restoration shall be implemented at a 1:1 acreage ratio, as described in an approved restoration plan. A restoration plan for the scheduled facility maintenance areas shall be submitted to the State Water Board with the NOI, as described in Attachment D "Notice of Intent." The Permittee shall provide annual monitoring reports for restoration areas if required by the Water Boards, in accordance with conditions set forth in Attachment E.
2. Restoration and revegetation shall include replacement planting and seeding of native plant species that were damaged or removed during permitted maintenance activities. Plantings are not limited to those species present in the project area before the maintenance activity and may include species compatible with existing riparian vegetation in the work area.
3. An Annual Mitigation and Monitoring report for temporary impacts shall be submitted which includes the following:
  - a. Identification of specific maintenance site boundaries and time period at each site for which the monitoring report is applicable;
  - b. A list of names, titles, and employers of persons responsible for the content of the annual report and persons who conducted monitoring activities;
  - c. Monitoring data, statistics, and graphs;
  - d. Survival, percent cover, and height of tree and shrub species;
  - e. Methods used to assess these parameters;
  - f. Number by species of plants replaced;
  - g. Progress photographs taken from the same vantage point as baseline photographs; and
  - h. Details of any remedial maintenance to be performed.
4. The State Water Board may extend the monitoring period beyond requirements of the restoration plan upon a determination by State Water Board Executive Director that the performance standards have not been met or are not likely to be met within the monitoring period.

5. If restoration of temporary impacts to waters of the state is not completed within three hundred sixty-five (365) days of the impacts, compensatory mitigation may be required to offset temporal loss of waters of the state. However, the Water Boards may determine on a project-specific basis that specific timeframes for restoration must be imposed to avoid temporal loss which would otherwise be included in permanent loss. Additionally, the Water Boards may determine on a project-specific basis that restoration time frames may be extended based on specific site conditions.

#### **I. Certification Deviation**

1. Minor modifications of Project locations or predicted impacts may be necessary as a result of unforeseen field conditions, necessary engineering re-design, construction concerns, or similar reasons. Some of these prospective Project modifications may have impacts on water resources. Some modifications of Project locations or predicted impacts may qualify as Certification Deviations as set forth in Attachment F. For purposes of this Certification, a "Certification Deviation" is a Project locational or impact modification that does not require an immediate amendment of the Order, because the State Water Board has determined that any potential water resource impacts that may result from the change are sufficiently addressed by the Order conditions and the CEQA Findings. After the termination of construction, this Order will be formally amended to reflect all authorized Certification Deviations and any resulting adjustments to the amount of water resource impacts and required compensatory mitigation amounts.
2. A Project modification shall not be granted a Certification Deviation if it warrants or necessitates changes that are not addressed by the Order conditions or the CEQA environmental document such that the Project impacts are not addressed in the Project's environmental document or the conditions of this Order. In this case a supplemental environmental review and different Order will be required.

#### **XIV. Water Quality Certification**

I hereby issue the Order for the Orange County Public Works County-Wide Long Term Routine Maintenance Program authorized under U.S. Army Corps of Engineers RGP 100, SB13007IN certifying that as long as all of the conditions listed in this Order are met, any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) and approves the mitigation monitoring and reporting program (MMRP) for County of Orange Flood Control District County-Wide Long-Term Routine Maintenance Permitting Program dated February 8, 2013) for the Project.

The State Water Board will file a Notice of Determination (NOD) at the SCH within five (5) working days of issuance of this Order. This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Order to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).

Except insofar as may be modified by any preceding conditions, all Order actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this Order and the attachments to this Order; and, (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, the Regional Water Boards' Water Quality Control Plans and Policies.



Eileen Sobeck  
Executive Director

9/2/17

Date

- Attachment A** Project Maps
- Attachment B** Authorized Activities, As-Built Dimensions and Facilities Information
- Attachment C** CEQA Findings
- Attachment D1** Notice of Intent Instructions
- Attachment D2** Notice of Intent Form
- Attachment E** Reporting Requirements
- Attachment F** Certification Deviation Requirements
- Attachment G** Signatory Requirements