

Los Angeles Regional Water Quality Control Board

January 10, 2013

Colonel R. Mark Toy
U.S. Army Corps of Engineers Los Angeles
P.O. Box 2711
Los Angeles, CA 90053

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
CLAIM NO. 7011 2970 0000 0645 2512

CALIFORNIA WATER CODE § 13267 ORDER TO SUBMIT INFORMATION – REPORTED ON DECEMBER 29, 2012, UNAUTHORIZED VEGETATION REMOVAL IN THE SEPULVEDA BASIN LOCATED WITHIN THE LOS ANGELES RIVER WATERSHED

Dear Colonel Toy:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board), is the public agency with primary responsibility for the protection of ground and surface water quality within major portions of Los Angeles and Ventura Counties, including the upper portion of the Los Angeles River in the San Fernando Valley where the referenced site is located.

On December 29, 2012, the Regional Board was notified by a news article published in the Los Angeles Times of the United States Army Corps of Engineers' (USACOE) activities in Sepulveda Basin which resulted in the removal of 43 acres of vegetation from a designated wildlife preserve in the Los Angeles River flood plain. The portion of Sepulveda Basin where the vegetation removal occurred is located immediately south of Burbank Boulevard and west of Interstate 405 and Sepulveda Dam along the Los Angeles River. Haskell Creek, a tributary to the Los Angeles River, flows through the project site. Both Haskell Creek and the Los Angeles River are waters of the State of California and of the United States. The USACOE completed the removal of 43 acres of vegetation and proceeded to completely fill a small pond located on the project area with sediment without notifying the Regional Board and without consulting the Regional Board about state water quality certification for the project pursuant to Section 1341 of the Federal Water Pollution Control Act.

As part of the Regional Board's effort to protect water quality and investigate the quality of waters within its jurisdiction, the USACOE is required to submit technical and/or monitoring reports addressing vegetation removal and discharge of sediment to "Pothole Pond" as required by the Regional Board pursuant to California Water Code section 13267. The deadline for submission of the required technical and/or monitoring report is February 11, 2013.

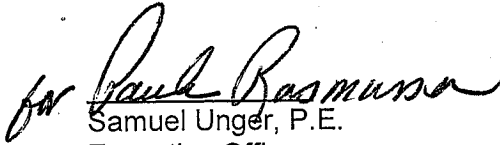
MARIA MEHRANIAN, CHAIR | SAMUEL UNGER, EXECUTIVE OFFICER

320 West 4th St., Suite 200, Los Angeles, CA 90013 | www.waterboards.ca.gov/losangeles

January 10, 2013

If you have any questions regarding this matter, please call Ms. Valerie Carrillo Zara at (213) 576-6759 or Dr. L.B. Nye at (213) 576-6785.

Sincerely,


Samuel Unger, P.E.
Executive Officer

Enclosure: Investigative Order No. R4-2013-0001

cc: via US Mail w/ Enclosure

The Honorable Kevin de León
State Capitol, Room 5108
Sacramento, California 95814-4900

The Honorable Fran Pavley
State Capitol, Room 4035
Sacramento, California 95814-4900

cc: via electronic mail w/ Enclosure

Mr. Eric Katz
Supervising Deputy Attorney General
Office of the Attorney General
Eric.Katz@doj.ca.gov

Ms. Alice Busching Reynolds
Deputy Secretary for Law Enforcement and Counsel
California Environmental Protection Agency
Alice.Reynolds@calepa.ca.gov

Mr. Christian Carrigan
Director, Office of Enforcement
State Water Resources Control Board
CCarrigan@waterboards.ca.gov

Mr. David Weeshoff
President, San Fernando Valley Audubon Society
dave.weeshoff@sfaudubon.org

Mr Chris Dellith
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003
chris_dellith@fws.gov

Los Angeles Regional Water Quality Control Board

**INVESTIGATIVE ORDER NO. R4-2013-0001 TO PROVIDE A TECHNICAL OR
MONITORING REPORT ON
THE UNAUTHORIZED REMOVAL OF VEGETATION IN THE SEPULVEDA BASIN
REPORTED ON DECEMBER 29, 2012**

CALIFORNIA WATER CODE SECTION 13267

**DIRECTED TO THE US ARMY CORPS OF ENGINEERS LOS ANGELES
P.O. BOX 2711
LOS ANGELES, CA 90053**

The Regional Water Quality Control Board, Los Angeles Region (Regional Board) makes the following findings and issues this Order pursuant to California Water Code section 13267.

1. On December 29, 2012, the Regional Board was notified that the United States Army Corps of Engineers (USACOE) removed 43 acres of vegetation in the Sepulveda Basin ("the Site") by a news article published in the Los Angeles Times. Sepulveda Basin is a flood risk management basin located on the upper portion of the Los Angeles River in the San Fernando Valley, in Los Angeles County, California. The Site where the vegetation removal occurred is located immediately south of Burbank Boulevard and west of Interstate 405 and Sepulveda Dam along the Los Angeles River. A small man-made pond called "Pothole Pond" was located on the Site prior to the vegetation removal project. The USACOE owns and originally developed this portion of the Sepulveda Basin in approximately 1979.
2. The Donald C. Tillman Water Reclamation Plant (Facility) owned and operated by the City of Los Angeles is located in the northern portion of the Sepulveda Basin. Tertiary-treated wastewater is discharged from one of the discharge points at the Facility and flows by gravity to Wildlife Lake, located northeast of Burbank Boulevard and Woodley Avenue, then to Haskell Creek which flows through the Site to the Los Angeles River. Haskell Creek and the Los Angeles River are waters of the State of California and of the United States.
3. California Water Code section 13267, subdivision (b)(1) states, in part: In conducting an investigation. . . , the Regional Board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation

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with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

4. This Order identifies the USACOE as a person who has discharged or is suspected of having discharged waste within the jurisdiction of the Regional Board because the USACOE was the entity responsible for the vegetation removal project described in Paragraph 1 above and because the USACOE owns the portion of the Sepulveda Basin where the vegetation removal project took place.
5. This Order requires the USACOE to prepare and submit technical and/or monitoring reports providing complete and detailed information addressing Items 1 through 26 below.
6. The Regional Board requires this information in order to determine the nature and extent of possible impacts to water quality, to assess whether further action is required to protect beneficial uses, and to determine what actions can be taken to prevent water quality impacts from vegetation removal projects in the future.
7. The burdens, including costs, of these reports bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The removal of vegetation from waters of the State and the United States can result in significant impacts on aquatic habitat and water quality. The information is necessary to identify whether such water quality impacts occurred, to assure adequate restoration of the areas of vegetation removal, if necessary, and to determine what actions can be taken to prevent unauthorized water quality impacts in the future.
8. The issuance of this Order is an enforcement action by a regulatory agency and is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15321, subdivision (a)(2), Chapter 3, Title 14 of the California Code of Regulations. This Order requires submittal of technical and/or monitoring reports and work plans. The proposed activities under the work plans are not yet known. It is unlikely that implementation of the work plans associated with this Order could result in anything more than minor physical changes to the environment. If the implementation may result in significant impacts on the environment, the appropriate lead agency will address the CEQA requirements prior to approval of any work plan.
9. Any person aggrieved by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must *receive* the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order 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 law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

THEREFORE, IT IS HEREBY ORDERED that the US Army Corps of Engineers Los Angeles, pursuant to section 13267, subdivision (b) of the California Water Code, is required to submit the following:

By February 11, 2013, we require a technical report that includes:

- 1) The address and precise description of the location at which the vegetation removal occurred;
- 2) The names and addresses of all contractors involved in the vegetation removal;
- 3) The dates and times that the December 29, 2012 reported vegetation removal commenced and ended;
- 4) A detailed description of the methods used to remove vegetation, including a specific description of the equipment and/or machinery used;
- 5) A detailed summary of the total amount of vegetation removed including estimates of vegetation types and tree species. Include copies of the calculations, records, data, and photographs (if available) used in determining the estimate of the amount removed;
- 6) Number and species of trees "flagged" for protection prior to the vegetation removal and number and species of "flagged" trees remaining after vegetation removal;
- 7) A description of creeks, ponds, wetlands and other surface waters on the Site, including but not limited to Pothole Pond, before vegetation removal activities, whether you believe them to be jurisdictional waters of the United States or not;
- 8) A description of all roads and/or trails on the Site before and after vegetation removal activities;
- 9) A description of all previous restoration projects at the Site, including habitat restorations and mitigation required by federal or state permits;
- 10) An explanation of why the vegetation was removed;
- 11) An explanation of why Pothole Pond was removed;
- 12) The source and quantity of water that was typically used to maintain Pothole Pond, including when the supply of water was removed;
- 13) A detailed site map or maps showing the areas and habitat type where vegetation was removed, elevation or flood frequency, creeks, ponds, wetlands and other surface waters (before and after vegetation removal

activities), roads or trails (before and after vegetation removal activities), and point(s) of entry to the Site;

- 14) The dates and times that heavy equipment accessed the Los Angeles River or Los Angeles River bottom, before and after vegetation removal;
- 15) The volume of fill material including soils, sediment and vegetation discharged in the Los Angeles River;
- 16) An analysis of the impacts of the vegetation removal on beneficial uses of the surface waters, including any loss of wetlands;
- 17) A description of any activities undertaken by the USACOE after the vegetation clearing in response to impacts to surface waters, including when these activities were performed;
- 18) All surface water quality monitoring data and sampling locations in the area of the vegetation removal, prior to, during or after the vegetation removal. Include quality control plans if available and analytical methods. If monitoring was not conducted, please explain;
- 19) All habitat or biological assessments made before and after vegetation removal including any California Rapid Assessment Methods for wetlands, Hydrogeomorphic Approach and/or other condition or functional assessments;
- 20) An analysis of the economic impact resulting from closures of public access areas in the areas affected by the vegetation removal;
- 21) Future plans for the site including restoration plans and criteria for restoration success;
- 22) Copies of all permits issued for the vegetation removal project from any federal, state or local agency and all documents developed to satisfy the requirements of the National Environmental Policy Act and/or California Environmental Quality Act;
- 23) Copies of all agreements with other agencies or municipalities, including the City of Los Angeles concerning the management of the Site;
- 24) A list of all agencies that the vegetation removal was reported to and the time the reports were made;
- 25) A description of public outreach efforts concerning the vegetation removal; and
- 26) Any other documentation or correspondence the USACOE feels is relevant to the vegetation removal.

Each of the above items shall be submitted as a pdf via email or disk (CD-ROM or CD) to Ms. Valerie Carrillo Zara, 320 W. 4th Street, Suite 200, Los Angeles, CA 90013-2343, vcarrillo@waterboards.ca.gov, (213) 576-6759, and submitted by you under penalty of perjury under the laws of the State of California.

The technical report is required to be submitted under California Water Code section 13267 Order. Pursuant to 13267, subdivision (a) of the California Water Code, any person who fails to submit reports in accordance with the Order is guilty of a misdemeanor. Pursuant to section 13268, subdivision (b)(1) of the California Water Code, failure to submit the required technical report described above by the specified due date(s) may result in the imposition of administrative civil liability by the Regional Board in an amount up to one thousand dollars (\$1,000) per day for each day the technical report is not received after the above due date. These civil liabilities may be assessed by the Regional Board for failure to comply, beginning with the date that the violations first occurred, and without further warning.

The Regional Board, under the authority given by California Water Code section 13267, subdivision (b)(1), requires you to include a perjury statement in all reports submitted under the 13267 Order. The perjury statement shall be signed by a senior authorized representative (not by a consultant). The perjury statement shall be in the following format:

"I, [NAME], certify under penalty of perjury under the laws of the State of California that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

SO ORDERED

for Paul Rasmussen

Samuel Unger, P.E.
Executive Officer

January 10, 2013

DATE