

PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT

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APPLICATION FOR PERMIT San Bernardino County Master Storm Water System Maintenance Program

Public Notice/Application No.: SPL-2020-00237-SLP Project: San Bernardino County Master Storm Water System Maintenance Program Comment Period: November 17, 2021 through December 21, 2021 Project Manager: Shannon Pankratz; (213) 452-3412; <u>Shannon.L.Pankratz@usace.army.mil</u>

Applicant

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Contact

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Location

The project is located within San Bernardino County Flood Control District (SBCFCD) facilities throughout the Santa Ana River, Mojave River, and Colorado River watersheds within San Bernardino County, California (Figure 1). The SBCFCD facilities have been grouped into the three distinct geographic regions of "Valley", "Mountain", and "Desert". Approximately 80% of the geographic extent of the County is within the Desert Region. However, the Valley Region is the most developed, with approximately 77% of the SBCFCD facilities situated within the Valley Region.

Activity

The applicant proposes to conduct routine maintenance activities within approximately 409 existing channel reaches (natural and engineered) and basin (detention, debris, recharge, and spreading grounds) flood control facilities over a 20-year period (Figures 1, 5a-5b). In total, the proposed project would temporarily impact approximately 2,647 acres and 39 acres of non-wetland and wetland waters of the U.S. (WOTUS), respectively. For more information, see Additional Project Information section below.

Submittal of Public Comments

Interested parties are hereby notified an application has been received for a Department of the Army permit for the activity described herein and shown on the attached drawing(s). We invite you to review today's public notice and provide views on the proposed work. By providing substantive, site-specific comments to the Corps Regulatory Division, you provide information that supports the Corps' decision-making process. All comments received during the comment period become part of the record and will be considered in the decision. This permit will be issued, issued with special conditions, or denied under Section 404 of the Clean Water Act.

During the Coronavirus Health Emergency, Regulatory Program staff are teleworking. Please do not mail hard copy documents, including comments to any Regulatory staff. Instead, your comments should be submitted electronically to: <u>Shannon.L.Pankratz@usace.army.mil</u>. Should you have any questions or concerns about the Corps' proposed action or our comment period, you may contact Shannon Pankratz directly at (213) 452-3412.

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable water and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

Evaluation Factors

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, if the proposal would discharge dredged or fill material, the evaluation of the activity will include application of the EPA Guidelines (40 CFR Part 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Preliminary Review of Selected Factors

<u>EIS Determination</u>- A preliminary determination has been made an environmental impact statement is not required for the proposed work.

<u>Water Quality</u>- The applicant is required to obtain water quality certification, under Section 401 of the Clean Water Act, from the California State Water Resources Control Board (WRCB). Section 401 requires any applicant for an individual Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to permit issuance.

<u>Coastal Zone Management</u>- This project is located outside the coastal zone and preliminary review indicates it would not affect coastal zone resources. After a review of the comments received on this public notice and in consultation with the California Coastal Commission, the Corps will make a final determination of whether this project affects coastal zone resources.

Essential Fish Habitat- No Essential Fish Habitat (EFH), as defined by the Magnuson-Stevens Fishery Conservation and Management Act, occurs within the project area and no EFH is affected by the proposed project.

Cultural Resources- Consultation under Section 106 of the National Historic Preservation Act is required for this undertaking. The proposed routine maintenance activities do not require engineering nor involve the construction of new facilities nor the expansion of existing facilities. Maintenance activities occur in areas that have been subject to disturbance from the initial construction of facilities, as well as from periodic maintenance and in some cases from being situated within active channel areas. Preliminary analysis indicates that the proposed maintenance activities are unlikely to result in adverse effects to cultural resources.

Endangered Species- Maintenance activities authorized under the proposed permit, including activities such as vegetation and sediment removal, could result in direct and indirect disturbance to endangered and threatened species and their associated habitat. Preliminary determinations indicate the proposed activity may affect and is likely to adversely affect federally-listed endangered species, including the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) (SBKR), least Bell's vireo (*Vireo bellii pusillus*) (LBV), and the Santa Ana River woollystar (*Eriastrum densifolium* ssp. *sanctorum*) (Figures 2a-4b). The proposed activity may affect federally designated critical habitat for the following species: coastal California gnatcatcher (*Polioptila californica californica*) (CAGN), LBV, SBKR, Santa Ana sucker (*Catostomus santaanae*) (SASU), southwestern willow flycatcher (*Empidonax traillii extimus*) (SWWF), and desert tortoise (*Gopherus agassizii*). Therefore, formal consultation under Section 7 of the Endangered Species Act is required at this time and will be conducted with USFWS separate from this Public Notice.

<u>Public Hearing</u>- Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Proposed Activity for Which a Permit is Required

<u>Basic Project Purpose</u>- The basic project purpose comprises the fundamental, essential, or irreducible purpose of the proposed project, and is used by the Corps to determine whether the applicant's project is water dependent (i.e., requires access or proximity to or siting within the special aquatic site to fulfill its basic purpose). Establishment of the basic project purpose is necessary only when the proposed activity would discharge dredged or fill material into a special aquatic site (e.g., wetlands, pool and riffle complex, mudflats, coral reefs). The basic project purpose for the proposed project is maintenance. As maintenance would occur within flood control facilities, including within special aquatic sites, the project is water dependent.

<u>Overall Project Purpose</u>- The overall project purpose serves as the basis for the Corps' 404(b)(1) alternatives analysis and is determined by further defining the basic project purpose in a manner that more specifically describes the applicant's goals for the project, and which allows a reasonable range of alternatives to be analyzed. The overall project purpose for the proposed project is to conduct routine maintenance of SBCFCD flood management facilities within waters of the U.S. in the Santa Ana River and Mojave River watersheds.

Additional Project Information

<u>Baseline information-</u> SBCFCD performs routine maintenance activities on a regular and ongoing basis in an effort to maintain existing structures, access roads, and stockpiles. SBCFCD's flood control system is organized into six flood control zones, which overlap with the Valley, Mountain and Desert Regions. A Biological Resources Technical Report (BTR) (dated January 2019) was prepared for the SBCFCD's proposed Master Storm Water System Maintenance Program. This report evaluated the potential impacts of the maintenance activities to special-status biological resources and identified specific mitigation measures. The BTR covered each facilities region (Valley, Mountain and Desert) individually, with the results summarized below:

Valley Region- This area contains the San Bernardino and San Gabriel Mountain foothills and valley floors, with three facilities that extend into Riverside County. The Valley Region encompasses SBCFCD designated Zones 1-3. Maintenance program activities occurring in the Valley Region have the potential to impact USFWS designated critical habitat for SBKR, LBV, CAGN, SWWF, and SASU. Figure 2a depicts USFWS Critical Habitat in the Valley Region and Figure 2b depicts habitat linkages within the Valley Region. Federally listed plant and wildlife species known to occur in the study area include the LBV, SBKR, Santa Ana River woollystar (Eriastrum densifolium ssp. sanctorum), and SASU (present in facility but not in maintenance area). Slender-horned spineflower (Dodecahema leptoceras), thread-leaved brodiaea (Brodiaea filifolia), and Nevin's barberry (Berberis nevinii) have a moderate potential to occur in the study area of the valley region. Delhi Sands flower loving fly, a federally listed wildlife species, has a moderate potential to occur within the study area. The SWWF and CAGN, both of which are federally listed, have a low potential to occur in the study area. Generalized habitat types occurring within SBCFCD facilities of this region include: coastal sage scrub, Eucalyptus naturalized forest, grasslands, marsh, oak woodlands and forests, riparian forest and woodland, riparian scrub, Riversidean alluvial fan sage scrub, undifferentiated chaparral scrubs, waterways, open water, and non-natural land covers (basins, disturbed land, agriculture, ornamental plantings, ruderal, upland mustard, and urban).

Mountain Region- The Mountain Region is situated between the Valley and Desert Regions and is composed of the San Gabriel and San Bernardino Mountain Ranges, separated by the Cajon Pass, a defining feature of the San Andreas Fault Zone. The Mountain Region includes SBCFCD Zone 5. Maintenance program activities occurring in the Valley Region have the potential to impact USFWS-

designated critical habitat for the SWWF, SASU, and SBKR. Figure 3a depicts USFWS Critical Habitat in the Mountain Region and Figure 3b depicts habitat linkages within the Mountain Region. Federally listed plant species with a moderate potential occur in the study area include: ash-gray paintbrush (*Castilleja cinerea*), San Bernardino bluegrass (*Poa atropurpurea*), California dandelion (*Taraxacum californicum*), bird-foot checkerbloom (*Sidalcea pedata*), and slender-petaled thelypodium (*Thelypodium stenopetalum*). Another federally listed wildlife species with a low potential to occur within the study area is the SWWF. Finally, the federally listed mountain yellow-legged frog (*Rana muscosa*) is not expected to occur within the study area, but the study area overlaps potential, future reintroduction areas for the species, as identified in the Recovery Plan for Mountain Yellow-Legged Frog Southern California Distinct Population Segment. Generalized habitat types occurring in SBCFCD facilities of this region include: California bay forests and woodlands, coastal scrub, Eucalyptus naturalized forest, Great Basin scrub, Incense-cedar forests, Marsh, Oak woodlands and forests, open water, pine forests and woodlands, riparian forest and woodland, Riversidean alluvial fan sage scrub, undifferentiated chaparral scrub, waterways, grassland, and non-natural land covers.

Desert Region- This largest region is north of the San Bernardino and San Gabriel Mountains and extends east to the Arizona state line. The Desert Region encompasses SBCFCD Zones 4 and 6. This includes the cities of Big Bear, Needles, Yucca Valley, and Twentynine Palms, and the communities of Amboy, Joshua Tree, Lucerne Valley, Morongo Valley, and Trona. Maintenance program activities occurring in the Desert Region have the potential to impact USFWS designated critical habitat for the desert tortoise and SWWF. Figure 4a depicts USFWS Critical Habitat in the Desert Region and Figure 4b depicts habitat linkages within the Desert Region. Federally listed plant and wildlife species with a low potential to occur in the study area include Parish's daisy (Erigeron parishii), triple-ribbed milkvetch (Astragalus tricarinatus), and the arroyo toad (Anaxyrus californicus). Federally listed wildlife species known to occur in the study area include desert tortoise and LBV. SWWF have a very low potential to occur in the study area. Yellow-billed cuckoo (Coccyzus americanus) has been reported as a migrant in the study area. Generalized habitat types occurring in SBCFCD facilities of this region include chenopod scrub, desert dry wash woodland, desert dunes, desert sink scrub, grassland, Great Basin scrub, Joshua tree woodland, Juniper woodlands, marsh, open water, riparian forest and woodland, riparian scrub, Sonoran and Mojavean desert scrub, waterways and non-natural land covers.

A Jurisdictional Waters Delineation Report (JD) (dated March 2020) was also prepared for SBCFCD's Master Storm Water System Maintenance Program. Natural and semi-natural waterways maintained by SBCFCD include creeks, canyons, washes, and rivers. Other aquatic features include developed or semi-improved earthen channels, spreading grounds, storm drain channels, dam, levee and groin areas, and detention and debris basins. The delineation of jurisdictional waters results for each region are summarized below:

Valley Region- The results of the WOTUS jurisdictional delineation concluded there are approximately 16 acres of potential wetland waters and 1,431 acres of non-wetland WOTUS within the maintenance program area (Figure 5a). This region includes the watersheds of: Middle and Upper Santa Ana watersheds (Reaches 3-5), with subwatersheds that include San Antonio Creek, Cucamonga and West Cucamonga Creek, Lytle and Cajon Creeks, Twin and Warm Creeks, San Timoteo Creek, Mission and Zanja channels, City Creek, Plunge Creek, and Mill Creek, along with portions of Day Creek, Etiwanda Creek, San Sevaine channel, Rialto channel, and Grand Terrace channel.

Mountain Region- The results of the WOTUS jurisdictional delineation concluded there are approximately 37 acres of non-wetland WOTUS within the program area. No wetland WOTUS were

mapped in this region (Figure 5a). This region includes the watersheds of: upstream portions of the Mojave River (Upper Reach) and the Santa Ana River (Reach 5), including upstream sections of the subwatersheds of Lytle and Cajon Creeks, Twin and Warm Creeks, City Creek, Plunge Creek, Mill Creek, Big Bear and Santa Ana River headwaters, Cucamonga and West Cucamonga Creeks, Day Creek, Etiwanda Creek, San Sevaine channel, and San Timoteo Creek.

Desert Region- The results of the WOTUS jurisdictional delineation concluded there are approximately 24 acres of potential wetland waters and 2,783 acres of non-wetland WOTUS under the jurisdiction of ACOE and the WRCB in the program area. In addition, there are approximately 122 acres of isolated waters of the State under the jurisdiction of WRCB. Approximately 1,831 acres of streambed under the jurisdiction of California Department of Fish and Wildlife (CDFW) are present in the region (Figure 5b, Watersheds, Desert Region). This region includes the watersheds of: the Mojave River (Upper, Middle, Lower Reaches), Sheep Creek, Little Morongo Creek, Needles-Sacramento Wash, and portions of Mojave-Baker watershed.

Additional project information is also available through the applicant's public notification website at http://cms.sbcounty.gov/dpw/PublicNotices.aspx.

<u>Project Description</u>- The proposed SBCFCD maintenance program includes a Maintenance Plan describing the maintenance activities that would be performed on a regular basis for each facility, including a general description of work to be performed, vehicle and equipment needs, and anticipated activity timing and/or frequency. In general, approximately 30% of flood management facilities are expected to be maintained each year of the overall 20-year maintenance program period. Maintenance activities in each flood management facility may occur more or less often as needed. The timing of facilities maintenance is primarily guided by the need for weed abatement and sediment accumulation, general avoidance of work during the storm season to perform work in facilities dry enough to safely operate equipment, and the avoidance of nesting season if practicable. The elements of the proposed SBCFCD facility maintenance include vegetation management, sediment and debris removal, mechanized land clearing, ingress and egress route maintenance, flood management structure repair, bank repair, and stockpiling. The Maintenance Plan includes SBCFCD Standard Operating Procedures (SOPs) and provides management plans implemented by the District during routine maintenance activities, including an integrated pest management plan, vegetation management plan.

The Project would result in temporary impacts to approximately 2,647 acres and 39 acres of nonwetland and wetland WOTUS, respectively (Figure 3). The on-going maintenance of this overall facilities footprint is proposed over a 20-year period.

<u>Proposed Mitigation</u> – The proposed mitigation may change as a result of comments received in response to this public notice, the applicant's response to those comments, and/or the need for the project to comply with the 404(b)(1) Guidelines. In consideration of the above, the proposed mitigation sequence (avoidance/minimization/compensation), as applied to the proposed project is summarized below:

<u>Avoidance:</u> Due to the project being situated within WOTUS, avoidance of impacts to WOTUS is not feasible.

<u>Minimization</u>: The applicant reviewed flood management facilities maintenance requirements from 2011-2013, and subsequently conducted workshops between 2013-2015 to identify sensitive

resources and the minimum extent of maintenance activities required to allow the 100-year storm event to pass through the system. Following the adoption of the EIR in 2019, the applicant conducted further reviews of maintenance activities to minimize maintenance footprints and impacts where feasible.

The applicant has also reduced maintenance program impacts through 36 SOPs that are described in the Maintenance Plan. The SOPs address the general categories of:

- reducing runoff into aquatic resources;
- outlining various seasonal work restrictions (i.e., special-status species requirements and Migratory Bird Treaty Act restrictions);
- requiring pre-activity surveys (including least Bell's vireo, coastal California gnatcatcher, southwestern willow flycatcher, burrowing owl, desert tortoise, maternal bat roosts, and special-status plants);
- outlining worker education programs and monitoring when special-status resources are present; and
- implementing best management practices that reduce the degradation of environmental resources both at and downstream of the maintenance locations.

Implementation of the SOPs would be tracked and reported for each facility that receives maintenance. Tracking would be conducted using an online tracking tool and reporting will be conducted annually as a part of the annual reporting for the SBCFCD maintenance program.

The applicant has also proposed to generally conduct maintenance on average in most facilities once every three years, or a temporal delay between cycles of impacts. In other sensitive facilities, such as the riparian corridor within the Santa Ana River, between Interstate 215 and Waterman Avenue crossings, the applicant has proposed to conduct vegetation removal within strips of the overall facility. This would increase the temporal delay of impacts to approximately 9-year cycles.

Lastly, as part of the overall maintenance program activities, the applicant is removing approximately 126 acres of tamarisk within the facilities maintenance areas. The tamarisk removal would be conducted in accordance with the SBCFCD vegetation management plan in such a manner as to reduce and minimize the potential for tamarisk regrowth. All removed vegetation would be hauled off-site so seeds are not dispersed downstream within the system.

<u>Compensation</u>: The applicant proposes compensatory mitigation for functional losses of WOTUS, including habitat removal associated with routine maintenance, in the form of permittee-responsible mitigation and/or with the purchase of credits through Corps-approved mitigation banks and in-lieu fee programs. The proposed permittee-responsible mitigation program includes sequestering large blocks of land in the Valley and Desert Regions in lieu of a smaller piecemeal approach to compensatory mitigation. The overall proposed mitigation program is as follows:

The applicant proposes to mitigate for impacts to Riversidean Alluvial Fan Sage Scrub (RAFSS) habitat through the obligation of 255 acres of RAFSS habitat within Cajon Wash, an additional approximately 40 acres of upland buffer within the Cajon property, and obligation of an additional 55 acres of RAFSS within a separate SBCFCD parcel. The total mitigation would be 350 acres. The applicant proposes to place a conservation easement over the Cajon property and would utilize an agency-approved, third-party organization to conduct long-term management to preserve and manage the property in perpetuity.

For impacts to riparian woodland in the Valley Region, the applicant proposes to enhance 145 acres of riparian habitat within the Santa Ana River downstream of Mt. Vernon Avenue on the terraces outside of designated maintenance areas. Enhancement activities would include invasive species removal, planting of native species, trash removal, and unauthorized encampment removal. The applicant would designate this area as a mitigation area on its maps. With enhancement and protection measures, this area is proposed to be functionally lifted to provide stratified, multi-structured habitat for federal and/or state listed threatened or endangered species such as least Bell's vireo.

Lastly, for impacts to riparian habitat in the Desert Region, the applicant proposes to mitigate for impacts to riparian habitat through the preservation and enhancement of 150 acres of riparian habitat within and adjacent to the Mojave River. The applicant proposes to place a conservation easement over the property and would use an agency-approved, third-party organization to conduct long-term management to preserve and manage the property in perpetuity.

Proposed Special Conditions

No special conditions are proposed at this time. Special conditions will be developed through information received during this Public Notice comment period, agency consultations, and other processes.

For additional information please call Shannon Pankratz of my staff at (213) 452-3412 or via email at <u>Shannon.L.Pankratz@usace.army.mil</u>. This public notice is issued by the Chief, Regulatory Division.



Regulatory Program Goals:

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

DEPARTMENT OF THE ARMY LOS ANGELES DISTRICT, U.S. ARMY CORPS OF ENGINEERS WWW.SPL.USACE.ARMY.MIL/MISSIONS/REGULATORY

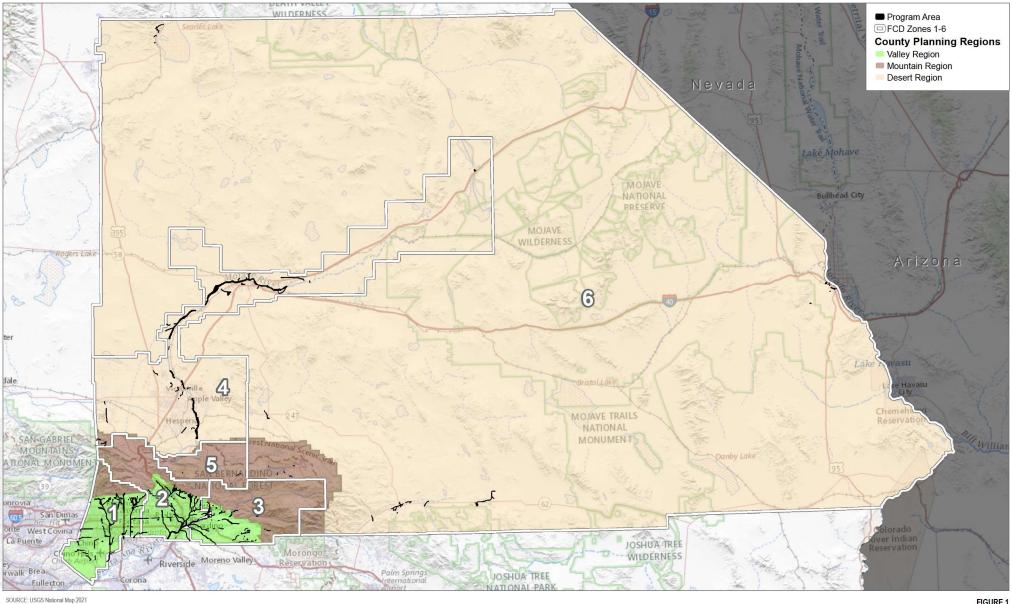
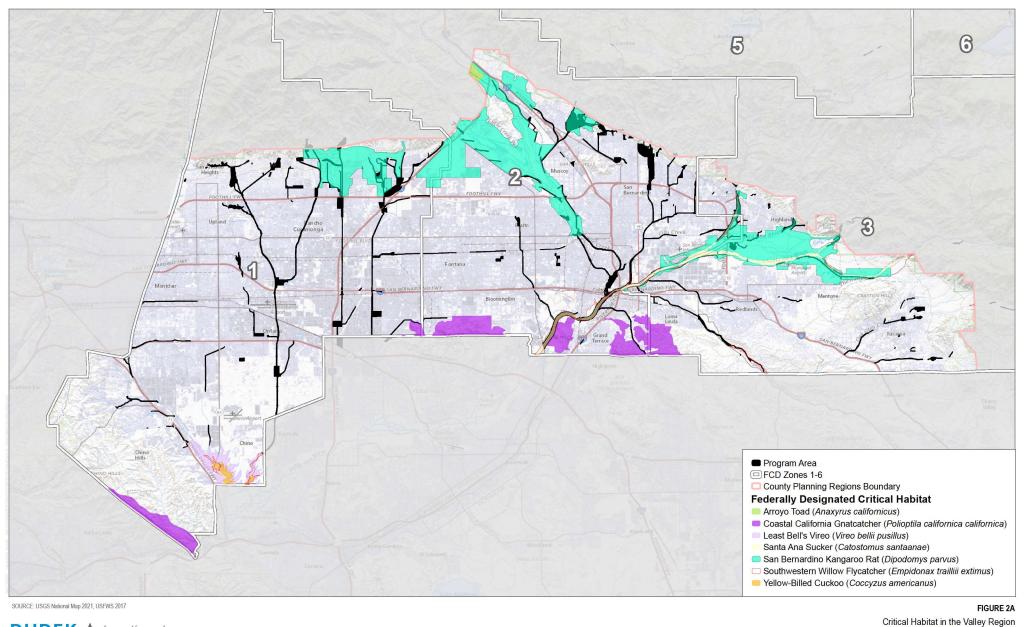
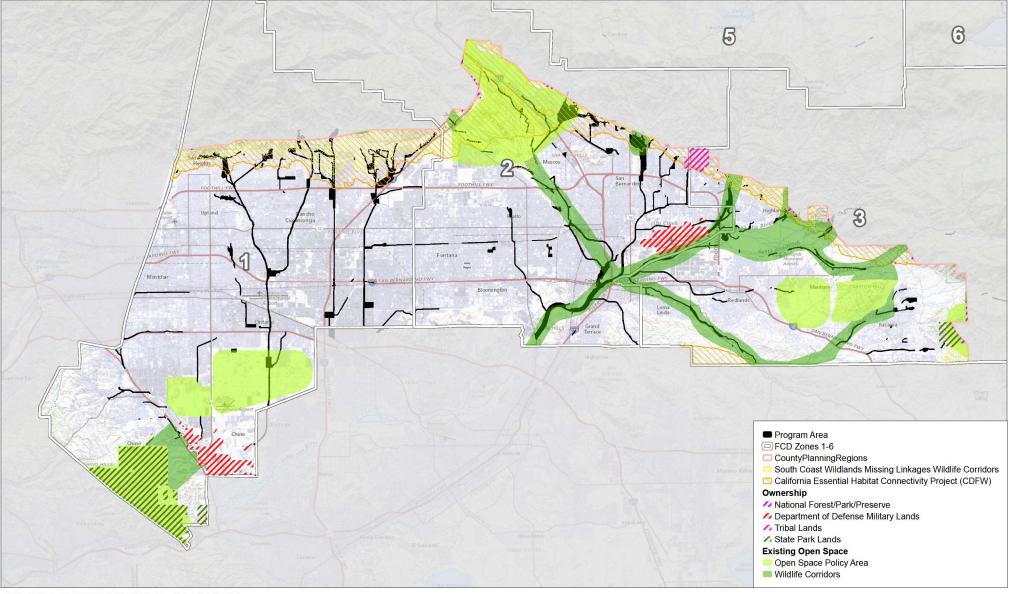


FIGURE 1 Program Area Master Storm Water System Maintenance Program



Master Storm Water System Maintenance Program



SOURCE: USGS National Map 2021, USFWS 2016, BLM 2014, South Coast Wildlands 2012, CDFW 2010

FIGURE 2B

Habitat Linkages and Wildlife Corridors in the Valley Region Master Storm Water System Maintenance Program

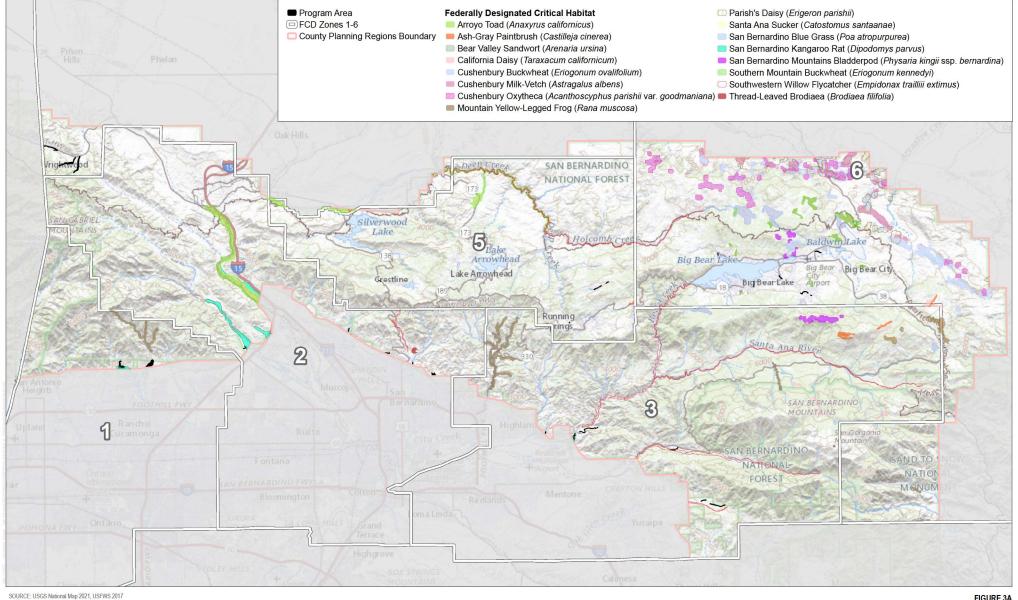
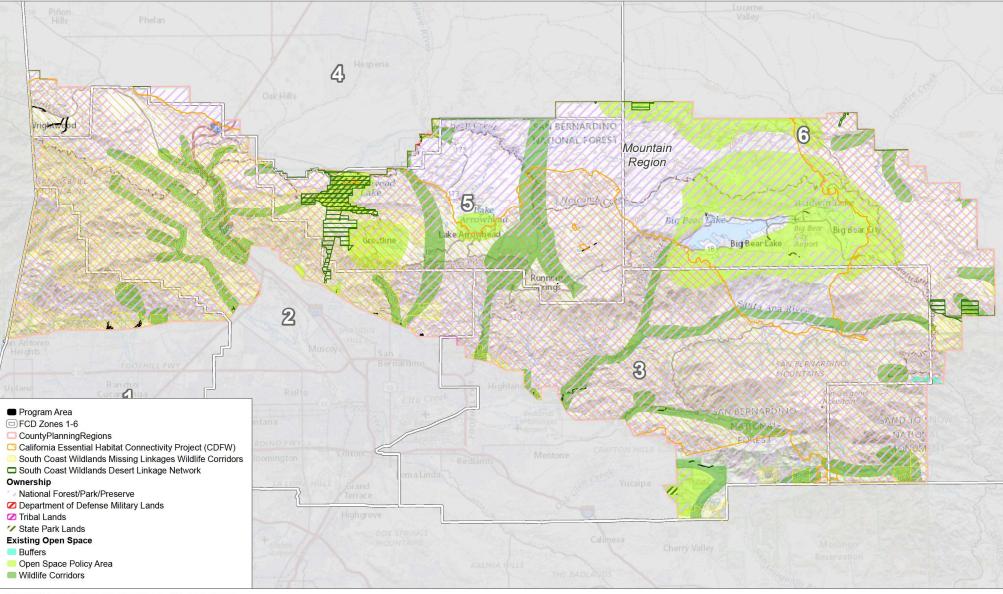


FIGURE 3A Critical Habitat in the Mountain Region

Master Storm Water System Maintenance Program

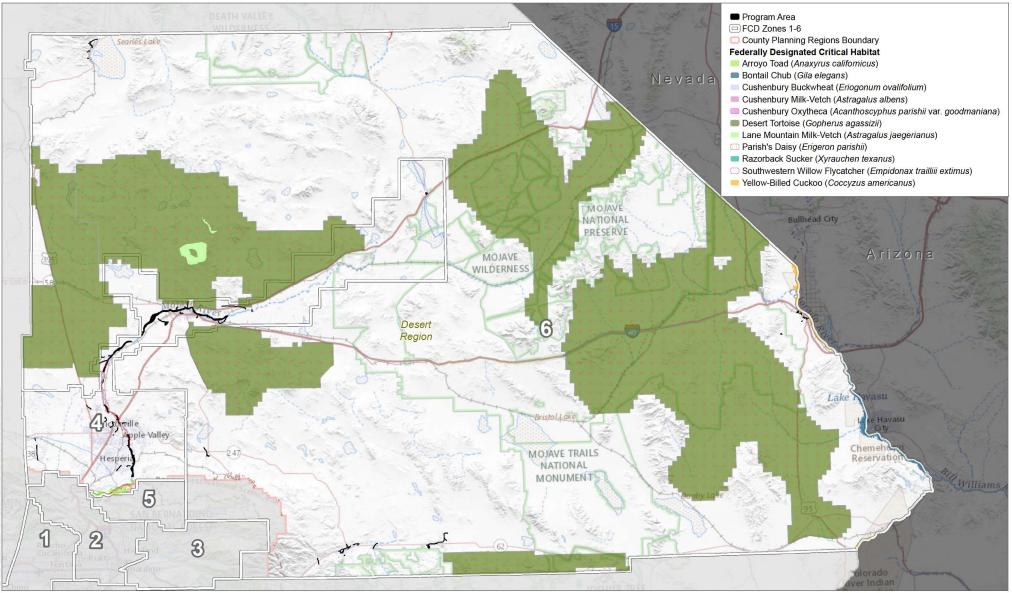


SOURCE: USGS National Map 2021, USFWS 2016, BLM 2014, South Coast Wildlands 2012, CDFW 2010



FIGURE 3B Habitat Linkages and Wildlife Corridors in the Mountain Region

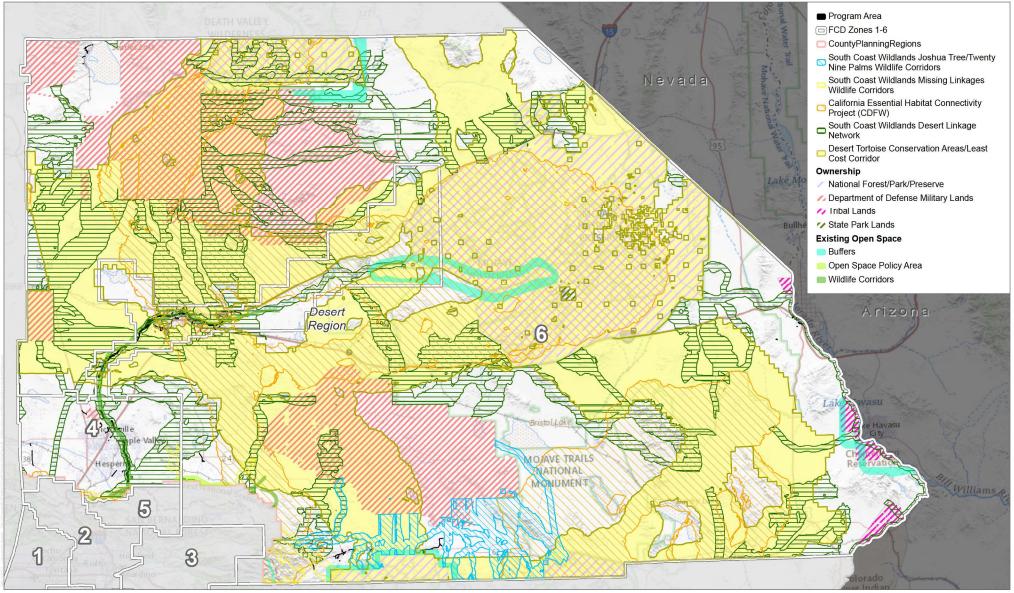
Master Storm Water System Maintenance Program



SOURCE: USGS National Map 2021, USFWS 2017

FIGURE 4A Critical Habitat in the Desert Region

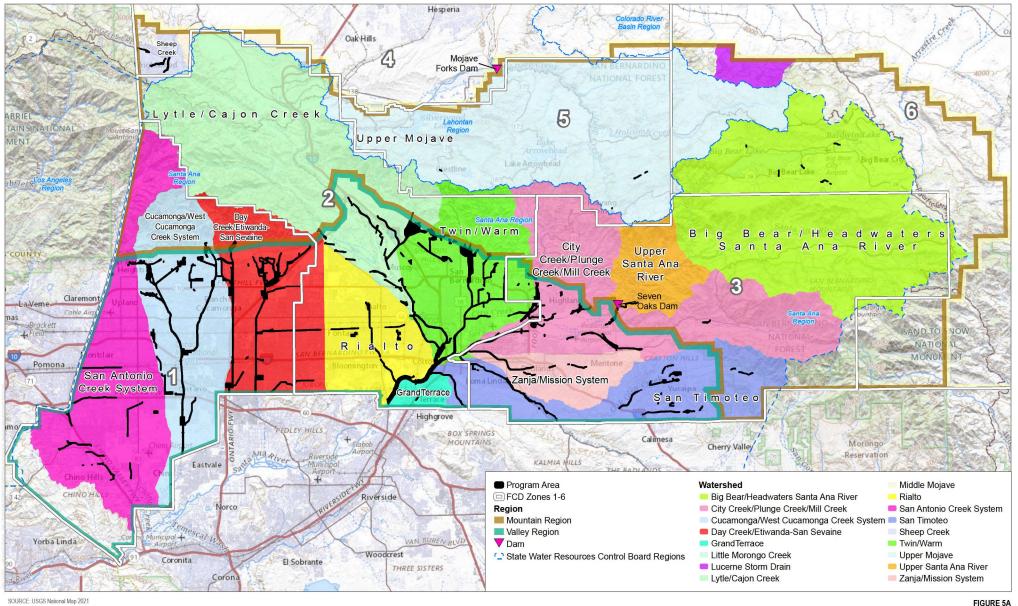
Master Storm Water System Maintenance Program



SOURCE: USGS National Map 2021, USFWS 2016, BLM 2014, South Coast Wildlands 2012, CDFW 2010

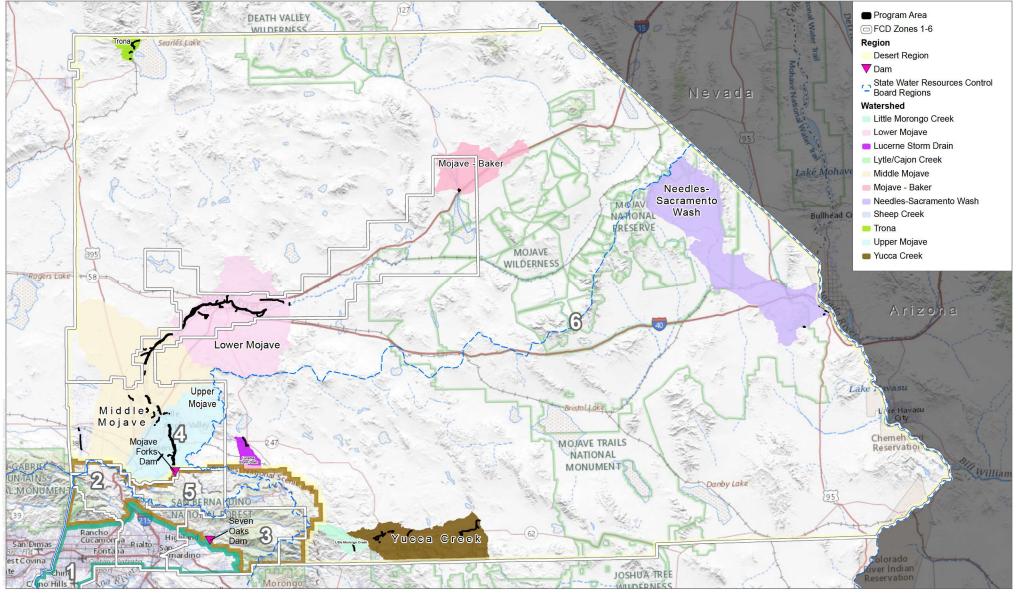
FIGURE 4B Habitat Linkages and Wildlife Corridors in the Desert Region

Master Storm Water System Maintenance Program



Watershed Map - Valley and Mountain Regions

Master Stormwater System Maintenance Program



SOURCE: USGS National Map 2021

FIGURE 5B Watershed Map - Desert Regions Master Stormwater System Maintenance Program