



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS LOS ANGELES DISTRICT
3636 N. CENTRAL AVE, SUITE 900
PHOENIX, AZ 85012-1939

November 2023

RECORD OF DECISION

CORPS FILE NO. (ACTION ID): SPL-2014-00238

APPLICANT: Coachella Valley Water District

PROJECT NAME: Thousand Palms Flood Control Project

I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning the permit application for the proposed action, as well as the stated views of interested agencies and the public. In doing so, I have considered the possible consequences of the proposed action in accordance with regulations published in 33 Code of Federal Regulations (CFR) Parts 320 through 332 and 40 C.F.R. Part 230.

As described in the Final Environmental Impact Report/Environmental Impact Statement (EIR/EIS), the purpose of the proposed action is to provide flood hazard protection within the Thousand Palms community by constructing a system of flood control improvements while also supporting continued aeolian (wind-driven) transport of sand to the Coachella Valley Preserve, where it provides habitat for sensitive plant and wildlife species, including the California state-listed (endangered) and federally listed (threatened) Coachella Valley fringe-toed lizard. The proposed action involves the permanent and temporary discharge of dredged or fill material into waters of the United States (WOUS) under Section 404 of the Clean Water Act. As such, a Department of the Army (DA) permit under the Regulatory Program is required for the proposed action.

I. Background

This project was originally part of a Civil Works Program study by the U.S. Army Corps of Engineers, Los Angeles District (Corps) in this area known as the Whitewater River Basin Flood Control Project. The feasibility study and environmental impact statement (EIS) was completed in 2000; however, the project was never implemented because of

the lack of federal funding for designing and constructing the project. Although the project is no longer federally funded, Coachella Valley Water District (CVWD) is proposing to implement this project as a locally funded project and is using the information developed during the joint feasibility study process (Corps-CVWD) as the basis for their project. Because the project would result in the placement of dredged or fill material within WOUS, CVWD has submitted a DA permit application to the Corps.

A complete application for a DA permit under Section 404 of the Clean Water Act for the proposed action was originally received on April 24, 2014. The Corps determined a joint EIR/EIS would be prepared that would also address CVWD's state-mandated environmental review requirements. An initial public notice was issued by the Corps for the period of May 2, 2014 to June 23, 2014, and a public meeting was conducted in Thousand Palms, California. The project was delayed until it became active again in 2016. Scoping for the EIS began on November 9, 2016, with publication of a Notice of Intent to Prepare an EIS in the *Federal Register* (Vol. 81, No. 217 / pp. 78794-78795). A public scoping meeting was held on December 16, 2016, in Thousand Palms, California. Because of funding issues for the applicant, permit processing and preparation of the EIR/EIS was placed on hold in June 2018.

The project resumed in August 2020. An updated permit application that included minor updated information was submitted to the Corps and found to be complete.

The U.S. Fish and Wildlife Service (USFWS), Sonny Bono Salton Sea National Wildlife Refuge Complex, agreed to be a cooperating agency on the preparation of the EIR/EIS on April 19, 2021.

In April 2022, a Draft EIR/EIS was issued by the Corps for a 45-day review period. A Notice of Availability was published in the *Federal Register* on April 1, 2022 (Vol. 87, No. 63, p 19089). A public notice for the Draft EIR/EIS was issued on April 1, 2022. A public hearing/meeting was not conducted. During the Draft EIR/EIS public review period, six communications were received containing comments on the Draft EIR/EIS.

The Corps issued a Final EIR/EIS in December 2022. A Notice of Availability was published in the *Federal Register* on December 23, 2022 (Vol. 87, No. 246, p. 78960). A public notice announcing the availability of the FEIS was issued December 23, 2022.

II. Project Purpose and Need

- a. Purpose: The overall purpose for the proposed action is to provide flood hazard protection to areas located within the Federal Emergency Management Agency-designated flood hazard zone and floodplain in the Thousand Palms area, while avoiding adverse effects to wildlife and habitat within the Coachella Valley Preserve. The basic project purpose for the proposed Project is flood protection, which is not water dependent.

- b. Need: The community of Thousand Palms is without flood protection and is therefore subject to flooding associated with storms of varying sizes. As recently as September 8, 2014, flash flooding associated with rainfall and runoff from Hurricane Norbert resulted in floodwaters as deep as five feet in some areas, including roadways in Thousand Palms. The proposed action is designed to increase the level of flood protection for this area to reduce damage from flooding hazards associated with large storm events such as the one that occurred in 2014.

Development in the Thousand Palms area is continuing to expand despite the current lack of flood protection. The need for flood control in this area has long been recognized, originally when the Flood Control Act of 1937 authorized a survey for flood control in the entire area of the Whitewater River, and in 1977 when the U.S. House of Representatives' Committee on Public Works and Transportation authorized a study of the Whitewater River Basin. The proposed Project has been studied in various forms since the 1990s, with the current Project design and alignment influenced by development that has continued to occur in the area since the need for flood protection was originally recognized.

III. Alternatives Considered

- a. Alternative 1 (Proposed Action): Alternative 1 is comprised of four individual reaches extending from northwest to southeast across the community that would tie into existing flood control features at the southeast end including the floodway at the Classic Club Golf Course and the existing channel in the Del Webb/Sun City residential development located on the east side of Washington Street. Implementation of Alternative 1 would protect the most undeveloped and developed areas on the alluvial fan downstream of proposed project features. Areas located above Reach 1 would remain subject to flooding from Long Canyon and Morongo Wash, including various industrial facilities (CalPortland cement plant, Desert Recycling Center), residences along the northernmost areas of Desert Moon Drive and Via Las Palmas, and open undeveloped lands, including the Coachella Valley Preserve.

Alternative 1 includes levees, channels, culverts, and a sediment basin (at the end of Reach 1). Soils generated by the implementation of Alternative 1 would either be used to construct the levees or disposed of offsite. All levees would have an underground "toe" (levee toe) extending to a depth of approximately 15 feet. The top, upstream/northern sides and the toe of the levees would be covered with soil cement, while the southern/downstream side would be comprised of earthen materials (soil). Soil cement is a compacted high-density mix of pulverized native rocks and soils bonded with cement and water that is highly resistant to erosion while maintaining an earthen color. The channels

would also be fully lined with soil cement to protect the structures during large flow events.

Alternative 1 includes acquisition of an approximate 550-acre floodway located along the levees and in the active wind corridor between Reach 1 and Reach 3. Development would be prohibited in this floodway to protect the wind corridor and limit disruptions to sand migration. Drainages located within the floodway would be preserved and would receive additional flow as larger storm events convey flow along the floodway. In addition, it is expected that the extent of drainages within the floodway will expand to accommodate additional stormwater runoff that coalesces on the face of the levee and is conveyed to downstream areas. During operations and maintenance of the project, suitable material (e.g., fine sands) that accumulate along the levees and channels would be excavated and distributed in the floodway area for natural distribution onto the Preserve or placed in the proposed USFWS sediment disposal area.

Implementation of this alternative would result in permanent direct impacts from placement of fill to 10.62 acres of WOUS. An additional 17.98 acres of WOUS would be indirectly (and permanently) impacted by truncation of the watersheds draining to those ephemeral streams by project features. Total permanent impacts would be 28.6 acres. Approximately 4.5 acres of temporary impacts would also result.

- b. Alternative 2: Under this alternative, the proposed Reach 2 levee would not be constructed. Although implementation of this alternative would slightly reduce direct impacts to WOUS, flood protection in the community would be reduced; in particular, for the existing Mirage substation.

Implementation of this alternative would result in permanent direct impacts from placement of fill to 10.21 acres of WOUS. An additional 18.15 acres of WOUS would be indirectly (and permanently) impacted by truncation of the watersheds draining to those ephemeral streams by project features. Total permanent impacts would be 28.36 acres. Approximately 4.48 acres of temporary impacts would also result.

- c. Alternative 3: Two sub-alternatives were evaluated that involve two different alignments of Reach 3 features. Each alignment alternative resulted in less impacts to waters of the U.S. compared to the proposed action. However, each sub-alternative also resulted in reduced flood control benefits for the community.
 - 3A: Sub-alternative 3A. This sub-alternative would tilt the alignment about six to ten degrees to the west/southwest away from the wind corridor. Implementation of this alternative would result in permanent direct impacts from placement of fill to 5.72 acres of WOUS. An additional 9.5 acres of WOUS would

be indirectly (and permanently) impacted by truncation of the watersheds draining to those ephemeral streams by project features. Total permanent impacts would be 14.77 acres. Approximately 3.86 acres of temporary impacts would also result.

- 3B: This sub-alternative would tilt the alignment about 17 degrees to the west/southwest away from the wind corridor. Implementation of this alternative would result in permanent direct impacts from placement of fill to 7.29 acres of WOUS. An additional 11.04 acres of WOUS would be indirectly (and permanently) impacted by truncation of the watersheds draining to those ephemeral streams by project features. Total permanent impacts would be 18.33 acres. Approximately 4.02 acres of temporary impacts would also result.
- d. Alternative 4 (No Action, no permit issued): Under this alternative, the Corps would deny the permit or CVWD would withdraw the application. No impacts to waters of the U.S. would result but the Thousand Palms community would continue to be at risk from flooding.

Environmentally Preferred Alternative: Within a National Environmental Policy Act (NEPA) context, the environmentally preferable alternative is the alternative considered in the EIS that would cause the least damage to the biological and physical environment and would best protect, preserve, and enhance historic, cultural, and natural resources. In the case of this project, the No-Action Alternative would be considered the environmentally preferable alternative because there would be no permitting action by the Corps and no damage to the biological and physical environment when compared to the action alternatives. However, this alternative does not meet the project purpose.

Least Environmentally Damaging Practicable Alternative (LEDPA). Within a Clean Water Act context, a range of alternatives were evaluated and compared in a 404(b)(1) analysis that was included in the EIR/EIS. This analysis used the project purpose and screening criteria to determine whether alternatives are considered practicable. The Whitewater River Basin Flood Control Project Feasibility Study that was completed in 2000 provided a range of alternatives that were analyzed and considered for future implementation to accomplish the project goals and objectives. The alternatives screened in the 404(b)(1) analysis include the alternatives assessed in the EIR/EIS and thirteen other alternatives evaluated in the Feasibility Study, including off-site alternatives.

Each alternative was initially screened for any substantial issues, or fatal flaws, that would warrant withdrawing the alternative from further consideration. Each alternative was screened to determine whether it met the project purpose and need. Lastly, alternatives were screened based on practicability criteria: logistics, available technology, and cost. After each alternative was screened, the Corps determined that

Alternative 1, the Proposed Action, was the least environmentally damaging practicable alternative under the 404(b)(1) guidelines.

IV. Comments on the Final Environmental Impact Report/Environmental Impact Statement

- a. Environmental Protection Agency (EPA). EPA's comments focused on several areas noted below:
 - Noise: EPA recommended adding a number of additional best management practices to possibly avoid noise complaints from the project.
 - Response: Most of these recommended practices are already addressed under mitigation measures contained in the report that will be implemented by CVWD. CVWD will also implement other noise-related measures where possible.
 - Compensatory Mitigation: EPA provided comments on the compensatory mitigation approach for this project, including recommending the use of a different evaluation methodology and recalculation of the mitigation ratio.
 - Response: The Corps calculated the need/location for compensatory mitigation based on several factors. The mitigation approach tracks with a long multi-decade planning effort by several federal, state, and local agencies to mitigate for the effects of this project on multiple resources including WOUS, the sand transport corridor, and state and federal listed species/critical habitat. The implementation of an over-arching multi-species habitat conservation plan for the Coachella Valley region, including this project site has also played a substantial role in mitigation planning because it provides for a long-term management mechanism.

The assessment of impacted streams and the mitigation area was accomplished by using a qualitative approach, similar to what has been used in other permitting situations. The episodic riverine module for the California Rapid Assessment Model was not used because it was not yet fully developed at the time of the mitigation assessment.

The mitigation ratio was developed considering numerous factors as required under the 2008 Mitigation Rule (33 CFR Part 332). In this situation, other factors also affected the calculation of mitigation requirements. Although almost 29 total acres of WOUS would be impacted, about 18 acres of impacts would result from cut-off drainages by construction of project features that cut-off a portion of the drainage shed (to varying degrees) from the streams. Depending on the size of the cut-off drainage shed, the functions and services for the drainage in question would likely be reduced to varying degrees. However, although the Corps is assuming this is a permanent loss of WOUS, it is a very conservative estimate of impacts that likely overestimates this loss substantially. Also, the ratios used in the mitigation plan also assumes the mitigation would consist of preservation and enhancement of existing

waters within the mitigation site. This is also a very conservative assumption because the expectation is that the WOUS extent would expand in this area from the introduction of increased stormwater flows redirected from the flood control features to be constructed, resulting in establishment of new WOUS.

For the reasons discussed above, the Corps's position is that the compensatory mitigation plan adequately compensates for the loss of WOUS associated with this project.

- Vegetation: EPA commented on CVWD's intention to keep downstream levee slopes vegetation free and recommends planting appropriate forbs and grasses to provide special-status species habitat.
 - Response. CVWD will consider vegetating downstream slopes where possible provided it complies with levee certification requirements; however, the pervasiveness of Sahara mustard in this area, an invasive exotic species that colonizes disturbed areas, presents a management challenge. This is particularly an important consideration in an area that supports listed plant species such as Coachella Valley milk-vetch (CVMV).
 - Vulnerable Communities: EPA commented that the EIR/EIS does not provide a commitment to provide direct outreach to vulnerable populations on emergency action plan awareness.
 - Response: The EIR/EIS identifies low-income/minority populations in the project area. CVWD has an emergency response plan in place that includes actions for flooding events and maintains a commitment to work with the local community to ensure the safe operation of their facilities.
- b. California Department of Fish and Wildlife (CDFW). CDFW states that impacts to CDFW-owned lands are not adequately addressed in the EIR/EIS.
- Response: CVWD maintains those impacts were fully addressed and is fully committed to acquisition of the 550-acre floodway parcel for project mitigation. CVWD is committed to working with CDFW to ensure that any state lands that are impacted by this Project will be replaced in coordination with CDFW and consistent with the conservation goals of the Coachella Valley Multi-Species Habitat Conservation Plan.
- c. Center for Biological Diversity (CBD). CBD comments that the EIR/EIS fails to address the need for regular sand clearing in Reach 4 and the disposition of that sand. CBD also provides recommendations regarding fencing along the Reach 4 channel.
- Response: The reviewer is directed to pages 2-22 to 2-23, which addresses sand removal along all levees and channels. In addition, Mitigation Measure EC SM-1 (Sand Removal and Distribution or Disposal) addresses this issue. Mitigation Measure EC P-1 addresses fencing along the channels.

After evaluating the comments received and considering input received on those comments from the Applicant, the Corps has determined that no further changes to the Final EIR/EIS are necessary. CDFW concerns are best addressed through upcoming state regulatory/permitting processes and do not relate directly to the DA permitting action.

V. Consideration of Applicable Laws, Regulations, Executive Orders and Policies

- a. National Environmental Policy Act: Upon receipt of the 404 permit application and subsequent environmental review, the Corps determined that an EIS should be prepared to meet the requirements of NEPA. The EIS process has been completed.
- b. Section 401 of the Clean Water Act: The proposed project is in compliance with the Section 401 of the CWA. The Water Quality Certificate (WQC) was received on October 3, 2023, and is included as an attachment to the permit document. Pursuant to 33 U.S.C. 1341(d), special conditions of the Section 401 WQC are special conditions of the DA permit and are included as an attachment to the permit document. Under Section 401(a)(2), the EPA was provided the opportunity to review the effects of this discharge on neighboring jurisdictions. They did not make a “may affect” determination regarding water quality effects on a neighboring jurisdiction.
- c. Endangered Species Act of 1973: The proposed project complies with the Endangered Species Act. On December 10, 2021, the Corps initiated consultation with the USFWS with respect to potential effects to CVMV (*Astragalus lentiginosus* var. *coachellae*) and its designated critical habitat, Coachella Valley fringe-toed lizard (CVFTL) (*Uma inornate*) and its designated critical habitat, and desert tortoise (*Gopherus agassizii*). The Corps determined the project may affect CVMV and CVFTL and their designated critical habitats and may affect, but not likely to adversely affect, desert tortoise. The USFWS issued a Biological Opinion on September 27, 2022. With respect to CVMV and CVFTL, USFWS determined the project is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat. USFWS concurred with the Corps’s determination the project may affect, but is not likely to adversely affect, desert tortoise. The Biological Opinion included an incidental take statement.
- d. Fish and Wildlife Coordination Act The project complies with the Fish and Wildlife Coordination Act. The Corps coordinated directly with both USFWS and the California Department of Fish and Wildlife during scoping and throughout the NEPA and Endangered Species Act Section 7 consultation processes.

- e. Magnuson-Stevens Fishery Conservation and Management Act: This Act is not applicable to this project because there is no Essential Fish Habitat present.
- f. Section 106 of the National Historic Preservation Act: This project complies with the National Historic Preservation Act. The Corps consulted with the California State Historic Preservation Officer (SHPO), the California Native American Heritage Commission, and Native American tribes regarding effects on historic properties. The Corps determined there would be no effect on historic properties and there were no objections to that determination during consultation.
- g. Section 176(C) of the Clean Air Act (CAA) General Conformity Rule Review: Because the project is located in nonattainment areas for particulate matter (PM10) and ozone (both 8-hour and 1 hour standards) the project was evaluated to determine whether issuance of a 404 permit and subsequent project implementation would result in an exceedance of de minimis levels for PM10 and ozone precursors (see Final EIR/EIS, Appendix B). The analysis indicated that de minimis levels would not be exceeded for these pollutants; therefore, a general conformity analysis is not required, and the issuance of the 404 permit is presumed to conform to the appropriate State Implementation Plans.
- h. Executive Order 11998: Floodplain Management: Executive Order 11988 requires federal agencies to prepare floodplain assessments for proposed actions located in or affecting floodplains. If an agency proposes to conduct an action in a floodplain, it must consider alternatives to avoid adverse effects and incompatible development in the floodplain. If the only practicable alternative involves siting in a floodplain, the agency must minimize potential harm to or in the floodplain and explain why the action is proposed there. This project involves work within floodplains that will result in an increased level of flood protection to the community. The 404(b)(1) alternatives analysis provides a practicability analysis that satisfies the requirements of this executive order.
- i. Executive Order 11990: Protection of Wetlands: Executive Order 11990 requires federal agencies to prepare wetland assessments for proposed actions located in or affecting wetlands. Agencies must avoid undertaking new construction in wetlands unless no practicable alternative is available, and the proposed action includes all practicable measures to minimize harm to wetlands. The proposed project would not affect wetlands.
- j. Executive Order 13175: Consultation with Indian Tribes, Alaska Natives, and Native Hawaiians: The Corps consulted with Native American tribes regarding potential historic properties and traditional cultural properties present on the project site. The proposed project complies with this Executive Order.

- k. Environmental Justice (Title VI of the Civil Rights Act and Executive Order 12898): An analysis of environmental justice considerations is provided in Sections 3.12 and 4.12 of the Final EIR/EIS. Although the proposed action will have impacts that affect the Thousand Palms community, including minority communities, those impacts would not be disproportionate, and the beneficial effects of the project will also be experienced by the community as a whole. Therefore, the project is not expected to cause disproportionately high and adverse impacts to minority or low-income communities.

VI. Consideration of Mitigation Measures

The EIR/EIS contains a number of mitigation measures that were developed to limit the potential for adverse environmental impacts related to construction and operation of the proposed project. Some of these measures were developed to address state requirements under the California Environmental Quality Act, while others were developed to address issues related to the federal permitting action. Those measures related to the federal permitting action are required as special conditions to the 404 permit.

VII: Compliance with 404(b)(1) Guidelines

Based on the discussion in Appendix C.4 of the EIR/EIS are there available, practicable alternatives having less adverse impact on the aquatic ecosystem and without other significant adverse environmental consequences that do not involve discharges into "waters of the U.S." or at other locations within these waters? No

If the project is in a special aquatic site and is not water dependent, has the applicant clearly demonstrated that there are no practicable alternative sites available?

Not applicable.

Will the discharge:

Violate state water quality standards? No

Violate toxic effluent standards under Section 307 of the Clean Water Act? No

Jeopardize endangered or threatened species or their critical habitat? No

Violate standards set by the Department of Commerce to protect marine sanctuaries?
No

Evaluation of the information above indicates that the proposed discharge material meets testing exclusion criteria for the following reason(s): based on the above information, the material is not a carrier of contaminants.

Will the discharge contribute to significant degradation of “waters of the U.S.” through adverse impacts to:

Human health or welfare, through pollution of municipal water supplies, fish, shellfish, wildlife and/or special aquatic sites? No

Life stages of aquatic life and/or wildlife? No

Diversity, productivity, and stability of the aquatic life and other wildlife? Or wildlife habitat or loss of the capacity of wetlands to assimilate nutrients, purify water or reduce wave energy? No

Recreational, aesthetic and economic values? No

Will all appropriate and practicable steps be taken to minimize adverse impacts of the discharge on the aquatic ecosystem? Does the proposal include satisfactory compensatory mitigation for losses of aquatic resources? Yes

VIII. Public Interest Review

- a. The relative extent of the public and private need for the proposed work has been considered. This project would provide benefits to the local community in the form of flood protection for residential, institutional, and commercial land uses along with protection of public infrastructure. The project provides the added benefit of supporting a regional sand transport corridor that supports state and federally listed species in this area.

The following public interest factors were considered, including both cumulative and secondary impacts. Further discussion is provided for factors that will receive an effect that is not negligible.

Conservation. Beneficial Effect.

Economics. Beneficial Effect.

Aesthetics. Adverse Effect.

General environmental concerns. Neutral as result of mitigation actions.

Wetlands. Negligible Effect.

Historic properties. Negligible Effect.

Fish and wildlife values. Neutral as result of mitigation actions.

Flood hazards. Beneficial Effect.

Floodplain values. Negligible Effect.

Land use. Negligible Effect.

Navigation. Negligible Effect.

Shore erosion and accretion. Negligible Effect.

Recreation. Negligible Effect.

Water supply and conservation. Negligible Effect.
Water quality. Negligible Effect.
Energy needs. Negligible Effect.
Safety. Beneficial Effect.
Food and fiber production. Negligible Effect.
Mineral needs. Negligible Effect.
Considerations of property ownership. Adverse Effect
Needs and welfare of the people. Beneficial Effect.

1. Conservation. Implementation of this project would have two primary beneficial effects in the project area. In addition to reducing the overall flood risk for the community, this project also has been planned in such a way to maintain an important sand transport corridor that supports state and federally listed special-status plant and wildlife species that are dependent on dune habitat created and maintained by aeolian transport of sand. Operations and maintenance activities include provisions for cleaning out sand from flood control facilities and disposing of it in areas that make it available to this corridor, ultimately supporting the National Wildlife refuge at the southeast end of the project. Also, this project and associated mitigation activities have been developed to fit within the overall planning approach associated with implementation of the Coachella Valley Multi-Species Habitat Conservation Plan.
2. Economics. This project would generally have a beneficial effect on economics in the Thousand Palms community by addressing a long-time flooding issue that affects a large area. By implementing this project, landowners will get long-term assurances for their properties regarding flood protection and also may become eligible for flood insurance. This can result in increased economic stability in the community with opportunities for economic growth.
3. Aesthetics. The EIR/EIS concluded that significant and unavoidable impacts would result to the visual character of this community from project implementation. The impacts would result from the construction of multiple levees that will permanently change the view sheds with long linear constructed features. This impact can't be avoided or mitigated to any great degree but must be balanced against the substantial community benefits that would also result.
4. General Environmental Concerns. The EIR/EIS documents a range of environmental concerns associated with construction and operation of this project. Mitigation measures have been developed that will either be reflected in the special conditions for the DA permit or will be implemented by CVWD to satisfy state requirements and standards.

5. Fish and Wildlife Values. As described above, one of the overall benefits of this project is the way it has been designed to support and enhance the sand transport corridor, which provides habitat for a range of sand dune-reliant fauna and flora. Other negative effects have been fully disclosed and mitigation measures have been developed, in consultation with USFWS and CDFW, to reduce those effects.
6. Flood Hazards. Implementation of this project provides substantially more flood protection to the Thousand Palms community, reducing flood hazards to residents, businesses, and infrastructure.
7. Safety. By reducing flood risk to the community, public safety is increased. A smaller proportion of the population is exposed to flood risks, and accessibility to emergency services is improved as fewer roads are subject to flooding.
8. Considerations of Property Ownership. This project will require the displacement of some residential properties to allow for construction of flood control features. This unavoidable as CVWD tries to address the flooding issues for the maximum community benefit. Some disruptions may also result to other landowners and land uses in the project area.
9. Needs and Welfare of the People. This project provides benefits including increased economic security to Thousand Palms overall by addressing a longstanding problem affecting much of the community.
 - b. The practicability of using reasonable alternative locations and/or methods to accomplish the objective of the proposed structure or work has been evaluated: A detailed analysis of the practicability of alternative locations and methods has been provided in the final EIR/EIS (Appendix C.4). The applicant's proposed project was determined to be the least environmentally damaging practical alternative.
 - c. The extent and permanence of the beneficial and/or detrimental effects that the proposed structures or work may have on the public and private uses which the area is suited has been reviewed:

The proposed project will have a permanent effect on the Thousand Palms community through the construction of permanent flood control facilities and related sub-projects to address a longstanding regional flooding problem that effects a substantial portion of the community. As described in the EIR/EIS, there are a range of environmental effects that would result from construction, operations, and maintenance of the project and would affect public and private uses. Most adverse effects would occur during construction and mitigation measures have been developed to reduce the magnitudes of those effects. However, after construction, adverse impacts would be minimal while

the natural and human environments experience the substantial beneficial effects resulting from the project, including increased flood protection, economic benefits, and ecological benefits related to the sand transport corridor.

IX. Special Conditions

The following special conditions will be included in the permit to ensure the project is not contrary to the public interest and complies with the 404 (b)(1) Guidelines:

- a) The Permittee shall comply with the terms and conditions of the Clean Water Act Section 401 Water Quality Certification (WQC) (WDID No: 7A333252001) dated October 3, 2023. This WQC is hereby incorporated by reference and compliance includes but is not limited to Conditions XII.A through XII.H.
- b) This Corps permit does not authorize you to take any threatened or endangered species; in particular, the federally endangered Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*), the federally threatened Coachella Valley fringe-toed lizard (*Uma inornata*) or adversely modify designated critical habitat for either species or take the federally threatened Mojave desert tortoise (*Gopherus agassizii*). In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed FWS BO (FWS-ERIV-2022-0033479) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, the terms and conditions of which are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The FWS is the appropriate authority to determine compliance with the terms and conditions of its BO and with the ESA.
- c) Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction within waters within the Corps Permit Area (construction footprint) of either human remains, archaeological deposits, or any other type of historic property, the Permittee shall notify the Corps Regulatory Project Manager (Michael Langley, 602-230-6953) and the Corps' Regulatory Archaeology Staff (Danielle Storey [213-452-3855]) within 24 hours. The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area

surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. Section 800.13.

- d) One or more tribal monitors who are authorized by the Agua Caliente Band of Cahuilla Indians shall be present to monitor for tribal cultural resources full-time during construction work. The tribal monitor(s) will participate in CVWD's Worker Environmental Awareness Program training prior to beginning monitoring work. The tribal monitor is vested with the authority to halt construction work if an inadvertent discovery of a traditional cultural property or other tribal resource occur and will report any concerns immediately to the on-site Project Manager or designated USACE tribal liaison.
- e) No later than 30 days following completion of authorized work in waters of the U.S., the permittee shall ensure all sites within waters of the U.S. subject to authorized, temporary impacts are restored to pre-project alignments, elevation contours, and conditions to the maximum extent practicable to ensure expeditious resumption of aquatic resource functions. No later than 45 calendar days following completion of authorized work in waters of the U.S., the permittee shall submit a memorandum documenting compliance with this special condition.
- f) Prior to initiation of any work within waters of the U.S., the applicant shall implement the following compensatory mitigation measures:
 - 1. CVWD shall mitigate direct and indirect impacts to waters of the U.S. through the acquisition and preservation of the 550-acre floodway as described in Appendix C.4 (Appendix B) (Conceptual Compensatory Mitigation Plan) of the Final Environmental Impact Report/Final Environmental Impact Statement. This Plan preserves approximately 70.41 acres of existing jurisdictional streambeds that occur in the 550-acre floodway to off- set the permanent loss of approximately 10.62 acres of waters of the US and indirect impacts to approximately 17.98 acres of waters of the US. The total required compensatory mitigation is 30.28 acres. In the event future land use patterns change for the floodway and the designated lands cannot be acquired, the Permittee shall contact the Corps to discuss available options for meeting mitigation requirements.
 - 2. Prior to initiation of work within waters of the U.S., the Permittee shall record a Conservation Easement (CE), in a form approved by the Corps Regulatory Division and the Regional Water Quality Control Board, which shall run with the land, obligating the Permittee, its successors and assigns to protect and maintain the 550-acres floodway mitigation area as natural open space in perpetuity. The CE must include a 3rd party easement holder qualified to hold easements pursuant to California Civil Code section 815.3 and Government Code section 65965. The Permittee must provide monies in the

form of an endowment (endowment amount to be determined by Property Analysis Record or similar methodology) for the purposes of fulfilling the 3rd party easement holder's responsibilities under the CE. The CE shall preclude establishment of fuel modification zones, paved public trails, drainage facilities, walls, maintenance access roads and/or future easements, except as provided in the Project Description (described herein). Further, to the extent practicable, any such facilities outside the CE shall be sited to minimize indirect impacts on the avoided, created, restored and enhanced wetland and non-wetland waters of the U.S. The Permittee shall receive written approval (by letter or email) from the Corps Regulatory Division and the Regional Water Quality Control Board of this CE prior to it being executed and recorded. A recorded copy of the CE shall be furnished to the Corps Regulatory Division prior to initiation of work in waters of the U.S.

Within 60 days following recordation, you shall provide to this office GIS data (polygons only) depicting the authorized CE boundaries. All GIS data and associated metadata shall be provided on a digital medium (CD or DVD) or via file transfer protocol (FTP), preferably using the Environmental Systems Research Institute (ESRI) shapefile format. GIS data for CE sites shall conform to the Regulatory_mitigation_template_20160115.lpk labeling requirements, as specified in the Final Map and Drawing Standards for the South Pacific Division Regulatory Program dated February 10, 2016 (<http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences/tabid/10390/Article/651327/updated-map-and-drawing-standards.aspx>), and shall include a text file of metadata, including datum, projection, and mapper contact information.

X. Findings

- a. The evaluation of the proposed action and alternatives was done in accordance with all applicable laws, executive orders, regulations, and agency regulations. The EIS and supporting documents are adequate and contain sufficient information to make a reasoned permit decision.
- b. The selected alternative is Alternative 1, and with appropriate and practicable mitigation measures to minimize environmental harm and potential adverse impacts of the discharges on the aquatic ecosystem and the human environment, the applicant's proposed project, as mitigated by these conditions, is considered the environmentally preferred alternative. This alternative is also considered to

be the Least Environmentally Damaging Practicable Alternative per the 404(b)(1) guidelines.

- c. The discharge complies with the Section 404(b)(1) guidelines, with the inclusion of appropriate and practicable general and special conditions in the permit to minimize pollution or adverse effects to the affect ecosystem.
- d. Issuance of a Department of the Army permit, with the inclusion of special conditions on the permit, as prescribed by regulations published in 33 C.F.R. Parts 320 to 332, and 40 C.F.R. Part 320 is not contrary to the public interest.

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David J. Castanon
Chief, Regulatory Division