Final 2021 Nationwide Permit (NWP) Regional Conditions for the State of California

(Effective February 25, 2022 until March 14, 2026)

A. Regional Conditions for the State of California:

1. The permittee shall submit a pre-construction notification (PCN), in accordance with General Condition 32, in the following circumstances:

a. Activities involving new bank stabilization that do not incorporate bioengineering techniques. Bioengineering techniques include using live plants alone or in combination with dead or inorganic materials, including rock, sand, or gravel;

b. Activities resulting in a discharge of dredged or fill material in waters of the U.S. on Tribal lands[1];

c. Activities involving the permanent channelization, realignment, or relocation of streams; and,

d. Activities that have the potential to adversely affect Essential Fish Habitat (EFH), as designated by the Pacific Fishery Management Council. The PCN shall include an EFH assessment and analysis of effects of the action on EFH, in accordance with 50 C.F.R. § 600.920 (e). For Federal permittees, if a PCN is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the Magnuson-Stevens Fishery Conservation and Management Act.

2. In the Sacramento District, the use of any NWP (except NWPs 3, 6, 16, 20, 24, 27, 37, 38, 52, 53, and 59) authorizing the discharge of dredged or fill material in peatlands[2] containing histosols, including bogs and fens, is prohibited.

[1]Tribal lands is defined as any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

[2]A peatland is defined as a wetland with saturated organic soil (greater than or equal to 16 inches in thickness) that is classified as a histosol in the Natural Resources Conservation Service (NRCS) Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at: http://www.nrcs.usda.gov/Internet/_DOCUMENTS/nrcs142p2_053171.pdf

B. 401 Water Quality Certification (401 WQC) Regional Conditions for California:

1. For NWPs 1, 3(a), 4, 5, 6, 9, 10, 11, 14, 20, 22, 28, 32, 36, and 54, on **non-tribal lands within the State of California**, the permittee shall comply with all terms and conditions of the attached October 12, 2021, 401 WQC granted by the State of California, State Water Resources Control Board.

2. For NWPs 3, 5 – 7, 13, 14, 18 – 20, 23, 25, 27, 31 – 33, 36 – 38, 41, 45, 46 and 59, on **tribal lands within U.S. Environmental Protection Agency (EPA) Region 9[3] boundaries in the State of California**, the permittee shall comply with all terms and conditions of the attached October 12, 2021, 401 WQC granted by the U.S. EPA.

3. For NWP 43, **on tribal lands within U.S. Environmental Protection Agency (EPA) Region 9[3] boundaries in the State of California**, the permittee shall comply with all terms and conditions of the attached December 11, 2020, 401 WQC granted by the U.S. EPA.

4. For NWPs 4, 5, 7, 14 – 17, 19, 20, 22, 23, 25, 27, 30 – 34, 36, 37, 41, 45, 46, 49, 53, 54, and 59, on the **Kletsel Dehe Winton Nation within the Sacramento District boundaries in the State of California**, the permittee shall comply with all terms and conditions of the attached October 11, 2021, 401 WQC granted by the Kletsel Dehe Winton Nation.

[3]The EPA 401 WQC does not apply to activities proceeding in the territories of the 25 tribes in Region 9 that have been approved as Section 401 certifying authorities – the Navajo Nation, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk, White Mountain Apache Tribe, Table Mountain Rancheria, Resighini Rancheria, La Posta Band of Diegueno Mission Indians. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification

ATTACHMENTS

401 Water Quality Certifications

State Water Resources Control Board

October 12, 2021

Michael S. Jewell
U.S. Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, CA 95814-2922

RE: GENERAL ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTION FOR THE U.S. ARMY CORPS' REMAINING NATIONWIDE PERMITS (SWRCB ID SB21031GN)

Michael Jewell:

Enclosed please find a GENERAL ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTION, authorized by the State Water Resources Control Board. This General Order is issued to the U.S. Army Corps of Engineers for the remaining 41 Nationwide Permits (NWPs) that are expected to be finalized and published in the Federal Register by the end of the calendar year. Attachments A through E of the Enclosure are also part of the General Order.

This General Order is issued in response to a certification request submitted by the U.S. Army Corps of Engineers (Corps) on October 13, 2020, for proposed discharges to waters of the state, to ensure that the water quality standards for all waters of the state impacted by the Project are met. The Corps extended the reasonable period of time to take certification action on these 41 NWPs, and the extended reasonable period of time ends on October 12, 2021.

If you require further assistance, please contact Paul Hann by phone at (916) 341-5726 or by email at Paul.Hann@waterboards.ca.gov. You may also contact Beth Payne, Wetlands Permitting and Planning Unit Supervisor by phone at (916) 341-5579 or by email at Elizabeth.Payne@waterboards.ca.gov.

Sincerely,

Karen Mogus, Deputy Director
Division of Water Quality, State Water Resources Control Board

Enclosure (1): General Order for Clean Water Act Section 401 Water Quality Certification Action for the U.S. Army Corps' remaining Nationwide Permits

cc: [Via email only] (w/ enclosure):

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GENERAL ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTION ORDER NO. WQ 2021-0048-DWQ

Effective Date:	Effective date of the remaining Nationwide Permits
Program Type:	Fill/Excavation

Reg. Meas. ID:	444647
SWRCB ID:	SB21031GN

Project: State Water Board Certification and Denial of the Corps' Nationwide Permits (Project)

Applicant: Department of the Army, Corps of Engineers

Applicant Contact:
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Chief, Regulatory Division
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State Water Board Contact Person:
If you have any questions, please call State Water Resources Control Board (State Water Board) contact listed above or contact your local Regional Water Quality Control Board using the Clean Water Act Section 401 Program Staff Directory (https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staff_directory_20210616.pdf).

Table of Contents

I. Background and Summary

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the Nationwide Permits (NWPs). On January 13, 2021, the Corps published in the Federal Register its final rule reissuing 12 NWPs and issuing 4 new NWPs, as well as the NWP general conditions and definitions. State Water Board Order No. [WQ] 2020-0039-EXEC applies only to those NWPs that went into effect on March 15, 2021.

On June 11, 2021, the Corps submitted a draft final rule to the Office of Management and Budget for the remaining 41 NWPs. In a letter to the Board dated August 18, 2021, the Corps extended the reasonable period of time to act on the remaining 41 NWPs to October 12, 2021. This State Water Board Clean Water Act section 401 Water Quality Certification action and waste discharge requirements (General Order), which includes attachments A through E, applies to only the remaining 41 NWPs as they are described in the Corps' letter dated August 18, 2021.

This General Order conditionally certifies 15 and denies 26 of the Corps NWPs. Certification is granted to NWPs 1, 3(a), 4, 5, 6, 9, 10, 11, 14, 20, 22, 28, 32, 36, and 54, subject to this General Order's terms and conditions. All other NWPs are denied. See Attachment E List of Certified Nationwide Permits. The State Water Board's Certification of the 2017 Nationwide Permits remains in effect for these NWPs until the effective date of the Corps' final Nationwide Permits, which is anticipated in 2022.

II. Findings

1. This Order is adopted pursuant section 401 of the Clean Water Act and the California Porter-Cologne Water Quality Control Act (Cal. Water Code §§ 13000, et seq.). Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264. Notwithstanding any determinations made by the U.S. Army Corps or other federal agency pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this Order because the General Order also serves as waste discharge requirements in accordance with State Water Board Water Quality General Order No. 2003-0017-DWQ. Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264.

2. Failure to comply with any condition in this General Order may constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.

3. In the event of any violation or threatened violation of the conditions of this General Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law.

4. In response to a suspected violation of any condition of this General Order, the Water Board may require a discharger with authorization under this General Order to furnish, under penalty of perjury, any technical or monitoring reports the Water

Board deems appropriate, provided 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 the permitted dischargers and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.

5. This General Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any license or permit issued for the project.

6. This General Order does not provide coverage under the Construction General Permit. As applicable, dischargers 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). For ground disturbing activities that do not require enrollment in Order No. 2009-0009-DWQ, project plans included with the NOI shall include appropriate erosion and sediment control measures as described in section VI.B (Stormwater Condition 18) below.

7. This General Order does not authorize any act which results in the taking of a threatened, endangered or candidate species, 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 General Order, the discharger 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 discharger is responsible for meeting all requirements of the applicable endangered species act for the project authorized under this General Order.

8. This General Order does not authorize any activity adversely impacting a significant historical or archeological resource; directly or indirectly destroying a unique paleontological resource or site or unique geologic feature; disturbing any human remains; or eliminating important examples of the major periods of California history or prehistory, unless the activity is authorized by the appropriate historical resources agencies.

9. This General Order includes monitoring and reporting requirements pursuant to Water Code section 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The reports confirm that the best management practices required under this General Order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

III. Summary of NWPs

The Corps issues NWPs to authorize certain activities that require Corps permits under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbor Act of 1899. The NWPs include general conditions that modify, suspend, or revoke NWPs for specific activities or within specific geographic regions. In addition, districts or divisions add other conditions, called regional conditions, to the general conditions. The Corps is proposing to issue 40 existing, and 1 new NWP, including modifications to the general conditions, and definitions.

IV. Project Location

An individual project authorized by the Water Board under this General Order may occur anywhere within California except as restricted herein. The nine California Regional Water Boards are the: North Coast Regional Water Board, San Francisco Regional Water Board, Central Coast Regional Water Board, Los Angeles Regional Water Board, Central Valley Regional Water Board, Lahontan Regional Water Board, Colorado River Regional Water Board, Santa Ana Regional Water Board and San Diego Regional Water Board (collectively Regional Water Boards). The jurisdictional boundaries of each board can be found on the State Water Board's map website (https://www.waterboards.ca.gov/waterboards_map.html).

V. Description of Direct Impacts to Waters of the State

Projects proposed under the Corps' Nationwide Permits cover a wide variety of activities. A complete list of activities, including Corps' supplemental decision documents, is available on the Federal Register for the Nationwide Permits (docket ID number COE-2020-0002).

Direct impacts to waters of the state may include temporary fill activities such as placement of temporary stream crossings, or permanent impacts such as placement of permanent structures in waterways. These activities may result in temporary impacts to water quality or may result in a permanent loss of waters. Impacts are generally of limited scope individually. To ensure that project impacts do not cumulatively cause adverse impacts to waters or interfere with compliance with water quality standards or objectives, this certification includes only a subset of those permits as listed in Attachment E.

VI. Conditions

This General Order provides reasonable assurance that projects authorized under this General Order will comply with state and federally approved water quality requirements, provided that the following conditions are adhered to.

A. General Conditions

1. Pursuant to California state regulations governing certifications, this General 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.

2. This General 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 General Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations.

    a. Fees are not required for NWPs 1, 4, 9, 10, and 11. An application fee is required for NWPs 3(a), 5, 6, 14, 20, 22, 28, 32, and 54 under this General Order. The application fee amount is determined as required by the California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3). Annual fees may apply. Fees are periodically adjusted. Dischargers should confirm the correct fee amount prior to submitting an NOI.

4. **Cumulative Impacts:** Activities permitted under this General Order shall not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

5. **Avoidance and Minimization:** Projects authorized under this General Order shall be designed to avoid and minimize impacts to waters of the state to greatest practicable extent.

6. 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 water quality control plans by any applicable Regional Water Board or any applicable State Water Board water quality control plan or policy (including the California Ocean Plan). The source of any such discharge must be eliminated as soon as practicable.

7. **Site Access**: The discharger shall grant Water Board staff 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 General Order.

c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this General Order.

d. Sample or monitor for the purposes of assuring General Order compliance.

8. The discharger shall be responsible for work conducted by its consultants, contractors, and any subcontractors. A copy of this General Order shall be provided to any consultants, contractors, and subcontractors working on this project. Copies of this General Order shall remain at the project site from the duration of this General Order. All personnel performing work on the project shall be familiar with the content of this General Order and its posted location at the project site.

9. This General Order shall not apply to projects for which any NWP conditions or regional conditions have been waived by the Corps' District Engineer.

10. This General Order shall not apply to projects for which more than one NWP has been issued by the Corps except as provided in NWP 14.

11. This General Order shall not apply to projects requiring compensatory mitigation for permanent impacts to waters except as provided in NWPs 3(a), and 14 and section VI.C.

12. Projects impacting histosols, fens, bogs, peatlands, in wetlands contiguous with fens and vernal pools are prohibited.

13. **Lake and Streambed Alteration Agreement:** If issued, the discharger shall submit a signed copy of the Department of Fish and Wildlife's lake and streambed alteration agreement to the Water Board prior to any discharge to waters of the state.

14. The certifying agency may review and revise or revoke (change) a general certification pursuant to California Code of Regulations, title 23, chapter 28, section 3861. Any change to a general certification made by the certifying agency pursuant to this subsection shall not apply to activities subject to a federal license or permit issued before such a change is made.

15. The State Water Board or Regional Water Quality Control Boards (collectively Water Boards) shall determine whether the activity is eligible for enrollment under this General Order. The Water Boards will require a discharger to apply for an individual certification or a certification under another general certification where the activity does not fit in within a CEQA exemption or the activity would not comply with water quality control plans or water quality control policy if authorized for coverage under this Order. A discharger may choose to apply for an individual water quality certification.

B. Construction Conditions

1. All materials and supplies necessary for implementing these construction conditions must be on-site and ready for use at the start of the construction activity and must remain in supply and ready for implementation throughout the construction process. All non-structural best management practice (BMP) materials (e.g., training documents, compliance tracking procedures) must be ready for use at the start of construction.

2. 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. Spoils from excavations shall not be stored in waters of the state.

3. Environmentally sensitive areas and environmentally restricted areas, including any avoided waters of the state, must be clearly identified in the field for exclusion prior to the start of construction. Such identification must be properly maintained until construction is completed and the soils have 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.

4. The number of access routes, number and size of staging areas, and the total area of the activity must be limited to the minimum necessary to achieve the project goal. Routes and work area boundaries must be clearly demarcated.

5. Bridges, culverts, dip crossings, or other structures must be installed so that water and in-stream sediment flow is not impeded. Appropriate design criteria, practices and materials must be used in areas where access roads intersect waters of the state.

6. Temporary materials placed in any water of the state must be removed as soon as construction is completed at that location, and all temporary roads must be removed or re-contoured and restored according to approved re-vegetation and restoration plans.

7. A method of containment must be used below any temporary bridge, trestle, boardwalk, and/or other stream crossing structure to prevent any debris or spills from falling into the waters of the state. Containment must be maintained and kept clean for the life of the temporary crossing structure.

8. Unless authorized for restoration, material excavated to prepare a site for placement of the permitted fill material must be properly disposed of in an upland area. The disposal site must be located at a sufficient distance away from flowing or standing water such that the excavated material does not erode or move in any way into any water of the state. The disposal area shall be identified in the project NOI.

9. **Topsoil:** For any excavation, including utility line trenches, the top 6 to 12 inches of topsoil shall be removed and stockpiled separately during construction. Following installation, the topsoil shall be replaced and seeded with native vegetation.

10. Any structure, including but not limited to, culverts, pipes, piers, and coffer dams, placed within a stream where fish (as defined in Fish and Game Code section 45) exist or may exist, must be designated, constructed, and maintained such that it does not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish due to impedance of their upstream or downstream movement. This includes, but is not limited to, maintaining the supply of water and maintaining flows at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish migration. If any structure results in a long-term reduction in fish movement, the discharger shall be responsible for restoration of conditions as necessary (as determined by the Water Board) to secure passage of fish across the structure.

11. **Dust Abatement:** Dust abatement chemicals added to water can be hazardous to wildlife and, if allowed to enter streams, detrimental to water quality. Therefore, dust abatement activities shall be conducted so that sediment or dust abatement chemicals are not discharged into waters of the state. Dust abatement products or additives that are known to be detrimental to water quality or wildlife shall not be used, unless specific management needs are documented, and product-specific application plans are approved by Water Board staff.

12. **Use of Mechanized Equipment:** Activities permitted under this General Order shall be conducted in a manner that minimizes ground disturbance, soil compaction, rutting and other mechanical impacts. Equipment shall be operated and maintained in a manner that reduces the risk of spills or the accidental exposure of fuels or hazardous materials to water bodies or wetlands. Appropriate project specific BMPs shall be specified by the discharger and shall be provided as part of the project description included in the NOI.

13. **Piers or Piles:** Piers or piles placed in the stream channel to support a linear transportation structure over a creek channel must be aligned parallel with the direction of flow to prevent erosive eddies.

14. **Culvert Replacement and Maintenance**

    a. Cured in Place Pipe (CIPP) is prohibited where it could cause detrimental physiological responses to human, plant, animal, or aquatic life, or cause discharges to waters of the state that do not comply with water quality objectives or goals.

    b. Replacement of culverts acting as grade control structures is prohibited. A vertical gap between the outlet of the culvert and the immediate downstream invert of the stream channel indicates that the culvert likely functions as a grade control structure.

c. Projects proposing to replace culverts must repair any existing scour or headcutting actively discharging sediment, caused by prior culvert design.

d. The replaced or maintained culvert shall be in alignment with the stream channel upstream and downstream of the culvert.

e. Any replacement culvert or culvert that is to be left in place by a repair or maintenance project must be placed at a gradient and orientation that will not result in erosional scour at the outlet.

f. Replacement of a culvert with a similarly sized culvert is allowable only where there is no visual indication that the existing culvert is undersized. Visual indications of undersized culverts include, but are not limited to: sediment aggradation upstream of the culvert; evidence of flow over the top of the culvert (e.g., erosional rills in dirt road surfaces or erosion of shoulders adjacent to paved road surfaces), erosion of the fill cell between the culvert and the road surface, scour pools at the culvert outlet, or erosion of creek banks immediately downstream of the culvert.

g. Culverts with solid bottoms (e.g., cylindrical culverts or box culverts) may be replaced with arch culverts or free-span bridges, if the existing culvert is not acting as a grade control structure.

h. The culvert must not be located in a meander bend of the stream channel.

i. Replacement culverts must be sized to convey a 100-year flow event with debris, without pressurizing flow passing through the culvert. The 100-year flow event should be modeled under climate change projections, if available.

15. Toxic and Hazardous Materials

a. Activities permitted under this General Order shall not discharge toxic substances in concentrations that produce detrimental physiological responses to human, plant, animal, or aquatic life.

b. 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 the site, washout containment shall be used to prevent any discharge. 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.

c. Appropriate BMPs must be implemented throughout project activities to prevent and control potential leaks/spills/drainage of potentially hazardous materials such as: non-petroleum hydraulic fluid; epoxies; paints and other protective coating materials; cement concrete or asphalt concrete; and washings and cuttings thereof.

d. Activities permitted under this General 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:

i. All personnel handling fuels and other hazardous materials shall be properly trained.

ii. Adequate spill prevention and cleanup equipment and materials shall be present on site at all times during project implementation.

iii. All mechanized equipment shall be maintained in good operating order and inspected on a regular basis.

iv. 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.

v. All equipment shall be fueled, maintained, and/or parked overnight in an upland area at least 100 feet from any delineated waters of the state.

vi. Hazardous materials, including chemicals, fuels, and lubricating oils, shall not be stored within 100 feet of any delineated waters of the state, and shall be stored in appropriate containers with appropriate secondary containment.

vii. Pumps or other stationary equipment operating within 100 feet of a waterbody or wetland shall utilize appropriate secondary containment systems to prevent spills.

viii. Any spills or leaks of hazardous materials, chemicals, fuels, lubricants, or any other potential pollutants shall be promptly and completely treated using appropriate materials and equipment.

ix. Spill containment supplies shall be on site in all work areas in sufficient quantities to allow immediate remediation of fuel, oil, hydraulic fluid or similar leaks and spills.

x. A staging area for equipment and vehicle fueling and storage shall be designated at least one hundred (100) feet away from waters of the state, in a location where fluids or accidental discharges cannot flow into waters of the state.

e. Projects that create new or affect existing wetland areas shall be designed to include features or management measures to reduce the production of methylmercury in the wetland, including minimizing the wetting and drying of

soils by keeping wetlands flooded and sediment control measures to reduce the transport of total mercury or methylmercury out of the wetland.

16. Invasive Species and Soil Borne Pathogens

a. The discharger is responsible for ensuring that all project personnel follow proper weed control practices, and that appropriate weed prevention measures are included in project plans.

b. Any straw, hay or other unprocessed plant material used for any purpose must be certified or documented as being weed free.

c. Soil borne pathogens are any nematodes, or any bacterial, protozoan, viral or fungal pathogens that can cause disease or death to native plants, agricultural crops or ornamental plants (e.g., *Phytophthora ramorum*, the cause of sudden oak syndrome, and *Phytophthora lateralis*, the cause of Port Orford cedar root disease). Any equipment entering or leaving the project area from an area of known soil borne pathogen infestation shall be thoroughly cleaned using methods appropriate for the known pathogen before entering or leaving the project area. The fungus that causes Valley Fever, *Coccidioides spp.,* is not considered a soil borne pathogen in this certification.

17. In-Water Work

a. In-water work must not cause or contribute to an exceedance of water quality objectives in the receiving waters. Work in delineated waters commences at the onset of the regulated activity and continues until the activity is finished and all restoration of the affected work area is complete. The term "work" means any ground disturbing activities in any delineated waters of the state that are permitted under this General Order, regardless of the presence or absence of flowing or standing water.

b. Temporary diversions or impoundments of water, cofferdams, or similar structures installed for the purpose of temporary dewatering work areas may be permitted if the project description provided by the discharger in the NOI includes: (a) an adequate description of the proposed dewatering structures, including design criteria, (b) appropriate BMPs for the installation, operation, maintenance and removal of those structures, and (c) appropriate monitoring for water quality upstream and downstream of diversion structures as required in section VI.D.5 of this General Order.

c. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to waters of the state.

d. Except for the following conditions, equipment must not be operated in standing or flowing waters without site specific approval from Water Board staff:

i. All construction activities must be effectively isolated from water flows to the greatest extent possible. This may be accomplished by working in the dry season or dewatering the work area in the wet season. When work in standing or flowing water is required, structures for isolating the in-water work area and/or diverting the water flow must not be contaminated by construction activities. All open flow temporary diversion channels must be lined with filter fabric or other appropriate liner material to prevent erosion. Structures used to isolate the in-water work area and/or diverting the water (e.g., coffer dam, geotextile silt curtain) must not be removed until all disturbed areas are stabilized.

ii. Cofferdams and water barrier construction must be adequate to prevent seepage into or from the work area to the greatest extent feasible.

iii. Flow diversions must be conducted in a manner that prevents pollution and/or siltation and in a manner that restores pre-project flows (except for variation in flows due to seasonality, upstream diversions, etc.) upon completion of the activity. Diverted flows must be of sufficient quality and quantity, and of appropriate temperature, to support existing fish and other aquatic life both above and below the diversion. Diversions must be designed, installed, and maintained to reduce erosion. Pre-project flows must be restored to the affected surface water body upon completion of work at that location.

e. If groundwater dewatering is required for the project, the discharger shall consult with the Water Board to determine if additional permits are required. If additional Water Board permits relating to dewatering are required, the designated Water Board staff contact identified in the project's Notice of Applicability (NOA) must be notified and copied on pertinent correspondence pertaining to those other required permits.

f. All temporary dewatering methods shall be designed to have the minimum necessary impacts to waters of the state. All dewatering methods shall be installed such that natural flow is maintained upstream and downstream of the diversion area. Any temporary dams or diversions shall be installed such that the diversion does not cause sedimentation, siltation, or erosion upstream or downstream of the diversion area. All dewatering methods shall be removed immediately upon completion of activities for which diversions are needed.

g. All temporary dewatering activities are subject to the work-in-water reporting and monitoring conditions presented in sections VI.D below.

18. Stormwater: Dischargers that require enrollment in the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002) shall maintain compliance with that Order. Compliance with that Order constitutes compliance with Erosion and Sediment Control Conditions 18.a.i-ii and Stormwater Management Condition 18.b.i-ii, below.

For ground disturbing activities that do not require enrollment in Order No. 2009-0009-DWQ, project plans included with the NOI shall include the appropriate erosion and sediment control and stormwater management conditions described below.

a. Erosion and Sediment Control

i. No later than 24 hours prior to the start of a likely rain event, the discharger shall ensure that disturbed areas that drain to waters of the state are protected with correctly installed erosion control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw, etc.) or revegetated with propagules (seeds, cuttings, divisions) of locally collected native plants. The likely rain event is defined as any weather pattern that is forecast to have a 50 percent or greater probability of producing precipitation in the project area. The discharger shall obtain on a daily basis a printed copy of the precipitation forecast information (and keep for record) from the National Weather Service Forecast Office.

ii. The timing for installation of the post-construction stormwater BMP subdrains, soils, mulch, and plants shall be scheduled to ensure that the installed bioretention areas do not receive runoff from exposed or disturbed areas that have not been landscaped. The constructed post-project stormwater BMPs shall not receive site runoff until all project landscaping is planted, and effective erosion control measures implemented to ensure that the stormwater features are protected from sediment accumulation.

b. Stormwater Management:

i. Disturbed areas must be temporarily stabilized to prevent erosion and accidental discharge into waters of the state no later than 24 hours prior to any likely precipitation event. A likely precipitation event is any weather pattern that is forecast to have a 50 percent probability of producing precipitation in the project area, as predicted by the National Weather Service. If commencement of a precipitation event is predicted to begin less than 24 hours after the

forecast is issued, temporary stabilization of the disturbed in-water work areas must begin immediately.

ii. No individual construction activity that could discharge sediment or other pollutants may be initiated if that activity and its associated erosion control measures cannot be completed prior to the onset of precipitation. After any rain event, the discharger shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sedimentation problems and take corrective action as needed. Seventy-two hour weather forecasts from the National Weather Service shall be consulted prior to start-up of any phase of the project that may result in sediment-laden runoff to the project site, and construction plans made to meet this condition.

C. Mitigation for Temporary Impacts

1. The discharger shall restore all areas of temporary impacts to waters of the state and all project site upland areas of temporary disturbance which could result in a discharge of waters of the state as described in an approved restoration plan. The restoration plan shall be submitted for written acceptance by Water Board staff with the NOI. The restoration plan shall provide the following: a schedule; plans for grading of disturbed areas to pre-project contours; a planting palette with plant species native to the project area; seed collection location; invasive species management; performance standards; and maintenance requirements (e.g., watering, weeding, and replanting).

2. In cases where implementation actions in the restoration plan cannot be reasonably conducted within one year, or where the adverse temporary impacts result in temporary loss of aquatic resource function(s), the discharger may be required to provide compensatory mitigation to offset temporal loss of waters of the state. Examples of additional mitigation include, but are not limited to, enhancement activities such as increasing the presence of native species and reducing dominance of non-native/invasive species, native willow stalking, planting of native riparian vegetation and trash removal.

3. The Water Board may extend the monitoring period beyond requirements of the restoration plan upon a determination by Water Board staff that the performance standards have not been met or are not likely to be met within the monitoring period.

D. Notifications and Reports

The following notifications and reports are required, as applicable:

1. **Accidental Discharges of Hazardous Materials.**[1] Following an accidental discharge of a reportable quantity of hazardous material, sewage, or an unknown material, the following applies (Wat. Code § 13271):

    a. As soon as (A) discharger 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:

        1. First call – 911 (to notify local response agency)
        2. Then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
        3. 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

    b. Following notification to OES, the discharger shall notify the Water Board, as soon as practicable (ideally within 24 hours). Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.

    c. Within five (5) working days of notification to the Water Board, the discharger must submit an Accidental Discharge of Hazardous Material Report to the Water Board.

2. **Violation of Compliance with Water Quality Standards:** The discharger shall notify the 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.

    a. 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.

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[1] "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 administrating 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 and Saf. Code § 25501.)

b. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.

3. **In-Water Work**:

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

   b. Within seven (7) working days following completion of in-water work or stream diversions, an In-Water Work/Diversions Water Quality Monitoring Report must be submitted to the Water.

4. **Modifications to Project**: The discharger shall give advance notice to the Water Board 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 discharger shall inform the Water Board of any project modifications that will interfere with the compliance with this General Order.

5. **Water Quality Monitoring**

   a. General: In work areas during construction, visual monitoring shall be conducted to detect accidental discharge of construction related pollutants (e.g. oil and grease, turbidity plume, or uncured concrete).

   b. Accidental Discharges/Noncompliance: Upon occurrence of an accidental discharge of hazardous materials or a violation of compliance with a water quality standard, the Water Board may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

   c. In-Water Work or Diversions: For projects involving planned work in water or stream diversions, a water quality monitoring plan shall be submitted to the Water Board for acceptance at least 30 days in advance of any discharge to the affected water body. Water quality monitoring shall be conducted in accordance with the approved plan.

   d. Post-Construction: If the proposed project includes ground disturbance, the discharger shall visually inspect the project site during the rainy season (October 1 – April 30) until a Notice of Completion is issued 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, the discharger shall contact the Water Board staff member overseeing the project within three (3) working days. The 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.

E. Application for Coverage and Termination

The following sections describe the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment B, including specifications for photo and map documentation. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment B, which must be signed by the legally responsible person or authorized representative.

1. **Request for Authorization.** The administrative process for authorization by this General Order varies according to NWP, as follows:

    a. Dischargers shall submit an NOI for certification under NWPs 3(a), 5, 6, 14, 20, 22, 28, 32, 36, and 54 at least 45 days before any project activity. The NOI shall describe all proposed direct project impacts and project design steps taken to first avoid, and then minimize, impacts to waters of the state to the maximum extent practicable. The NOI shall also include a delineation of impact sites. The NOI must also comply with the instructions set forth in Attachment A.

    b. Other than the accidental discharge of hazardous materials reporting, dischargers with projects authorized under NWPs 1, 4, 9, 10, and 11 need not submit other notifications or reports to the Water Board identified in this General Order. Dischargers shall comply with all other applicable General Order conditions.

2. All document submittals shall comply with the signatory requirements set forth in Attachment D of this General Order.

3. **Projec**t **Status Notifications**

    a. **Commencement of Construction:** The discharger shall submit a Commencement of Construction Notice at least seven (7) days prior to start of initial disturbance activities.

    b. **Request for Notice of Project Complete Letter:** This request shall be submitted to the Water Board within thirty (30) days following completion of all project activities including post-construction monitoring of restoration sites. Upon approval of the request, the Water Board shall issue a Notice of Project Complete Letter to the discharger. Annual fees will be terminated concurrent with the date of the Project Complete Letter.

4. **Project Reporting**

    a. **Annual Reporting:** If required in the NOA, the discharger shall submit an Annual Report each year on the date specified in the NOA. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the discharger. The discharger shall provide at least one annual report, in the event the project is completed in less than one year.

5. **Transfer of Property Ownership:** Authorization by this General Order is not transferable in its entirety or in part to any person or organization except after notice to the Water Board in accordance with the following terms:

    a. The discharger must notify the Water Board of any change in ownership or interest in ownership of the project area by submitting a Transfer of Property Ownership Report. The discharger and purchaser must sign and date the notification and provide such notification to the Water Board at least 10 days prior to the transfer of ownership. The purchaser must also submit a written request to the Water Board to be named as the discharger in a revised order.

    b. Until such time as this Order has been modified to name the purchaser as the discharger, the discharger named on the NOI shall continue to be responsible for all requirements set forth in this Order.

6. **Transfer of Long-Term Best Management Practices Maintenance:** If maintenance responsibility for post-construction best management practices is legally transferred, the discharger must submit to the Water Board a copy of such documentation and must provide the transferee with a copy of a Long-Term Best Management Practices Maintenance Plan that complies with manufacturer or designer specifications. The discharger must provide such notification to the Water Board with a Transfer of Long-Term Best Management Practices Maintenance Report at least 10 days prior to the transfer of best management practices maintenance responsibility.

F. Nationwide Specific Impact Size Limits

1. **NWP 3(a) – Maintenance; and NWP 14 – Linear Transportation Projects:** Total impacts (temporary plus permanent) and permanent impacts to waters of the state are subject to the project size limits and restrictions below. This General Order does not authorize any activities seeking coverage under NWP 3 category (b) (removal of accumulation of sediments and debris), or NWP 3 category (c) (temporary structures, fills, and work necessary to conduct maintenance activity).

    a. **Individual Project Impact Size Limits to Waters of the State:**

        i. **Permanent Impact Acreage:** The project shall not result in more than one hundredth (0.01) of an acre of permanent impacts to waters of the state.

ii. **Total Impact Acreage:** The project shall not result in more than two-tenths (0.2) of an acre of total impacts to waters of the state.

iii. **Permanent Impact Length:** The project shall not result in more than 100 linear feet of permanent impacts to waters of the state.

iv. **Total Impact Length:** The project shall not result in more than 300 linear feet of total impacts to waters of the state.

G. Nationwide Specific Compliance

1. **NWP 3(a) – Maintenance:** This General Order authorizes impacts resulting from the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, subject to the size limits in section VI.F.1 and all other applicable General Order conditions, including:

   a. **NWP 3(a) Prohibitions:**

      i. **Lahontan Water Board:** Any NWP 3(a) activity within the Lake Tahoe Hydrologic Unit (HUC; 634.00), the Truckee River HUC (635.00), and the Little Truckee River HUC (636.00) is prohibited.

      ii. **Riparian Vegetation:** Repair, rehabilitation, or replacement is only authorized when trimming of riparian vegetation does not result in significant adverse effects to water quality or impair beneficial uses.

      iii. **Riparian Tree Removal:** If a project involves removal of riparian trees list the following information on the project NOI form for each adult tree proposed for removal: species; common name; diameter breast height; and whether part of the riparian understory or overstory. Any tree removal that results in adverse effects to water quality is prohibited.

      iv. **Roads:** Maintenance of access roads under this General Order shall be confined to the previously existing road prism, except for minor, targeted widening, or improvements. Grading of throughcut roads (any road having a running surface lower than the surrounding terrain on both sides of the road) is prohibited.

      v. **Armoring Facilities:** Placement of in-stream armor above streambed elevation is prohibited, except as otherwise authorized by the Water Boards.

      vi. **Gabions:** Use of gabions ("rock gabions" and similar wire basket structures) in waters of the state is prohibited.

vii. **Riprap Installation:** New riprap installed as part of the maintenance of existing structures shall not increase the footprint of the structure in jurisdictional waters by more than 15 percent or place new fill across the complete width of the active channel in a manner that creates a new grade control structure in the channel.

viii. **Grouted Riprap:** Use of grouted riprap in waters of the state is prohibited.

ix. Construction, replacement, or expansion of facilities in any ocean, bay, tidal waters, or shores thereof are prohibited.

b. **NWP 3(a) Compensatory Mitigation Requirements:** Compensatory mitigation is required to offset permanent impacts to waters of the state, unless the discharger has demonstrated that the project authorized by this General Order was designed to restore or improve the ecological function of the impacted aquatic resource. When compensatory mitigation is required, the discharger shall provide the following:

i. A draft compensatory mitigation plan at a level of detail sufficient to accurately evaluate whether compensatory mitigation offsets the adverse impacts attributed to the project considering the overall size and scope of impact.

ii. Compensatory mitigation at a minimum of a one-to-one mitigation ratio, measured in area or length. The Water Board will require a higher overall mitigation ratio where necessary to ensure replacement of lost aquatic resource functions.

iii. Subject to Water Board approval, the mitigation may be satisfied using any of the following compensatory mitigation methods: restoration, enhancement, establishment, and/or preservation.[2]

iv. Compensatory mitigation shall be provided through a mitigation bank or in-lieu fee program, where feasible. If no mitigation bank or in-lieu fee program options are available, mitigation may be provided through on-site or off-site permittee responsible mitigation, subject to Water Board approval.

v. No discharge of dredged or fill material to waters of the state shall occur prior to Water Board approval of a final mitigation plan.

[2] Restoration should generally be the first option considered because the likelihood of success is greater and the impacts to potentially ecologically important uplands are reduced compared to establishment, and the potential gains in terms of aquatic resource functions are greater, compare to enhancement and preservation.

2. **NWP 14 – Linear Transportation Projects:** This General Order authorizes projects for which one or more NWP 14 has been authorized as long as the individual project size limits in section VI.F.1 are not exceeded. This General Order authorizes impacts resulting from the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, subject to the size limits in section VI.F.1 and all other applicable General Order conditions, including:

    a. **NWP 14 Prohibitions:**

        i. **Lahontan Water Board:** Any NWP 14 activity within the Lake Tahoe Hydrologic Unit (HUC; 634.00), the Truckee River HUC (635.00), and the Little Truckee River HUC (636.00) is prohibited.

        ii. **Riparian Vegetation:** Repair, rehabilitation, or replacement is only authorized when trimming of riparian vegetation does not result in significant adverse effects to water quality or impair beneficial uses.

        iii. **Riparian Tree Removal:** If a project involves removal of riparian trees list the following information on the project NOI form for each adult tree proposed for removal: species; common name; diameter breast height; and whether part of the riparian understory or overstory. Any tree removal that results in adverse effects to water quality is prohibited.

        iv. **Roads:** Maintenance of access roads under this General Order shall be confined to the previously existing road prism, except for minor, targeted widening, or improvements. Grading of throughcut roads (any road having a running surface lower than the surrounding terrain on both sides of the road) is prohibited.

        v. **Armoring Facilities:** Placement of in-stream armor above streambed elevation is prohibited, except as otherwise authorized by the Water Boards.

        vi. **Gabions:** Use of gabions ("rock gabions" and similar wire basket structures) in waters of the state is prohibited.

        vii. **Riprap Installation:** New riprap installed as part of the maintenance of existing structures shall not increase the footprint of the structure in jurisdictional waters by more than 15 percent or place new fill across the complete width of the active channel in a manner that creates a new grade control structure in the channel.

        viii. **Grouted Riprap:** Use of grouted riprap in waters of the state is prohibited.

        ix. Projects impacting any ocean, bay, tidal waters, or shores thereof are prohibited.

b. **NWP 14 Compensatory Mitigation Requirements:** Compensatory mitigation is required to offset permanent impacts to waters of the state, unless the discharger has demonstrated that the project authorized by this General Order was designed to restore or improve the ecological function of the impacted aquatic resource. When compensatory mitigation is required, the discharger shall provide the following:

   i. A draft compensatory mitigation plan at a level of detail sufficient to accurately evaluate whether compensatory mitigation offsets the adverse impacts attributed to a project considering the overall size and scope of impact.

   ii. Compensatory mitigation at a minimum of a one-to-one mitigation ratio, measured in area or length. A higher overall mitigation ratio shall be used where necessary to ensure replacement of lost aquatic resource functions.

   iii. Subject to Water Board approval, the mitigation may be satisfied using any of the following compensatory mitigation methods: restoration, enhancement, establishment, and/or preservation.

   iv. Compensatory mitigation shall be provided through a mitigation bank or in-lieu fee program, where feasible. If no mitigation bank or in-lieu fee program options are available, mitigation may be provided through on-site or off-site permittee responsible mitigation, subject to Water Board approval.

   v. No discharge of dredged or fill material to waters of the state shall occur prior to Water Board approval of a final mitigation plan.

3. **NWP 36 – Boat Ramps:**

   a. **Lahontan Water Board:** Any NWP 36 activity within the Lake Tahoe Hydrologic Unit (HUC; 634.00), the Truckee River HUC (635.00), and the Little Truckee River HUC (636.00) is prohibited.

   b. To prevent the release of uncured cement components into water, use of concrete in areas where ramps may be submerged before the concrete is fully cured is prohibited.

VII. California Environmental Quality Act (CEQA)

The State Water Board has determined that the projects authorized by this General Order are exempt from review under CEQA pursuant to California Code of Regulations, title 14, section 15061. Specifically, the issuance of this Order and the activities described herein meet the exemption criteria under California Code of Regulations, title 14, section(s) listed in the table provided in Attachment E List of Certified Nationwide Permits. Additionally, the State Water Board concludes that no exceptions to the CEQA

exemption apply to the activities approved by this Order. The State Water Board will file a Notice of Exemption with the State Clearinghouse within five (5) working days from the issuance of this Order (Cal. Code Regs., tit 14 § 15062).

VIII. Public Notice

On October 16, 2020, the State Water Board provided public notice of an application by the Corps to reissue all NWPs. The Corps reissued 12 NWPs and issued four new NWPs in January 2021. The remaining 41 NWPs are expected to be finalized and published in the Federal Register by the end of the calendar year. The Corps extended the reasonable time period to take certification action on the remaining 41 NWPs to October 12, 2021. The State Water Board provided a second public notice of the proposed certification of the Corps' NWPs pursuant to California Code of Regulations, title 23, section 3861 from August 18, 2021, to October 2, 2021.

In response to the October 16, 2020, public notice, the State Water Board received one late comment from The Citizens Committee to Complete the Refuge, Center for Biological Diversity, California Coastkeeper Alliance, San Francisco Baykeeper, AquAlliance and Defenders of Wildlife. The comment letter raised a number of concerns regarding the process by which the NWPs are being reissued, including that the Corps failed to comply with applicable federal regulations, and substantive portions of the NWPs, including the removal of linear foot restrictions. The comment letter expressed support for conditional certification of a limited number of NWPs and denial of the remaining NWPs. Although the comment letter was late, State Water Board staff considered the recommendations set forth in the letter but notes that many of the concerns expressed in the letter cannot be addressed through this General Order.

In response to the August 18, 2021, public notice, the State Water Board received one comment letter from the Santa Clara Valley Water District on October 1, 2021. The District requested reducing or eliminating conditions in the General Order, which it viewed as undermining streamlining benefits and/or being redundant with protections already included in the Corps' NWP conditions, and strongly supported the certification of NWPs 3(b) and 3(c). State Water Board staff considered the recommendations set forth in the letter and did not remove conditions or certify NWPs 3(b) or 3(c). Conditions in the General Order reflect state water quality requirements that are not otherwise present in federally-imposed NWP conditions, and while not certified in this General Order, staff may consider future certification of NWPs 3(b) and 3(c) when the Corps reissues them, anticipated in 2026.

IX. General Order Expiration

Except for reporting obligations and enforcement purposes, authorization under this General Order shall extend until the NWPs expire. If a project authorized by the NWPs and by an NOA under this General Order has commenced or is under contract to commence on or before the expiration date of the NWPs, the applicant has up to one year from the General Order expiration to complete the project under the terms of this General Order. If a project has not commenced or is not under contract to commence

by the NWPs' expiration date, a new Notice of Intent, or individual application, and applicable fees will be required.

X. Petitions for Reconsideration

Any person aggrieved by this action may petition the State Water Board to reconsider this General 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 General Order.

XI. Nationwide Permits Denied

Clean Water Act section 401 water quality certification for the following NWPs are denied, unless they qualify for coverage under another applicable general certification: 2, 3(b), 3(c), 7, 8, 13, 15, 16, 17, 18, 19, 23, 24, 25, 27, 30, 31, 33, 34, 35, 37, 38, 41, 45, 46, 49, 53, and 59. The State Water Board does not have reasonable assurance that the denied NWPs will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of the Clean Water Act and appropriate requirements of state law. (See 33 USC § 1341.) This denial does not preclude an applicant from submitting a new or separate project-specific certification request. Information required pursuant to 40 C.F.R. section 121.7(e)(2) is set forth in Attachment C. Clean Water Act section 401 certification action on projects authorized by these denied NWPs will be considered on an individual, project-specific basis, or if eligible, may enroll under another applicable general certification.

XII. Water Quality Certification

I hereby issue the General Order for the State Water Board Certified Corps' Nationwide Permits Project (file number SB21031GN) certifying that as long as all of the conditions listed in this General Order are met, any discharges authorized by NWPs 1, 3(a), 4, 5, 6, 9, 10, 11, 14, 20, 22, 28, 32, 36, and 54 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). The State Water Board will file a Notice of Exemption (NOE) at the SCH within five (5) working days of issuance of this General Order.

In addition to a section 401 certification, this General Order serves as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) as set forth in State Water Board Water Quality General Order No. 2003-0017-DWQ. Notwithstanding any determinations made by the U.S. Army Corps or other federal agency pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this Order. Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264.

Except insofar as may be modified by any preceding conditions, all General Order actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this General Order and the attachments to this General 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.

Karen Mogus Digitally signed by Karen Mogus
Water Boards Date: 2021.10.12 16:47:28 -07'00'

Date

Karen Mogus, Deputy Director
Division of Water Quality

Attachment A – Notice of Intent Instructions

How to Apply

Applicants seeking General Order authorization for Nationwide Permits (NWP) are required to submit a Notice of Intent (NOI) to the appropriate Water Board. A map showing regional water board jurisdictional boundaries is available on the Water Board's website (http://www.waterboards.ca.gov/waterboardsmap.shtml). Addresses and contact information can be found in the online Staff Directory (https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf).

Regional Water Board NOI Submission
Submit the NOI and application fee to the Regional Water Board with jurisdiction where the proposed project impacts would occur. For projects that cross a regional board boundary, submit the NOI to the State Water Board as directed below.

State Water Board NOI Submission
For projects that cross a regional board boundary: submit the NOI to the State Water Board with the application fee. The appropriate Regional Board(s) should also be provided a copy of any NOI submitted to the State Water Board. For State Water Board NOIs, mail to:

State Water Resources Control Board, Division of Water Quality
1001 I Street; 15th Floor
Sacramento, CA 95814
(SWBNWP@waterboards.ca.gov)

Notice of Intent Review Process

To avoid project delays, submit an NOI as early as possible. Within 30 days of NOI receipt, Water Board staff will determine if the NOI is complete.

- Incomplete NOIs will be returned to the applicant with a request to provide information needed to determine the NOI complete. In cases where the NOI is incomplete and the applicant fails to provide the requested information, the Water Board may issue a Notice of Exclusion (NOE).
- If the NOI is determined complete, within 45 days of NOI receipt, the Water Board will either issue a Notice of Applicability (NOA) or an NOE.
    - If the Water Board does not issue an NOA or NOE within 45 days of receiving a complete NOI, the discharger may proceed with the project according to all applicable General Order conditions.
- An NOA authorizes the proposed activity for enrollment under the General Order. An NOE denies authorization and enrollment of the proposed activity under the General Order.

Definitions

Consider the following definitions while completing your NOI.

Permanent aquatic resource impacts will permanently change an aquatic resource to a non-aquatic habitat type or permanently changes the bottom elevation of an aquatic resource. Permanent impacts can result in physical loss of area and ecological degradation.

Temporary aquatic resource impacts are impacts that temporarily cause a physical loss or ecological degradation of an aquatic resource. The impact must be restored to pre-project conditions through natural ecological processes or active restoration in order to be classified as temporary. If the impact is not restored to pre-project condition, it is classified as permanent.

Form Instructions

Section 1: Nationwide Permit Number

Identify the NWP number that applies to the project.

Section 2: Legally Responsible Party and Duly Authorized Representative Information

Legally Responsible Party, Contact Name, and Title: Provide the full, legal company name of the responsible party (applicant). Most commonly, the applicant is the property and/or facility owner. If the applicant is an individual and not a company, indicate that a company name is not applicable. If the applicant is an agency, company, corporation or other organization, a contact name (first, middle initial, last) of the main representative of the company and their title must be provided. The applicant will be the entity or individual responsible for compliance with state and federal regulations, including the Clean Water Act, California Water Code, applicable Water Quality Control Plans, and General Order Conditions.

Legally Responsible Party Contact Information: Telephone number, email address, and the company's mailing address (not the project address) including the street, city, state, and zip code must be provided. **Note that the company's mailing address will also be used for billing purposes.**

Duly Authorized Representative Name and Title: The Duly Authorized Representative (agent) is authorized to certify and submit applications or reports to the Water Boards on behalf of the Legally Responsible Party. Telephone number, email address, and the agent's mailing address (not the project address) including the street, city, state, and zip code must be provided. It is not a requirement to have an agent. If you choose to be represented by an agent, provide the agent's information in this section. If you choose to not be represented by an agent leave this section blank.

Section 3: Fees

Fee amounts are determined according to the Cal. Code Regs., tit. 23, § 2200(a)(2) fee schedule (https://govt.westlaw.com/calregs/Document/IEEE14760D45A11DEA95CA4428EC25FA0?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.DefaDef).

- A fee calculator is available online and may be used to **estimate** fees (https://www.waterboards.ca.gov/water_issues/programs/cwa401/#fees).
- Include only the application fee with your NOI. Water Board staff will determine whether any additional project fees are required during NOI review.
- Fees may be paid online or by check, money order, or cashier check. Information on how to make an online payment is available at the State Water Board's Fee Payment Website (https://www.waterboards.ca.gov/make_a_payment/). If fees are paid online prior to application submission, attach payment receipt to the NOI. Although fees should be included with the NOI and submitted to the appropriate Water Board, **make all checks, money orders, and cashier checks payable to the "State Water Board**."
- Fees are subject to change.

Section 4: Other Agency Permits, Licenses, Agreements, Plans, and Email Correspondence

Provide the following information for each permit from other agencies:

- **Have you applied?** Indicate yes if you have applied for the specified permit; indicate no if you have not.
- **Have you received the permit?** Indicate yes if you have received the permit; indicate no if you have not.
- **Permit Type:** Provide the name of the permit.
- **ID Number:** Provide the permit's identification number or unique identifier.

Section 5: Project Information

Project Name: Provide the project name. The project name will be used in all correspondence referencing the project. Be sure the project name is consistent with other agency permits and applications for the same project, and is consistent on all maps, drawings, and reports. The project name should be clearly relevant to the project (e.g., Blue Creek Bridge Project; Jones Subdivision Road Widening Project).

Project Address: Provide the street address of the project location and the Assessor's Parcel Number (APN). If the proposed project does not have a physical street address, be as descriptive as possible in this section. For example, "Leisure Town Rd., 5.5 miles south of the intersection of I-80 and Leisure Town Rd."

Coordinates: Indicate the location for the center point of your project in decimal degrees (approximate location is acceptable). Assistance in determining a project's coordinates is widely available through various free online services or your local library.

Construction Timeline: Provide the estimated start and end dates for the proposed project.

Project Description/Purpose: Provide a detailed, technically accurate narrative description of the proposed project purpose, project design, all activities planned to complete the design. Include total impacts, area of ground disturbance and area of impact to all aquatic resources on the site (i.e., any and all streams, wetlands, lakes, ponds, beaches, shorelines, etc). If temporary diversions or impoundments of water, cofferdams, or similar structures are proposed, include a dewatering plan as required in General Order section VII.B.20. If trimming of riparian vegetation is proposed, describe the species impacted and explain why trimming is necessary to complete the project.

Section 6: Avoidance, Minimization, and Cumulative Impacts

Avoidance and Minimization: Describe steps taken to avoid impacts to waters and measures incorporated into the project design to minimize loss of, or significant adverse impacts to, beneficial uses of waters of the state, including on-site restoration of the project area. A description may include actions or methods proposed for erosion control, including winterization strategies to stabilize bare soils and revegetation proposals. A map may be included to indicate the approximate location and area of soil, land and vegetation disturbance, and proposed erosion and sediment control best management practices (BMPs) proposed to avoid and minimize project impacts to waters of the state, including BMPs for hazardous substances. Refer to the Procedures' state Supplemental Dredge or Fill Guidelines, subpart H, for actions to minimize adverse impacts to waters of the state. If the effects of impervious surfaces will be minimized through implementation of Low Impact Development treatments, describe those minimization treatments.

Cumulative Impacts: Include a discussion of any potential cumulative impacts. Provide a brief description, including estimated adverse impacts of any projects implemented by the project applicant within the last five years or planned for implementation by the applicant within the next five years that are in any way related to the proposed activity or that may impact the same receiving water body(ies) as the proposed activity. For this item, the waterbody extends to a named source or stream segment identified in the relevant Regional Water Quality Control Plan (Basin Plan). Water Board Basin Plans are found on the applicable Regional Board Basin Plan webpage, and also located on the State Water Board's Plans and Policies website (https://www.waterboards.ca.gov/plans_policies/).

Section 7: Temporary Impacts, Permanent Impacts, and Compensatory Mitigation

Riparian Tree Removal: Indicate yes if your project results in the removal of riparian trees; indicate no if it will not. If yes, populate Table 1 with the requested information, or attach a similar table if additional rows are needed.

- Species name

- Common name
- Diameter at breast height (DBH)
- Indicate if the tree(s) are part of the riparian overstory or understory

Temporary Impacts: Indicate yes if your project will result in temporary impacts to waters of the state. Provide the total temporarily impacted area in acres, to the nearest thousandth of an acre. Provide the total temporarily impacted length to the nearest whole foot. These quantities must match the sum of the temporary impact quantities provided in Table 3. If you are proposing temporary impacts attach a restoration plan, that contains all General Order requirements (a schedule; plans for grading of disturbed areas to pre-project contours; a planting palette with plan species native to the project area; seed collection location; invasive species management; performance standards; and maintenance requirements (e.g., watering, weeding, and replanting). A restoration plan must be provided before your NOI may be determined complete.

Permanent Impacts: Indicate yes if your project would result in permanent impacts; indicate no if it would not. Provide the total permanently impacted area in acres, to the nearest thousandth of an acre. Provide the total temporarily impacted length to the nearest whole foot.

Table 2: Receiving Waters Information: Populate Table 2 with the requested information as described below.

- **Impact Site ID:** Identify the impact site with a site ID. Site IDs should correspond to those used in project maps and other agency application materials.
- **Waterbody Name:** List the waterbody name found in the applicable Basin Plan. If the impact site ID occurs in an unnamed waterbody enter "unnamed" and provide the first named downstream receiving water. Contact Water Board staff for Basin Plan maps or general assistance completing this section, if needed. Regional Board Basin Plans are also located on the State Water Board's Plans and Policies website (https://www.waterboards.ca.gov/plans_policies/).
- **Impacted Aquatic Resource Type:** For each impact site ID, identify the impacted aquatic resource type from the following list: lake, ocean, bay, estuary, riparian zone, stream channel, vernal pool, or wetland. (More refined or precise resource classifications may be used in project plans and related documents.)
- **Water Board Hydrologic Units:** Identify the Water Board Basin Plan hydrologic unit code (HUC). Note that the Basin Plan HUC is not the same as a U.S. Geological Survey HUC. If unknown, indicate UNK and this information will be completed by Water Board staff.
- **Receiving Waters:** List the first downstream waterbody with beneficial use designation in the Water Board Basin Plan. If unknown, indicate UNK and this information will be completed by Water Board staff.
- **Receiving Waters Beneficial Uses:** List the beneficial use designation. If unknown, indicate UNK and this information will be completed by Water Board staff.

- **303d Listing Pollutant:** List pollutants for receiving waters that have a 303(d) impairment designation; if the water is not listed, indicate NA. If unknown, indicate UNK and this information will be completed by Water Board staff.
- **eCRAM ID:** If a California Rapid Assessment Method (CRAM) assessment has been performed at this location, provide the CRAM assessment area ID and attach the CRAM score sheet to the NOI.

Table 3 - Individual Direct Impact Information: Populate Table 3 with the requested information as described below. This table may be used for dredge or fill/excavation activities.

- **Impact Site ID:** Identify the impact site with a site ID; site IDs should correspond with those used in Table 2.
- **Latitude:** Provide the center coordinate of the impact site in decimal degrees.
- **Longitude:** Provide the center coordinate of the impact site in decimal degrees.
- **Permanent or Temporary:** Indicate if the impact at the impact site ID is permanent or temporary.
- **Acres, Cubic Yards, and Linear Feet:** Provide the area in acres, volume in cubic yards dredged (if applicable), and length in linear feet for each impact site. For acres, round to the nearest thousandth of an acre.
- **Dredge or Fill/Excavation?** For each impact site, identify if the impact is from dredging or from fill/excavation activities.

Section 8: Documentation

Use the checklist to confirm the necessary documentation is attached to your NOI. If you determine one of the listed items does not pertain to your project, leave the checkbox empty:

- **Fee Check or Online Payment Receipt**
- **Riparian Trees Proposed for Removal**
- **Other Agency Correspondence, Permits, and Permit Applications**: Attach other agency permits, applications, or correspondence as required in Section 4. If the Corps requires submittal of a Pre-Construction Notification (PCN), include a copy with the NOI.
- **Aquatic Resource Delineation Report:** Include if available.
- **Drawings, or Design Plans:** As applicable, attach drawings, including plan and cross-section views, clearly depicting the location, size, and dimensions of the proposed activity, as well as the location of delineated waters on the site. The drawings should contain a title block, legend and scale, amount (in cubic yards, if applicable) and area (in acres) of fill, including both permanent and temporary impacts. The ordinary high-water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation and design plans. Maps prepared according to the description below may satisfy some or all of this information.
- **Temporary Impact Restoration Plan**

- **Map(s):** Submit maps of sufficient detail to clearly illustrate all project elements, site characteristics, and impacts, with a scale of at least 1:24000 (1" = 200'). Acceptable map formats, listed in order of preference, are:
    - **GIS shapefiles:** Shapefiles must depict the boundaries of all project areas, site characteristics, and extent of aquatic resources impacted or avoided. Each shapefile should be attributed with the extent/type of aquatic resources impacted. Features and boundaries should be accurate to within 33 feet (10 meters). Identify datum/projection used and, if possible, provide map with north American datum of 1983 (NAD 83) in the California Teale Albers projection in feet.
    - **KLM files:** Saved from online mapping services. Maps must show the boundaries of all project areas and extent/type of aquatic resources impacted. Include URL(s) of maps. If this format is used, include a spreadsheet with the object ID and attributed with the extent/type of aquatic resources impacted.
    - **Other electronic format**: (CAD or illustration format) that provides a context for location (inclusion of landmarks, known structures, geographic coordinates, or USGS DRG or DOQQ). Maps must show the boundaries of all project areas and extent/type of aquatic resources impacts. If this format is used, include a table with the object ID and attributed with the extent/type of aquatic resources impacted.
    - Aquatic resource maps marked on paper **USGS 7.5 minute topographic maps or Digital Orthophoto Quarter Quads (DOQQ):** Original or legible copies are acceptable. Maps must show boundaries of all project areas and extent/type of aquatic resources impacted. If this format is used, include a spreadsheet with the object ID and attributed with the extent/type of aquatic resources impacted.
- **Pre-Project Photographs:** Include a unique identifier, date stamp, written description of photo details, and latitude/longitude (in decimal degrees) or map indicating location of photo. Successive photos should be taken from the same vantage point to compare pre/post construction conditions.
- **Proposed Dewatering Plan:** If not included in project description.
- **Additional Pages and/or Supplemental Information:** For example, if the requested information does not fit in the space provided on the form, or if you would like to provide supplemental information not requested in the NOI.

Section 9: Legally Responsible Party and Duly Authorized Representative Signature

The Legally Responsible Party (LRP) must comply with the eligibility requirements described below (and set forth in Attachment D). The LRP shall sign and submit the NOI to the appropriate Water Board. Water Board mailing addresses are located in the Staff Directory (https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf).

The attestation on the NOI form must be signed by the LRP. LRP eligibility is as follows:

1. For a corporation: The NOI must be signed by a responsible corporate officer of at least the level of vice-president.

2. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
3. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. This includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of the U.S. EPA).

Certification of the Corps' remaining Nationwide Permits: **Notice of Intent**

Section 1: Nationwide Permit Number[1]

Select the applicable Nationwide Permit (NWP):

- ☐ NWP 3(a) Maintenance
- ☐ NWP 5 Scientific Measurement Devices
- ☐ NWP 6 Survey Activities
- ☐ NWP 14 Linear Transportation Projects
- ☐ NWP 20 Response Operations for Oil and Hazardous Substances
- ☐ NWP 22 Removal of Vessels
- ☐ NWP 28 Modification of Existing Marinas
- ☐ NWP 32 Completed Enforcement Actions
- ☐ NWP 36 Boat Ramps
- ☐ NWP 54 Living Shorelines

**For NWPs 12, 57, and 58, eligible projects may be enrolled using the Notice of Intent (NOI) included in Order No. 2020-0039-EXEC[2].*

Section 2: Legally Responsible Party (Applicant) and Duly Authorized Representative Information

Information	Legally Responsible Party	Duly Authorized Representative (optional)
Company/Agency Name		
Name of Contact		
Title		
Address		
City, State, Zip		
Phone Number(s)		
Email Address		

Section 3: Fees

Pay the application fee online or include a check, money order or cashier check, payable to the State Water Board, with your NOI.

[1] Refer to Attachment A of the General Order for instructions on how to fill out this Notice of Intent.

[2] https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2020/noi.docx

Section 4: Other Agency Permits, Licenses, Agreements, Plans, and Email Correspondence

Attach application if final action not yet taken.

Permit	Have you applied? (yes/no)	If yes, have you received the permit? (yes/no)	Permit Type	ID Number (e.g. Corps file number)
Army Corps NWP Pre-Construction Notification (PCN)				
US Fish and Wildlife Service Incidental Take Permit				
National Marine Fisheries Service Incidental Take Permit				
Other Federal Permits				
California Department of Fish and Wildlife Lake and Streambed Alteration (LSA) Agreement				
Coastal Development Permit				
Other State Permits				
Local Permit(s)				
Stormwater Pollution Prevention Plan (SWPPP)				

Section 5: Project Information

Project Name:
Project Address (Include city, zip code, county, and Assessor's Parcel Number):
Coordinates (decimal degrees):
Construction Timeframe (Provide approximate start and end dates):
Project Description/Purpose:

Section 6: Avoidance, Minimization, and Cumulative Impacts

Avoidance and Minimization:
Cumulative Impacts:

Section 7: Temporary Impacts, Permanent Impacts, and Compensatory Mitigation

Riparian Tree Removal: Would your project result in the removal of riparian trees ? If yes, use the table below for each adult tree proposed for removal (or attach a similar table if additional rows are needed).

Table 1: Riparian Tree Removal

Species	Common Name	Diameter Breast Height	Indicate whether the tree is part of the Overstory or Understory

Temporary Impacts: Would your project result in temporary impacts ? If yes, attach the restoration plan.

Total Temporary Impacts: _____acres; _____ linear feet

Permanent Impacts: Would your project result in permanent impacts?

Total Permanent Impacts: _____acres; _____ linear feet

Table 2: Receiving Waters Information[3]

Impact Site ID	Waterbody Name	Impacted Aquatic Resource Type	Water Board Hydrologic Units	Receiving Waters	Receiving Waters Beneficial Uses	303(d) Listing Pollutant	eCRAM ID

Table 3: Individual Direct Impact Information

Impact Site ID	Latitude	Longitude	Permanent or Temporary Impact?	Acres	Cubic Yards	Linear Feet	Dredge or Fill/Excavation?

[3] Attach additional tables or add rows to the tables as needed. For receiving waters information (e.g., beneficial uses, watershed identification, etc.) refer to the Regional Water Basin Plans on the applicable Regional Water Board website or the State Water Board's Plans and Policies website (https://www.waterboards.ca.gov/plans_policies/).

Section 8: Documentation

Check any of the following documents that are applicable to your project and attach copies to your NOI.

- ☐ Fee Check or Online Payment Receipt
- ☐ Riparian Trees Proposed for Removal
- ☐ Other Agency Correspondence, Permits and Permit Applications
- ☐ Aquatic Resource Delineation Report
- ☐ Drawings, or Design Plans
- ☐ Temporary Impact Restoration Plan
- ☐ Map(s)
- ☐ Pre-Project Photographs
- ☐ Proposed Dewatering Plan
- ☐ Additional Pages and/or Supplemental Information

Section 9: Legally Responsible Party and Duly Authorized Representative Signature

See NOI Instructions for Legally Responsible Party eligibility.

Legally Responsible Party Attestation

I certify under penalty of law that this application and all attachments were prepared under my direction or supervision in accordance with a process designed to assure that qualified personnel properly gather and evaluate the information submitted. 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.

Print Legally Responsible Person Name (Not the Duly Authorized Representative)

X _____

Legally Responsible Person's Signature

Duly Authorized Representative assignment is as follows (optional):

The authorization shall specify that a person designated as a Duly Authorized Representative has responsibility for the overall operation of the regulated facility or activity, such as a person that is a manager, operator, superintendent, or another position of equivalent responsibility, or is an individual who has overall responsibility for environmental matters for the company.

Optional Duly Authorized Representative Assignment
I hereby authorize [Print Duly Authorized Representative's Name] to act on my behalf as the Duly Authorized Representative in the processing of this NOI, and to furnish upon request, supplemental information in support of this NOI. Print Legally Responsible Person Name (not the Duly Authorized Representative) X _____ Legally Responsible Person's Signature

For Internal Water Board Use Only

Reviewer:

Date Received:

Reg Measure ID:

WDID:

Check Number:

Attachment B – Report and Notification Requirements

Report Submittal Instructions:

1. Check the box on the Report and Notification Cover Sheet (page 9 and 10 of Attachment B) next to the report or notification you are submitting. See the General Order and Notice of Applicability (NOA) for report and notification requirements specific to your project.
2. Complete and sign the Report and Notification Cover Sheet and attach all information requested for the Report or Notification Type.
3. Submit the signed Report and Notification Cover Sheet and required information via email to the Water Board staff assigned to your project.
4. Include in the subject line of the email:
   ATTN: [Staff Name] and [Reg Measure ID] Report

Map/Photo Instructions:

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

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

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

Part A – Annual Reports

Report Type 1 – Annual Report

1. **Report Purpose** - Notify the Water Board staff of project status throughout the duration of the project.
2. **When to Submit** – If required in the NOA, the discharger shall submit an annual report each year by the date specified in the NOA until a Notice of Project Complete Letter is issued to the discharger.
3. **Report Contents** - The contents of the annual report shall include the topics indicated below. Report contents are outlined in Annual Report Topics below.

   - **Topic 1: Construction Summary**
   - **Topic 2: Mitigation for Temporary Impacts Status**
   - **Topic 3: Compensatory Mitigation for Permanent Impacts Status**

   a. **Annual Report Topic 1 - Construction Summary -** Project progress and schedule including initial ground disturbance, site clearing and grubbing, road construction, site construction, and the implementation status of construction storm water best management practices (BMPs). If construction has not started, provide estimated start date and reasons for delay.

      i. Map showing general project progress.
      ii. Summary of Conditional Notification and Report Types 6 and 7 (Part C below), if applicable.

   b. **Annual Report Topic 2 - Mitigation for Temporary Impacts Status**

      i. Planned date of initiation and map showing locations of mitigation for temporary impacts to waters of the state and all upland areas of temporary disturbance which could result in a discharge to waters of the state.
      ii. If mitigation for temporary impacts has already commenced, provide a map and information concerning attainment of performance standards contained in the restoration plan.

   c. **Annual Report Topic 3 - Compensatory Mitigation for Permanent Impacts Status - *If not applicable report "N/A."**

      i. NWP 3(a) and 14 Projects: Include the following as required by the approved Compensatory Mitigation Plan:

         Permittee Responsible:

         a. If mitigation has not been installed, the planned installation date(s).
         b. If installation is in progress, a map of what has been completed to date.

c. If installation is complete, provide a final map and information concerning attainment of performance standards contained in the compensatory mitigation plan.

Mitigation Bank or In-Lieu Fee (ILF):

a. Status or proof of purchase of credit types and quantities.

b. The name of bank/ILF program and contact information.

c. If ILF, project location and type, if known.

Part B – Project Status Notifications

Report Type 2 - Commencement of Construction

1. **Report Purpose** - Notify Water Board staff prior to the start of construction.
2. **When to Submit** - Must be received at least seven (7) days prior to start of initial ground disturbance activities.
3. **Report Contents** -
    - **a.** Date of commencement of construction.
    - **b.** Anticipated date when discharges to waters of the state will occur.
    - **c.** Project schedule milestones including a schedule for onsite compensatory mitigation, if applicable.
    - **d.** Construction Storm Water General Permit WDID No., if applicable.

Report Type 3 - Request for Notice of Project Complete Letter

1. **Report Purpose** - Notify Water Board staff that construction and/or any post-construction monitoring is complete, and no further project activity is planned. Water Board staff will review the request and send a Project Complete Letter to the discharger upon approval. Termination of annual invoicing of fees will correspond with the date of the Project Complete Letter.
2. **When to Submit** - Must be received by Water Board staff within thirty (30) days following completion of all project activities.
3. **Report Contents** -
    - **a. Part A: Stormwater Compliance**
        - **i.** Status of post-construction stormwater BMP installation, pursuant to the General Order.
    - **b. Part B: Mitigation for Temporary Impacts**
        - **i.** A report establishing that the performance standards outlined in the restoration plan have been met for project site upland areas of temporary disturbance which could result in a discharge to waters of the state.
        - **ii.** A report establishing that the performance standards outlined in the restoration plan have been met for restored areas of temporary impacts to waters of the state. Pre- and post-photo documentation of all restoration sites.
    - **c. Part C: Permittee Responsible Compensatory Mitigation**
        - **i.** A report establishing that the performance standards outlined in the compensatory mitigation plan have been met.

ii. Status on the implementation of the long-term maintenance and management plan and funding of endowment.

iii. Pre- and post-photo documentation of all compensatory mitigation sites.

iv. Final maps of all compensatory mitigation areas (including buffers).

Part C – Conditional Notifications and Reports

Report Type 4 - Accidental Discharge of Hazardous Material Report

1. **Report Purpose** - Notifies Water Board staff that an accidental discharge of hazardous material has occurred.
2. **When to Submit** - Within five (5) working days following the date of an accidental discharge. Continue reporting as required by Water Board staff.
3. **Report Contents** -
   a. The report shall include the Office of Emergency Services (OES) Incident/Assessment Form, a full description and map of the accidental discharge incident (i.e. location, time and date, source, discharge constituent and quantity, aerial extent, and photo documentation). If applicable, the OES Written Follow-Up Report may be substituted.
   b. If applicable, any required sampling data, a full description of the sampling methods including frequency/dates and times of sampling, equipment, locations of sampling sites.
   c. Locations and construction specifications of any barriers, including silt curtains or diverting structures, and any associated trenching or anchoring.

Report Type 5 - Violation of Compliance with Water Quality Standards Report

1. **Report Purpose** - Notifies Water Board staff that a violation of compliance with water quality standards has occurred.
2. **When to Submit** - The discharger shall report any event that causes a violation of water quality standards within three (3) working days of the noncompliance event notification to Water Board staff.
3. **Report Contents** - The report shall include: the cause; the location shown on a map; and the period of the noncompliance including exact dates and times. If the noncompliance has not been corrected, include: the anticipated time it is expected to continue; the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and any monitoring results if required by Water Board staff.

Report Type 6 - In-Water Work and Diversions Water Quality Monitoring Report

1. **Report Purpose** - Notifies Water Board staff of the completion of in-water work.
2. **When to Submit** - Within seven (7) working days following the completion of in-water work. Continue reporting in accordance with the approved water quality monitoring plan.
3. **Report Contents** - As required by the approved water quality monitoring plan.

Report Type 7 - Modifications to Project Report

1. **Report Purpose** - Notifies Water Board staff if the project, 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.
2. **When to Submit** - 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.
3. **Report Contents** - A description and location of any alterations to project implementation. Identification of any project modifications that will interfere with the discharger's compliance with the Order.

Report Type 8 - Transfer of Property Ownership Report

1. **Report Purpose** - Notifies Water Board staff of change in ownership of the project or permittee-responsible mitigation area.
2. **When to Submit** - At least 10 working days prior to the transfer of ownership.
3. **Report Contents -**
    - **a.** A statement that the discharger has provided the purchaser with a copy of the Order and that the purchaser understands and accepts:
        - **ii.** The Order's requirements and the obligation to implement them or be subject to administrative and/or civil liability for failure to do so; and
        - **iii.** Responsibility for compliance with any long-term BMP maintenance plan requirements in the Order.
        - **iv.** A statement that the discharger has informed the purchaser to submit a written request to the Water Board to be named as the discharger in a revised order.

Report Type 9 - Transfer of Long-Term BMP Maintenance Report

1. **Report Purpose** - Notifies Water Board staff of transfer of long-term BMP maintenance responsibility.
2. **When to Submit** - At least 10 working days prior to the transfer of BMP maintenance responsibility.
3. **Report Contents** - A copy of the legal document transferring maintenance responsibility of post-construction BMPs.

Report and Notification Cover Sheet

Project: [Project Name]

Discharger: [Applicant]

WDID/File Number: [######]

Reg. Meas. ID: [######]

Place ID: [######]

Order Effective Date:[1] Click here to enter a date

Report Type Submitted

A. Part A – Project Reporting

Report Type 1 ☐ Annual Report

B. Part B – Project Status Notifications

Report Type 2 ☐ Commencement of Construction

Report Type 3 ☐ Request for Notice of Project Complete Letter

C. Part C – Conditional Notifications and Reports

Report Type 4 ☐ Accidental Discharge of Hazardous Material Report

Report Type 5 ☐ Violation of Compliance with Water Quality Standards Report

Report Type 6 ☐ In-Water Work/Diversions Water Quality Monitoring Report

Report Type 7 ☐ Modifications to Project Report

Report Type 8 ☐ Transfer of Property Ownership Report

Report Type 9 ☐ Transfer of Long-Term BMP Maintenance Report

[1] The date the NOA was issued. If an NOA or Notice of Exclusion (NOE) was not issued for the project, the effective date is 45 days from the date the discharger submitted a complete Notice of Intent (NOI) to the Water Boards.

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

Print Name[1]	**Affiliation and Job Title**
Signature	**Date**

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

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

Signature	**Date**

***This Report and Notification Cover Sheet must be signed by a Duly Authorized Representative and included with all written submittals.**

Attachment C - Compliance with 40 CFR Part 121.7

The purpose of Attachment C is to comply with Title 40, Code of Federal Regulations (CFR) sections 121.7(d)(2) and 121.7(e)(2).

Notwithstanding any determinations by the U.S. Army Corps or other federal agency made pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this General Order because the General Order also serves as waste discharge requirements in accordance with State Water Board Water Quality General Order No. 2003-0017-DWQ.

Certification Conditions and Compliance with Title 40, Code of Federal Regulations (CFR) Part 121.7 (d) (2)

Attachment C uses the same organizational structure as section VI, and the statements below correspond with the conditions set forth in section VI. Sections I through V, and VII through XII are not "conditions" as used in 40 CFR section 121.7.

Attachment C includes citations to some sources of authority that are applicable to all conditions. These sources are specifically identified where they are most relevant but are also generally applicable to the conditions below. California Code of Regulations, title 23,[1] Chapter 28 sets forth regulations pertaining to water quality certifications. As set forth in section 3861, the State Water Board may issue a general certification for discharges for a class or classes of activities only if those activities will not individually or cumulatively result in significant adverse impacts or violations of water quality objectives. Accordingly, the State Water Board imposes the conditions set forth in this General Order to assure that the discharge complies with water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code. These conditions are also generally required to comply with the state's Anti-Degradation Policy (State Board Resolution No. 68-16), which requires that for any "activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the state will be maintained." All Regional Board Water Quality Control Plans incorporate the state's Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR Part 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." According to U.S. EPA, for dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with U.S. EPA's section 404(b)(1) Guidelines. The State

[1] Unless as otherwise noted, all citations are to title 23 of California Code of Regulations.

Water Boards adopted a modified version of U.S. EPA's section 404(b)(1) Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines).

VI. Conditions

A. General Conditions

1. Standard Condition CCR section 3860(a) "Pursuant to California state regulations governing certifications, this General Order is subject to modification or revocation upon review…"

This condition was included to comply with section 3860, which sets forth conditions that must be included in water quality certifications. This condition applies only to administrative or judicial review. This condition is also necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States. California Code of Regulations, title 23, Chapter 28 sets forth regulations pertaining to water quality certification for point source discharges to waters of the United States.

2. Standard Condition CCR section 3860(b) for "FERC…"

This condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States. California Code of Regulations, title 23, Chapter 28 sets forth regulations pertaining to water quality certification for point source discharges to waters of the United States. This condition was included to comply with section 3860, which sets forth conditions that must be included in water quality certifications.

3. Standard Condition CCR section 3860(c) for "conditioned upon total payment of any fee…"

This condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States. California Code of Regulations, title 23, Chapter 28 sets forth regulations pertaining to water quality certification for point source discharges to waters of the United States. This condition was included to comply with section 3860, which sets forth conditions that must be included in water quality certifications. This fee requirement condition is also required pursuant to California Code of Regulations, sections 3861(c)(4) and 3833(b), which requires payment of fees by project proponents enrolling in this General Order.

4. Cumulative impacts

This condition related to cumulative impacts is required pursuant to California Code of Regulations, section 3861(d), which requires that for a general certification, the category of activities to be certified individually or cumulatively will not have any of the following impacts, taking into account the probable effectiveness of any conditions or certification in avoiding or mitigating such impacts:

a. Significant adverse impacts on water quality that could feasibly be avoided if individual certification, for the proposed activities seeking individual federal licenses or permits, was issued.

b. Violation of any water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code.

c. The taking of any candidate, threatened, or endangered species or the violation of the federal Endangered Species Act (16 USC Section 1531 et seq.) or the California Endangered Species Act (Fish and Game Code Section 2050 et seq.).

d. Exposure of people or structures to potential substantial adverse effects – including the risk of loss, injury, or death – from flooding, landslides, or soil erosion.

This General Order also authorizes only projects that meet a CEQA exemption, and for which no exceptions to the exemptions apply. Accordingly, this condition is required pursuant to California Code of Regulations, tit. 14, section 15300.2(b) that "All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant."

5. Avoidance and Minimization

Conditions that require avoidance and minimization measures are consistent with the Dredge or Fill Procedures, section IV.B.1.a (Cal. Code of Reg., section 3013),[2] which requires applicants to demonstrate that a "sequence of actions has been taken to first avoid, then to

[2] The State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Dredge or Fill Procedures) was adopted on April 2, 2019, went into effect on May 28, 2020, and was revised on April 6, 2021. The Dredge or Fill Procedures were adopted pursuant to the State Water Board's authority under Water Code section 13140 (state policy for water quality control) and 13170 (water quality control plan), and accordingly have regulatory effect. Consistent with Government Code, section 11353, a clear and concise summary of the Dredge or Fill Procedures is available in California Code of Regulations, section 3013. A full version of the Dredge or Fill Procedures is available on the State Water Board's website. Although general orders are not directly subject to the procedural requirements set forth for individual orders, the Procedures do not preclude the incorporation of similar requirements in general orders and provide useful guidance that was adopted by the Water Boards for dredge or fill projects.

minimize, and lastly compensate for adverse impacts that cannot be practicably avoided or minimized to waters of the state." A description of avoidance and minimization measures are also required pursuant to the California Code of Regulations, section 3856(h)(6), which requires dischargers to provide a "description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state." This condition is also consistent with the State Supplemental Guidelines, section 230.10.

6. Permitted actions must not cause violation of applicable water quality standards…

Conditions related to compliance with water quality objectives and designated beneficial uses are required pursuant to the state's Anti-Degradation Policy (State Board Resolution No. 68-16), which requires that for any "activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the state will be maintained." All of the Water Quality Control Plans incorporate the state's Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR Part 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.". According to U.S. EPA, for dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with U.S. EPA's section 404(b)(1) Guidelines. The State Water Boards adopted a modified version of U.S. EPA's section 404(b)(1) Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines).

These conditions are also required pursuant to California Code of Regulations section 3861(d), which requires that discharges comply with any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code.

7. Site Access

Conditions related to site access requirements are authorized pursuant to the Water Boards' authority to investigate the quality of any waters of the state within its region under Water Code section 13267. Water Code section 13267(c) provides that "the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with."

8. The discharger shall be responsible for work…

This condition requires site personnel and agencies to be familiar with the content of the General Order and availability of the document at the project site. This condition is required to assure that any authorized discharge will comply with the terms and conditions of the General

Order, which requires compliance with all of the water quality objectives and beneficial uses adopted or approved under sections 13170 or 13245 of the Water Code.

9. Waiver of NWP conditions or regional conditions

If conditions are waived, the State Water Board would need to determine the effect of any such waiver on the proposed project's impacts to waters of the state. This condition is necessary to ensure that the activity does not individually or cumulatively violate water quality objectives or result in significant adverse impacts, and are more appropriately regulated under an individual certification action than under a general certification (Cal. Code of Regs., § 3861(d)). Water Code section 13264 prohibits any discharge that is not specifically authorized in this General Order, which was drafted based on the conditions set forth in the proposed NWPs noticed on September 15, 2020 and regional conditions.

10. More than one NWP has been issued except as provided by NWP 14

This General Order must comply with the requirements set forth in CEQA, Cal. Code of Regs., section 3861(c)(5), which includes the requirements that the permitting authority consider the project, which means the "whole of the action." (Cal. Code of Regs., tit. 14, § 15378.) Projects relying on permitting under more than one NWP are more likely to have significant or cumulative impacts of water quality when considering the whole of the project.

11. Not applicable to projects requiring compensatory mitigation except as otherwise provided.

Except as specifically provided in this General Order, compensatory mitigation plans are more appropriate to consider on an individual basis to ensure compliance with Subpart J of the State Supplemental Guidelines. Given the potential for significant water quality impacts from projects authorized under this General Order must meet CEQA exemption criteria, this condition is also required pursuant to California Code of Regulations, tit. 14, section 15300.2(b) that "All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant." This condition is necessary to ensure that the exception set forth in California Code of Regulations, tit. 14, section 15300.2(b) ("All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.") does not apply, and the project does not have a significant effect on the environment and is accordingly exempt from the California Environmental Quality Act.

12. Projects impacting histosols, fens, bogs, peatlands, in wetlands contiguous with fens and vernal pools are prohibited.

Water Code section 13264 prohibits any discharge that is not specifically authorized in this order. This condition is necessary to protect certain aquatic resources that are rare and difficult to replace. (California Code of Regulations, section 3861(d).) For example, vernal pools are small seasonal wetlands that are ecologically diverse and difficult to replace once

lost. They support endemic rare plant and animal species, including many that are designated by federal and state government as rare, threatened, or endangered. In 2005 the U.S. Fish and Wildlife Service finalized its Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon that addresses 33 plant and animal species of interest that are endemic to vernal pools, including 15 plants that are listed as threatened or endangered under the California Endangered Species Act.[3] Most of the historical vernal pool habitat in California has been destroyed (estimates are around 90% compared to pre-Spanish exploration), due to agriculture and development, so any loss of vernal pools due to dredge or fill activities would be considered a significant adverse impact, would conflict with or violate Water Quality Control Plans designated uses for RARE, and would not meet CEQA exemption criteria.

13. Lake and Streambed Alteration Agreement

Condition 13 is required pursuant to California Code of Regulations section 3856(e), which requires that copies be provided to the Water Boards of "any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included."

14. The certifying agency may review and revise or revoke (change) a general certification pursuant to…

Condition 14 is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements because it reserves the authority set forth in California Code of Regulations, title 23, section 3861(e). This condition reserves the state's authority to take into account changing water quality requirements or environmental conditions that would result in any of the projects authorized under the general certification, individually or cumulatively, resulting in any of the impacts identified in section 3861(d).

15. The State Water Board or Regional Water Quality Control Boards shall determine whether the activity is eligible for enrollment…

Condition 15 is necessary to assure that any discharge authorized under the general license or permit will comply with water quality standards, and will not result in significant adverse impacts on water quality, violate water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code, or expose people or structures to potential substantial adverse effects. (California Code of Regulations, section 3861(d).)

[3] California Department of Fish and Wildlife, Vernal Pools at <https://wildlife.ca.gov/Conservation/Plants/Vernal-Pools> [as of Nov. 30, 2020].

B. Construction Conditions

1. All materials and supplies necessary…

On-site availability of materials and supplies assures best management practices can be reasonably implemented and that the discharge complies with water quality objectives. This condition and other conditions related to best management practices are consistent with the Water Board's authority to establish, "[w]ater quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area" pursuant to Water Code section 13241(c). The activities authorized under this General Order have the potential to result in a discharge that exceed water quality objectives and work in waters of the state must not cause an exceedance of water quality objectives. As required by Water Code section 13369, all Water Quality Control Plans incentivize the use of best management practices to prevent prohibited discharges into waters of the state.

2. Construction material, debris, rubbish….

Water Code section 13264 prohibits any discharge that is not specifically authorized in this General Order. This condition is necessary to prevent violation of state discharge prohibitions that protect water quality objectives. Water Quality Control Plans prohibit the discharge of construction materials and byproducts from being discharged into waters of the state. For example, "The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited" (Water Quality Control Plan for the North Coast Region, section 4.2.1).

This condition prohibiting discharge of materials detrimental to water quality or hazardous to aquatic life is also consistent with the Dredge or Fill Procedures, Appendix A, Subpart H, which requires actions to minimize and avoid adverse effects, including actions concerning the location, the material. and controlling the material after the discharge (§ 230.70 et seq.).

3. Environmentally sensitive areas and environmentally restricted…

This condition is necessary to assure that the project discharge will comply with state discharge prohibitions that protect beneficial uses and water quality objectives. A description and delineation of impact sites is necessary to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters (California Code of Regulations, title 23, section 3856(h); Dredge or Fill Procedures section IV.A.1(c); Water Quality Control Plan for the San Francisco Bay Region, section 4.23.2).

In addition, Water Quality Control Plans prohibit the discharge of construction materials and byproducts from being discharged into waters of the state, including areas that may be environmentally sensitive, such as vernal pools or eel grass beds. For example, "The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse

in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited" (Water Quality Control Plan for the North Coast Region, section 4.2.1). Identification and visible demarcation of areas of avoidance must be obvious to all on-site personnel, to ensure that impacts only occur within the permitted boundaries of project disturbance and to prevent unauthorized discharges to other waters of the state, including environmentally sensitive areas. Furthermore, waters that are not quantified and mapped as either a temporary or permanent impact site in a water quality certification must be fully avoided throughout the duration of the construction activity. This condition is necessary to ensure protection of aquatic resources where no discharge is authorized to occur. Furthermore, excavated material that is improperly exposed can produce or contribute to runoff that results in an unintentional discharge to waters of the state, which is prohibited (Water Quality Control Plan for the North Coast Region, section 4.2.1).

4. The number of access routes, number and size of staging areas…

5. Bridges, culverts, dip crossings, or other structures…

6. Temporary materials places in any water of the state…

7. A method of containment must be used below any temporary bridge, trestle…

Conditions 4, 5, 6, and 7 limit activities such as construction or maintenance of access roads, staging areas, water crossings, and temporary structures to assure that the activities are minimally impacting and comply with water quality objectives. These types of activities commonly require grading, construction, excavation, and vegetation removal, and may result in erosion and increased sediment loads, turbidity, etc., that adversely affect water quality. These conditions are required to assure that the discharges from such activities do not exceed water quality objectives established in Water Quality Control Plans, including water quality objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity. For example, the sediment water quality objective requires that, "the suspended sediment load and suspended sediment discharge rate to surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses" (Water Quality Control Plan for the North Coast Region, section 3.3.11). Additionally, improperly designed and/or installed roads and bridges may also create physical barriers to fish passage and impair the beneficial use of fish spawning (Water Quality Control Plan for the San Francisco Basin, section 7.8.4.1).

8. Unless authorized for restoration, material excavated to prepare a site…

Condition 8 is required pursuant to the Water Quality Control Plans, and the water quality objectives therein prohibiting excavated material erosion or disposal into waters of the state. For example, the North Coast Water Quality Control Plan prohibits waters from containing settleable material in concentrations that result in the deposition of material that causes

nuisance or adversely affects beneficial uses (Section 3.3.12), and prohibits waters from containing suspended material in concentrations that cause nuisance or adversely affect beneficial uses (Section 3.3.13).

9. Topsoil

This condition is consistent with the requirements set forth in Nationwide Permits 12, C, and D which require that the top 6 to 12 inches of a dig to be backfilled with native topsoil in order to ensure that temporary impacts can be considered as such. The top 6 to 12 inches of topsoil tend to be richer in organic matter than other soil horizons below this depth. Therefore, it is essential to stockpile the topsoil layer separately from the rest of the soil in order to ensure survivorship of riparian vegetation populations upon completion of the project.

Backfilling of native topsoil is necessary to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters. "Operations and activities should be planned and conducted in a manner that will not disturb extensive areas of soil or that will disrupt local drainage. Areas where soil is disturbed should be promptly reseeded or stabilized to prevent erosion." (Water Quality Control Plan for the Tulare Lake Basin, section 4.1.7.) Backfilling of native topsoil also assures that the pre-project hydrologic regime is not altered or adversely impacted by introduction of new backfill materials. "The stream flow regimen should be stabilized and maintained, and soil control measures should be applied in a timely manner." (Water Quality Control Plan for the Tulare Lake Basin, section 4.1.7.) "Limit disturbance of natural drainage features and vegetation." (Water Quality Control Plan for the North Coast, Appendix D, page 4-104, Urban and Suburban Runoff Management Measures.)

10. Any structure, including but not limited to culverts, pipes, piers, and coffer dams, placed within a stream…

Conditions related to placement of structures within waters are required to assure that they do not create physical barriers to fish passage and spawning activities. "Any barrier to migration or free movement of migratory fish is harmful. Natural tidal movement in estuaries and unimpeded river flows are necessary to sustain migratory fish and their offspring. A water quality barrier, whether thermal, physical, or chemical, can destroy the integrity of the migration route and lead to the rapid decline of dependent fisheries" (Water Quality Control Plan for the San Francisco Region, section 2.1.10). Furthermore, barriers to migration or free movement may result in an impairment of state water quality objectives, including but not limited to Rare, Threatened, or Endangered Species (RARE), Spawning, Reproduction, and/or Early Development (SPWN), Cold Fresh Water Habitat (COLD), or Warm Fresh Water Habitat (WARM), which occur in all regions of the state.

The Water Quality Control Plan for the North Coast Region sets a numeric target of "zero human-caused barriers" for migration barriers on Class I watercourses (Section 4.2.8). Barriers would also impair beneficial uses designated in the Water Quality Control Plans including "migration of aquatic organisms," "spawning, reproduction, and/or early

development," "fish migration," and "fish spawning" (Water Quality Control Plan for the North Coast Region, section 2.2; Water Quality Control Plan for the San Francisco Region, sections 2.1.10 and 2.1.18).

"Hydromodification is a general term that encompasses effects of projects on the natural hydrologic, geochemical and physical functions of streams and wetlands that maintain or enhance water quality." (Water Quality Control Plan for the San Francisco Region, section 4.26.7.) Conditions related to placement of structures within waters of the state are required to assure that they do not result in adverse impacts related to hydromodification. Failure to comply with these conditions may trigger bank failure, channel incision, or headcutting along the channel thalweg, creating excess sediment and barriers to fish passage. These impacts can impair beneficial uses including fish migration, fish spawning, wildlife habitat, cold freshwater habitat, preservation of rare and endangered species, and warm freshwater habitat (Water Quality Control Plan for the San Francisco Region, section 2.1). "The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited" (Water Quality Control Plan for the San Diego Region, section 4.18).

11. Dust Abatement

This dust abatement condition is required to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters. Chemicals used in dust abatement activities can result in a discharge of chemical additives and treated waters to surface waters of the state. Therefore, dust abatement activities shall be conducted so that sediment or dust abatement chemicals are not discharged into waters of the state. The Water Quality Control Plan for the San Francisco Region, section 3.3.8, requires that all waters should be free of toxic substances in concentrations that are lethal to or that produce significant alterations in population or community ecology or receiving water biota. In addition, the health and life history characteristics of aquatic organisms in waters affected by controllable water quality factors should not differ significantly from areas unaffected by controllable water quality factors, such as toxicity. This condition will ensure that the discharge will not adversely affect beneficial uses of the receiving water or cause a condition of nuisance. (Water Quality Control Plan for the North Coast Region, section 4.1.8; Water Code section 13267; Dredge or Fill Procedures section IV. A.2(c)).

12. Use of Mechanized Equipment

This condition is necessary to prevent violation of state discharge prohibitions that protect water quality objectives. By altering an aquatic resource's surface topography and reducing hydrologic connectivity and capacity, the use of mechanized equipment can cause a direct loss of aquatic resource area and degrade beneficial uses of waters of the state, including designations that protect listed species habitat. These impacts would result in violations of water quality objectives that have been set in Water Quality Control Plans. For example, the

Water Quality Control Plan for the Santa Ana Regional Board, section 4.6, requires that, "Inland surface water communities and populations, including vertebrate, invertebrate, and plant species, shall not be degraded as a result of the discharge of waste." Additionally, fuels and lubricants associated with the use of mechanized equipment have the potential to result in toxic discharges to waters of the state. The North Coast Regional Water Board's toxicity water quality objective prohibits waters from containing toxic substances in concentrations that are toxic to, or that, "produce detrimental physiological responses in human, plant, animal, or aquatic life" (Water Quality Control Plan for the North Coast Region, section 3.3.16).

13. Piers or Piles

14. Culvert Replacement and Maintenance

Conditions related to structures within waters (such as conditions 13 and 14), including placement of instream piers or piles, and culvert replacement and maintenance activities, are required to assure that they do not create physical barriers to fish passage and spawning activities. "Any barrier to migration or free movement of migratory fish is harmful. Natural tidal movement in estuaries and unimpeded river flows are necessary to sustain migratory fish and their offspring. A water quality barrier, whether thermal, physical, or chemical, can destroy the integrity of the migration route and lead to the rapid decline of dependent fisheries" (Water Quality Control Plan for the San Francisco Region, section 2.1.10).

The Water Quality Control Plan for the North Coast Region sets a numeric target of "zero human-caused barriers" for migration barriers on Class I watercourses (Section 4.2.8). Barriers would also impair beneficial uses designated in the Water Quality Control Plans including "migration of aquatic organisms," "spawning, reproduction, and/or early development," "fish migration," and "fish spawning" (Water Quality Control Plan for the North Coast Region, section 2.2; Water Quality Control Plan for the San Francisco Region, sections 2.1.10 and 2.1.18).

"Hydromodification is a general term that encompasses effects of projects on the natural hydrologic, geochemical and physical functions of streams and wetlands that maintain or enhance water quality." (Water Quality Control Plan for the San Francisco Region, section 4.26.7.) Conditions related to culverts and other instream structures are required to assure that they do not result in adverse impacts related to hydromodification. Failure to comply with these conditions may trigger bank failure, channel incision, or headcutting along the channel thalweg, creating excess sediment and barriers to fish passage. These impacts can impair beneficial uses including fish migration, fish spawning, wildlife habitat, cold freshwater habitat, preservation of rare and endangered species, and warm freshwater habitat (Water Quality Control Plan for the San Francisco Region, sections 2.1). "The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited" (Water Quality Control Plan for the San Diego Region, section 4.18).

15. Toxic and Hazardous Materials

These conditions are required pursuant to the Water Quality Control Plans, and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP)[4], which prohibit the discharge of substances in concentrations toxic to human, plant, animal, or aquatic life. For example, the North Coast Water Quality Control Plan prohibits waters from containing toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life. The concentrations of toxic substances in the water column, sediments or biota shall not adversely affect beneficial uses (Water Quality Control Plan for the North Coast Region, section 3.3.16). All waters should be free of toxic substances in concentrations that are lethal to or that produce significant alterations in population or community ecology or receiving water biota. In addition, the health and life history characteristics of aquatic organisms in waters affected by controllable water quality factors should not differ significantly from areas unaffected by controllable water quality factors, such as toxicity (Water Quality Control Plan for the San Francisco Bay Region, section 3.3.8).

Toxic compounds impair the beneficial uses of cold fresh water habitat, estuarine habitat, marine habitat, preservation of rare and endangered species, fish migration, fish spawning, warm fresh water habitat, and wildlife habitat (Water Quality Control Plan for the San Francisco Bay Region, sections 2.1.3; 2.1.5; 2.1.9; 2.1.14; 2.1.10; 2.1.18; 2.1.19; & 2.1.20).

Conditions related to concrete/cement are required pursuant to the Water Quality Control Plans, which prohibit discharges to waters that adversely raise or lower pH levels. For example, the North Coast Water Quality Control Plan prohibits discharges from lowering pH levels below 6.5 or raising them above 8.5, or raising/lowering the pH to a level that causes a nuisance or impairs beneficial uses. Concrete/cement is an alkaline component that has the potential to raise the pH of water resources to levels that would negatively affect beneficial uses (Water Quality Control Plan for the North Coast Region, section 3.3.16).

Conditions related to toxic and hazardous materials are necessary to assure that discharges comply with any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code.

Many waters in California are high in mercury either naturally or due to historic mining activities. This mercury, when discharged to waters of the state can become bioavailable and impair beneficial uses including Subsistence Fishing (SUB) and Tribal Subsistence Fishing (T-SUB). Effective sediment control is required under the Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (Cal. Code of Reg., section 3010).

[4] The SIP implements criteria for priority toxic pollutants contained in the California Toxics Rule promulgated by the U.S. Environmental Protection Agency (U.S. EPA).

16. Invasive Species and Soil Borne Pathogens

Soil borne pathogens cause disease and death to native plants, agricultural crops, and ornamental plants. Non-native invasive plant species can alter ecosystem processes such as nutrient cycling, hydrological cycles, and frequencies of wildfires, erosion, and sediment deposition. They interfere in ecosystem functions by outcompeting and displacing native plants and animals, by providing refuge for non-native animals, and by hybridizing with native species.[5]

Conditions related to invasive species and soil borne pathogens are required pursuant to the California Code of Regulations, section 3861 (d) (2) that prohibits discharges that violate any water quality objectives adopted or approved under Section 13170 or 13245 of the Water Code, including the Water Quality Control Plans in California. Invasive species and soil borne pathogens adversely affect beneficial uses designated in the Water Quality Control Plans, such as RARE, WILD, and BIOL. RARE (rare, threatened, or endangered species) is a designated beneficial use for "waters that support habitat necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered" (Water Quality Control Plan for the Central Coast Region, section 2.2.20; Water Quality Control Plan for the San Francisco Region, section 2.1.14). WILD (wildlife habitat) is a designated beneficial use of water that supports "terrestrial ecosystems including, but not limit to, preservation and enhancement of terrestrial habitats, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food supplies." (Water Quality Control Plan for the Central Coast Region, section 2.2.18). BIOL (preservation of biological habitats of special significance) is a designated beneficial use of water that supports "designated areas or habitats, such as established refuges, parks, sanctuaries, ecological reserves, or Areas of Special Biological Significance (ASBS), where the preservation or enhancement of natural resources requires special protection" (Water Quality Control Plan for the Central Coast Region, section 2.2.19).

Invasive species and soil borne pathogen control practices prevent their uncontrolled spread to waters of the state and are necessary to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters. The spread of soil borne pathogens devastates host species populations in riparian ecosystems, such as *Phytophthora lateralis*, the cause of Port Orford cedar root disease, and threatens the stability of native and commercial cedar populations worldwide. Invasive weeds degrade physical and chemical water quality characteristics, and overgrown vegetation reduces special species habitat and reduces aquatic resource capacity.

Furthermore, in State Water Board Resolution No. 2017-0012, the State Water Board resolved that the state shall update plans, permits, and policies to improve "ecosystem resilience to the impacts of climate change, including but not limited to actions that protect headwaters,

[5] Bossard et al. (2000) *Invasive Plants of California's Wildlands*. University of California Press.

facilitate restoration, enhance carbon sequestration, build and enhance healthy soils, and reduce vulnerability to and impacts from fires."

Lastly, species diversity and growth anomalies, which are adversely affected by invasive species and soil borne pathogens, are measures of water quality health as it relates to water quality objectives for toxic substances. "All waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. This objective applies regardless of whether the toxicity is caused by a single substance or the interactive effect of multiple substances. Compliance with this objective will be determined by analyses of indicator organisms, species diversity, population density, growth anomalies, and biotoxicity tests of appropriate duration or other methods as specified by the Regional Water Board" (Central Valley Regional Board Basin Plan, section 3.1.20).

17. In-Water Work

Conditions related to work in delineated waters are required pursuant to the California Code of Regulations, section 3861 (d) (2) which prohibits discharges that violate any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code. Work in waters must not cause exceedances of water quality objectives; accordingly, these conditions require implementation of best practicable treatments and controls to prevent pollution and nuisance, and to maintain water quality. Consistent with the Dredge or Fill Procedures, section IV.A.2.c, water quality monitoring plans are required for any in-water work. These conditions are required to assure that 1) the discharge shall not adversely affect the beneficial uses of the receiving water or cause a condition of nuisance; 2) the discharge shall comply with all applicable water quality objectives; and 3) treatment and control of the discharge shall be implemented to assure that pollution and nuisance will not occur and the highest water quality is maintained (Water Quality Control Plan for the North Coast Region, section 4.1.8; Water Code section 13267).

Conditions related to dewatering and diversions or impoundments of water are required pursuant to the California Code of Regulations, section 3861(d)(2) which prohibits discharges that violate any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code. Work in waters and temporary diversions must not cause exceedances of water quality objectives; accordingly, these conditions require implementation of best practicable treatments and controls to prevent pollution and nuisance, and to maintain water quality.

These conditions are also required pursuant to the state's Anti-Degradation Policy (State Board Resolution No. 68-16), which requires that for any "activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water

quality consistent with maximum benefit to the people of the state will be maintained." All of the Water Quality Control Plans incorporate the state's Anti-Degradation Policy by reference.

If surface waters or ponded waters are not appropriately diverted from areas undergoing grading, construction, excavation, and/or vegetation removal, the waters will be susceptible to erosion and increased sediment loads, contamination and pollution from construction equipment, temperature fluctuations, etc. Diverting waters away from these areas will ensure that the discharge will not exceed water quality objectives, adversely affect beneficial uses of the receiving waters, or cause a condition of nuisance. Dewatered areas must also be stabilized prior to a rainfall event to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters. For example, the Water Quality Control Plan for the Central Coast Region, section 3.3.2, prohibits alteration of the suspended sediment load and suspended sediment discharge rate of surface waters in such as manner as to cause nuisance or adversely affect beneficial uses. Similarly, the Water Quality Control Plan for the San Francisco Bay Region, section 4.19, requires stabilization prior to a rainfall event as necessary to prevent sediment contributions to water bodies.

Consistent with the Dredge or Fill Procedures, section IV.A.2.c, water quality monitoring plans are required for any in-water work, including temporary dewatering or diversions. These conditions are required to assure that 1) the discharge shall not adversely affect the beneficial uses of the receiving water or cause a condition of nuisance; 2) the discharge shall comply with all applicable water quality objectives; and 3) treatment and control of the discharge shall be implemented to assure that pollution and nuisance will not occur and the highest water quality is maintained (Water Quality Control Plan for the North Coast Region, section 4.1.8; Water Code section 13267).

Conditions related to groundwater permits is required pursuant to the Cal. Code of Regs, title 23, section 3856(e), which requires complete copies of any final and signed federal, state, or local licenses, permits, and agreements (or copies of drafts if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity.

18. Stormwater

a. Erosion and Sediment Control

Discharges that are not covered under the State Water Board's Stormwater Construction General Permit are required to comply with the conditions in this section (VI.B.18.a through VI.B.18.b) pursuant to the California Code of Regulations, section 3861(d)(2), which prohibits discharges that violate any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code. Conditions related to erosion and sediment control design requirements are required to sustain fluvial geomorphic equilibrium. Improperly designed and installed BMPs result in excess sediment, which impairs surface waters, adversely affect beneficial uses, and results in exceedance of water quality objectives in the Water Quality Control Plans in California. Water Quality Control Plans impose design requirements to ensure excess stormwater sediment does not exceed water quality objectives in the plans. For

example, "[t]he discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited" (Water Quality Control Plan for the San Diego Region, section 4.18). "Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration tor turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU. (Water Quality Control Plan for the San Francisco Region, section 3.3.19.)

Conditions on projects that result in a hydromodification to a water of the state are necessary to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters. "Hydromodification is a general term that encompasses effects of projects on the natural hydrologic, geochemical, and physical functions of streams and wetlands that maintain or enhance water quality." "Protecting beneficial uses within the Region consistent with the federal Clean water Act and Porter-Cologne Act requires careful consideration of projects that result in hydrogeomorphic changes and related adverse impacts to the water quality and beneficial sues of waters of the state." (Water Quality Control Plan for the San Francisco Region, section 4.26.7.) Improper project design and installation of any project that results in a hydromodification to a waters of the state may trigger bank failure and channel incision which results in excess sediment impacts to downstream beneficial uses.

Many waters in California are high in mercury either naturally or due to historic mining activities. This mercury, when discharged to waters of the state can become bioavailable and impair beneficial uses including Subsistence Fishing (SUB) and Tribal Subsistence Fishing (T-SUB). Effective sediment control is required under the Tribal and Subsistence Fishing Beneficial Uses and Mercury Provisions (Cal. Code of Reg., section 3010.)

b. Stormwater Management

In addition, disturbed areas in delineated waters must be stabilized prior to a rainfall event to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters. For example, the Water Quality Control Plan for the Central Coast Region, section 3.3.2, prohibits the suspended sediment load and suspended sediment discharge rate of surface waters not to be altered in such as manner as to cause nuisance or adversely affect beneficial uses. Similarly, the Water Quality Control Plan for the San Francisco Bay Region, section 4.19, requires stabilization prior to a rainfall event as necessary to prevent sediment contributions to water bodies.

Conditions related to stormwater management are required to comply with the Water Quality Control Plans and to assure that the discharge complies with water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code. Post-rain erosion and sedimentation problems can contribute to significant degradation of the waters of the state; therefore, it is necessary to take corrective action to eliminate such discharges in order to

avoid or minimize such degradation. Implementation of control measures and best management practices (BMPs) described in the condition will assure compliance with water quality objectives including sediment, turbidity, temperature, suspended material, and settleable material. For example, "[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration tor turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU" (Water Quality Control Plan for the San Francisco Region, section 3.3.19). The Water Quality Control Plan for the Central Coast Region, section 3.3.2, prohibits alternation of the suspended sediment load and suspended sediment discharge rate of surface waters in such as manner as to cause nuisance or adversely affect beneficial uses. The Water Quality Control Plan for the San Francisco Bay Region, section 4.19, requires stabilization prior to a rainfall event as necessary to prevent sediment contributions to water bodies.

C. Mitigation for Temporary Impacts

Conditions in this section related to restoration and/or mitigation of temporary impacts are required pursuant to California Code of Regulations, section 3861(d), which requires the inclusion of conditions to avoid and mitigate all project impacts, and to assure that the discharge complies with water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code. These conditions are also consistent with the Dredge or Fill Procedures, which requires "in all cases where temporary impacts are proposed, a draft restoration plan that outlines design, implementation, assessment, and maintenance for restoring areas of temporary impacts to pre-project conditions." (Dredge or Fill Procedures section IV. A.2(d) & B.4.) Mitigation is also required to ensure compliance with Executive Order W-59-93 that requires no net loss of the structure or function of California's wetland resources.

D. Notifications and Reports

1. Accidental Discharges of Hazardous Materials

2. Violation of Compliance with Water Quality Standards

Conditions 1 and 2, related to the accidental discharge of hazardous materials are necessary to assure that discharges comply with any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code. Conditions related to notification and reporting requirements in the event of an accidental discharge of hazardous materials are required pursuant to section 13271 of the Water Code, which requires immediate notification of the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

Conditions related to monitoring and reporting are required pursuant to California Code of Regulations, section 3861(c)(3), which requires the inclusion of "appropriate monitoring and agency-reporting requirements for all activities subject to federal licenses and permits issued in reliance on such certification." These monitoring and reporting requirements are also consistent with the Water Boards' authority to investigate the quality of any waters of the state within its region under Water Code section 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The reports confirm that the best management practices required under this order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

3. In-Water Work

Conditions related to monitoring and reporting are required pursuant to California Code of Regulations, section 3861(c)(3), which requires the inclusion of "appropriate monitoring and agency-reporting requirements for all activities subject to federal licenses and permits issued in reliance on such certification." These monitoring and reporting requirements are also consistent with the Water Boards' authority to investigate the quality of any waters of the state within its region under Water Code section 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The reports confirm that the best management practices required under this order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

4. Modifications to Project

Authorization under this General Order is granted based on the application information submitted. This condition is necessary to ensure that if there are modifications to the project, that the project remains eligible for coverage under this General Order. Water Code section 13264 prohibits any discharge that is not specifically authorized in this General Order.

5. Water Quality Monitoring

Conditions in this section related to monitoring and reporting are required pursuant to California Code of Regulations, section 3861(c)(3), which requires the inclusion of "appropriate monitoring and agency-reporting requirements for all activities subject to federal licenses and permits issued in reliance on such certification." These monitoring and reporting requirements are also consistent with the Water Boards' authority to investigate the quality of any waters of the state within its region under Water Code section 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The reports confirm that the best management practices required under this order are sufficient to

protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

Conditions related to the accidental discharge of hazardous materials are necessary to assure that discharges comply with any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code. Conditions related to notification and reporting requirements in the event of an accidental discharge of hazardous materials are required pursuant to section 13271 of the Water Code, which requires immediate notification of the Office of Emergency Services of the discharge in accordance with the spill reporting provision of the state toxic disaster contingency plan adopted pursuant to Article 3.7 (commencing with Section 8574.16) of Chapter 7 of Division 1 of Title 2 of the Government Code.

These conditions are also necessary to assure that 1) the discharge shall not adversely affect the beneficial uses of the receiving water or cause a condition of nuisance; 2) the discharge shall comply with all applicable water quality objectives; and 3) treatment and control of the discharge shall be implemented to assure that pollution and nuisance will not occur and the highest water quality is maintained. (Water Quality Control Plan for the North Coast Region, section 4.1.8; Water Code section 13267; Dredge or Fill Procedures section IV. A.2(c).) For example, what needs to be monitored will depend on the project. (E.g., Water Quality Control Plan for the San Francisco Bay region, section 3.3.12 (sediment).)

E. Application for Coverage and Termination

1. Request for Authorization

These conditions requiring dischargers to identify impacts in a notification are required pursuant to the California Code of Regulations, section 3856(h)(4), which requires dischargers identify "for each water body reported…the total estimated quantity of waters of the United States that may be adversely impacted…" This condition is also consistent with the Dredge or Fill Procedures, section IV.A.1.c and f, which requires applicants to provide a "description of the waters proposed to be impacted by the dredge or fill activity." (Cal. Code of Reg., section 3013.) (Also see Water Quality Control Plan for the San Francisco Bay Region, section 4.23.2.)

These conditions requiring a description of avoidance and minimization measures are also required pursuant to the California Code of Regulations, section 3856(h)(6), which requires dischargers to provide a "description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state." These conditions are also consistent with the Dredge or Fill Procedures, section IV.B.1.a, which requires applicants to demonstrate that a "sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts that

cannot be practicably avoided or minimized to waters of the state." (Cal. Code of Reg., section 3013.)

2. Signatory Requirements

Condition 2 for signatory requirements is required pursuant to Water Code section 13267, which requires any person discharging waste that could affects the quality of waters to provide to the Water Boards, under penalty of perjury, any technical or monitoring program reports as required by the Water Boards. The signatory requirements are consistent with 40 C.F.R. section 122.22.

3. Project Status Notifications

4. Project Reporting

Conditions related to notifications, monitoring, and reporting are required pursuant to California Code of Regulations, section 3861(c)(3), which requires the inclusion of "appropriate monitoring and agency-reporting requirements for all activities subject to federal licenses and permits issued in reliance on such certification." These monitoring and reporting requirements are also consistent with the Water Boards' authority to investigate the quality of any waters of the state within its region under Water Code section 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The reports confirm that the best management practices required under this order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

5. Transfer of Property Ownership

Authorization under this General Order is granted based on the application information submitted, including the legally responsible party. Notification is necessary to confirm whether the new owner wishes to assume legal responsibility for compliance with this General Order. If not, the original discharger remains responsible for compliance with this Order. Water Code section 13264 prohibits any discharge that is not specifically authorized in this General Order.

6. Transfer of Long-Term Best Management Practices Maintenance

Authorization under this General Order is granted based on the application information submitted, including the legally responsible party. Notification is necessary to confirm whether liability for long-term best management practices maintenance is accepted by another entity. If not, the original discharger remains responsible for compliance with this Order. Water Code section 13264 prohibits any discharge that is not specifically authorized in this General Order.

F. Nationwide Specific Impact Size Limits

1. NWP 3(a) – Maintenance; NWP 14 – Linear Transportation Projects

Because of the number, geographic scale, and variety of potential environmental impacts that are possible under NWPs 3(a) and 14, temporary and permanent impacts to waters of the state are subject to the project impact size limits and restrictions as described in the General Order, Section VI.F. Project impacts greater than the General Order allows for these NWPs would be more appropriately regulated under an individual certification because they would require additional information and analysis to ensure that they are minimally impacting. The State Water Board would need additional project-specific information, including but not limited to, the location of activities, the receiving water bodies affected, the BMPs proposed, avoidance and minimization measures taken, proposed compensatory mitigation, and a restoration plan for temporary impacts before taking a certification action. For example, projects best management practices may depend on their proximity to waters of the state and whether they are in a floodplain.

These conditions related to project impact size limits are also required pursuant to the California Code of Regulations, section 3861(d), which requires that for a general certification, the category of activities to be certified individually or cumulatively will not have any of the following impacts, taking into account the probable effectiveness of any conditions or certification in avoiding or mitigating such impacts:

a. Significant adverse impacts on water quality that could feasibly be avoided if individual certification, for the proposed activities seeking individual federal licenses or permits, was issued.

b. Violation of any water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code.

c. The taking of any candidate, threatened, or endangered species or the violation of the federal Endangered Species Act (16 USC Section 1531 et seq.) or the California Endangered Species Act (Fish and Game Code Section 2050 et seq.).

d. Exposure of people or structures to potential substantial adverse effects – including the risk of loss, injury, or death – from flooding, landslides, or soil erosion.

G. Nationwide Specific Compliance

1. NWP 3(a) – Maintenance

a. NWP 3(a) Prohibitions

i. Lahontan Water Board

This condition is required pursuant to the Water Quality Control Plan for the Lahontan Region, sections 4.1 and 5.2, which prohibit discharges of waste or deleterious material to surface waters in certain Hydrologic Units. Section 13243 of the Water Code gives Regional Boards, in Basin Plans (i.e., Water Quality Control Plans) or waste discharge requirements, authority to "specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted."

ii. Riparian Vegetation

iii. Riparian Tree Removal

Conditions G.1.a.ii and G.1.a.iii above are required to assure that riparian vegetation removal does not significantly affect water quality and its designated uses, and to assure that the activity complies with state water quality objectives or federal water quality standards. Riparian vegetation removal frequently results in increased erosion potential, temperature fluctuations, creating space for invasive species, etc. All Water Quality Control Plans require protection of beneficial uses. For example, in the Water Quality Control Plan for the San Francisco Bay Basin, section 2.1.3, riparian vegetation is an essential component of sustaining cold freshwater habitat (beneficial use of COLD). In addition to providing shade to moderate stream temperature, riparian vegetation provides allochthonous inputs of nutrients to the stream channel in the form of both vegetation and invertebrates.

iv. Roads

v. Armoring Facilities

vi. Gabions

vii. Riprap Installation

viii. Grouted Riprap

Conditions G.1.a.iv through G.1.a.viii above are required to assure that discharges will comply with state water quality requirements. Specifically, activities associated with road maintenance have the potential to exceed water quality objectives established in all the Water Quality Control Plans, including objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity. For example, the sediment water quality objective requires that, "the suspended sediment load and suspended sediment discharge rate to surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses" (Water Quality Control Plan for the North Coast Region, section 3.3.11).

Conditions related to roads and bridges, and other facilities such as riprap, gabions, and armoring facilities that are within or cross waters of the state, are required to assure that they do not create physical barriers to fish passage and spawning activities. "Any barrier to migration or free movement of migratory fish is harmful. Natural tidal movement in estuaries and unimpeded river flows are necessary to sustain migratory fish and their offspring. A water quality barrier, whether thermal, physical, or chemical, can destroy the integrity of the migration route and lead to the rapid decline of dependent fisheries" (Water Quality Control Plan for the San Francisco Region, section 2.1.10).

The Water Quality Control Plan for the North Coast Region sets a numeric target of "zero human-caused barriers" for migration barriers on Class I watercourses. (Section 4.2.8). Barriers would also impair beneficial uses designated in the Water Quality Control Plans including "migration of aquatic organisms," "spawning, reproduction, and/or early development," "fish migration," and "fish spawning" (Water Quality Control Plan for the North Coast Region, section 2.2; Water Quality Control Plan for the San Francisco Region, sections 2.1.10 and 2.1.18).

"Hydromodification is a general term that encompasses effects of projects on the natural hydrologic, geochemical and physical functions of streams and wetlands that maintain or enhance water quality." (Water Quality Control Plan for the San Francisco Region, section 4.26.7.) Conditions related to roads and bridges, and other facilities such as riprap, gabions, and armoring facilities that are within or cross waters of the state, are required to assure that they do not result in adverse impacts related to hydromodification. Failure to comply with these conditions may trigger bank failure, channel incision, or headcutting along the channel thalweg, creating excess sediment and barriers to fish passage. These impacts can impair beneficial uses including fish migration, fish spawning, wildlife habitat, cold freshwater habitat, preservation of rare and endangered species, and warm freshwater habitat (Water Quality Control Plan for the San Francisco Region, section 2.1). "The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited" (Water Quality Control Plan for the San Diego Region, section 4.18).

ix. Construction, replacement, or expansion of facilities in any ocean, bay, tidal waters, or shores thereof are prohibited

This condition prohibiting impacts to oceans, bays, tidal waters, and shores thereof, is required pursuant to the California Code of Regulations, section 3861(d)(1), which requires that activities authorized under this General Order not result in significant adverse impacts on water quality that could feasibly be avoided if individual certification was issued. This condition applies only to this General Order's authorization of projects under NWPs 3(a) and 14. This prohibition does not apply to NWPs 1, 4, 5, 6, 9, 10, 11, 20, 22, 28, 32, 36, and 54, which include activities that are largely dependent on occurring in marine waters. For example, NWP

9 authorizes placement of structures to facilitate mooring of vessels within anchorage areas established by the U.S. Coast Guard, and NWP 10 allows non-commercial, single-boat mooring buoys. Discharges resulting from these types of activities, as long as they meet all conditions of this General Order, will be minimally impacting and not result in adverse impacts to water quality, either individually or cumulatively. Unlike NWPs 1, 4, 5, 6, 9, 10, 11, 20, 22, 28, 32, 36, and 54, which do allow discharges to ocean, bay, tidal waters, or shores thereof, projects authorized under NWPs 3(a) and 14 are generally not marine-water dependent. They include classes of activities that individually or cumulatively may result in significant environmental effects if they were to occur within ocean, bay, or tidal waters, or the shores thereof; therefore it is more appropriate to regulate these activities pursuant an individual water quality certification. Furthermore, the state's Water Quality Control Plan for Ocean Waters of California (revised 2019) states that "protection of the quality of the ocean waters for use and enjoyment by the people of the state requires control of the discharge of waste to ocean waters," and discharges associated with activities related to NWP 3(a) and 14 may individually or cumulatively impact designated beneficial uses of ocean waters of the state (beneficial uses of ocean water are designated as: industrial water supply; water contact and non-contact recreation, including aesthetic enjoyment; navigation; commercial and sport fishing; mariculture; preservation and enhancement of designated Areas of Special Biological Significance (ASBS); rare and endangered species; marine habitat; fish migration; fish spawning and shellfish harvesting).

b. NWP 3(a) Compensatory Mitigation Requirements

Conditions regarding compensatory mitigation are necessary to ensure compliance with state and federal anti-degradation policies. Compensatory mitigation requirements are consistent with State Supplemental Guidelines, section 230.10, restrictions on discharge and the Dredge or Fill Procedures, section IV.B.1.a (Cal. Code of Regs., section 3013), which requires that the Water Boards will approve a project only after it has been determined that a sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts that cannot be practicably avoided or minimized. (See also Cal. Code of Regs., section 3856(h) (requiring submittal of proposed mitigation and description of steps taken to avoid, minimize, or compensate). Compensatory mitigation conditions are consistent with Executive Order W-59-93 commonly referred to as California's "no net loss" policy for wetlands. Compensatory mitigation requirements are also authorized by Water Code, section 13263, which requires the imposition of requirements that implement water quality control plans, takes into consideration the beneficial uses to be protected, and the need to prevent nuisance.

These conditions related to mitigation requirements are consistent with the Dredged or Fill Procedures, section IV.B.1.a, which requires that the Water Boards will approve a project only after it has been determined that a sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts that cannot be practicably avoided or

minimized. Accordingly, compensatory mitigation is required for projects that would result in permanent impacts.

2. NWP 14 – Linear Transportation Projects

a. NWP 14 Prohibitions

i. Lahontan Water Board

For condition G.2.a.i, see justification for NWP 3(a) (condition G.1.a.i), above.

ii. Riparian Vegetation

iii. Riparian Tree Removal

For conditions G.2.a.ii and G.2.a.iii, see justification for NWP 3(a) (conditions G.1.a.ii and G.1.a.iii), above.

iv. Roads

v. Armoring Facilities

vi. Gabions

vii. Riprap Installation

viii. Grouted Riprap

For conditions G.2.a.iv through G.2.a.viii, see justification for NWP 3(a) (conditions G.1.a.iv through G.1.a.viii), above.

ix. Construction, replacement, or expansion of facilities in any ocean, bay, tidal waters, or shores thereof are prohibited

For condition G.2.a.ix, see justification for NWP 3(a) (condition G.1.a.ix), above.

b. NWP 14 Compensatory Mitigation Requirements

For condition G.2.b, see justification for NWP 3(a) (condition G.1.b), above.

3. NWP 36 – Boat Ramps

a. Lahontan Water Board Prohibition

For condition G.3.a, see justification for NWP 3(a) (condition G.1.a.i), above.

b. Uncured cement

Concrete/cement is an alkaline component that has the potential to raise the pH of water resources to levels that would negatively affect beneficial uses. This condition is required pursuant to the Water Quality Control Plans in California, which require compliance with water

quality objectives for pH. For example, the Water Quality Control Plan for the North Coast Region, section 3.3.9, requires that the "pH shall conform to those limits listed in Table 3-1. For waters not listed in Table 3-1 and where pH objectives are not prescribed, the pH shall not be depressed below 6.5 nor raised above 8.5. Changes in normal ambient pH levels shall not exceed 0.2 units in waters with MAR or SAL beneficial uses nor 0.5 units within the range specified above in fresh waters with COLD or WARM beneficial uses." The Water Quality Control Plan for the San Francisco Region, section 3.3.9 requires the "pH shall not be depressed below 6.5 nor raised above 8.5. This encompasses the pH range usually found in waters within the basin. Controllable water quality factors shall not cause changes greater than 0.5 units in normal ambient pH levels."

XI. Denial and Compliance with 40 CFR Part 121.7(e)(2)

The following NWPs are denied: 2, 3(b), 3(c), 7, 8, 13, 15, 16, 17, 18, 19, 23, 24, 25, 27, 30, 31, 33, 34, 35, 37, 38, 41, 45, 46, 49, 53 and 59. These NWPs are denied because the State Water Board does not have reasonable assurance that the denied NWPs will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of the Clean Water Act and appropriate requirements of state law. (See 33 USC § 1341.) Any future Clean Water Act section 401 certification action on projects authorized by these denied NWPs will be considered on an individual, project-specific basis, or if eligible, may enroll under another applicable general certification.

The State Water Board is able to certify the NWPs specified in Attachment E because they are similar activities that will cause similar impacts, have very small, mostly temporary impacts to waters of the state, and more predictable impacts to waters. In contrast, it is not possible to determine whether all the activities authorized by the denied NWPs will comply with California Code of Regulations, section 3861(d), which prohibits the issuance of a general certification unless the activities to be certified will not have any of the following impacts:

(1) Significant adverse impacts on water quality that could feasibly be avoided if individual certification, for the proposed activities seeking individual federal licenses or permits, was issued.

(2) Violation of any water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code.

(3) The taking of any candidate, threatened, or endangered species or the violation of the federal Endangered Species Act (16 USC Section 1531 et seq.) or the California Endangered Species Act (Fish and Game Code Section 2050 et seq.).

(4) Exposure of people or structures to potential substantial adverse effects – including the risk of loss, injury, or death – from flooding, landslides, or soil erosion.

The denied NWPs may individually or cumulatively have the above impacts. NWP projects may occur anywhere within California and include a broad range of activities. NWPs authorize

impacts of up to 0.5 acres of waters. Pursuant to California Code of Regulations, section 3837, a certification request may be denied when compliance with water quality standards and other appropriate requirements is not yet determined. The State Water Board would need additional project-specific information, including but not limited to, the location of activities, the receiving water bodies affected, the BMPs proposed, avoidance and minimization measures taken, proposed compensatory mitigation, and a restoration plan for temporary impacts before taking a certification action. For example, projects best management practices may depend on their proximity to waters of the state and whether they are in a floodplain. In another example, the Corps does not require compensatory mitigation for impacts of 0.10 acres or less. The Water Boards routinely required compensatory mitigation for impacts smaller than that threshold pursuant to their authority under Water Code, section 13263 and as is consistent with Dredge or Fill Procedures, section IV.B.5 and subpart J of the State Supplemental Guidelines. Without this information, the State Water Board cannot determine potential impacts on beneficial uses. Specifically, the State Water Board would need additional information regarding significant adverse impacts on water quality to determine what environmental documentation would be necessary, if any, to comply with CEQA. (See, e.g., Pub. Res. Code §§ 21081; 21082.3, 21092.) Pursuant to California Code of Regulations, section 3856(f), "the certification agency shall be provided with and have ample time to properly review a final copy of valid CEQA documentation before taking a certification action." Accordingly, certification action for these NWPs is more appropriate on an individual basis. California Code of Regulations, section 3861(c)(5) requires that general certifications meet all applicable requirements of CEQA.

ATTACHMENT D – SIGNATORY REQUIREMENTS

All documents submitted in compliance with this Order shall meet the following signatory requirements:

1. All applications, reports, or information submitted to the Water Board must be signed and certified by the legally responsible party as follows:
    a. For a corporation, by a responsible corporate officer of at least the level of vice-president.
    b. For a partnership or sole proprietorship, by a general partner or proprietor, respectively.
    c. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official. This includes the chief executive officer of the agency or the senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of the U.S. EPA).
2. A duly authorized representative of the legally responsible party may sign documents if:
    a. The authorization is made in writing by the legally responsible party.
    b. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity.
    c. The written authorization is submitted to the Water Board Staff Contact prior to submitting any documents listed in item 1 above.
3. Any person signing a document under this section shall make the following certification:

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

Attachment E – Certified Nationwide Permits

As listed below, this General Order conditionally certifies 15 NWPs and denies 26 NWPs[1].

NWP No.	Nationwide Permit	Decision	CCR Title 14 Section/Exemption
1	**Aids to Navigation:** Allows the placement of U.S. Coast Guard (USCG)-approved navigational aids.	Certify subject to conditions	§15304/Minor Alterations to Land; and §15311 Accessory Structures
3(a)	**(a) Maintenance:** Allows the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill.	Certify subject to conditions, specific activity restrictions, and notification requirements	§15301/Existing Facilities; §15302 Replacement of Reconstruction; §15303 New Construction or Conversion of Small Structures; §15304 Minor Alterations to Land; and §15309 Inspections
4	**Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities:** Allows fish and wildlife harvesting devices and activities.	Certify subject to conditions and specific activity restrictions	§15304 Minor Alterations to Land
5	**Scientific Measurement Devices:** Allows the placement of scientific gages, recording devices, water quality testing and improvement devices, and similar structures; allows the construction of weirs and flumes constructed primarily to record water quantity data and velocity.	Certify subject to conditions and notification requirements	§15306 Information Collection

[1] The following NWPs are denied, unless they qualify for coverage under another applicable general certification: 2, 3(b), 3(c), 7, 8, 13, 15, 16, 17, 18, 19, 23, 24, 25, 27, 30, 31, 33, 34, 35, 37, 38, 41, 45, 46, 49, 53, and 59.

NWPs not identified in this attachment and General Order were either certified or denied in the **2020** State Water Board General Certification; refer to Attachment E in Order No. [WQ] 2020-0039-EXEC (https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/2020/att_e_list_nwps.pdf).

NWP No.	Nationwide Permit	Decision	CCR Title 14 Section/Exemption
6	**Survey Activities:** Allows core sampling, seismic exploration, and plugging exploration bore holes.	Certify subject to conditions and notification requirements	§15304 Minor Alterations to Land
9	**Structures in Fleeting and Anchorage Areas:** Allows placement of structures to facilitate mooring of vessels within anchorage areas established by the USCG.	Certify subject to conditions	§15301 Existing facilities; and §15304 Minor Alterations to Land
10	**Mooring Buoys:** Allows non-commercial, single-boat mooring buoys.	Certify subject to conditions	§15304 Minor Alterations to Land
11	**Temporary Recreational Structures:** Allows the temporary placement of buoys, markers, small floating docks, and similar structures placed during special water events.	Certify subject to conditions	§15304 Minor Alterations to Land
14	**Linear Transportation Projects:** Allows the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill associated with linear transportation projects (e.g., roads, highways, railways).	Certify subject to conditions, specific activity restrictions and notification requirements	§15301 Existing Facilities; §15302 Replacement or Reconstruction; §15303 New Construction or Conversion of Small Structures; §15304 Minor Alterations to Land; and §15309 Inspections
20	**Response Operations for Oil and Hazardous Substances:** Allows cleanup of oil and hazardous substances provided the work activity is done in accordance with federal regulations and any existing State contingency plans, and has the concurrence of the federal Regional Response Team	Certify subject to conditions and notification requirements	§15307 Actions by Regulatory Agencies for Protection of Natural Resources; §15308 Action by Regulatory Agencies for Protection of the Environment; and §15330 Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances

NWP No.	Nationwide Permit	Decision	CCR Title 14 Section/Exemption
22	**Removal of Vessels:** Allows minor discharges of fill in connection with removal of disabled or abandoned vessels or manmade obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or river snagging.	Certify subject to conditions	§15301 Existing facilities; and §15303 New Construction or Conversion of Small Structures
28	**Modifications of Existing Marinas:** Allows the reconfiguration existing dock space in an authorized marina. No dredging or expansion of any kind would be permitted.	Certify subject to conditions and notification requirements	§15301 Existing facilities; and §15303 New Construction or Conversion of Small Structures
32	**Completed Enforcement Actions:** Allows any structure, work, or discharge that is in compliance with a final federal court decision, consent decree, or settlement agreement resulting from a federal enforcement violation action under section 404 or section 10.	Certify subject to conditions and notification requirements	§15321 Enforcement Action by Regulatory Agencies
36	**Boat Ramps:** Activities required for the construction of boat ramps.	Certify subject to conditions, specific activity restrictions, and notification requirements	§15303 New Construction or Conversion of Small Structures; and §15304 Minor Alterations to Land
54	**Living Shorelines:** Activities required for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters.	Certify subject to conditions and notification requirements	§15304 Minor Alterations to Land; and §15333 Small Habitat Restoration Projects

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Colonel Antoinette Gant
Division Engineer, South Pacific Division
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, CA 94103-1398

Subject: Clean Water Act, Section 401 Certification of the 41 proposed Nationwide Permits in the June 11, 2021 draft final rule for Tribal Lands within the Region 9 coverage area of the U.S. Environmental Protection Agency.

Dear Colonel Gant,

The U.S. Environmental Protection Agency Region 9 (EPA) has responsibility under Section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protections for federal permits and licenses issued for work on tribal lands (40 C.F.R 123.12(a)). EPA has reviewed the U.S. Army Corps of Engineers (Corps) CWA Section 404 Nation Wide Permits (NWPs), including the regional conditions proposed for each South Pacific Division District and herby transmit our water quality certification. The enclosed NWP conditions become binding requirements for activities on tribal lands within EPA Region 9 and will remain in effect for the authorization period of the 2021 NWPs.[1,2]

Please instruct your regulatory staff to provide this certification to anyone contacting the Corps with applicable projects. If a project fails to meet the enclosed conditions, the applicant must contact EPA Region 9 at **R9cwa401@epa.gov** for individual project-specific certifications, to schedule pre-filing meeting requests, or for any certification-related questions.

EPA appreciates our long-standing partnership and coordination in implementing Section 401 of the CWA. Please contact me at (415) 972-3337 or torres.tomas@epa.gov should you have any questions, or

[1] This water quality certification does not apply to activities proceeding in the territories of the 25 tribes in Region 9 that have been approved as Section 401 certifying authorities – the Navajo Nation, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk,White Mountain Apache Tribe, Table Mountain Rancheria, Resighini Rancheria, La Posta Band of Diegueno Mission Indians . In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.
[2] Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes,* EPA sent a letter dated September 2, 2021, offering to consult with the tribes in Region 9 on this certification. EPA did not receive any formal request for consultation or any written comments on the draft certification.

your staff may contact our Wetlands Section Manager, Sahrye Cohen at (415) 972-3523 or cohen.sahrye@epa.gov.

Sincerely,

TOMAS TORRES

Digitally signed by TOMAS TORRES
Date: 2021.10.12 13:49:49 -07'00'

Tomás Torres
Director, Water Division

Enclosure

cc:
All federally recognized Indian Tribes within EPA Region 9
James Mazza, Regulatory Branch Chief, San Francisco District
Michael Jewell, Regulatory Branch Chief, Sacramento District
David Castanon, Regulatory Branch Chief, Los Angeles District
Kelly Allen, Regulatory Branch Chief, New Mexico District
Todd Tillinger, Corps South Pacific Division
Trevor Baggiore, Arizona Department of Environmental Quality
Paul Hann, California State Water Resources Control Board
Brigit Widegren, Nevada Division of Environmental Protection

Enclosure
U.S. Environmental Protection Agency Region 9's Clean Water Act Section 401 Certification of the 41 Nationwide Permits (2021) on applicable Tribal Lands in California, Nevada, Arizona, and Navajo Allottee Lands

This Clean Water Act (CWA) Section 401 water quality certification (WQC) applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers (Corps) Nation Wide Permits (NWPs) into waters of the U.S. that occur within tribal lands where tribes do not have treatment in a similar manner as a state and lands with exclusive federal jurisdiction in in California, Nevada, Arizona, and Navajo Allottee land in the corresponding Sacramento, San Francisco, Los Angeles and Albuquerque Corps Districts: NWP 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 49, 53, 54, and 59. The Corps is not requesting certification for the following NWPs: 1, 2, 8, 9, 10, 11, 24, 28, and 35.

Section 401(a)(1) of the CWA requires applicants for Federal permits and licenses that may result in discharges into waters of the United States, to obtain certification that any such discharges will comply with applicable provisions of the CWA including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, the U.S. Environmental Protection Agency Region 9 (EPA) is the certifying authority. In this case, the EPA is making the certification decision for potential discharges that may result from the projects authorized under the proposed CWA Section 404 NWPs listed above.[1]

Project Description

On September 15, 2020, the Corps published in the Federal Register its proposal to reissue the NWPs.[2]

On January 13, 2021, the Corps published in the Federal Register its final rule reissuing 12 NWPs and issuing 4 new NWPs, as well as the NWP general conditions and definitions. The Corps is now proposing to re-issue 40 existing NWPs and one new NWP and associated general conditions and definitions, with some modifications. The Corps states that it is "proposing these modifications to simplify and clarify the NWPs, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects": 85 FR 57298. For the 41 proposed NWPs that have not been issued, the Corps has extended the reasonable period of time within which CWA Section 401 certifying authorities must act and has provided the opportunity for those CWA Section 401 certifying authorities to revise or reconsider their

[1] This water quality certification does not apply to activities proceeding in the territories of the 25tribes in Region 9 that have been approved as Section 401 certifying authorities – the Navajo Nation, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk, White Mountain Apache Tribe, Table Mountain Rancheria, Resighini Rancheria, La Posta Band of Diegueno Mission Indians . In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

[2] See 85 FR 57298.

prior CWA Section 401 WQC decisions. For more details: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/

General Information

The general information provided in this section does not constitute a certification condition or conditions.

The project proponents for potential activities authorized under the NWPs are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Project proponents for potential projects authorized under the NWPs should retain this certification in their files with the applicable NWPs as documentation of EPA CWA Section 401 WQC for the above-referenced proposed final NWPs. This CWA Section 401 WQC is specifically associated with the NWPs described above and expires when those NWPs expire.

Copies of this certification shall be kept on the job site and readily available for reference.

The project proponent for potential activities authorized under the NWPs are encouraged to contact EPA during the project planning phase if they have any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance. Planning and construction practices, such as the use of native vegetation and bioengineering techniques, can be used to minimize adverse impacts to plants and animals and improve water quality.

As required by Condition 1, project proponents shall provide notice to EPA at least 30 days prior to commencing construction to provide EPA with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the project proponent should also provide the PCN to Region 9. If additional information is required per the conditions of this certification, that information shall be submitted with the PCN notification to the EPA. Concurrent with notification to the EPA, project proponents shall notify the appropriate Tribal Environmental or Governmental Office. Within 30 days of complete submittal, EPA will review the proposed project to determine compliance with this 401 certification.

Project proponents shall also notify EPA and the appropriate Tribal Environmental Office if spills or unauthorized discharges occuring during the project.

Pursuant with CWA Section 308(a), EPA representatives are authorized to inspect the authorized activity and any mitigation areas to determine compliance with the 401 certification and conditions.

To submit a project for review, or if you have questions regarding this certification, please contact EPA at: R9cwa401@epa.gov

Granted with Conditions (121.7(d)(2)):

On behalf of 123 federally recognized tribes within the purview of EPA Region 9, CWA Section 401 certification for the following proposed NWPs is granted with conditions. EPA has determined that any discharge authorized under the following proposed NWPs will comply with water quality requirements, as defined at 40 C.F.R. 121.1(n), subject to the following conditions pursuant to Section 401(d).

NWPs: 3, 5, 6, 7, 13, 14, 18, 19, 20, 23, 25, 27, 31, 32, 33, 36, 37, 38, 41, 45, 46, 59

EPA has determined that any discharge authorized under the following NWPs will comply with water quality requirements as defined in 40 CFR 121.1(m) subject to the following conditions pursuant to CWA Section 401(d).

General EPA Conditions for Certification 2021 NWPs

Condition 1 – Notification to EPA

Project proponents shall provide notice to EPA Region 9 prior to commencing construction to provide EPA with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the project proponent shall also provide the PCN to Region 9. Concurrent with notification to the EPA, project proponents shall notify the appropriate Tribal Environmental or Governmental Office.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This condition is necessary to provide EPA Region 9 with notice and information to allow for an efficient and effective pre-operation inspection to determine if the certified discharge will violate the certification. If the project scope changes during the Corps review prior to initiation of the activity, it is also critical for EPA Region 9 to be provided any changes in the project design, scope, amount, and location of discharges to inform the pre-operation inspection opportunity as provided by 40 CFR 121.11(a).

Citation(s) that authorizes this condition: 40 CFR 121.11(a)

Condition 2 – Projects or Activities Discharging to Impaired Waters

Projects or activities are not authorized under the NWPs if the project will involve point source discharge into an active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody and the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed. The current lists of 303(d) and TMDL listed waterbodies are available on EPA Region 9's web site at: https://www.epa.gov/tmdl/impaired-waters-and-tmdls-pacific-southwest-region-9.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: A 303(d) listed waterbody is

impaired due to the cumulative effects of discharges of pollutants. The NWPs do not provide necessary activity specific information to determine compliance with specific water quality requirements, such as limits on total suspended solids, temperature, dissolved oxygen, nutrients, or pH for which a specific waterbody could be listed as impaired. Site specific analysis is required to determine whether water quality requirements are met in the active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody.

Citation(s) that authorizes this condition: CWA section 303(d)

Condition 3 – Dewatering

For all dewatering activities that propose structures or fill in waters of the U.S. that require authorization from the Corps, projects or activities are authorized under the NWPs if the site is naturally dewatered (e.g., seasonally dry), or if an artificial dewatering plan is developed and implemented to ensure that erosion and unauthorized discharges do not occur prior to site restoration. The dewatering plan shall be submitted to EPA Region 9 in conjunction with the notification in Condition 1, prior to site disturbance.

The Dewatering Plan shall, at a minimum, include the following:

- Methods for dewatering;
- Equipment that would be used to conduct the dewatering;
- Length of time the area is to be dewatered;
- Area (acres) and length (linear feet) in waters of the U.S. of the structure and/or fill used for the dewatering;
- Method for removal of the temporary structures and/or fill;
- Method for pre-disturbance measurement and restoration, following construction, of the preconstruction contours and site conditions of the waters of the U.S. affected by the structure or fill;
- Frequency and methods for monitoring and maintenance of dewatering measures to ensure unauthorized discharges do not occur before the site restoration is complete; all dewatering measures should be assessed within 24 hours after a rain event and any damaged measures shall be repaired or modified as required to protect water quality; and
- Reporting and adaptive management processes if any of the dewatering methods cause erosion or if unauthorized discharges occur before the site restoration is complete.
- EPA Region 9 requires reporting of unauthorized discharges or water quality violations within 24 hours.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: General conditions included in the NWPs do not address dewatering activities. Dewatering activities can often be a point source

for pollutants entering waters of the Unites States. This condition is necessary to ensure that the authorized activity does not result in more than minimal degradation to water quality and the aquatic environment because the project proponent will complete pre-planning, monitoring, maintenance, reporting and adaptive management to achieve site restoration.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.24; 40 CFR § 230.70; 40 CFR § 230.71; 40 CFR § 230.74

Condition 4 – Site Management and Construction Practices

Except as specified in the permit application, the project proponent shall not allow debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction related materials or wastes to enter or be stored within 100 feet of where it may enter waters of the U.S. The project proponent shall develop and implement a plan to prevent pollutants from entering jurisdictional wetlands and waterways. The plan shall be submitted to EPA Region 9 in conjunction with the notification in Condition 1, prior to site disturbance. The plan shall include, at a minimum, the following measures:

- Silt fences, straw wattles, and other standard erosion control techniques[3] shall be employed to protect waters of the U.S. from sedimentation and other pollutants.
- Water used in dust suppression shall not contain contaminants that could violate surface water or aquifer standards.
- Project activities (e.g., work during rain events, heavy equipment in flowing water, etc.) that may result in channel and bank erosion within waters of the United States during or after construction are not authorized under this certification. Precipitation forecasts shall be considered when planning construction activities. The project proponent shall monitor the 72- hour forecast from the National Weather Service at http://www.nws.noaa.gov. When there is a forecast of more than 80% chance of rain, or at the onset of unanticipated precipitation, the project proponent shall remove all equipment from waters of the United States and implement erosion and sediment control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw), and cease all project activities within the waters. Erosion control measures shall be inspected within 24 hours after each rain event and repaired or modified as required to protect water quality.
- All equipment shall be cleaned prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any streams or wetlands, for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. All equipment detected with leaks shall be repaired promptly or moved offsite within 24 hours.

[3] Many state and local agencies have developed erosion control manual and guidelines the provide detailed information on standard techniques and practices. Examples include the Los Angeles Construction Site Best Management Practices (BMPs) Manual: http://dpw.lacounty.gov/cons/specs/bmpmanual.pdf and the City of Sacramento's Administrative and Technical Procedures Manual for Grading and Erosion and Sediment Control: http://www.cityofsacramento.org/-/media/Corporate/Files/DOU/Specs-Drawings/Sediment-control-manual.pdf?la=en

- All contaminated areas shall be cleaned immediately, and contaminated soil removed from the site or contained in enclosed containers. Containers shall be located no closer than 100 feet to a jurisdictional wetland or waterbody. If it is not possible to site a storage area at least 100 feet away, the project proponent shall explain the reasons for the storage location and the additional measures that will be implemented to protect waters in their plan.
- Containment booms and/or absorbent material shall be available onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S. Project proponents shall notify the appropriate Tribal government and EPA Region 9 within 24 hours if spills or unauthorized discharges occur during the project. As part of the notice, the project proponent shall provide plans for remedying the spill or unauthorized discharge.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: Protection of water quality includes implementation of suitable measures to control site runoff, spillage, waste disposal, and drainage from construction activities and raw material storage as such sources may contribute significant amounts of pollutants into waters of the United States. Timing the discharge of material, for instance by limiting fill during rain events, minimizes impacts to water quality. Measures minimize adverse effects to plant and animal populations by maintaining habitat for these species. The use of measures as required under this condition will ensure that the authorized activity does not result in more than minimal degradation to water quality. The condition is necessary to prevent the unauthorized release of pollutants into waters of the United States. This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. The condition minimizes equipment contact with water (and potential for oil, gas, invasive species, etc. contamination) and allows for clean-up of potential spills before entering waters. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species. This condition is necessary to ensure minimization of adverse effects on populations of plants and animals and to preserve the water quality and flood protection benefits provided by vegetation in riparian areas adjacent wetlands and waterbodies. Inspection times are required to ensure that pollution and erosion controls remain effective or are repaired promptly.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.70; 40 CFR § 230.72; 40 CFR § 230.74; 40 CFR § 230.75

Condition 5 – Discharges in Aquatic Resources of Special Concern

Activities resulting in a point source discharge in the following types of jurisdictional aquatic resources of special concern shall request a project-specific CWA Section 401 WQC: bogs, fens, and other peatlands; natural springs; vernal pools; alkali wetlands; riffle-pool complexes of streams; marine or estuarine mudflats; salt marshes; marine waters with native eelgrass or kelp beds; or marine nearshore forage fish habitat. These resources may be identified using USGS

topographic maps, the U.S. Fish and Wildlife Service National Wetland Inventory, or other aquatic resource identification documentation.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: Aquatic resources of special concern include special aquatic sites[4] and other aquatic resources that are specific waters of the U.S. that are difficult to replace, are unique, and/or have high ecological function. General permits, including NWPs, are only allowed for those discharges and associated activities that will cause no more than minimal adverse impacts to the aquatic environment. However, point source discharges to the types of aquatic resources of special concern listed above could have more than minimal adverse impacts on an individual or cumulative basis, because the discharge of dredged or fill material would impair and degrade the chemical, physical and biological conditions of these systems. As noted in 40 C.F.R. § 230.1(d), "[f]rom a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources." Discharge of dredged or fill material into these systems can alter water circulation patterns and hydroperiods, which in turn can release nutrients causing shifts in native to non-native species composition; release chemicals that adversely impact biota (plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, and ultimately change the capacity of these systems to support aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Thus, this condition is established to ensure a case-by-case review of any actions or activities proposed in these specific aquatic resource site types which are inherently difficult to replace, have high ecological functions and values, and for which degradation cannot be determined to meet water quality requirements on a general permit basis.

Citation(s) that authorizes this condition: 40 C.F.R. § 230.1(d); 40 C.F.R. § 230.10(c); 40 C.F.R. § 230.21; 40 C.F.R. § 230.23; 40 C.F.R. § 230.32; 40 C.F.R. Part 230, Subpart E.

Condition 6 – Disturbance to Streambank Vegetation

Disturbance to jurisdictional streambank vegetation shall be limited to no more than 0.5 acre of vegetation removal. Areas of vegetation removal shall be identified on construction plans and submitted to EPA as part of the notification. Areas of streambank vegetation adjacent to the planned disturbance area shall be clearly marked with signs, high visibility flagging, orange fencing, or some other method that clearly indicates the limits of the disturbance area to prevent encroachment into adjacent habitat. Revegetation of disturbed areas shall be based on pre-disturbance or reference site conditions, including percent cover and native species diversity. Therefore, the project proponent shall photo-document the site prior to, during and post-construction, and post-restoration. Revegetated areas shall use local or regionally sourced native seed and other plant materials. Non-native and invasive species shall not be used for restoration

[4] See 40 C.F.R. Part 230 Subpart E.

activities. Stockpile weed-free topsoil shall replace disturbed soil areas. Revegetation measures may include topsoil replacement, planting, seeding, fertilization, liming, and weed-free mulching. Projects that will remove more than 0.5 acre of vegetation shall request a project-specific 401 certification.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: Streambank vegetation is important in stabilizing soils, reducing run-off, providing for shaded aquatic areas, and providing cover and habitat for aquatic wildlife. Invasive species are detrimental to functioning aquatic ecosystems. Revegetation planting with native plant species is necessary to ensure ecosystem functions and services. This condition is necessary to ensure minimization of adverse effects on water quality as well as populations of plants and animals that derive benefits provided by vegetation in riparian areas adjacent wetlands and waterbodies. This condition size limit is necessary to require project-specific CWA Section 401 WQC review so EPA Region 9 can ensure that projects will be conditioned to avoid and minimize adverse impacts to comply with water quality requirements.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.70; 40 CFR § 230.72; 40 CFR § 230.74; 40 CFR § 230.75

NWP Permit Specific Conditions

NWP-03 Maintenance

NWP-03 is conditionally certified subject to the General Conditions above, and the following specific condition.

Replacement of "Currently serviceable structures" under this permit shall be appropriately sized culverts or structures[5] for the drainage area and/or anticipated peak flow so that structures do not cause or exacerbate channel incision, bank destabilization, and/or prevent fish and wildlife passage due to inadequate design or construction standards. Replacement of existing riprap is allowed but the placement of additional non-vegetated riprap beyond the original footprint is not authorized and requires an individual project-specific certification. If a PCN is required for the NWP, the project proponent shall submit design documentation used to determine the appropriate sizing of culverts and/or structures to EPA Region 9, the correlating Tribal government, and the authorizing Corps District.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: Improperly sized or undersized culverts constrict the channel, create flow hydraulics and channel conditions that are markedly dissimilar from those in the natural channel, and impede the movement fish and other aquatic organisms along the stream corridor. Areas covered by riprap limit the biological, chemical, and

[5] For site where no hydrologic data is available methods such as Talbots formula for culvert sizing: http://www.sd-w.com/civil/talbots_formula.html. Other established methods such as those described in the Handbook For Forest, Ranch And Rural Roads (http://www.pacificwatershed.com/sites/default/files/12_-_appendix_a_-_culvert_sizing_procedures.pdf) may also be used.

physical processes that can occur in those aquatic resources. The lack of vegetation results in lower quality habitat and less carbon cycling and other ecosystem functions in aquatic and riparian areas. This condition is necessary to ensure the properly sized and designed replacement structures are used to protect aquatic habitat and to ensure that the authorize activities would result in more than a minimal degradation of water quality. Projects that require a PCN for NWP meet a size, location or resource threshold that requires design review to ensure that there are no more than minimal impacts to aquatic resources.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.71; 40 CFR § 230.72

NWP-07 Outfall Structures and Associated Intake Structures

NWP-07 is conditionally certified subject to the General Conditions above, and the following specific condition.

Outfall structures shall be appropriately sized and designed to prevent high pressure discharge of stormwater that may result in localized scouring and erosion[6]. The project proponent shall submit project plans to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. The project plans shall describe the design documentation used to determine the appropriate sizing of outfall structures in the final project design.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: Storm drain and outfall systems are dependent on topography, hydrology, surface hydraulics, outfall location and constraints for design layout. Outfall materials have a design maximum velocity to ensure that structures and surrounding areas do not have detrimental erosion. This condition is necessary to ensure outfall structures are designed and constructed in a manner that will prevent localized erosion at the point of discharge and will minimize impacts to downstream water quality.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d), 40 CFR § 230.70; 40 CFR § 230.73

NWP-13 Bank Stabilization

NWP-13 is conditionally certified subject to the General Conditions above, and the following specific condition.

For any activities that include bank stabilization, the project proponent shall use bioengineering techniques for bank stabilization activities instead of or in combination with hard armoring; this may be either the sole use of native vegetation or other bioengineered design techniques (e.g.,

[6] Outfall design information for common types, like stormwater, may be found through state Departments of Transportation (e.g. Caltrans https://dot.ca.gov/programs/design/hydraulics-stormwater) and state water quality regulatory agencies (e.g. https://www.waterboards.ca.gov/rwqcb2/water_issues/programs/stormwater/muni/nrdc/chapter%2013%20design%20examples%20part%202.pdf). Local, county, state, and tribal resources may also be used to determine outfall design criteria and/or the maximum design velocity for stormwater and similar outfalls.

willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g., rock) and native vegetation or bioengineered design techniques. If it is not possible to solely rely on bioengineering techniques, the project proponent shall submit project plans to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. Projects consisting entirely of riprap or similar rock techniques are limited to 300 linear feet under this conditional certification; project proponents with riprap or similar rock activities over 300 linear feet shall request a project-specific water quality verification. For both partially bioengineered projects, and those composed of riprap, the project plans shall describe the design techniques and stabilization methods assessed to determine the final project design. The use of soil cement, concrete, and grouted rip-rap hard armoring methods are not authorized under this certification and project proponents shall submit a request for a project-specific water quality certification.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: The use of native vegetation and bioengineering is necessary to ensure the activity incorporates appropriate measures to that will minimize potential adverse impacts of the discharge on water quality and the aquatic ecosystem. Planning and construction practices can be used to minimize adverse impacts to plants and animals and can compensate for destroyed habitat. This condition is necessary to provide the project proponent with clarity on how to meet appropriate soil erosion and sediment controls, as required by NWPs General Condition 12. These appropriate and practicable alternatives often include more ecologically beneficial soft or bioengineering techniques. In conjunction with other bank stabilization practices, this condition will ensure water quality impacts from potential discharges of dredged or fill material are minimized. As a result, this condition is necessary to require project-specific CWA Section 401 WQC review so EPA Region 9 can ensure that projects will be conditioned to avoid and minimize adverse impacts to comply with water quality requirements. Native vegetation and natural materials and structures, such as biodegradable erosion control blankets, staking and live cutting, biologs, coir fiber rolls, brush mattresses, etc. can be effective erosion control measures are when installed properly under the right conditions. Projects without bioengineering are limited to 300 linear feet due to the negative impacts of hard armoring on aquatic habitat functions and water quality. 300 linear feet is the previous restriction in the NWPs without waiver by the District Engineer and is supported by years of data on minimal adverse impacts to the aquatic environment.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.71; 40 CFR § 230.72; 40 CFR § 230.75

NWP-14 Linear Transportation Projects

NWP-14 is conditionally certified subject to the General Conditions above, and the following specific condition.

For replacement crossings that would result in a reduction in the pre-construction ordinary high water mark channel width and depth of open waters of the U.S. at the crossing, as compared to the upstream and downstream open waters the project proponent shall submit design plans and

documentation to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. The documentation shall include:

- Information on why it is not practicable to approximate the pre-construction ordinary high water mark channel width and depth of the upstream and downstream open waters, and
- Documentation demonstrating that the reduction in the pre-construction bankfull width and the channel depth would not result in adverse effects to water quality and aquatic resource functions and services. Adverse effects may include, but are not limited to erosion, degredation, and increased water velocity. Functions and services to be considered include but are not limited to short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

Projects that may result in an adverse effect because of reduction in channel width, depth, or open water shall request a project-specific 401 certification.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This condition is necessary to ensure the authorized activity will result in only minimal impacts to water quality and the aquatic ecosystem through obstruction of flow or other reductions in physical characteristics related to water circulation. This condition is necessary to require project-specific CWA Section 401 WQC review so EPA Region 9 can ensure that projects will be conditioned to avoid and minimize adverse impacts to comply with water quality requirements.

Citation(s) that authorizes this condition: 40 CFR § 230.10 and 40 CFR § 230.72

NWP-27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities

NWP-27 is conditionally certified subject to the General Conditions above, and the following specific conditions.

Condition (a): To document that the project results in a net increase in aquatic functions and services, the project proponent shall submit a project monitoring and adaptive management plan to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. The plan shall include:

- Goals and objectives of the project;
- Specific performance metrics that will be used to evaluate the success of meeting those goals and objectives;
- Monitoring methods or techniques (including timing and duration) used to evaluate the progress towards achieving the desired increase in aquatic functions and services; and

- Adaptive management techniques and reporting processes to be implemented if the project is not meeting net increase performance metrics.

Functions and services to be considered in the justification include, but are not limited to, short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: Minimization of adverse effects on populations of plants and animals can be achieved by using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all the existing environmental characteristics. Habitat development and restoration techniques can be used to minimize adverse impacts and to compensate for destroyed habitat. The project proponent will complete pre-planning, monitoring, maintenance, reporting and adaptive management to achieve site restoration and enhancement.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.72; 40 CFR § 230.75

Condition (b): For removal of small water control structures authorized under NWP 27, to ensure that effective implementation measures are employed for the prevention of uncontrolled discharges and water quality violations, the project proponent shall conduct pre-disturbance site assessment and submit project plans to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. The project plans shall include:

- Methods to remove and dispose of any accumulated sediments stored behind the structure;
- Methods to ensure that the channel bed and banks are stabilized to prevent head-cutting and failure after the structure is removed;
- Stabilization methods that will be implemented to minimize secondary impacts to waters resulting from the removal of the structure; and
- Adaptive management and reporting processes if an unauthorized discharge or water quality violation were to occur

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:

This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded. Uncontrolled release of sediment could contribute to degradation of water quality, aquatic dependent plants and animals, and loss of capacity of the waterbody to assimilate nutrients and purify water. The project proponent will complete pre-planning,

monitoring, maintenance, reporting and adaptive management to ensure that removal of small water control structures complies with water quality requirements.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.71; 40 CFR § 230.72; 40 CFR § 230.75

NWP-31 Maintenance of Existing Flood Control Facilities

NWP-31 is conditionally certified subject to the General Conditions above, and the following specific condition.

If flood control facilities have levees that support existing jurisdictional non-invasive riparian vegetation, the project proponent shall submit project plans including baseline measurement of the existing vegetative cover, and measures to avoid and minimize impacts to jurisdictional non-invasive riparian vegetation growing on levees to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. Limited removal of riparian vegetation required to access an individual maintenance work area is permitted under this certification, but the removal of jurisdictional non-invasive riparian vegetation from levees as a specific and intended maintenance activity is not authorized and requires a project-specific 401certification. For authorized project activities that remove jurisdictional non-invasive riparian vegetation for access to work areas, the project proponent shall submit a revegetation plan developed using the native vegetative cover baseline, or other appropriate vegetative cover (per Natural Resources Conservation Service, CA Department of Fish and Wildlife, etc. guidelines), to EPA Region 9, the correlating Tribal government, and the authorizing Corps District.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: Riparian vegetation can provide many benefits for water quality such as bank stabilization and ground cover protecting slopes from rain-induced surface erosion. In cases where levees are composed of largely uncohesive materials, root-reinforcement provides significant support to the soil matrix, whilst additionally reducing shear stresses acting on the soil from flowing water and protecting the levee from rainfall impact and runoff. Riparian vegetation also provides for other beneficial uses including aesthetics, habitat and protection for fish and wildlife species and overall improved complexity to the river system. This condition is necessary to ensure activities authorized under this permit will not result in more than minimal impacts to water quality and beneficial uses.

Citation(s) that authorizes this condition: 40 CFR § 230.10; 40 CFR § 230.72, 40 CFR § 230.75

NWP-33 Temporary Construction, Access, and Dewatering

NWP-33 is conditionally certified subject to the General Conditions above, and the following specific condition.

New temporary access roads shall be no more than 20 feet wide and shall be designed to minimize changes to the hydraulic flow characteristics of the stream and degradation of water quality.

Temporary access roads are those that are in place for no more than one growing season.

The following site management and construction practices shall be followed to ensure that flow and circulation patterns of waters are not impaired and adverse effects on the aquatic environment are minimized:

- The temporary road or access shall be stabilized, monitored, and maintained during and following construction to prevent erosion. Stabilization materials that are damaged shall be repaired or modified within 24 hours of damage to protect water quality.
- Mats shall be used in temporary access and construction occurring in wetlands and ephemeral streams. Mat should be in good condition and installed with minimal dragging to reduce soil disturbance.
- The boundaries of temporary access within waters and wetlands shall be clearly marked by flagging, orange construction fencing, or other visible marking method to minimize the impacts by heavy equipment.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This measure is included to ensure that temporary access roads and dewatering activities minimize potential adverse impacts of the discharge on water quality and the aquatic ecosystem. Heavy equipment can compress wetland soils and result in decreased wetland function. Mats spread out the weight of heavy equipment so the soil is not compressed and can prevent ruts and other destructive impacts. In stream crossings, mats are used to reduce soil disturbance and prevent excessive rutting. Visible marking of the wetlands and water boundaries minimizes impacts that can result in ruts, erosion, and other negative impacts to water quality. Fill impacts that last longer than one growing season can have permanent reductions on ecosystem function and permanent loss of habitat to aquatic plants and animals.

Citation(s) that authorizes this condition: 40 CFR § 230.10; 40 CFR § 230.72; 40 CFR § 230.75

NWP-37 Emergency Watershed Protecting and Rehabilitation

NWP-37 is conditionally certified subject to the General Conditions above, and the following specific conditions.

Condition (a): Construction activities shall not result in the permanent channelization of streams or sloughs. Channelization is defined, for this purpose, as the placement of excess material in a manner that modifies the bank alignment, and subsequently the channel alignment, from its pre-emergency condition. Permanent for the purposes of this conditional certification are impacts to waters lasting more than one growing season.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: The discharge of dredged or fill material which alters the contours of a waterbody and/or its riparian zone can lead to increased erosion and sediment loads to the waterbody and the loss or change of habitat and preferred food sources for wildlife species associated with the aquatic ecosystem.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.73; 40 CFR § 230.75; 40 CFR § 230.76

Condition (b): Construction of temporary structures or drains for the purpose of reducing or preventing flood damage shall be removed within 60 days following the completion of the permitted action.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This measure is included to ensure that temporary activities minimize potential adverse impacts of the discharge on water quality and the aquatic ecosystem. Dredge and fill impacts in response to emergency that are in place after the permitted action are complete can have permanent reductions on ecosystem function and permanent loss of habitat to aquatic plants and animals.

Citation(s) that authorizes this condition: 40 CFR § 230.10; 40 CFR § 230.73; 40 CFR § 230.75

NWP-41 Reshaping Existing Drainage Ditches

NWP-41 is conditionally certified subject to the General Conditions above, and the following specific conditions.

Condition (a): To document that the modification of existing drainage and irrigation ditches results in improvement to water quality, the project proponent shall submit project plans and documentation to EPA Region 9, the correlating Tribal government, and the authorizing Corps District. The documentation shall include:

- Water quality improvements that are expected from implementation of the project. These may include, but are not limited to, improvement in water characteristics such as pH, dissolved oxygen, or temperature, and/or a decrease in pollutants, algal blooms, etc.
- Construction and modification methods or techniques that are expected to result in water quality improvement
- Monitoring methods and/or techniques to evaluate progress in improving water quality

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: This condition is necessary to ensure the authorized activity will improve water quality as required by the NWP. Water movements including current and water circulation are the physical movements of water that affect aquatic ecosystem. Reshaping of existing drainages ditches should result in improvement of environmental characteristics and values related to water flow circulation by removing obstructions or otherwise changing the dimensions of a water body.

Citation(s) that authorizes this condition: 40 CFR § 230.23

Condition (b): All side-cast materials from excavation shall be removed from unstable slopes and disposed of within non-jurisdictional areas. Sidecast material that is incorporated into authorized activities shall be placed to avoid erosion, slumping, or leaching of materials into the surrounding aquatic features. Depending on topographic and precipitation conditions, side-cast materials may need to be contained by silt fencing, or other containment control materials to prevent point source pollution into the adjacent drainage ditch.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: Disposal sites adjacent to aquatic features have the potential for erosion, slumping or leaching of materials into the surrounding aquatic ecosystem unless properly sited or controlled. Unstable slopes may slump and introduce material in ditches, which increases turbidity. Disposal of side-cast material from excavation of existing drainage ditches placed in jurisdictional wetlands constitutes a fill that can adversely affect water quality and the aquatic environment and is not authorized under this certification.

Citation(s) that authorizes this condition: 40 CFR § 230.10; 40 CFR § 230.72

NWP-45. Repair of Uplands Damaged by Discrete Events

NWP-45 is conditionally certified subject to the General Conditions above, and the following specific condition.

For any activities that include bank stabilization to protect restored uplands, the project proponent shall use bioengineering techniques for bank stabilization activities instead of hard armoring; this may be either the sole use of native vegetation or other bioengineered design techniques (e.g., willow plantings, root wads, large woody debris, etc.) or a combination of hard-armoring (e.g., rock) and native vegetation or bioengineered design techniques. If it is not possible to solely rely on bioengineering techniques, the project proponent shall submit project plans to EPA Region 9, the correlating Tribal government, and the correlating authorizing Corps District. Projects consisting entirely of riprap or similar rock techniques are limited to 300 linear feet under this conditional certification; project proponents with riprap or similar rock activities over 300 linear feet shall request a project-specific water quality verification. For both partially bioengineered projects, and those composed of riprap, the project plans shall describe the design techniques and stabilization methods assessed to determine the final project design. If the project proponent did not consider bioengineering techniques in the submitted project design, they shall request a project-specific water quality certification. The use of soil cement, concrete, and grouted rip-rap hard armoring methods are not authorized under this certification and project proponents shall submit a request for a project-specific water quality certification.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements: The use of native vegetation and bioengineering is necessary to ensure the activity incorporates appropriate measures to that will minimize potential adverse impacts of the discharge on water quality and the aquatic ecosystem. Planning and construction practices can be used to minimize adverse impacts to plants and animals and can compensate for destroyed habitat. This condition is necessary to provide the

project proponent with clarity on how to meet appropriate soil erosion and sediment controls, as required by NWPs General Condition 12. These appropriate and practicable alternatives often include more ecologically beneficial soft or bioengineering techniques. In conjunction with other bank stabilization practices, this condition will ensure water quality impacts from potential discharges of dredged or fill material are minimized. As a result, this condition is necessary to require individual CWA Section 401 WQC review so EPA Region 9 can ensure that projects will be conditioned to avoid and minimize adverse impacts to comply with water quality requirements. Native vegetation and natural materials and structures, such as biodegradable erosion control blankets, staking and live cutting, biologs, coir fiber rolls, brush mattresses, etc. can be effective erosion control measures are when installed properly under the right conditions. Projects without bioengineering are limited to 300 linear feet due to the negative impacts of hard armoring on aquatic habitat functions and water quality. 300 linear feet is the previous restriction in the NWPs without waiver by the District Engineer and is supported by years of data on minimal adverse impacts to the aquatic environment.

Citation(s) that authorizes this condition: 40 CFR § 230.10(d); 40 CFR § 230.71; 40 CFR § 230.72; 40 CFR § 230.75

NWP-46 Discharges in Ditches

NWP 46 is conditionally certified, subject to the general conditions listed above, except for the following projects, where an individual project-specific water quality certification is required, when impacts to non-tidal waters of the U.S., including intermittent and ephemeral streams are greater than 0.5 acre.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:

Drainages, including ditches, in the Arid West are typically narrow. For example, typical roadway ditches designed by AZDOT are between 2-10” wide. Because of the narrow width typical of ditches in the Arid West, measurement by area can result in many linear feet of impact relative to other regions of the U.S. The 0.5 acre limit is necessary to regionalize the 401 certification for this condition due to the resource types and typical practices. This condition is necessary to ensure that physical habitat and hydrologic characteristics of waters are not degraded. Discharge of large amounts of fill material in intermittent and ephemeral streams could contribute to degradation of water quality, aquatic dependent plants and animals, and loss of capacity of the waterbody to assimilate nutrients, purify water, or reduce wave energy.

Citation(s) that authorizes this condition: 40 CFR § 230.10; 40 CFR § 230.70

Waived (121.9(a)(1)):

On behalf of 123 federally recognized tribes within the purview of EPA Region 9, EPA is expressly waiving its authority to act on the CWA Section 401 certification request for the following proposed NWPs:

NWPs: 4, 15, 16, 17, 22, 30, 34, 49, 53, 54

Summary Table

General Permit	2021 EPA 401 Certification
1. Aids to Navigation	No cert. request
2. Structures in Artificial Canals	No cert. request
3. Maintenance	Certify with Conditions
4. Fish and Wildlife Harvesting, Enhancement, Attraction Devices and Activities	Waived
5. Scientific Measurement Devices	Certify with Conditions
6. Survey Activities	Certify with Conditions
7. Outfall Structures and Associated Intake Structures	Certify with Conditions
8. Oil and Gas Structures on the Outer Continental Shelf	No cert. request
9. Structures in Fleeting and Anchorage Areas	No cert. request
10. Mooring buoys	No cert. request
11. Temporary Recreation Structures	No cert. request
13. Bank Stabilization	Certify with Conditions
14. Linear Transportation Projects	Certify with Conditions
15. U.S. Coast Guard Approved Bridges	Waived
16. Return Water from Upland Contaminated Disposal Areas	Waived
17. Hydropower Projects	Waived
18. Minor Discharges	Certify with Conditions
19. Minor Dredging	Certify with Conditions
20. Response Operations for Oil or Hazardous Substances	Certify with Conditions
22. Removal of Vessels	Waived
23. Approved Categorical Exemptions	Certify with Conditions
24. Indian Tribe or State Administered Section 404 Program	No cert. request
25. Structural Discharges	Certify with Conditions
27. Aquatic Habitat Restoration, Enhancement and Establishment Activities	Certify with Conditions
28. Modifications of Existing Marinas	No cert. request
30. Moist Soil Management for Wildlife	Waived
31. Maintenance of Existing Flood Control Facilities	Certify with Conditions
32. Completed Enforcement Actions	Certify with Conditions
33. Temporary Construction, Access, and Dewatering	Certify with Conditions
34. Cranberry Production Activities	Waived
35. Maintenance Dredging of Existing Basins	No cert. request
36. Boat Ramps	Certify with Conditions
37. Emergency Watershed Protection and Rehabilitation	Certify with Conditions
38. Cleanup of Hazardous and Toxic Waste	Certify with Conditions
41. Reshaping Existing Drainage Ditches	Certify with Conditions
45. Repair of Uplands Damaged by Discrete Events	Certify with Conditions

General Permit	2021 EPA 401 Certification
46. Discharges in Ditches	Certify with Conditions
49. Coal Remining Activities	Waived
53. Removal of Low Head Dams	Waived
54. Living Shorelines	Waived
59. Water Reclamation and Reuse Facilities	Certify with Conditions

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Brigadier General Paul E. Owen
Division Engineer, South Pacific Division
U.S. Army Corps of Engineers
1455 Market Street
San Francisco, CA 94103-1398

Subject: Programmatic Clean Water Act, Section 401 Certification of the Draft 2020 Nationwide Permits for Tribal Lands within the Region 9 coverage area of the U.S. Environmental Protection Agency

Dear General Owen,

The U.S. Environmental Protection Agency Region 9 (EPA) has responsibility under section 401 of the Clean Water Act (CWA) to evaluate and certify water quality protections for federal permits or licenses issued for work on tribal lands (40 CFR 121.13(a)). We have reviewed the U.S. Army Corps of Engineers (Corps) Federal Register notice dated September 15, 2020, announcing the proposed issuance of the Corps' CWA Section 404 Nationwide Permits (NWPs). We have also reviewed the regional conditions proposed for each District within the South Pacific Division and hereby transmit our programmatic water quality certification of these general permits. The enclosed conditions of the NWPs become binding requirements of NWPs issued for work on tribal lands within EPA Region 9.[1,2] Please instruct your regulatory staff to provide this certification to anyone contacting the Corps with applicable projects.

Based on a thorough review of the materials provided by the Corps, EPA made a determination as to whether potential discharges authorized by the proposed NWPs will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the CWA. In summary, of the 57 proposed active permits, EPA is conditionally certifying 19 NWPs, denying 12 NWPs , and waiving certification for 15 NWPs. The Corps is not requesting certification for 11 NWPs.[3] The 401 certification conditions are necessary to assure that potential discharges authorized by the NWPs will comply with applicable water quality requirements. A table summarizing the certification status for each NWP, is included in the attached certification. The attached programmatic 401 certification will remain in effect for the authorization

[1] This water quality certification does not apply to activities proceeding in the territories of the 23 tribes in Region 9 that have been approved as Section 401 certifying authorities —the Navajo Nation, Hualapai Tribe, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of the Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk and White Mountain Apache Tribe. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

[2] Consistent with the *EPA Policy on Consultation and Coordination with Indian Tribes*, EPA sent a letter dated September 29, 2020, offering to consult with tribes in Region 9 on this certification. EPA did not receive any formal requests for consultation or any written comments on the draft certification.

[3] The 11 NWPs are as follows: 1, 2, 8, 9, 10 11, 24, 28, 35, A, B.

period of the 2020 NWPs and will be re-evaluated when the NWPs are next proposed for reissuance and revisions in 2025.

If a project fails to meet the enclosed conditions, the applicant must contact EPA Region 9 for individual project certification. Please advise project proponents who seek authorization under the NWPs for individual project certification on tribal lands within EPA Region 9 to submit their questions, pre-filing meeting requests, and subsequent 401 certification requests when required to: R9-401-Certs@epa.gov.

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Please contact me at (415) 972-3337 with any questions regarding this conditional certification, or have your staff contact Elizabeth Goldmann at (415) 972-3398 or goldmann.elizabeth@epa.gov.

Sincerely,

TOMAS TORRES

Digitally signed by TOMAS TORRES
Date: 2020.12.11 14:12:16 -08'00'

Tomás Torres
Director
Water Division

Enclosure:
U.S. Environmental Protection Agency Region 9's Programmatic Clean Water Act Section 401 Certification of the 2020 Nationwide Permits for Projects on Applicable Tribal Lands in California, Nevada, Arizona and Navajo Allottee Lands

cc:
All federally recognized Indian Tribes within EPA Region 9
James Mazza, Regulatory Branch Chief, San Francisco District
Michael Jewel, Regulatory Branch Chief, Sacramento District
David Castanon, Regulatory Branch Chief, Los Angeles District
Kelly Allen, Regulatory Branch Chief, Albuquerque District
Wade Eakle, Corps, South Pacific Division
Trevor Baggiore, Arizona Department of Environmental Quality
Paul Hann, California State Water Resources Control Board
Birgit Widegren, Nevada Division of Environmental Protection

Enclosure
U.S. Environmental Protection Agency Region 9's Programmatic Clean Water Act Section 401 Certification of the 2020 Nationwide Permits for Projects on applicable Tribal Lands in California, Nevada, Arizona and Navajo Allottee Lands

This Certification applies to any potential point source discharges from potential projects authorized under the proposed re-issuance of the following U.S. Army Corps of Engineers (Corps) CWA 404 Nationwide Permits (NWPs) into waters of the United States that occur within applicable tribal lands in California, Nevada, Arizona and Navajo Allottee land in the corresponding Sacramento, San Francisco, Los Angeles and Albuquerque Corps Districts: NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, C, and D, and E. The Corps is not requesting certification for 11 NWPs: 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B.

Section 401(a)(1) of the CWA requires applicants for Federal permits and licenses that may result in discharges into waters of the United States, to obtain certification that any such discharges will comply with applicable provisions of the CWA, including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has authority to give such certification, U.S. Environmental Protection Agency (EPA) Region 9 is the certifying authority. In this case, the EPA is making the certification decision for potential discharges that may result from the projects authorized under the proposed Corps CWA 404 NWPs listed above.[1]

Project Description

The Corps is proposing to re-issue its existing NWPs and associated general conditions and definitions, with some modifications. The Corps states that it is "proposing these modifications to simplify and clarify the NWPs, reduce burdens on the regulated public, and continue to comply with the statutory requirement that these NWPs authorize only activities with no more than minimal individual and cumulative adverse environmental effects." 85 FR 57298. For more

[1] This water quality certification does not apply to activities proceeding in the territories of the 23 tribes in Region 9 that have been approved as Section 401 certifying authorities —the Navajo Nation, Hualapai Tribe, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of the Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk and White Mountain Apache Tribe. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

details: https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/.

General Information

The general information provided in this section does not constitute a certification condition(s).

The project proponents for potential projects authorized under the NWPs are responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Copies of this certification shall be kept on the job site and readily available for reference.

The project proponent for potential projects authorized under the NWP are encouraged to contact EPA Region 9 during the project planning phase if there are any questions about relevant best management practices (e.g., bioengineering techniques, biodegradable erosion control measures, revegetation using native plant species, suitable fill materials, and disposal of debris/construction materials preventing runoff) and resources that can assist with compliance.

Prior to work commencing, project proponents should notify the appropriate Tribal Environmental Office.

Project proponents for potential projects should also notify the appropriate Tribal Office and EPA Region 9 if spills or unauthorized discharges occur during the project.

Pursuant to CWA section 308(a), EPA Region 9 representatives are authorized to inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the NWP.

If you have questions regarding this certification, please contact EPA Region 9 at: R9-401-Certs@epa.gov.

Granted with Conditions (121.7(d)(2)):

On behalf the 125 federally recognized tribes with tribal lands within Region 9, CWA Section 401 certification, for the following proposed NWPs, is granted with conditions. EPA Region 9 has determined that any discharge authorized under the following proposed NWPs will comply with water quality requirements, as defined at 40 CFR 121.1(n), subject to the following conditions pursuant to Section 401(d).

NWPs 5, 6, 7, 18, 19, 20, 23, 25, 27, 32, 33, 36, 37, 38, 41, 43, 45, 53, and E.

Condition 1 – Notification to EPA

All applicants must provide notice to EPA Region 9 prior to commencing construction to provide EPA Region 9 with the opportunity to inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. Where the Corps requires a PCN for the applicable NWP, the applicant should also provide the PCN to

Region 9. Within 30 days, EPA Region 9 will provide written verification to the applicant that the proposed project will not violate the water quality certification of the NWP.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:
This condition is necessary to provide EPA Region 9 with notice and information to allow for an efficient and effective pre-operation inspection to determine if the certified discharge will violate the certification. If the project scope changes during the Corps review prior to initiation of the activity, it is also critical for EPA Region 9 to be provided any changes in the project design, scope, amount and location of discharges to inform the pre-operation inspection opportunity as provided by 40 CFR 121.11(a).

Citation(s) that authorizes this condition: 40 CFR 121.11(a)

Condition 2 – Projects or Activities Discharging to Impaired Waters
Projects or activities are not authorized under the NWPs if the project will involve point source discharge into an active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody and the discharge may result in further exceedance of a specific parameter (e.g. total suspended solids, dissolved oxygen, temperature) for which the waterbody is listed. The current lists of 303(d) and TMDL listed waterbodies are available on EPA Region 9's web site at: https://www.epa.gov/tmdl/impaired-waters-and-tmdls-pacific-southwest-region-9.

Why the condition is necessary to assure that any discharge authorized under the general license or permit will comply with water quality requirements:
A 303(d) listed waterbody is impaired due to the cumulative effects of discharges of pollutants. The NWPs do not provide necessary activity specific information to determine compliance with specific water quality requirements, such as limits on total suspended solids, temperature, dissolved oxygen, nutrients, or pH for which a specific waterbody could be listed as impaired. Site specific analysis is required to determine whether water quality requirements are met in the active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody.[2]

Citation(s) that authorizes this condition: CWA section 303(d)

Denied (121.7(e)(2))

On behalf of the 125 federally recognized tribes with tribal lands within EPA Region 9, EPA Region 9 cannot certify that the range of discharges from potential projects authorized under the following proposed NWPs will comply with water quality requirements, as defined in 40 CFR 121.1(n). Therefore, CWA Section 401 water quality certification is denied for NWPs 3, 12, 13, 14, 29, 39, 40, 42, 44, 51, C and D, and applicants must request an individual water quality certification, consistent with 40 CFR 121.5.

Certification denial is due to insufficient information. 40 CFR 121.7(e)(2)(iii). In EPA's unique role certifying on behalf of a tribe, in a tribal jurisdiction where EPA is not the regulator, EPA lacks important information about tribal water resources. In the case of the 125 federally

[2]For example, Granite Creek in Arizona, a 303(d) listed as impaired for *e. coli*, runs through Yavapai Prescott Indian Reservation.

recognized tribes with tribal lands within EPA Region 9, EPA Region 9 lacks sufficient information on sensitive resources that may exist on these tribal lands, potential impaired waters on these tribal lands, and potential cultural importance of the water resources on these tribal lands. Additional information on these specific subjects would be needed for EPA Region 9 to assure that the range of discharges from potential projects authorized under NWPs 3, 12, 13, 14, 29, 39, 40, 42, 44, 51, C, and D will comply with water quality requirements, as defined in 40 CFR 121.1(n).

This information would also be necessary for EPA Region 9 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such requirements, in accordance with CWA section 401(a)(1) and 40 CFR 121.7(b). Lacking this information, EPA Region 9 is therefore denying certification.

Waived (121.9(a)(1)):

On behalf of the 125 federally recognized tribes with tribal lands within U.S. Environmental Protection Agency (EPA) Region 9, EPA Region 9 is expressly waiving its authority to act on the CWA Section 401 certification request for the following proposed NWPs:

NWPs 4, 15, 16, 17, 21, 22, 30, 31, 34, 46, 48, 49, 50, 52, 54

Summary Table – EPA Region 9 CWA § 401 Certification of NWPs

NWP	Certification Status				Specific Conditions
	Certified with Conditions	Denial	Waived	NWPs the Corps is not Requesting Certification	
1				X	
2				X	
3		X			
4			X		
5	X				Notice to EPA, NWP not applicable to 303(d) listed waters
6	X				Notice to EPA, NWP not applicable to 303(d) listed waters
7	X				Notice to EPA, NWP not applicable to 303(d) listed waters
8				X	
9				X	
10				X	
11				X	
12		X			
13		X			
14		X			

15			X		
16			X		
17			X		
18	X				Notice to EPA, NWP not applicable to 303(d) listed waters
19	X				Notice to EPA, NWP not applicable to 303(d) listed waters
20	X				Notice to EPA, NWP not applicable to 303(d) listed waters
21			X		
22			X		
23	X				Notice to EPA, NWP not applicable to 303(d) listed waters
24				X	
25	X				Notice to EPA, NWP not applicable to 303(d) listed waters
26				Reserved. This NWP is no longer in use.	
27	X				Notice to EPA, NWP not applicable to 303(d) listed waters
28				X	
29		X			
30			X		
31			X		
32	X				Notice to EPA, NWP not applicable to 303(d) listed waters
33	X				Notice to EPA, NWP not applicable to 303(d) listed waters
34			X		
35				X	
36	X				Notice to EPA, NWP not applicable to 303(d) listed waters
37	X				Notice to EPA, NWP not applicable to 303(d) listed waters
38	X				Notice to EPA, NWP not applicable to 303(d) listed waters
39	X				Notice to EPA, NWP not applicable to 303(d) listed waters
40		X			
41	X				Notice to EPA, NWP not applicable to 303(d) listed waters
42		X			
43		X			
44		X			

45	X				Notice to EPA, NWP not applicable to 303(d) listed waters
46			X		
47				Reserved. This NWP is no longer in use.	
48			X		
49			X		
50			X		
51		X			
52			X		
53	X				Notice to EPA, NWP not applicable to 303(d) listed waters
54			X		
A				X	
B				X	
C		X			
D		X			
E	X				Notice to EPA, NWP not applicable to 303(d) listed waters

KLETSEL ENVIRONMENTAL
REGULATORY AUTHORITY
P O BOX 1630♦ Williams, CA 95987-1630

October 11, 2021

Michael Jewell, Chief, Regulatory Division
US Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Sent via U.S. mail and email: micheal.s.jewell@usace.army.mil

Re: Request for Certification of the Nationwide Permits under Section 401.

Dear Mr. Jewell:

The Kletsel Dehe Wintun Nation would like to thank you for the opportunity to comment on the new U.S. Army Corps of Engineers proposal to reissue the Nationwide Permits (NWPs). According to your letter of August 18, 2021, the 41 proposed NWPs subject to this extension of the reasonable period of time are: 3, 4, 5, 7, 13, 14, 1516, 17, 18, 19, 20, 22, 23, 25, 27, 30, 31, 32, 33, 34, 36, 37, 38, 41, 45, 46, 53, and 59.

The Nation will be commenting on only 3, 6, 13, 18, 38. The remainder of the NWPs the Nation is certifying without conditions.

EPA Region 9:

The Nation is aware that on behalf of tribes in the Region, Region 9 denied certification for NWPs 12, 14, 29, 39, 40, 42, 44, and 51 on the grounds of insufficient information to certify that the range of discharges would comply with the water quality requirements. Further they believe they have insufficient on what areas might contain sensitive resources or resources of cultural importance. They also area unaware of whether there is currently any impaired waters on the tribal lands and lack specific information on water quality requirements for those reservations.

The Nation believes that if the EPA itself feels the need to deny blanket certification of those NWPs, instead requiring review on a case-by-case basis, that denial should be accepted.

The Nation's Comments:

The Nation will be denying certification for NWPs 3, 6, 13, 18, and 38.

#3 Maintenance – Subpart (c) would not meet specific Kletsel Dehe water quality standard's because in this dry climate, the soil is highly erodible, and the Nation's standards would require evaluation of whether all of the temporary fill would need to be removed in order to maintain appropriate water quality standards.

> See Kletsel Dehe Water Quality Standards, Sensitive Waters:
>
> §4.1(D)(2)(i) "In permitting any activity that could impact in sensitive water bodies, the Nation shall require the most stringent statutory and regulatory requirements for all new and existing non-point sources and all cost effective and reasonable BMPs for non-point control."
>
> §4.1(D)(3)(ii) "No degradation of Outstanding Tribal Resource Waters shall be permitted."
>
> §5.0 "No person shall engage in any activity that violates or causes the violation of these standards. All discharges from point sources, all in-stream activities, rate non-point source pollution shall be conducted so as to comply with this document and all applicable requirements."

#6 Survey Activities – The NWP would not meet the Kletsel Dehe Solid Waste Management Plan of 2000, because the Nation has unstable seismic areas in addition to the highly erodible soils which would affect how surveys are conducted and strict review by Kletsel Environmental Regulatory Authority (KERA) to assure maintaining appropriate standards.

#13 Bank Stabilization - The NWP would not meet the Kletsel Dehe Non-Point Source Management Plan because the Cortina NPS Management Program states:

> "If you are planning a construction project that will disturb more than one acre of land you are required to have permit from EPA. You should also have erosion and sediment controls in place for runoff from your site before construction begins. Information can be found in the *Clean Water Act Requirements for Construction Projects in Indian Country EPA*-909-F-04-008 August 2004. This summarizes your responsibilities for permit coverage and for erosion and sediment controls, as required under the Federal Clean Water Act to limit water pollution from construction sites. Contractors can also reference, *Managing Your Environmental Responsibilities: A Planning Guide for Construction and Development EPA/305-B-04-003 April 2005.*

#18 Minor Discharges - The NWP would not meet the Kletsel Dehe NPS Management Program Plan because under the Program, the value of the resource served, and site characteristics will influence the choice of road construction standards and maintenance activities. Most Rancheria roads are built by excavating a road surface. When

constructing roads fill or substrate should be obtained from available Sources on the Rancheria. Road design and layout on-the-ground show machine operators the proper cut slopes and indicate cut slope steepness. The bulldozer starts at the top of the cut slope, excavating and side casting material until the desired road grade and width is obtained. Material from cuts is often pushed in front of the blade to areas where fill is needed. Road fill is used to cover culverts and build up flat areas. Since fill must support traffic, it needs to be spread and compacted in layers to develop strength.

#38 Cleanup of Hazardous and Toxic Waste - The NWP would not meet the Kletsel Dehe Antidegradation requirements for Wetlands (Water Quality Standards §4.2.3) because they were designed to not allow for the accident to happen in the first place rather than to let it occur and then try to clean it up.

> **§ 4.2.3 Wetlands Antidegradation Requirements**
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> For all wetlands, as defined by the Nation, the following antidegradation requirements shall apply:
>
> i. Maintenance and protection of existing instream water uses and the level of water quality necessary to protect the existing uses.
>
> ii. No net loss to the water quality, functions, values, area, or ecological integrity of high- quality wetlands, unless, after satisfying applicable antidegradation provisions including avoidance, minimization, and mitigation/replacement requirements, the Nation determines that allowing degradation is necessary to accommodate important social or economic development in the area in which the wetlands are located consistent with this section; and
>
> iii. No loss to the water quality, functions, values, area, or ecological integrity of wetlands assigned as Outstanding National Resource.

The Nation looks forward to continuing to work with the ACOE on assuring that the Nation's water quality standards are met on the Rancheria by all requesting permits.

Respectfully submitted,

R. Brett Matzke

ED, Kletsel Environmental Regulatory Authority.

Cc. KERA Files