

Attachment F - Compliance with 40 CFR § 121.7

The purpose of Attachment F is to comply with Title 40, Code of Federal Regulations (CFR) sections 121.7(d)(2), which requires all general certifications to provide an explanation of why each condition is necessary to assure that any discharge authorized by the certification will comply with water quality requirements, and a citation to federal, state, or tribal law that authorizes the condition.

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

Certification Conditions and Compliance with Title 40, CFR section 121.7(d)(2)

Attachment F uses the same organizational structure as Order section VI, and the statements below correspond with the conditions set forth in subsections A through H. Sections I through V, and VII through XI are not “conditions” as used in 40 CFR section 121.7.

Attachment F 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 231, 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 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’s 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).

Order Section VI.A General Conditions

- **Conditions 1-2.** These conditions are necessary to ensure that the Water Boards know when impacts to waters of the United States and/or state are occurring. The Water Boards have the authority to investigate the quality of any waters of the state within its region under California Water Code sections 13267 and 13383.
- **Conditions 3-6.** These conditions are necessary to protect water quality by ensuring that discharges do not violate water quality standards. California Water Code section 13264 prohibits any discharge that is not specifically authorized in the Order. These conditions are also required to assure that the discharge complies with water quality objectives adopted or approved under Sections 13170 or 13245 of the Water Code, and 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.
- **Condition 7.** 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."

Section VI.B Administrative Conditions

- **Condition 1.** This condition is authorized by Water Code section 13267, which requires any person discharging waste that could affect the quality of waters to provide 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 CFR section 122.22.
- **Condition 2.** 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.”

- **Conditions 3-4.** These conditions protect water quality by requiring that all construction personnel are familiar with the contents of this Order and that the Order must be kept at Project sites for easy access and reference. Being familiar with the Order and having it on site will allow the personnel to complete work in accordance with the conditions of the Order. (Wat. Code, § 13263.)

Section VI.C Construction Conditions

- **Conditions 1-6.** These conditions are necessary to prevent the discharge of toxic and hazardous pollutants into waters of the United States and/or state that impact beneficial uses and exceed compliance with water quality standards. (Clean Water Act sections 301 and 402, California Water Code sections 13370 and 13260).

Sections VI.D (Mitigation Conditions) and VI.E (Restoration of Temporary Impacts):

- **Conditions in sections VI.D (conditions 1-3) and VI.E (conditions 1-2).** These conditions 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.

Sections VI.F (Water Quality Monitoring) and VI.G (Reporting and Notification Requirements)

- **Conditions in sections VI.F (conditions 1-2) and VI.G (conditions 1-6).** These conditions 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); Water Quality Control Plan for the San Francisco Bay region, section 3.3.12 (sediment).)

Section VI.H Standard Conditions

- **Conditions 1-3.** These conditions “shall be included as conditions of all water quality certification actions.” (Cal. Code of Regs., section 3860.) They are necessary to assure that any discharge authorized under the Order will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States.