

California Regional Water Quality Control Board
North Coast Region

Order No. 2015-0023

DRAFT Waiver of Waste Discharge Requirements
and
General Water Quality Certification
for
Discharges of Waste Resulting from Marijuana Cultivation and Associated Activities
or Operations with Similar Environmental Effects
In the
North Coast Region

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Water Board) finds that:

Overview

1. The North Coast Region is inundated with marijuana cultivation in headwaters and main river systems, with active, developed sites in steep and rugged terrain. With the increase in use and cultivation of marijuana since the voters' passage of the Compassionate Use Act (Prop 215) and the legislature's passage of AB 420, the unregulated activity of marijuana cultivation has grown increasingly year by year, with land area under cultivation increasing exponentially over the past decade. The increased cultivation throughout the North Coast Region has resulted in significant waste discharges and a loss of instream flows associated with improper development of rural landscapes on privately-owned parcels, and the diversion of springs and streams, to the cumulative detriment of beneficial uses of water.
2. The purpose of this Order is to provide a water quality regulatory structure to prevent and/or address poor water quality conditions and adverse impacts to water resources associated with marijuana cultivation on private land. Under this Order, any landowner or operator cultivating marijuana that results in a discharge of waste to an area that could affect waters of the State (including groundwater) will fall within one of three tiers depending on the nature of their operation and risk to water quality.¹ Properties with site characteristics or development that have impacts that cannot be ultimately mitigated to less than significant levels require regulation under a separate and individual order.
3. This Order applies to any person engaged in cultivating marijuana and associated activities, on private land, that discharge waste to any area that could affect waters of the State including landowners, operators, lessees, tenants and occupiers² (hereinafter referred to as "Dischargers"). Subject to approval from the Executive Officer, Dischargers with similar operations to marijuana cultivation may also elect to enroll and comply with this Order to ensure their discharges are authorized. Landowners are responsible for the conditions, activities, and operations occurring on properties that

¹ This Order does not apply to operations or grows of no more than 12 immature or 6 mature plants and where there is no potential for discharge of waste.

² A lessee/occupier has primary responsibility for compliance; however, if the lessee/occupier fails to clean up or comply and/or cannot be reached, the landowner must assume responsibility (in re: Vallco Park, State Water Board WQO 86-18).

they own. These activities have the potential to result in impacts to water resources, including discharges of waste to receiving waters. Landowners are responsible for discharges of waste and water resource impacts both from recent site development and activities underway, as well as discharges of waste from past or legacy development/features³ on the properties that they own. Marijuana cultivators, whether landowners or tenants, are also responsible for water resource and water quality impacts associated with their occupancy of and activities on a property. Compliance with this Order may require information from or cooperation between both landowners and their tenants.

4. Discharges and related controllable water quality factors from the following activities covered under this Order include:
 - a. Maintenance of developed areas and drainage features.
 - b. Stream crossing maintenance and improvement, including culvert sizing and installation, non-culverted stream crossing installation, culvert cleaning, culvert improvement and repair, and culvert and non-culverted stream crossing replacement.
 - c. Activities within and adjacent to wetlands and riparian zones.
 - d. Spoil storage and disposal.
 - e. Water diversion, storage, and use.
 - f. Irrigation runoff from marijuana cultivation and other similar growing operations.
 - g. Fertilizer, soil amendments, petroleum products, biodiesel, and pesticide/herbicide/rodenticide storage, use, and waste disposal.
 - h. Waste handling and disposal, including empty soil/soil amendment/fertilizer/pesticide bags and containers, empty plant pots or containers, dead or harvested plant waste, spent growth medium, and other cultivation-associated wastes.
 - i. Household refuse, human waste and domestic wastewater.
 - j. Site remediation/cleanup/restoration activities including, but not limited to removal of fill from watercourses, stream restoration, riparian vegetation planting and maintenance, soil stabilization, erosion control, upgrading stream crossings, road outsloping and rolling dip installation where safe and suitable, installing or maintaining water bars, ditch relief culverts and overside drains, removing berms, stabilizing unstable areas, reshaping cutbanks, and rocking native-surfaced roads.
5. This Order authorizes discharges of waste from marijuana cultivation sites and associated activities listed above. Most of the potential water quality impacts from the listed activities are associated with erosion and sediment delivery⁴ and/or changes to

³ Legacy features are existing features that are 1) actively discharging or have the potential to discharge sediment or other pollutants in violation of water quality standards; 2) are caused or affected by human activity; and 3) may feasibly and reasonably respond to erosion control or other management measures.

⁴ Fine sediment waste discharges into surface waters impact many beneficial uses including those associated with fish habitat and health, domestic, municipal, and agricultural water supplies, and recreation.

riparian systems that may reduce shade and affect water temperatures, over allocation of water sources, and chemical/pollutant discharges from areas under cultivation or material/waste storage areas. This Order contains requirements that eliminate, minimize, or mitigate these impacts to protect and/or restore water quality. Listed activities that also require water quality certification are subject to additional requirements described in findings 28-31 and General Water Quality Certification. Activities and associated discharges authorized by this Order do not include those that take place within the channel and/or on the banks of a watercourse containing fish and/or that supplies water for a domestic water source. In addition, this Order does not authorize dredge and fill activities that result in a permanent loss of wetlands and other waters.

6. This Order does not preclude the need for permits that may be required by other governmental agencies for the activities listed in finding 4, nor does it supersede any requirements, ordinances, or regulations of any other regulatory agency, including necessary certification and permitting for the application of pesticides and herbicides and proper handling and disposal of solid and domestic wastes.
7. This Order does not apply to land use activities subject to other permitting programs (e.g., industrial activities, animal waste, mining, forestry), and hazardous waste cleanup.
8. This Order does not authorize discharges of waste associated with any new development of sites for marijuana cultivation or related activities. Dischargers must obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 2009-0009-DWQ) for construction projects (individual or part of a common development) that disturb one or more acres of land surface, specifically for new site preparation and development.⁵ In addition, any new site development involving dredge or fill in waters of the United States must apply for and receive coverage under Clean Water Act section 401 water quality certification. Many sites in the North Coast include steep slopes, highly erodible soils, or unstable areas. Land development on sites with these characteristics often requires design and oversight by a licensed engineer, geologist, or other appropriate California-licensed individual during construction to ensure that constructed features on the site are stable and do not represent a threat to the beneficial uses of water or public health and safety.
9. This Order does not in any way authorize, endorse, sanction, permit or approve the cultivation, possession, use, sale or other activities associated with marijuana. Individuals engaging in marijuana cultivation and other activities risk prosecution under federal, State, or local law.

Water Quality Regulation

10. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional water board a Report of Waste Discharge (ROWD) containing such information and data as may be required by the Regional Water Board. The Regional Water Board may waive the requirements of Water Code section 13260 for specific types of discharges if the waiver is consistent with the Basin Plan and in the public interest. Any

⁵ Construction activities subject to the Construction General Permit include clearing, grading and disturbances to the land surface such as stockpiling, or excavation, but do not include regular maintenance activities performed to repair roads and related facilities.

waiver is conditional and may be terminated at any time. A waiver should include monitoring requirements to verify the adequacy and effectiveness of the waiver's conditions. This Order conditionally waives the requirement to file a ROWD for discharges and associated activities described in finding 4.

11. The *Water Quality Control Plan for the North Coast Region* (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives to protect waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives. Economic considerations were evaluated as required by law during the development of these objectives. Compliance with the conditions, prohibitions, and provisions contained in this Order will implement these previously-developed water quality objectives and protect beneficial uses.
12. Activities described in finding 4 that involve construction and other work in waters of the United States may require a federal permit pursuant to section 404 of the Clean Water Act. Section 401 of the Clean Water Act (33 U.S.C. §1341) requires every applicant for a federal license or permit to apply for and receive water quality certification from the state. State water quality certification conditions shall become conditions of any federal license or permit for the project. This Order includes a Section 401 General Water Quality Certification for activities and associated discharges described in finding 4.
13. The federal Clean Water Act section 303(d) requires the states to determine waterbody compliance with water quality objectives and to develop a list of impaired waterbodies. Federal regulations require that a Total Maximum Daily Load (TMDL) be developed for 303(d)-listed waterbodies for each pollutant of concern. The US Environmental Protection Agency (EPA) has established TMDLs for 25 impaired stream segments in the North Coast Region. The Regional Water Board has adopted five additional TMDLs for impaired stream segments in the North Coast Region with accompanying implementation plans.
14. The majority of the North Coast TMDLs developed to date address sediment and temperature impairments, most with common approaches. The TMDLs typically list COLD⁶ as an important beneficial use. While specific load allocations and targets may vary slightly, all address the need to reduce and prevent excess sediment inputs and decrease water temperature by protecting and restoring natural shade or conditions equivalent to natural shade.
15. Implementation of this Order will address sediment and temperature impairments by requiring: 1) the application of Best Management Practices (BMPs) to avoid excess sediment and other waste discharges; 2) the protection and maintenance of riparian conditions and shade; 3) inventories, prioritization and remediation of sediment delivery sites; 4) implementation and effectiveness monitoring of BMPs and documentation of the monitoring results; 5) water conservation and measures to ensure that water diversions do not unreasonably impact beneficial uses; and 6) on-going education and outreach. For activities identified in finding 4, it is anticipated that compliance with the conditions contained in this Order will serve to prevent or minimize a site's contribution to watershed impairments and, thus, represent

⁶ Cold Freshwater Habitat (COLD): Uses of water that support cold water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.

compliance or progress toward compliance with applicable sediment and temperature TMDLs, subject to periodic review, monitoring and reassessment.

16. It is evident that the over-diversion of surface water for marijuana cultivation continues to impact instream beneficial uses. The impacts are compounded by the cumulative effect of many Dischargers drawing on the same water source, which is often the biggest problem in regulating nonpoint sources. The State Water Board, Division of Water Rights is the agency with authority to oversee and regulate water rights. The Regional Water Board does not have jurisdiction to determine the scope and extent of any water right, or grant or make changes to water rights permits and licenses; however, it may request that the State Water Board consider various water right actions and refer cases to the Office of Enforcement. Additionally, the Regional Water Board may require information pursuant to Water Code section 13267. Under Water Code 174, “[i]t is also the intention of the Legislature to combine the water rights and water quality functions of state government to provide for consideration of water pollution and water quality, and availability of unappropriated water whenever applications for appropriation of water are granted or waste discharge requirements or water quality objectives are established.” Accordingly, this Order contains information requirements pursuant to Water Code section 13267, and general guidance provisions for water quality as it relates to the diversion and use of surface water.

Program Framework

17. In order to prevent and/or address poor water quality conditions and adverse impacts to beneficial uses associated with marijuana cultivation on private land, any landowner or operator cultivating marijuana that results in a discharge of waste to an area that could affect waters of the state (including groundwater) will fall within one of three tiers depending on the nature of their operation and risk to water quality.

Tier 1:

The first tier is for dischargers with low risk to water quality based on certain physical characteristics of the operation such as slope, proximity to surface water, and scale of the operation. Specifically, slopes are no more than 35%, cultivation areas are no more than 2000 square feet. No cultivation areas or associated facilities⁷ are located within 200 feet of a surface water (i.e., wetland, Class I, II, or III⁸ streams). Tier 1 Dischargers do not directly divert surface water from May 15 through October 31.⁹ Dischargers in

⁷ Associated facilities include those constructed or placed features that facilitate plant cultivation (including but not limited to access roads, storage buildings, material storage areas, and irrigation systems).

⁸ A wetland is: An area that is covered by shallow water or where the surface soil is saturated, either year round or during periods of the year; where that water coverage has caused a lack of oxygen in the surface soil; and has either no vegetation or plants of a type that have adapted to shallow water or saturated soil. Some examples are fresh water marshes, bogs, riparian areas, vernal pools, coastal mud flats and salt marshes.

California Forest Practice Rules define a Class I watercourse as 1) a watercourse providing habitat for fish always or seasonally, and/or 2) providing a domestic water source; a Class II watercourse is 1) a watercourse capable of supporting non-fish aquatic species, or 2) a watercourse within 1000 feet of a watercourse that seasonally or always has fish present; and a Class III watercourse is a watercourse with no aquatic life present, and that shows evidence of being capable of transporting sediment to Class I and Class II waters during high water flow conditions after completion of timber operations.

⁹ Persons who are diverting water pursuant to a riparian water right, and move to storage for the purpose of meeting Tier 1 characteristics or for any other reason, must apply for and obtain an appropriative water

this tier must adhere to certain standard conditions contained in this Order at section I.A. Dischargers must certify that their site meets Tier 1 characteristics and standard conditions. (See Appendix A, Notice of Intent Form and Certification.)

A copy of the self-certification and this Order must be retained on site and shown to Regional Water Board staff on request. A notice of enrollment and an annual fee are required for Tier 1, and dischargers may be subject to administrative penalties if standard conditions are not met. If a site meets Tier 1 characteristics but does not meet standard conditions, the discharger must enroll under Tier 2 and follow Tier 2 requirements. Once standard conditions are met, (by development and full implementation of a water resource protection plan), a discharger may move to Tier 1.

Tier 2:

Tier 2 is for dischargers with operations that present a higher threat to water quality and water resources. The site does not meet the characteristics of Tier 1, or the site meets the Tier 1 characteristics but does not meet standard conditions. Tier 2 Dischargers must develop and implement a water resource protection plan that includes management measures to be implemented to meet standard conditions. Required components of the water resource protection plan are detailed in this Order at section I.B. A copy of the water resource protection plan and this Order must be retained on site and shown to Regional Water Board staff on request. Enrollment, an annual fee, and annual reporting are required for Tier 2, and dischargers are subject to administrative penalties if standard conditions are not met and/or a water resource protection plan is not prepared or implemented.

Tier 3:

The third tier is for dischargers with sites requiring cleanup, restoration, and/or remediation based on current or past land development/management activities that have resulted in a discharge or threatened discharge in violation of water quality standards. Such conditions may include, but are not limited to, filled watercourses or wetlands, perched fill, steep cut slopes, roads, or fill prisms that cannot be stabilized sufficiently to prevent erosion and sediment delivery to surface waters (either on or off site). Tier 3 Dischargers must develop and implement a cleanup and restoration plan as detailed in this Order at section I.C., and comply with applicable standard conditions. Enrollment and annual fee through the life of cleanup activities is required for Tier 3, and dischargers are subject to administrative penalties if applicable standard conditions are not met and a cleanup plan is not developed or implemented. Tier 3 Dischargers who are cultivating marijuana concurrent with or following site cleanup activities must adhere to all standard conditions and develop and implement a water resource protection plan for marijuana cultivation activities. Tier 3 Dischargers who are cultivating marijuana concurrent with site cleanup are also subject to Tier 2 annual fees and annual reporting, and are subject to administrative penalties if standard conditions are not met or a water resource protection plan is not prepared and implemented.

18. Dischargers fall within one of the above three tiers. Dischargers shall be in the tier that covers the most impactful part of the operations (i.e., different sections of property are not divided among the tiers). All sites, regardless of size or tier, are subject to the standard conditions in section I.A. Tier 2 Dischargers are also subject to section I.B.;

right. The Department of Fish and Wildlife, in collaboration with the State Water Resources Control Board, has developed an expedited process for applying conditions to Small Domestic Use registrations for diversions that meet certain criteria. Registrations that meet these criteria are known as Emergency Tank Storage Registrations. Additional information on this program is provided here:
http://www.swrcb.ca.gov/waterrights/water_issues/programs/registrations/index.shtml

Tier 3 Dischargers are subject to sections I.A. and I.C. and, if cultivating marijuana before, during, or following cleanup activities, are also subject to section I.B.

Some site-specific characteristics or cultivation operation characteristics may represent a higher threat to water quality than suggested by tier characteristic description, warranting regulation under higher tier requirements. Such sites will typically be identified by staff based on field inspection observations, or by recommendations made by certified third parties. Subject to approval from the Executive Officer, dischargers with operations that are similar to or whose potential impacts to water resources are similar to those posed by marijuana cultivation may also elect to enroll and comply with this Order to ensure their discharges are authorized.

19. This Order requires control of erosion and drainage features, proper soil disposal, proper stream crossing parameters, water conservation, proper storage and handling of fertilizers and soil amendments, refuse and human waste, and petroleum products and other chemicals, and riparian management and protection. Standard conditions I.A. further describe the required site conditions. All Tier 1 Dischargers are responsible for ensuring that standard conditions are met. For more complex properties, the water resource protection plans required under Tier 2 are meant to describe the specific measures a discharger implements to achieve compliance with standard conditions. Plans can range from a simple description of the management practices to be implemented, to comprehensive descriptions of existing sources of waste discharge and elevated water temperatures, management practices employed to control the sources, and a monitoring and reporting program to document actions taken to control the sources and the effectiveness of such actions. The level of detail required in a plan will be dependent on the site-specific characteristics of an activity/operation. Plans must be kept available on the site and subject to inspection.
20. Appendix B provides best management practices (BMPs) that may be applicable to prevent, minimize, and control the discharge of waste and other controllable water quality factors. All BMPs in Appendix B are considered enforceable conditions under the Order as applicable to a given site. Some or all may be added to the Order as mandatory BMPs for all sites.
21. Third Party Programs-Tier 1 and 2 Dischargers have the option to participate and comply with this Order through an approved, third party program. Third party programs can increase the program effectiveness and administrative efficiency of the Order, provided that the program meets certain elements (including sufficient feedback mechanisms to Regional Water Board). Third party programs can help meet some or all of the following:
 - Tracking names of participating (and non-participating) dischargers.
 - Collecting and submitting required fees.
 - Managing communication and notifications between participating dischargers and the Regional Water Board, including informing growers of the program and status of implementation.
 - Assisting dischargers with identifying the proper Tier for a specific site. Assisting self-certification requirements for dischargers meeting Tier 1 characteristics.
 - For Tier 2 Dischargers, developing sample water resource protection plans, helping individual dischargers develop individual plans, and/or developing a more comprehensive community plan which individual dischargers agree to abide by.
 - Assisting dischargers in implementing water resource protection plans.
 - Monitoring and reporting to Regional Water Board, including compliance with the Order, and effectiveness of management measures.

A Third Party Program seeking approval from the Executive Officer to fulfill some or all of the elements listed must submit a proposal to the Regional Water Board. The proposal must demonstrate the substantive and procedural mechanisms to serve the function it is applying for. Third Parties are encouraged to work with Regional Water Board staff as early as possible (even prior to Order adoption) to calibrate their program.

Compliance Assistance and Enforcement

22. In its early stages of implementation, Regional Water Board staff will generally be focused on coordination and cooperation with dischargers to help inform the community of the Order's requirements. Staff will reach out and be available for dischargers to get information to ensure that their site is in the proper tier. Staff will also be conducting outreach to individuals or third party groups to provide assistance for dischargers to be in compliance with the Order. Tier 1 Dischargers are required to meet standard conditions. Regional Water Board staff will be available to assist dischargers with complying with standard conditions, upon request. If standard conditions cannot be met, discharger must enroll under Tier 2 and develop and implement a water resource protection plan until standard conditions can be met. Once standard conditions are met, discharger may move to Tier 1. Tier 1 Dischargers must complete a self-certification (see Appendix A, Notice of Intent Form and Certification), indicating that the site meets Tier 1 characteristics and standard conditions, and retain the self-certification and this Order on site. The self-certification must be made available to Regional Water Board staff upon request. Tier 2 Dischargers and Tier 3 Dischargers (who are cultivating marijuana) are required to keep on the site a water resource protection plan, and implement the plan. Tier 3 Dischargers are also required to develop, submit and implement a cleanup and restoration plan. Staff may conduct onsite inspections to assess compliance with conditions, and provide technical assistance or guidance, where necessary. Staff will conduct a certain amount of routine inspections on a yearly rotation and with the goal of eventually having some communication with every site. Staff may either confirm the adequacy of a water resource protection plan, or require that improvements be made. Similarly, staff may confirm that a site is Tier 3 and require cleanup and abatement actions.
23. The Regional Water Board prefers that water quality impacts be regulated under this Order to the extent possible. However, if staff encounters a recalcitrant or uncooperative discharger, is denied access to an affected property, does not receive timely communication, or identifies serious violations such as evidence of significant disturbance to streams and riparian areas, additional steps beyond those outlined above may be pursued. In such cases, the Executive Officer may require the discharger to submit a Report of Waste Discharge (ROWD) or take other actions as appropriate.
24. The Regional Water Board participates in environmental crimes task forces in several counties, as well as a statewide and a federal task force. Participants include, but are not limited to, county code enforcement, planning, building, air quality, law enforcement, district attorney, and health department staff; representatives from California Department of Forestry and Fire Protection (Cal Fire), California Department of Fish and Wildlife (CDFW), California Coastal Commission, California Department of Toxic Substances Control (DTSC), California Highway Patrol (CHP), National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NOAA's NMFS), U.S. Coast Guard, U.S. Forest Service, Central Valley Regional Water Quality Control Board, and the State Water Resource Control Board's Office of Enforcement and Division of Water Rights. Through both the state and county models, cultivation sites are identified through various methods including, but not limited to, aerial surveillance, satellite imagery, and complaints received from the public or from other resource

protection or law enforcement agencies. Individual sites to inspect are generally prioritized based on threat to water quality, amount of land disturbance, proximity to watercourses and wetlands, presence of ponds, observed or reported instream impacts, and other factors and characteristics that suggest significant threat or impact to waters of the state. Watershed or subwatershed areas may also be selected based on observable density or number of developed cultivation sites, or significant observed or reported instream impacts. It is the Regional Water Board's intent to coordinate environmental task force activities with this Order to the extent possible.

25. Inspections allow Regional Water Board staff to confirm that dischargers have correctly identified their appropriate tier for coverage under this Order and are complying with applicable conditions and requirements. Dischargers who failed to enroll in this Order but can demonstrate compliance with the substantive requirements of this Order (including plans, schedule, and reasonable progress in bringing conditions on the site into compliance with the Order) may be subject to any additional enforcement response for failure to enroll and at a minimum must subsequently enroll and pay applicable fees for the time they should have been enrolled. Dischargers may be referred to organizations or groups that can provide technical assistance or support.
26. If water quality violations or impacts are confirmed, enforcement response may include requirements to clean up and abate violation conditions, restore impacted watercourses, remove and properly dispose of waste earthen material and other wastes, repair or remove stream crossings, upgrade roads, improve site drainage, and/or stabilize bare, erodible soils. If already enrolled under this Order, dischargers with cleanup obligations will need to comply with Tier 3 requirements of this Order. If not enrolled, dischargers must enroll and comply with this Order, and pay all applicable fees for the time that they should have been enrolled, or otherwise be subject to an individual order. Enforcement response may also include assessment of penalties for violations, discharges of waste, or failure to comply with cleanup orders.
27. Nothing in this Order precludes actions to enforce any directly applicable requirements, prohibitions, or provisions, or to require cleanup and abatement of existing sources of pollution, where appropriate.

General Water Quality Certification

28. Remediation/cleanup/restoration activities described in finding 4 that involve construction and other work in waters of the United States may require a permit from the Army Corps of Engineers pursuant to section 404 of the Clean Water Act. Section 401 of the Clean Water Act (33 U.S.C. §1341) requires every applicant for a federal license or permit to provide the licensing or permitting federal agency with section 401 certification that the project will be in compliance with state water quality standards and implementation plans promulgated pursuant to section 303 of the Clean Water Act, and other appropriate requirements of state law (33 U.S.C. § 1313). The Regional Water Board Executive Officer may issue a decision on a water quality certification application. (Cal. Code Regs., tit. 23, § 3838, subd. (b).) State water quality certification conditions shall become conditions of any federal license or permit for the project.
29. The Regional Water Board may issue a general water quality certification for a class or classes of activities that are the same or similar, or involve the same or similar types of discharges and possible adverse impacts to water quality if it determines that these activities are more appropriately regulated under a general certification rather than individual certifications. (Cal. Code Regs., tit. 23, §3861.) General certifications apply for a fixed term not to exceed five years, must be conditioned to require notice to the Regional Water Board prior to commencement of the activity, and include appropriate

monitoring and reporting requirements. A fee is also required pursuant to California Code of Regulations, title 23, section 3833, sub.(b)(3).

30. The General Water Quality Certification contained in this Order shall not apply to activities that will 1) take place within the channels and/or on the banks of a watercourse containing fish and/or that supplies water for a domestic water source; 2) result in significant unavoidable environmental impacts including permanent impacts to wetlands and other waters from dredge and fill activities, and/or violation of water quality standards; 3) result in the direct or indirect take of any listed species; or 4) expose people and/or structures to potential adverse effects from flooding, landslides or soil erosion. (Cal. Code Regs., tit. 23, §3861, subd. (d).)
31. This Order includes a General Water Quality Certification for activities covered under this Order that may require a federal permit. General certification conditions in addition to waiver conditions are provided for in section V. General 401 Water Quality Certification of this Order. A discharger seeking Clean Water Act section 401 certification for a project shall notify the Regional Water Board prior to commencement of the activity and submit information regarding the construction schedule and other relevant information including an appropriate fee. The discharger may not commence the activity until the Regional Water Board notifies the discharger that the work is authorized. Unless the Regional Water Board determines that the project or activity does not meet the specified criteria for coverage under the General Water Quality Certification, this Order will provide Clean Water Act section 401 certification for the federal permit required for that project. A list of projects authorized by this General Water Quality Certification will be posted on the Regional Water Board's website and shall serve as notice to the Army Corps of Engineers of project coverage. Projects that do not meet the criteria for coverage under the general certification must apply for individual certification.

Procedure

32. Tier 1 Dischargers shall complete and submit the applicable Tier 1 section of the Notice of Intent (NOI) form (Appendix A) and retain a copy of the completed form on-site with a copy of this Order. Tier 1 Dischargers may demonstrate enrollment and certification of compliance via alternative communication by participating in an approved third party program. The self-certification is meant to confirm that the site falls within Tier 1 scope and is meeting standard conditions. The self-certification must be provided for review upon request of Regional Water Board staff. Dischargers are encouraged to request a site inspection by an approved Third Party or Regional Water Board staff to confirm Tier 1 status. Tier 2 Dischargers shall complete and submit a Notice of Intent (NOI) Form or alternative communication through an approved third party program. Tier 2 Dischargers must retain on site a copy of their NOI and water resource protection plan and a copy of this Order. The water resource protection plan must be provided for review upon request of Regional Water Board staff. Tier 3 Dischargers must complete and submit applicable portions of the NOI and submit a cleanup and restoration plan to the Regional Water Board for review and approval. Once a cleanup and restoration plan has been fully implemented, Tier 3 Dischargers submit a Notice of Completion and upon approval by the Executive Officer, may move out of Tier 3.

The timeframe for compliance with this Order, including filing NOI forms, water resource protection plans, and cleanup and restoration plans, is described in section II.

33. A Third Party Program seeking approval from the Executive Officer to fulfill some or all of the elements listed in finding 21 must submit a proposal to the Regional Water Board. The proposal must demonstrate the substantive and procedural mechanisms to

serve the function it is applying for. Third Parties are encouraged to work with Regional Water Board staff as early as possible (even prior to order adoption) to calibrate their program to the requirements of this Order.

Fees

34. Under Water Code section 13269 subdivision (a)(4), a regional water board may include as a condition of a waiver the payment of an annual fee. Annual fees are established by the State Water Board in accordance with Water Code section 13260 subdivisions (d) and (f). A discharger seeking coverage under this Order in Tiers 1, 2 or 3 will be required to pay an annual fee as set forth in California Code of Regulations title 23, section 2200.7.

Monitoring and Reporting

35. Water Code section 13267, subdivision (a), authorizes the Regional Water Board to investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require Dischargers to furnish, under penalty of perjury, technical or monitoring program reports. A technical report, and restoration and monitoring work plan required by this Order, pursuant to Water Code section 13267, is necessary to ensure that the prior harm and future threat to water quality created by the discharges described above are properly assessed, abated, and controlled.

The Monitoring and Reporting Program is detailed in this Order at section I.D. Tier 1 Dischargers must inspect their site periodically and re-certify that it meets Tier 1 characteristics and standard conditions annually. Annual updates to the certification shall be maintained on site with the initial self-certification and copy of the Order. Tier 2 Dischargers must include a monitoring element in the water resource protection plan that at a minimum provides for periodic inspection of the site, checklist to confirm placement and efficacy of management measures, and document progress on any plan elements subject to a time schedule. Tier 2 Dischargers must submit annual reports that document implementation and effectiveness of management measures. Tier 2 annual reporting is a function that may be provided through an approved Third Party Program. Tier 3 Dischargers must incorporate monitoring and reporting elements into their cleanup and restoration plans for approval by the Executive Officer. At a minimum, the monitoring and reporting program must document completion and effectiveness of the specified cleanup and restoration actions in the plan.

The monitoring and reporting guidance form section of the NOI included with this Order is designed to allow the Tier 1 Discharger to assess compliance with each condition, and can serve as a guide for Tier 2 and 3 Dischargers in designing the monitoring and reporting elements to be incorporated into water resource protection and cleanup and restoration plans.

Anticipating that this program will result in an increased rate of site restoration and stream crossing replacement on sites across the region following Order adoption, Regional Water Board staff will implement comprehensive activity tracking by mapping Tier 3 cleanup and restoration sites and individual stream crossings proposed for replacement under Tier 2 water resource protection plans. Staff may draw information from Geotracker and SMARTS, the Regional Water Board's timber tracking database, and other available sources to help correlate cleanups and instream activities proposed and underway in individual watersheds and subwatersheds. Comprehensive activity tracking will enable the Regional Water Board to direct activity timing under

this Order as necessary to limit the number of individual potential construction-related impacts occurring at any given time in any given watershed. Specifically, where cleanup or stream crossing activities are proposed to be implemented on several properties within a subwatershed, staff will consult with project consultants and other sources to try to stagger the timing of implementation.

Additional Findings

36. State Water Board Resolution No. 68-16 Statement of Policy with Respect to Maintaining High Quality of Waters in California (Resolution No. 68-16) requires that regional water boards, in regulating the discharge of waste, to maintain high quality waters of the state, require that any discharge not unreasonably affect beneficial uses, and not result in water quality less than that described in regional water board's policies. This order is addressing an existing, previously unregulated discharge, and water quality impacts have already occurred. With the exception of certain cleanup activities, the order is not anticipated to result in new discharges. Compliance with the terms of this order should result in an improvement in water quality downstream of these sites. Any increase in further degradation to water quality as a result of this Order is not anticipated. This Order is consistent with Resolution No. 68-16 because it will result in a net benefit to water quality by improving existing environmental conditions currently impacted by this activity. The Order is designed to protect or recover instream beneficial uses and does not promote or authorize the permanent lowering of high quality waters. Mitigation measures are available and will be required to reduce to less-than-significant levels any potentially significant water quality impacts from cleanup/remediation and restoration activities. Implementation of this Order is a good first step toward bringing this largely un-regulated activity into compliance with the Basin Plan.
37. As lead agency under the California Environmental Quality Act (CEQA), the Regional Water Board provided notice of intent to adopt a mitigated negative declaration (SCH No. XXX) for this Order on April 24, 2015 (Cal. Code Regs., tit. 14, § 15072). The mitigated negative declaration reflects the Regional Water Board's independent judgment and analysis. After considering the document and comments received during the public review process, the Regional Water Board hereby determines that the proposed project, with mitigation measures, will not have a significant effect on the environment. The documents or other materials, which constitute the record, are located at 5550 Skylane Blvd, Suite A, Santa Rosa, CA 95403. The Regional Water Board will file a Notice of Determination within five days from the issuance of this order. Mitigation measures necessary to reduce or eliminate significant impacts on the environment and monitoring and reporting are incorporated as conditions of approval below.
38. The Regional Water Board has reviewed the contents of this Order, its accompanying Initial Study and Mitigated Negative Declaration, written public comments and testimony provided after notice and hearing and finds that the adoption of this Order is consistent with the Basin Plan, and is in the public interest.

THEREFORE, IT IS HEREBY ORDERED that pursuant to Water Code sections 13263, subdivision (a), 13267, and 13269, the Regional Water Board waives the requirement to submit a report of waste discharge and the requirement to establish waste discharge requirements [WDRs] for activities described in finding 4. Dischargers shall comply with the following:

- I. As described in the findings above, dischargers will fall within one of three tiers. Discharger shall be in the tier that covers the most impactful part of the operations

(i.e., different sections of a property cannot be divided among the tiers). All dischargers, regardless of Tier are subject to the standard conditions in section I.A, Monitoring and Reporting Program section I.D., and General Terms, Provisions and Prohibitions. Tier 2 Dischargers are also subject to section I.B., and Tier 3 Dischargers are subject to sections I.A., I.B.(if cultivating marijuana), and I.C. The Executive Officer has sole discretion to determine that a given site belongs in a specific tier.

A. Standard Conditions, Applicable to All Dischargers

1. Site maintenance, erosion control and drainage features
 - a. Roads shall be maintained as appropriate (with adequate surfacing and drainage features) to avoid developing surface ruts, gullies, or surface erosion that results in sediment delivery to surface waters.
 - b. Roads, driveways, trails, and other defined corridors for foot or vehicle traffic of any kind shall have adequate ditch relief drains or rolling dips and/or other measures to prevent and minimize erosion along the flow paths and at their respective outlets.
 - c. Roads and other features shall be maintained so that surface runoff drains away from potentially unstable slopes or earthen fills. Where road runoff cannot be drained away from an unstable feature, an engineered structure or system shall be installed to ensure that surface flows will not cause slope failure.
 - d. Roads, clearings, fill prisms, and terraced areas (cleared/developed areas with the potential for sediment erosion and transport) shall be maintained so that they are hydrologically disconnected¹⁰ from surface waters, including wetlands, ephemeral, intermittent and perennial streams.
 - e. Ditch relief drains, rolling dip outlets, and road pad or terrace surfaces shall be maintained to promote infiltration/dispersal of outflows and have no apparent erosion or evidence of soil transport to receiving waters.
 - f. Stockpiled construction materials are stored in a location and manner so as to prevent their transport to receiving waters.
2. Stream Crossing Maintenance
 - a. Culverts and stream crossings shall be sized to pass the 100-year expected flood and associated debris.

¹⁰ Connected roads are road segments that deliver road surface runoff, via the ditch or road surface, to a stream crossing or to a connected drain that occurs within the high delivery potential portion of the active road network. A connected drain is defined as any cross-drain culvert, water bar, rolling dip, or ditch-out that appears to deliver runoff to a defined channel. A drain is considered connected if there is evidence of surface flow connection from the road to a defined channel or if the outlet has eroded a channel that extends from the road to a defined channel. (http://www.forestsandfish.com/documents/Road_Mgmt_Survey.pdf)

- b. Culverts and stream crossings shall allow passage of all life stages of fish on fish-bearing or restorable streams, and allow passage of aquatic organisms on perennial or intermittent streams.
 - c. Stream crossings shall be maintained so as to prevent and minimize erosion from exposed surfaces adjacent to, and in the channel and on the banks.
 - d. Crossings shall be on stream grade and in a position that aligns with the natural stream channel at both the inlet and outlet.
 - e. Stream crossings shall be maintained so as to prevent stream diversion in the event that the culvert/crossing is plugged, and critical dips shall be employed with all crossing installations.
3. Riparian and Wetland Protection and Management
- a. For Tier 1 Dischargers, cultivation areas or associated facilities shall not be located within 200 feet of surface waters. While 200 foot buffers are preferred for Tier 2 sites, at minimum, cultivation areas and associated facilities shall not be located or occur within 100 feet of any Class I or II watercourse or within 50 feet of any Class III watercourse or wetlands. The Regional Water Board or its Executive Officer may apply additional or alternative¹¹ conditions on enrollment, including site-specific riparian buffers and other BMPs beyond those identified in water resource protection plans to ensure water quality protection.
 - b. Buffers shall be maintained at natural slope with native vegetation.
 - c. Buffers shall be of sufficient width to filter wastes from runoff discharging from production lands and associated facilities to all wetlands, streams, drainage ditches, or other conveyances.
 - d. Riparian and wetland areas shall be protected in a manner that maintains their essential functions, including temperature and microclimate control, filtration of sediment and other pollutants, nutrient cycling, woody debris recruitment, groundwater recharge, streambank stabilization, and flood peak attenuation and flood water storage.
4. Spoils Management
- a. Spoils¹² shall not be stored or placed in or where they can enter any surface water.
 - b. Spoils shall be adequately stabilized or contained to prevent erosion.
 - c. Spoils generated through development or maintenance of roads, driveways, earthen fill pads, or other cleared or filled areas shall not be

¹¹ Alternative site-specific riparian buffers that are equally protective of water quality may be necessary to accommodate existing permanent structures or other types of structures that cannot be relocated.

¹² Spoils are waste earthen or organic materials generated through grading or excavation, or waste plant growth media or soil amendments. Spoils include but are not limited to soils, slash, bark, sawdust, potting soils, rock, and fertilizers.

sidecast in any location where they can enter or be transported to surface waters.

5. Water Storage and Use:

- a. Size and scope of an operation shall be such that the amount of water used shall not adversely impact water quality, including and in consideration with other water use by operations in the planning watershed (see CalWater).
- b. Where practicable, water conservation measures shall be implemented. Examples include use of rainwater catchment systems or watering plants with a drip irrigation system rather than with a hose or sprinkler system.
- c. For Tier 2 Dischargers, if possible, develop off-stream storage facilities to minimize water diversion during low flow periods (see also footnote 9).
- d. Water is applied using agronomic rates.¹³
- e. Diversion and/or storage of water from a stream should be conducted pursuant to a valid water right and in compliance with reporting requirements under Water Code section 5101.
- f. Water storage features, such as ponds, tanks, and other vessels shall be selected, sited, designed, and maintained so as to insure integrity and to prevent release into waters of the state in the event of a containment failure.

6. Irrigation Runoff

Implementing water conservation measures, irrigating at agronomic rates, applying fertilizers at agronomic rates and applying chemicals according to the label specifications, and maintaining stable soil and growth media should serve to minimize the amount of runoff and the concentration of chemicals in that water. However, there may be some irrigation runoff, and this could be carrying pollutants. If so, measures shall be taken to treat/control/contain this runoff to minimize the pollutant loads in the discharge.

Irrigation runoff (aka tailwater return flows) shall be managed so that any entrained constituents, such as fertilizers, fine sediment and suspended organic particles, and other oxygen consuming materials are not discharged to nearby watercourses. Management practices include, but are not limited to, modifications to irrigation systems that reuse tailwater by constructing off-stream retention basins, and active (pumping) and or passive (gravity) tailwater recapture/redistribution systems. Care shall be taken to ensure that irrigation tailwater is not discharged towards or impounded over unstable features or landslides.

¹³ “Agronomic rates” is defined as the rates of fertilizer and irrigation water that a plant needs to enhance soil productivity and provide the crop or forage growth with needed nutrients for optimum health and growth, without having any excess water or nutrient percolate beyond the root zone.

7. Fertilizers and Soil Amendments

- a. Fertilizers, potting soils, compost, and other soils and soil amendments shall be stored in locations and in a manner in which they cannot enter or be transported into surface waters and such that nutrients or other pollutants cannot be leached into groundwater.
- b. Fertilizers and soil amendments shall be applied and used per packaging instructions and/or at proper agronomic rates (see footnote on previous page).
- c. Cultivation areas shall be maintained so as to prevent nutrients from leaving the site during the growing season and post-harvest.

8. Pesticides/Herbicides

At the present time, there are no pesticides or herbicides registered specifically for use directly on marijuana and the use of pesticides on marijuana plants has not been reviewed for safety, human health effects, or environmental impacts. Under California law, the only pesticide products not illegal to use on marijuana are those that contain an active ingredient that is exempt from residue tolerance requirements and either registered and labeled for a broad enough use to include use on marijuana or exempt from registration requirements as a minimum risk pesticide under FIFRA section 25(b) and California Code of Regulations, title 3, section 6147. For the purpose of compliance with conditions of this Order, any uses of pesticide products shall be consistent with product labelling and any products on the site shall be placed, used, and stored in a manner that ensures that they will not enter or be released into surface or ground waters.

9. Petroleum products and other chemicals

- a. Petroleum products and other liquid chemicals, including but not limited to diesel, biodiesel, gasoline, and oils shall be stored so as to prevent their spillage, discharge, or seepage into receiving waters. Storage tanks and containers must be of suitable material and construction to be compatible with the substance(s) stored and conditions of storage such as pressure and temperature.
- b. Above ground storage tanks and containers shall be provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation.
- c. Dischargers shall ensure that diked areas are sufficiently impervious to contain discharged chemicals.
- d. Discharger(s) shall implement spill prevention, control, and countermeasures (SPCC) and have appropriate cleanup materials available onsite.
- e. Underground storage tanks 110 gallons and larger shall be registered with the appropriate County Health Department and comply with State and local requirements for leak detection, spill overflow, corrosion protection, and insurance coverage.

10. Cultivation-related wastes

Cultivation-related wastes including, but not limited to, empty soil/soil amendment/ fertilizer/pesticide bags and containers, empty plant pots or containers, dead or harvested plant waste, and spent growth medium shall, for as long as they remain on the site, be stored at locations where they will not enter or be blown into surface waters, and in a manner that ensures that residues and pollutants within those materials do not migrate or leach into surface water or groundwaters.

11. Refuse and human waste

- a. Disposal of domestic sewage shall meet applicable County health standards, local agency management plans and ordinances, and/or the Regional Water Board's Onsite Wastewater Treatment System (OWTS) policy, and shall not represent a threat to surface water or groundwater.
- b. Refuse and garbage shall be stored in a location and manner that prevents its discharge to receiving waters and prevents any leachate or contact water from entering or percolating to receiving waters.
- c. Garbage and refuse shall be disposed of at an appropriate waste disposal location.

12. Remediation/Cleanup/Restoration

Remediation/cleanup/restoration activities may include, but are not limited to, removal of fill from watercourses, stream restoration, riparian vegetation planting and maintenance, soil stabilization, erosion control, upgrading stream crossings, road outcropping and rolling dip installation where safe and suitable, installing ditch relief culverts and overside drains, removing berms, stabilizing unstable areas, reshaping cutbanks, and rocking native-surfaced roads. Restoration and cleanup conditions and provisions generally apply to Tier 3 sites, however owners/operators of Tier 1 or 2 sites may identify or propose water resource improvement or enhancement projects such as stream restoration or riparian planting with native vegetation and, for such projects, these conditions apply similarly.

Appendix B accompanying this Order includes environmental protection and mitigation measures that apply to cleanup activities such as: temporal limitations on construction; limitations on earthmoving and construction equipment; guidelines for removal of plants and revegetation; conditions for erosion control, limitations on work in streams, riparian and wetland areas; and other measures.

These protection and mitigation measures have been developed to prevent or reduce the environmental impacts and represent minimum standards by which cleanup activities will be conducted under this Order.

B. Water Resource Protection Plan

Tier 2 Dischargers and Tier 3 Dischargers who intend to cultivate marijuana before, during, or following site cleanup activities shall develop and implement a water resource protection plan that contains the elements listed below. Dischargers must keep this plan on site, and produce it upon request by Water Board staff. Any

proposed improvements to watercourse crossings, as described in 3. and 4., below, shall be submitted to the Regional Water Board for review and authorization prior to commencement. Dischargers shall implement plans in a manner that is protective of water quality. Dischargers shall certify annually to the Regional Water Board individually or through a third party program that the plan is being implemented and is effectively protecting water quality, and report on progress in implementing site improvements intended to bring the site into compliance with all conditions of this Order.

1. Map of property including areas of operations, roads, water bodies, all cleared/developed areas, and including general drainage patterns and directions.
2. Applicable design drawings and schematics for watercourse structures, fish passages, roads, septic tanks, fill prisms, pads, ponds, or any other constructed feature that has been designed or engineered.
3. Assessment of current conditions and identification of any features needing improvements to correct the function of any roads or developed areas, drainage features or measures, encroachments into riparian buffer areas, controllable sediment delivery sites, and stream crossings in need of correction (undersized, improperly installed, improperly maintained, or otherwise substandard).
4. Detailed list of specific management practices designed to meet standard conditions in I.A., above, and any improvement work needed to bring site features into compliance with the standard conditions. Watercourse crossing improvements shall be designed by a qualified registered professional and shall incorporate standard BMPs from Appendix B, as appropriate. Management practices must address erosion control/stability, stream crossing construction/maintenance, riparian protection, road construction and maintenance, spoils storage and disposal, chemical handling and management, waste handling and disposal, irrigation runoff, and water storage and use. If necessary, include a time schedule.
5. List of chemicals stored onsite, and information about use (e.g., quantities used and frequency applied).
6. Monitoring element (see discussion at section I.D.) to ensure that BMPs are being implemented and to evaluate their effectiveness.
7. Water Use: Plan shall record water source, relevant water right documentation, and amount used monthly. Plan must describe water conservation measures and document approach to ensure that the quantity and timing of water use is not impacting water quality objectives and beneficial uses (including cumulative impacts based on other operations using water in the same watershed). Water use will be presumed to not adversely impact water quality under one of the following scenarios:
 - No surface water diversions from May 15-Oct 31.
 - Water diversion pursuant to a local plan that is protective of instream beneficial uses.
 - [Placeholder for other options] (e.g., % of flow present in stream; riffle depth; gage at bottom of Class I stream; AB2121 equations; DFW flow recommendations; promulgated flow objective in Basin Plan)

C. Cleanup and Restoration Plan

Pursuant to Water Code section 13304, Tier 3 Dischargers shall submit to the Regional Water Board a cleanup and restoration plan, prepared by a California registered civil engineer or professional geologist, that contains the elements listed below. Once the cleanup and restoration plan is approved by the Executive Officer, the Discharger shall implement the plan, incorporating any additional conditions or monitoring and reporting provision included in the Executive Officer's approval.

1. Map of property including areas of operations, roads, water bodies, all cleared/developed areas, all structures, and general drainage patterns and directions.
2. Design drawings at 1:12000 or larger scale (e.g., 1:6000) that delineate existing site conditions including existing and buried surface waters, projected restored slopes and surface waters, restoration plan work points, spoil disposal sites, re-vegetation planting areas, and any other features or site construction details to complete the scope of work; design and construction standards for earthen material compaction and stabilization and for re-planting of exposed soils with native vegetation; and erosion control methods and standards for unanticipated precipitation during remediation.
3. Plan and Schedule to accomplish the following:
 - a. Remove all earthen material and other discharged or placed debris from surface waters, including instream dams.
 - b. Restore the vegetative and hydrological functions of the damaged streams wetlands, and drainages to ensure the long term recovery of the affected surface waters.
 - c. Restore natural slope contours to ensure dispersed surface flows.
 - d. Replant the slopes and streamside areas with native vegetation to increase shading, prevent erosion and provide streamside protection, including, as necessary, additional planting of native species to reduce the potential for sediment delivery.
 - e. Control erosion and sediment delivery prior to, during, and following site restoration efforts, until vegetation is established.
4. To the extent possible, all work shall be completed prior to the first winter after plan approval. Depending on the extent of the work, the timing of plan submittal and approval, need for permits by other agencies, or other restrictions, it may require more than one construction season to complete work. The plan shall provide details and specifications, both in the narrative plan and as applicable in design drawings, for site winterization as needed to minimize and control erosion and sediment delivery over winter periods while construction is underway.
5. Monitoring and reporting element to document timely completion and effectiveness of specified cleanup actions in the plan, including the implementation and effectiveness of management measures.

6. The cleanup and restoration plan shall incorporate all applicable management measures identified in the accompanying CEQA document and Appendix B.
7. Development of the cleanup and restoration plan shall include consideration of (and make appropriate provision for) site-specific conditions or features that may warrant additional special BMPs, such as presence of expansive soils, presence of landslides and unstable features, proximity to earthquake faults or 100-year floodplains, or other unique geological or paleontological features. If the cleanup site is located in an Alquist-Priolo Earthquake Fault Zone or an area with substantial evidence of a known fault, the cleanup and restoration plan will consider fault rupture hazard during the siting, design, and monitoring of applicable site features in order to minimize the impact to public safety. The cleanup and restoration plan shall also consider hazards associated with strong seismic ground shaking and seismic-related ground failure, including liquefaction, during the siting, design, and monitoring of applicable site features in order to minimize the impact to public safety.
8. Any hazardous waste generated from the demolition of structures or impoundments shall be disposed of in designated hazardous waste landfills.

D. Monitoring and Reporting Program

Tier 1 Dischargers shall inspect their site periodically and re-certify that it meets Tier 1 characteristics and standard conditions annually. Annual updates to the certification shall be maintained on site with the initial certification and copy of the Order.

Tier 2 Dischargers shall include a monitoring element in the water resource protection plan that at a minimum provides for periodic inspection of the site, checklist to confirm placement and efficacy of management measures, and document progress on any plan elements subject to a time schedule. Tier 2 Dischargers shall submit an annual report by March 31 of each year that documents implementation and effectiveness of management measures during the previous year. Tier 2 annual reporting is a function that may be provided through an approved Third Party Program.

Tier 3 Dischargers shall incorporate a monitoring and reporting element into their cleanup and restoration plans for approval by the Executive Officer. At a minimum, the monitoring and reporting must document completion and effectiveness of the specified cleanup actions in the plan.

Regional Water Board staff will develop and implement comprehensive activity tracking by mapping Tier 3 cleanup sites and individual stream crossings proposed for replacement under Tier 2 water resource protection plans. Staff may draw information from Geotracker and SMARTS, the Region 1 timber tracking database, and other available sources to help correlate cleanups and instream activities proposed and underway in individual watersheds and subwatersheds. Regional Water Board staff will direct activity timing under this Order as necessary to limit the number of individual potential construction-related impacts occurring at any given time in any given watershed. Specifically, where cleanup or stream crossing activities are proposed to be implemented on several properties within a subwatershed, staff will consult with project consultants and other sources to stagger the timing of implementation.

II. Procedure

Tier 1, 2, and 3 Dischargers shall apply for coverage by submitting a completed Notice of Intent (NOI) Form (Appendix A) by November 15, 2015 (~90 days from adoption of the Order) or upon 30 days of notification from the Regional Water Board staff to comply with requirements of this Order. Tier 1 and 2 Dischargers may enroll using alternative communication through an approved third party program stating their commitment to comply with the conditions of the Order.

Completed forms shall be sent to the Regional Water Board, signed and certified to the following address:

northcoast@waterboards.ca.gov (preferable)

or

North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Dischargers under Tier 2 shall develop and begin implementing a water resource protection plan by 90 days from the submittal date of the NOI. Dischargers under Tier 3 shall develop and submit to the Regional Water Board a cleanup plan by 90 days from the submittal date of the NOI. Dischargers under Tier 3 shall implement the cleanup plan no later than 30 days from the Executive Officer's approval of the plan (unless the approved cleanup plan provides alternative timelines). The Executive Officer has discretion to require plan submittals earlier or later, and may grant a time extension for plan submittal or deadlines in the cleanup plan for good cause shown.

A Third Party Program seeking approval from the Executive Officer to fulfill some or all of the elements listed in finding 21 above must submit a proposal to the Regional Water Board. The proposal must demonstrate the substantive and procedural mechanisms to serve the function it is applying for. Third Parties are encouraged to work with Regional Water Board staff as early as possible (even prior to Order adoption) to calibrate their program.

III. General Terms and Provisions

- A. Dischargers shall comply with all mitigation measures identified in the accompanying mitigated negative declaration. CEQA mitigation measures shall constitute enforceable conditions under this Order.
- B. All erosion and sediment control devices, management measures and mitigations prescribed in a water resource protection plan shall be maintained in good working order.
- C. Compliance with Order conditions will ensure that no significant environmental impact to water quality occurs from an activity covered by this Order. Activities that have potentially significant impacts to water quality that cannot be reduced to less than significant levels are not eligible for coverage under this Order and the Discharger(s) will need to submit a Report of Waste Discharge to the Regional Water Board and obtain individual authorization for that activity.

- D.** Dischargers shall obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 2009-0009-DWQ) for construction projects that disturb one or more acres of soil, specifically for new site preparation and development. Dischargers shall submit to Regional Water Board staff a copy of the Stormwater Pollution Prevention Plan (SWPPP) developed for the site in compliance with that Permit.¹⁴
- E.** This Order shall not apply to any discharges for which a WDR or waiver of WDR is issued under a separate action of the state or Regional Water Board.
- F.** Dischargers shall allow Regional Water Board staff entry onto the affected property, for the purposes of observing, inspecting, and/or collecting samples or other monitoring information to document compliance with this Order.
- G.** Dischargers shall comply with all applicable water quality standards, requirements, and prohibitions specified in the Basin Plan, and policies adopted by the State Water Board.
- H.** Projects covered under this Order shall not discharge substances in concentrations toxic to human, plant, animal or aquatic life. Projects covered under this Order shall not discharge waste classified as “hazardous” as defined in California Code of Regulations, title 22, section 66261 and Water Code section 13173.
- I.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the Federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). Dischargers are responsible for meeting all other applicable requirements of local, state, and federal regulations and/or required permits.
- J.** Operations shall not occur within 250 feet of: 1) public, preschool, and K-12 facilities; 2) federal or state parks; and 3) military bases.
- K.** Dischargers shall not cause a pollution, contamination, or nuisance as defined by Water Code section 13050.
- L.** This Order does not preclude the need for permits that may be required by other governmental agencies, including necessary certification and permitting for the application of pesticides and herbicides.
- M.** Nothing in this Order shall be construed to mean that the Regional Water Board is authorizing, permitting, endorsing, or approving the cultivation of marijuana. This Order only places restrictions on waste discharges and other controllable water quality factors from the activity to the extent that the activity is occurring.
- N.** Subject to approval from the Executive Officer, Dischargers with operations that are similar to or whose potential impacts to water resources are similar to those

¹⁴ Construction activities subject to the Construction General Permit include clearing, grading and disturbances to the ground such as stockpiling, or excavation, but do not include regular maintenance activities performed to repair roads and related facilities.

posed by marijuana cultivation may also elect to enroll and comply with this Order to ensure their discharges are authorized.

- O. This Order shall not create a vested right and all such discharges shall be considered a privilege, as provided for in Water Code section 13268.
- P. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state law, including but not limited to administrative civil penalties under Water Code section 13350.
- Q. Nothing in this Order precludes actions to enforce any directly applicable prohibition or provisions found in the Basin Plan, or to require independent clean up and abatement of existing sources of pollution, where appropriate.
- R. This Order expires upon Regional Water Board adoption of a superseding regulatory action or after five years, whichever occurs first. This Order is conditional and may be terminated at any time by the State Water Resources Control Board or Regional Water Board.

IV. General Prohibitions

- A. The placement or disposal of earthen materials, soil, silt, plant waste, slash, or other organic, or inorganic refuse, rubbish, and solid waste, bio-stimulatory substances and/or water containing elevated temperatures above background conditions, and/or chemicals, such as but not limited to pesticides, fertilizers, or other substances into any stream or watercourse is prohibited.
- B. The placing or disposal of earthen materials, soil, silt, plant waste, slash, or other organic, or inorganic refuse, rubbish, and solid waste, water containing elevated temperatures above background conditions, chemicals, bio-stimulatory substances, and/or chemicals such as but not limited to pesticides, fertilizers or other substances in a location where such may discharge into streams or watercourses is prohibited.
- C. The discharge of any waste not specifically regulated by this order is prohibited.

V. General 401 Water Quality Certification

THE REGIONAL WATER BOARD HEREBY CERTIFIES that projects in compliance with the conditions of the Order above will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with applicable provisions of State law, subject to the following additional terms and conditions:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. This certification action is not intended and shall not be construed to apply to any discharge from 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 title 23, California Code of Regulations, section 3855, subdivision (b) and the application

specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. Certification is conditioned upon total payment of any fee required under California Code of Regulations, title 23, section 3833, subdivision (b)(3). Annual Fee Schedules are detailed in the California Code of Regulation, title 23, section 2200.
4. This general certification applies only to projects subject to the waiver. Dischargers may seek coverage under this Order for similar activities subject to public notice and approval by the Regional Water Board Executive Officer.
5. A Discharger seeking water quality certification coverage for stream crossing replacements or for proposed remediation/cleanup/restoration activities in surface waters shall notify the Regional Water Board prior to commencement of the activity and submit information regarding the construction schedule and other relevant information including an appropriate fee. Work may not commence until the discharger is provided authorization by the Regional Water Board either through coverage under this Order or through individual water quality certification.
6. The authorization of this certification for any General Water Quality Certification or dredge and fill activities expires five (5) years from the date the activity commences.
7. Upon completion of the project, Discharger shall submit a Notice of Completion certifying that all the conditions and monitoring and reporting requirements of this Order have been met.
8. All Order requirements, standard conditions, general terms and provisions, and prohibitions are enforceable conditions of this General Water Quality Certification.
9. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
10. This General Water Quality Certification portion of the Order may be modified as needed by the Executive Officer of the Regional Water Board.

I, Matthias St. John, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region on Month, DD, YYYY.

Matthias St. John
Executive Officer

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Appendices

Appendix A: Enrollment and Monitoring and Reporting Form

Appendix B: Guidance and references regarding management practices