
State Water Resources Control Board

**GENERAL ORDER FOR CLEAN WATER ACT
SECTION 401 WATER QUALITY CERTIFICATION ACTION
ORDER NO. 2020-0039-EXEC**

Effective Date: March 15, 2021

Reg. Meas. ID: 441304

Program Type: Fill/Excavation

SWRCB ID: SB20031GN

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

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I. Summary

This State Water Board Clean Water Act section 401 Water Quality Certification action and General Order (General Order), which includes attachments A through E, conditionally certifies 18 and denies 39 of the U.S. Army Corps of Engineers' (Corps) Nationwide Permits (NWP). Certification is granted to NWPs 1, 3(a), 4, 5, 6, 9, 10, 11, 12, 57, 58,¹ 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. This General Order conditionally certifies or denies the NWPs as described in the Corps' September 15, 2020 proposed NWPs, which is available as docket ID number COE-2020-0002 on the [Federal Register website](https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits) (<https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>) (85 Fed. Reg. 57298-57395 (Sep. 15, 2020)). The State Water Board's Certification of the 2017 Nationwide Permits remains in effect until the effective date of the Corps' final Nationwide Permits, which is anticipated in 2021.

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 shall 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

¹ NWP "C" and "D" were assigned numbers 57 and 58 when the Corps published their final NWPs. This Order was updated to refer to the assigned numbers.

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. 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. If there are material changes to the NWP from the version published on September 15, 2020, the State Water Board may consider modifications to this General Order.
6. 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.
7. Notwithstanding the provisions of this General Order, the State Water Board or Regional Water Quality Control Boards (collectively Water Boards) may deny any Notice of Intent (NOI) and instead require a discharger to apply for an individual certification or a certification under another general order. A discharger may choose to apply for an individual water quality certification.
8. 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.
9. 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.
10. 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.

11. 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 NWP's

The Corps issues NWP's 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 NWP's include general conditions that modify, suspend, or revoke NWP's 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 proposed reissuing 52 existing NWP's, general conditions, and definitions, with modifications, and also proposed authorizing five new NWP's.

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) (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 website](https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits) for the Nationwide Permits (<https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-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. 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 NWP 1, 4, 9, and 11. An application fee is required for NWP 3(a), 5, 6, 12, 57, 58, 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 NWPs 12, 57, 58, and 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), 12, 57, 58, 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.

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 wastewater 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. Work in Delineated Waters of the State

- a. Work in waters of the state 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.**² 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](http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill%20Booklet%20Feb2014%20FINAL%20BW%20Acc.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.

² “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 administering 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 (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 three (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, 12, 57, 58, 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. Project 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.
- 2. **NWP 12 – Oil or Natural Gas Pipeline Activities; NWP 57 – Electric Utility Line and Telecommunication Activities; and NWP 58 – Utility Line and Activities for Water and Other Substances:** Temporary and permanent impacts to waters of the state are subject to the project size limits and restrictions below.
 - a. **Individual Project Impact Size Limits to Waters of the State:**
 - i. **Permanent Impact Acreage:** The project shall not result in more than five thousandths (0.005) of an acre of permanent impacts to waters of the state.
 - ii. **Temporary Impact Acreage:** The project shall not result in more than one half (0.5) of an acre of total impacts to waters of the state.
 - iii. **Permanent Impact Length:** The project shall not result in more than 50 linear feet of permanent impacts to waters of the state.
 - iv. **Temporary Impact Length:** The project shall not result in more than 400 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.³
 - 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. **NWP 12 – Oil or Natural Gas Pipeline Activities:** This General Order authorizes the following activity types only when associated with the construction, maintenance, or repair of oil or natural gas pipelines. This General Order authorizes projects for which one or more NWP 12 has been authorized subject to the size limits in section VI.F.2 and all other applicable General Order conditions, including:
- a. **NWP 12 Prohibitions:**
 - i. **Lahontan Water Board:** Any NWP 12 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 throughout

³ 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.

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. **Grouted Riprap:** Use of grouted riprap in waters of the state is prohibited.
 - viii. Construction, replacement, or expansion of facilities in any ocean, bay, tidal waters or shores thereof are prohibited.
- b. **NWP 12 Directional Drilling:** The following conditions shall apply to all drilling operations under waters of the state.
- i. The discharge of bentonite, drilling muds, lubricants or any drilling compounds into waters of the state is prohibited. A draft HDD or drilling plan shall be prepared and shall be subject to review by Water Board staff at least 30 days before drilling activities under waters of the state. No HDD or other drilling operations under waters of the state shall commence until the HDD plan is approved by Water Board staff.
 - ii. Release of bentonite, drilling muds, lubricants through fractures in the streambed or bank substrate during drilling is referred to as a "frack-out". Because of the potential for frack outs to occur, the HDD or drilling plan shall include a frack out response plan. The frack-out response plan shall specify all measures to be initiated if frack-outs should occur during HDD operations.
 - iii. For all HDD and other drilling sites, a means of containment (e.g., damming, fluming) or screening capable of capturing all of the potential discharge shall be described in the HDD plan. The downstream end of any such containment structure shall be capable of containing all bentonite or other drilling muds or debris that may be released during boring or drilling. Any drilling mud, spoils, etc. must be completely removed from the streambed prior to removal of the containment structure (e.g., dam, flume, and screen).
 - iv. An environmental monitor shall provide monitoring for compliance with the HDD or drilling plan throughout drilling operations under waters of the state.

- v. Any HDD or other drilling operation shall be designed and directed in such a way as to minimize the risk of spills and discharges of all types including the frack-out release of drilling lubricants through fractures in the streambed or bank substrates. In substrates where frack-outs are likely to occur, HDD contractors shall employ all reasonable means and methods available to minimize potential for frack-out.
- vi. All drilling muds or compounds shall be contained and properly disposed of after drilling activities are completed.
- vii. If bore pits are excavated to support drilling operations, spoils shall be stored a minimum of 25 feet from the top of the bank of streams or wetland/riparian boundary, where feasible; if site specific conditions warrant storing spoils less than 25 feet from the top of the bank of streams or wetland/riparian boundary this request must be provide in the HDD or drilling plan submitted to the Water Board prior to any drilling activities with potential impacts to waters of the state. Spoils shall be stored behind a sediment barrier and covered with plastic or otherwise stabilized (i.e., tackifiers, mulch, or detention).

c. NWP 12 Authorized Permanent Impacts:

- i. **Facility Replacements:** such as underground lines, foundations, and other activities associated with pipelines or their access roads (e.g., wet crossings, culverts, bridge abutments) and appurtenances (e.g., valves, flanges, fittings, end modules, end terminals) located more than thirty feet from the original location. May also include structure removals.
- ii. **Access Road Crossing Repair, Improvements, and Upgrades:** the replacement or repair of existing culverts and associated outlets/headwalls, bridge abutments, or other road crossings, repairs, or resurfacing in waters of the state. The repair of existing or installation of new minor non-grouted riprap, armoring or other erosion control measures to protect existing access roads or existing structures from scour or erosion.
- iii. **New Access Road Crossings/Structures/Outfalls and Widening of Existing Roads:** includes new structures, outfalls, bridge abutments, road repairs or resurfacing, installation of new culverts or associated outlets, and erosion control/dissipation devices to protect the existing access roads. For example, the installation of concrete or non-grouted riprap on an existing access road to create a low-water (Arizona) crossing. Also includes the minor widening of existing roads.

- iv. **Structure Upgrades:** includes the installation of similar facilities with upgrades (e.g., new caissons), upgrades to larger facilities or facilities of different composition. Also includes the installation of new caissons, non-grouted riprap, or other armoring to protect existing structures from scour and erosion.
- v. **Underground Linear Activities:** excavation for inspection or repair of underground facilities, installation of new pipes across streams, placement of structures or erosion control to protect under-stream pipes, and installation of new valves or other appurtenances.
- vi. **Other:** includes facility drainage system repair, maintenance, or installation of existing facilities and other bank stabilization efforts.

d. NWP 12 Specially Designated Temporary Impacts

- i. **Culvert Relocation:** Culvert relocation within thirty feet is considered a temporary impact as long as the replacement footprint does not exceed the original footprint by more than ten percent, and the original footprint is completely restored.
- ii. **Roadside Ditches:** Impacts to roadside ditches are considered temporary if the roadside ditch has the following characteristics:
 - 1. the feature is artificially constructed (e.g., man-made);
 - 2. the feature is not in or part of a stream channel or other waters of the state, or in a stream channel or other waters of the state that has been relocated in uplands;
 - 3. the feature would not cause or contribute to an impairment of downstream beneficial uses; and
 - 4. the feature is restored following construction such that the pre-construction course, condition and capacity are retained to the maximum extent practicable.

e. NWP 12 Compensatory Mitigation Requirements: The discharger shall adhere to the process below for any proposed projects that would result in permanent impacts to waters of the state:

- i. Prior to submitting an NOI for an individual project, the discharger shall submit a letter of credit in favor of the State Water Board for the purchase of mitigation bank or in-lieu fee program credits sufficient to offset total anticipated permanent impacts for all proposed projects for the current year.

- ii. By January 15 of each year, the discharger shall submit to the State Water Board a draft mitigation plan that includes elements as outlined in Dredge or Fill Procedures, § IV.A.1.h; Appendix A: State Supplemental Dredge or Fill Guidelines, Subpart J, § 230.94(c)(5)-(6) and the following:
 1. A report of permanent impacts incurred through December 31 of the previous year as detailed in Attachment B; and
 2. Proposed credit purchase to offset the previous year's permanent impacts from a Corps approved mitigation bank or in-lieu fee program.

The following mitigation ratios apply towards the purchase of establishment or reestablishment credits. If enhancement or preservation credits are proposed, mitigation ratios will be determined on an individual project basis:

- a. In-kind, in watershed = 1:1 mitigation ratio
- b. In-kind, outside of watershed = 2:1 mitigation ratio
- c. Out-of-kind, in watershed = 3:1 mitigation ratio
- d. Out-of-kind, outside of watershed = 4:1 mitigation ratio

These ratios apply only if credits are purchased within eighteen months of permanent impacts, otherwise mitigation ratios may be increased to account for temporal loss.

3. **NWP 57 – Electric Utility Line and Telecommunications Activities:** This General Order authorizes the following activity types only when associated with the construction, maintenance, or repair of electrical utility lines. This General Order authorizes projects for which one or more NWP 57 has been authorized subject to the size limits in section VI.F.2 and all other applicable General Order conditions, including:
 - a. **NWP 57 Prohibitions:**
 - i. **Lahontan Water Board:** Any NWP 57 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. **Grouted Riprap:** Use of grouted riprap in waters of the state is prohibited.
 - viii. Construction, replacement, or expansion of facilities in any ocean, bay, tidal waters or shores thereof are prohibited.
- b. **NWP 57 Directional Drilling:** The following conditions shall apply to all drilling operations under waters of the state.
- i. The discharge of bentonite, drilling muds, lubricants or any drilling compounds into waters of the state is prohibited. A draft HDD or drilling plan shall be prepared and shall be subject to review by Water Board staff at least 30 days before drilling activities under waters of the state. No HDD or other drilling operations under waters of the state shall commence until the HDD plan is approved by Water Board staff.
 - ii. Release of bentonite, drilling muds, lubricants through fractures in the streambed or bank substrate during drilling is referred to as a "frack-out". Because of the potential for frack outs to occur, the HDD or drilling plan shall include a frack out response plan. The frack-out response plan shall specify all measures to be initiated if frack-outs should occur during HDD operations.

- iii. For all HDD and other drilling sites, a means of containment (e.g., damming, fluming) or screening capable of capturing all of the potential discharge shall be described in the HDD plan. The downstream end of any such containment structure shall be capable of containing all bentonite or other drilling muds or debris that may be released during boring or drilling. Any drilling mud, spoils, etc. must be completely removed from the streambed prior to removal of the containment structure (e.g., dam, flume, and screen).
- iv. An environmental monitor shall provide monitoring for compliance with the HDD or drilling plan throughout drilling operations under waters of the state.
- v. Any HDD or other drilling operation shall be designed and directed in such a way as to minimize the risk of spills and discharges of all types including the frack-out release of drilling lubricants through fractures in the streambed or bank substrates. In substrates where frack-outs are likely to occur, HDD contractors shall employ all reasonable means and methods available to minimize potential for frack-out.
- vi. All drilling muds or compounds shall be contained and properly disposed of after drilling activities are completed.
- vii. If bore pits are excavated to support drilling operations, spoils shall be stored a minimum of 25 feet from the top of the bank of streams or wetland/riparian boundary, where feasible; if site specific conditions warrant storing spoils less than 25 feet from the top of the bank of streams or wetland/riparian boundary this request must be provide in the HDD or drilling plan submitted to the Water Board prior to any drilling activities with potential impacts to waters of the state. Spoils shall be stored behind a sediment barrier and covered with plastic or otherwise stabilized (i.e., tackifiers, mulch, or detention).

c. NWP 57 Authorized Permanent Impacts:

- i. **Facility Replacements:** such as poles, underground lines, foundations for overhead utility line towers, and other activities associated with utility lines or their access roads (e.g., wet crossings, culverts, bridge abutments) and appurtenances (e.g., guy wires, anchors, grounding wires, valves, flanges, fittings, end modules, end terminals) located more than thirty feet from the original location. May also include structure removals.

- ii. **Access Road Crossing Repair, Improvements, and Upgrades:** the replacement or repair of existing culverts and associated outlets/headwalls, bridge abutments, or other road crossings repairs or resurfacing in waters of the state. The repair of existing or installation of new minor non-grouted riprap, armoring or other erosion control measures to protect existing access roads or existing structures from scour or erosion.
- iii. **New Access Road Crossings/Structures/Outfalls and Widening of Existing Roads:** includes new structures, outfalls, bridge abutments, road repairs or resurfacing, installation of new culverts or associated outlets, and erosion control/dissipation devices to protect the existing utility access roads. For example, the installation of concrete or non-grouted riprap on an existing utility access road to create a low-water (Arizona) crossing. Also includes the minor widening of existing roads.
- iv. **Utility Structure Upgrades:** includes the installation of similar poles with upgrades (e.g., new caissons), upgrades to larger poles or poles of different composition, conversion of overhead to underground, etc. Also includes the installation of new caissons, non-grouted riprap, or other armoring to protect existing structures from scour and erosion, and new minor line extensions.
- v. **Underground Linear Activities:** excavation for inspection or repair of underground facilities, installation of new pipes/cables across streams, placement of structures or erosion control to protect under-stream pipes/cables, and installation of new valves or other appurtenances.
- vi. **Other:** includes facility drainage system repair, maintenance, or installation of existing facilities such as substations and other bank stabilization efforts.

d. NWP 57 Specially Designated Temporary Impacts

- i. **Poles or Culvert Relocation:** Poles or culvert relocation within thirty feet is considered a temporary impact as long as the replacement footprint does not exceed the original footprint by more than ten percent, and the original footprint is completely restored.
- ii. **Roadside Ditches:** Impacts to roadside ditches are considered temporary if the roadside ditch has the following characteristics:
 - 1. the feature is artificially constructed (e.g., man-made);

2. the feature is not in or part of a stream channel or other waters of the state, or in a stream channel or other waters of the state that has been relocated in uplands;
 3. the feature would not cause or contribute to an impairment of downstream beneficial uses; and
 4. the feature is restored following construction such that the pre-construction course, condition and capacity are retained to the maximum extent practicable.
- e. NWP 57 Compensatory Mitigation Requirements:** The discharger shall adhere to the process below for any proposed projects that would result in permanent impacts to waters of the state:
- i. Prior to submitting an NOI for an individual project, the discharger shall submit a letter of credit in favor of the State Water Board for the purchase of mitigation bank or in-lieu fee program credits sufficient to offset total anticipated permanent impacts for all proposed projects for the current year.
 - ii. By January 15 of each year, the discharger shall submit to the State Water Board a draft mitigation plan that includes elements as outlined in 40 CFR § 230.94(c)(5)-(6) and the following:
 1. A report of permanent impacts incurred through December 31 of the previous year as detailed in Attachment B; and
 2. Proposed credit purchase to offset the previous year's permanent impacts from a Corps approved mitigation bank or in-lieu fee program.

The following mitigation ratios apply towards the purchase of establishment or reestablishment credits. If enhancement or preservation credits are proposed, mitigation ratios will be determined on an individual project basis:

 - a. In-kind, in watershed = 1:1 mitigation ratio
 - b. In-kind, outside of watershed = 2:1 mitigation ratio
 - c. Out-of-kind, in watershed = 3:1 mitigation ratio
 - d. Out-of-kind, outside of watershed = 4:1 mitigation ratio

These ratios apply only if credits are purchased within eighteen months of impacts, otherwise mitigation ratios may be increased to account for temporal loss.

3. By June 1, the discharger shall submit to the State Water Board proof of credit purchase that offset the previous year's permanent impacts.
4. **NWP 58 – Utility Line Activities for Water and Other Substances:** This General Order authorizes the following activity types only when associated with the construction, maintenance, or repair of utility lines for water and other substances. This General Order authorizes projects for which one or more NWP 58 has been authorized subject to the size limits in section VI.F.2 and all other applicable General Order conditions, including:
- a. **NWP 58 Prohibitions:**
 - i. **Lahontan Water Board:** Any NWP 58 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. **Grouted Riprap:** Use of grouted riprap in waters of the state is prohibited.

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

b. NWP 58 Directional Drilling: The following conditions shall apply to all drilling operations under waters of the state.

- i. The discharge of bentonite, drilling muds, lubricants or any drilling compounds into waters of the state is prohibited. A draft HDD or drilling plan shall be prepared and shall be subject to review by Water Board staff at least 30 days before drilling activities under waters of the state. No HDD or other drilling operations under waters of the state shall commence until the HDD plan is approved by Water Board staff.
- ii. Release of bentonite, drilling muds, lubricants through fractures in the streambed or bank substrate during drilling is referred to as a "frack-out". Because of the potential for frack outs to occur, the HDD or drilling plan shall include a frack out response plan. The frack-out response plan shall specify all measures to be initiated if frack-outs should occur during HDD operations.
- iii. For all HDD and other drilling sites, a means of containment (e.g., damming, fluming) or screening capable of capturing all of the potential discharge shall be described in the HDD plan. The downstream end of any such containment structure shall be capable of containing all bentonite or other drilling muds or debris that may be released during boring or drilling. Any drilling mud, spoils, etc. must be completely removed from the streambed prior to removal of the containment structure (e.g., dam, flume, and screen).
- iv. An environmental monitor shall provide monitoring for compliance with the HDD or drilling plan throughout drilling operations under waters of the state.
- v. Any HDD or other drilling operation shall be designed and directed in such a way as to minimize the risk of spills and discharges of all types including the frack-out release of drilling lubricants through fractures in the streambed or bank substrates. In substrates where frack-outs are likely to occur, HDD contractors shall employ all reasonable means and methods available to minimize potential for frack-out.
- vi. All drilling muds or compounds shall be contained and properly disposed of after drilling activities are completed.
- vii. If bore pits are excavated to support drilling operations, spoils shall be stored a minimum of 25 feet from the top of the bank of streams

or wetland/riparian boundary, where feasible; if site specific conditions warrant storing spoils less than 25 feet from the top of the bank of streams or wetland/riparian boundary this request must be provide in the HDD or drilling plan submitted to the Water Board prior to any drilling activities with potential impacts to waters of the state. Spoils shall be stored behind a sediment barrier and covered with plastic or otherwise stabilized (i.e., tackifiers, mulch, or detention).

c. NWP 58 Authorized Permanent Impacts:

- i. Facility Replacements:** underground lines, foundations, and other activities associated with pipelines or their access roads (e.g., wet crossings, culverts, bridge abutments) and appurtenances (e.g., valves, flanges, fittings, end modules, end terminals) located more than thirty feet from the original location. May also include structure removals.
- ii. Access Road Crossing Repair, Improvements, and Upgrades:** the replacement or repair of existing culverts and associated outlets/headwalls, bridge abutments, or other road crossings repairs or resurfacing in waters of the state. The repair of existing or installation of new minor non-grouted rip rap, armoring or other erosion control measures to protect existing access roads or existing structures from scour or erosion.
- iii. New Access Road Crossings/Structures/Outfalls and Widening of Existing Roads:** includes new structures, outfalls, bridge abutments, road repairs or resurfacing, installation of new culverts or associated outlets, and erosion control/dissipation devices to protect the existing access roads. For example, the installation of concrete or non-grouted riprap on an existing access road to create a low-water (Arizona) crossing. Also includes the minor widening of existing roads.
- iv. Structure Upgrades:** includes the installation of similar facilities with upgrades (e.g., new caissons), upgrades to larger facilities or facilities of different composition. Also includes the installation of new caissons, non-grouted riprap, or other armoring to protect existing structures from scour and erosion.
- v. Underground Linear Activities:** excavation for inspection or repair of underground facilities, installation of new pipes across streams, placement of structures or erosion control to protect under-stream pipes, and installation of new valves or other appurtenances.

- vi. **Other:** includes facility drainage system repair, maintenance, or installation of existing facilities and other bank stabilization efforts.

d. NWP 58 Specially Designated Temporary Impacts

- i. **Culvert Relocation:** Culvert relocation within thirty feet is considered a temporary impact as long as the replacement footprint does not exceed the original footprint by more than ten percent, and the original footprint is completely restored.
- ii. **Roadside Ditches:** Impacts to roadside ditches are considered temporary if the roadside ditch has the following characteristics:
 - 1. the feature is artificially constructed (e.g., man-made);
 - 2. the feature is not in or part of a stream channel or other waters of the state, or in a stream channel or other waters of the state that has been relocated in uplands;
 - 3. the feature would not cause or contribute to an impairment of downstream beneficial uses; and
 - 4. the feature is restored following construction such that the pre-construction course, condition and capacity are retained to the maximum extent practicable.

di. NWP 58 Compensatory Mitigation Requirements: The discharger shall adhere to the process below for any proposed projects that would result in permanent impacts to waters of the state:

- i. Prior to submitting an NOI for an individual project, the discharger shall submit a letter of credit in favor of the State Water Board for the purchase of mitigation bank or in-lieu fee program credits sufficient to offset total anticipated permanent impacts for all proposed projects for the current year.
- ii. By January 15 of each year, the discharger shall submit to the State Water Board a draft mitigation plan that includes elements as outlined in 40 CFR § 230.94(c)(5)-(6) and the following:
 - 1. A report of permanent impacts incurred through December 31 of the previous year as detailed in Attachment B; and
 - 2. Proposed credit purchase to offset the previous year's permanent impacts from a Corps approved mitigation bank or in-lieu fee program.

The following mitigation ratios apply towards the purchase of establishment or reestablishment credits. If enhancement or preservation credits are proposed, mitigation ratios will be determined on an individual project basis.

- a. In-kind, in watershed = 1:1 mitigation ratio
- b. In-kind, outside of watershed = 2:1 mitigation ratio
- c. Out-of-kind, in watershed = 3:1 mitigation ratio
- d. Out-of-kind, outside of watershed = 4:1 mitigation ratio

These ratios apply only if credits are purchased within eighteen months of impacts, otherwise mitigation ratios may be increased to account for temporal loss.

3. By June 1, the discharger shall submit to the State Water Board proof of credit purchase that offset the previous year's permanent impacts.

5. 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.

6. 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 September 15, 2020, the Corps' noticed a proposal to issue five new NWPs and reissue 52 existing NWPs with general conditions and revised definitions in the Federal Register (85 Fed. Reg. 57298-57395 (Sep. 15, 2020)). On October 13, 2020, the State Water Board received the Corps' request to certify the proposed NWPs. On October 16, 2020, the Corps established a 60-day reasonable time period for the State Water Board to act on the request, by December 12, 2020.

In addition to the Corps public notice, the State Water Board provided public notice of the proposed certification of the Corps' NWPs pursuant to California Code of Regulations, title 23, section 3861 from October 16, 2020, to November 30, 2020. 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.

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

The following NWPs are denied: 2, 3(b), 3(c), 7, 8, 13, 15, 16, 17, 18, 19, 21, 23, 24, 25, 27, 29, 30, 31, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, A, B, and E. 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.) Consistent with 40 C.F.R. section 121.8(a), this denial does not preclude an applicant from submitting a new certification request. Information required pursuant to 40 C.F.R. section 121.7(e)(2) is set forth in Attachment C. Consistent with 40 C.F.R. section 121.8(a), this denial does not preclude an applicant from submitting a new certification request. Clean Water Act section 401 certification action on projects authorized by these denied NWPs will be considered on an individual, project-specific basis.

XII. Water Quality Certification

I hereby issue the General Order for the State Water Board Certified Corps' Nationwide Permits Project (file number SB20031GN) 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, 12, 57, 58, 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.

 Digitally signed by Eileen Sobeck
Date: 2020.12.09 13:31:00 -08'00'

Eileen Sobeck, Executive Director

Date

- Attachment A** Notice of Intent
- Attachment B** Reporting and Notification Requirements
- Attachment C** 40 CFR Part 121.7 Compliance
- Attachment D** Signatory Requirements
- Attachment E** List of Certified Nationwide Permits