



**State Water Resources Control Board
Order WQ XXXX-XXXX-DWQ**

**General Order for Clean Water Act Section 401
Water Quality Certification and Waste Discharge
Requirements for Restoration Projects Statewide**

DRAFT

June 30, 2021



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CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND WASTE
DISCHARGE REQUIREMENTS FOR RESTORATION PROJECTS STATEWIDE

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STATE WATER RESOURCES CONTROL BOARD
DRAFT ORDER **WQ-XXXX-XXXX-DWQ**
ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION
AND WASTE DISCHARGE REQUIREMENTS FOR
RESTORATION PROJECTS STATEWIDE

I. Executive Summary

This Order for Waste Discharge Requirements and Clean Water Act section 401 Certification (Order) and Attachments A through F provides Clean Water Act (CWA) Section 401 Water Quality Certification for projects that require authorization from the U.S. Army Corps of Engineers (USACE) under CWA Section 404 and Rivers and Harbors Act of 1899 (RHA) Section 10 and Section 14 (33 USC 408, known as “Section 408”). This Order also provides Waste Discharge Requirements (WDRs) pursuant to the Porter-Cologne Water Quality Control Act (California Water Code §1300 et seq.). This Order covers projects that may directly or indirectly discharge to “waters of the state,” including “waters of the U.S.”

If the eligibility requirements set forth in this Order including Attachment A are not met, the State Water Resources Control Board (State Water Board) or Regional Boards (collectively Water Boards) will not authorize the proposed project under this Order and instead require the project proponent to apply for an individual certification or certification under another Order. A project proponent may also independently choose to apply for an individual water quality certification or WDRs.

The categories of eligible project types covered under this Order are listed below. Detailed eligible project type descriptions are provided in Attachment A. An individual project covered under this Order may include more than one of these types:

1. Improvements to Stream Crossings and Fish Passage
2. Removal of Small Dams, Tide Gates, Flood Gates, and Legacy Structures
3. Bioengineered Bank Stabilization
4. Restoration and Enhancement of Off-Channel and Side-Channel Habitat
5. Water Conservation Projects
6. Floodplain Restoration
7. Removal of Pilings and Other In-Water Structures
8. Removal of Nonnative Terrestrial and Aquatic Invasive Species and Revegetation with Native Plants
9. Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands
10. Establishment, Restoration, and Enhancement of Stream and Riparian Habitat and Upslope Watershed Sites

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II. Order

This CWA Section 401 Water Quality Certification action and waste discharge requirements Order, which includes and Attachments A through F, is issued for Restoration Projects Statewide. This Order is for the purpose described below.

III. Public Notice

The State Water Board provided public notice of the draft Order pursuant to California Code of Regulations, title 23, section 3858 and California Water Code section 13167.5 from June 30, 2021, to August 13, 2021. The State Water Board received (*number forthcoming*) comment(s) regarding the Order during the 45-day comment period. Public notice regarding the Program Environmental Impact Report (PEIR) is described in Attachment C, California Environmental Quality Act (CEQA) Findings of Fact.

IV. Project Purpose

The State Water Board currently provides general certification for small habitat restoration projects that (a) shall not exceed five (5) acres or a cumulative total of less than 500 linear feet of stream bank or coastline and (b) qualify for the California Environmental Quality Act (CEQA) Class 33 Categorical Exemption (California Code of Regulations title 14, section 15333).

The purpose of this Order is to provide authorization for restoration projects that meet the eligibility criteria herein and do not qualify for coverage under the Order for Small Habitat Restoration Projects.

V. Project Description

All covered projects must meet the definition of a restoration project as defined below and comply with all applicable water quality control plans and state policy for water quality control.

A "restoration project" is defined as one that would result in a net increase in aquatic or riparian resource area functions and/or services through implementation of the eligible project types, relevant general protection measures (GPMs), and consideration of design guidelines, summarized below and described in detail in Attachment A, Order Description and Eligibility.

VI. Project Location

An individual project authorized by the Water Board under this Order (project) may occur anywhere in California except as restricted herein. A map showing the nine Regional Boards' jurisdictional boundaries is provided in Attachment A of this Order. The nine Regional Boards are: North Coast Regional Board, San Francisco Bay Regional Board, Central Coast Regional Board, Los Angeles Regional Water Board, Central Valley Regional Board, Lahontan Regional Board, Colorado River Regional Board, Santa Ana Regional Board, and San Diego Regional Board (collectively Regional Boards).

VII. Project Impact and Receiving Waters Information

Receiving waters, groundwater, and inflow potentially impacted by projects authorized under this Order are protected in accordance with the applicable water quality control plans and state policy for water quality control, which may be accessed online at: http://www.waterboards.ca.gov/plans_policies/. Water quality control plans include water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal anti-degradation policies.

It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring project proponents to meet maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

Project proponents will identify the receiving waters and beneficial uses of waters of the state to be impacted by a proposed project, as listed in the applicable Regional Board water quality control plan. This information is required in the Notice of Intent (NOI; Attachment B), which must be completed by a project proponent to apply for authorization under this Order.

VIII. Description of Direct Impacts to Waters of the State

Project proponents will describe all proposed project features, including those potentially offsite and/or adjacent to waters of the state which could result in impacts to waters of the state, in the NOI, which must be completed for authorization under this Order.

IX. Avoidance and Minimization

Project impacts to waters of the state must be avoided and minimized to the greatest practicable extent. Project proponents will describe project design steps taken to first avoid, and then minimize, impacts to waters of the state to the maximum extent practicable in the NOI.

Project proponents shall identify (in the NOI) applicable GPMs proposed to be implemented for an individual restoration project. The purpose of including GPMs is to incorporate best management practices (BMPs) and to avoid and/or minimize potential short term, long term, and cumulative adverse effects. These standards and practices represent sound and proven methods to reduce the potential adverse effects of an action. A comprehensive suite of GPMs is provided in Attachment A. Additional or modified project-specific measures to protect water quality and/or beneficial uses may be proposed by the project proponent and/or recommended by the approving Water Board during the application process, based on site-specific conditions or technological constraints or advances. Each GPM may be used in combination with other measures, as applicable to each restoration project.

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Additionally, project type–specific design guidelines (see Attachment A) have been developed with input from multiple regulatory agencies (e.g., California Department of Fish and Wildlife [CDFW], National Marine Fisheries Service [NMFS], U.S. Fish and Wildlife Service [USFWS]) to help project proponents during the design development of their individual projects, in a manner that is appropriate and sustainable, minimizes adverse effects on aquatic habitats, and maximizes the ecological benefits of the restoration.

X. California Environmental Quality Act (CEQA)

This Order certifies a program environmental impact report (PEIR) (State Clearinghouse (SCH) No. 2019100230) and approves the mitigation monitoring and reporting program (MMRP) (*forthcoming title and date of document*). Pursuant to CEQA, the State Water Board has made Findings of Facts (Findings) which support the issuance of this Order and are included in Attachment C (*forthcoming*).

XI. Petitions for Reconsideration

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

XII. Application Fees

The application fee amount is determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3). A fee calculator can be found online at: https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredge_fillcalculator.xlsm.

The calculator is useful for estimation of fees, but project proponents must confirm the correct fee amount through consultation with the approving Water Board prior to submitting payment. Appropriate fees will be determined by the current fee regulations at the time of NOI submittal for an individual restoration project. Authorization of a project under this Order is not determinative of whether a project is a restoration project in the context of the fee schedule. Note that fees are periodically adjusted.

XIII. Conditions

The Water Boards will independently review any project proposed for authorization under this Order to analyze impacts to water quality and designated beneficial uses within the applicable watershed(s). If the eligibility requirements set forth in this Order including Attachment A are not met, Water Boards will not authorize the proposed project under this Order and instead require the project proponent to apply for an individual certification or certification under another Order. Specifically, the approving Water Board will not authorize the proposed project under this Order if it determines that any of the following requirements are not met: 1) the project meets the definition of a restoration project (as defined in Section V of the Order); 2) the project adopts and implements all appropriate GPMs and CEQA mitigation measures to protect water

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quality and beneficial uses; 3) the project proponent fulfills all approving Water Board requirements for project information and reporting; and 4) the project is designed to protect water quality and beneficial uses in accordance with regional or statewide water quality control plans.

The following conditions are limitations necessary to assure compliance with the water quality standards and other pertinent requirements of state law. California Code of Regulations, title 23, Chapter 28 sets forth regulations pertaining to water quality certifications. As set forth in section 3861, the State Water Board may issue a general certification for discharges for a class or classes of activities only if those activities will not individually or cumulatively result in significant adverse impacts or violations of water quality objectives. Accordingly, the State Water Board imposes the conditions set forth in this General Order to assure that the discharge complies with water quality objectives adopted or approved under Sections 13170 or 13245 of the California Water Code. These conditions are also generally required to comply with the state's Anti-Degradation Policy (State Board Resolution No. 68-16), which requires that for any "activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the state will be maintained." All Regional Board Water Quality Control Plans incorporate the state's Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR Part 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." According to U.S. EPA, dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with U.S. EPA's section 404(b)(1) Guidelines. The State Water Board adopted a modified version of U.S. EPA's section 404(b)(1) Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines). Notwithstanding any determinations by any federal agency made pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this General Order because the General Order also serves as waste discharge requirements.

Project proponents authorized under this Order may proceed with the project under the following conditions:

A. Request for Authorization

Requests for authorization shall be submitted to the Regional Board for the region in which the discharge may occur. Where the discharge falls under the jurisdiction of more than one Regional Board, the request shall be submitted to the State Water Board. Project proponents with projects authorized under this Order shall pay the required fee and follow reporting and notification requirements described below, and found in Attachments B and D of this Order. Project proponents shall contact the appropriate Water Board to request a pre-application meeting as soon as the project concept is developed, or at least 30-days prior to submittal of an NOI. The approving

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Water Board may waive the pre-application meeting requirement. If the proposed restoration activities may involve a Federal Energy Regulatory Commission (FERC)-licensed facility, the project proponent shall notify the State Water Board Division of Water Rights. Where the proposed restoration activities may involve a FERC-licensed facility, the restoration project may be covered by this General Order only upon receipt of written approval by the Deputy Director for the Division of Water Rights or their designee. Otherwise, the Deputy Director for the Division of Water Rights or their designee may determine that an individual certification is necessary. Project proponents shall submit a complete NOI to the appropriate Water Board as described in Attachment B before commencement of any project activity. The approving Water Board will review the NOI and respond to the project proponent with a request for additional information, an approval in the form of a Notice of Applicability, or a denial in the form of a Notice of Exclusion. As applicable to a project, the approving Water Board will consult with the State Water Board, Division of Water Rights on whether the restoration project requires any water right approvals, including but not limited to, a new water right, petition to change purpose/place of use or point of diversion, time extension, or waste water change petition. There may be limited instances where it may be more appropriate for the Division of Water Rights to process an individual certification to accompany a water right approval depending on the scope of the water right approval needed. If an individual certification is deemed necessary, project proponent must file a new and separate application with the State Water Board pursuant to California Code of Regulation, title 23, section 3855.

Other regulatory agencies may also have authority separate and in addition to this Order to authorize restoration projects. Project proponents are encouraged to collaborate with other applicable regulatory agencies in coordination with the approving Water Board during project design, especially when fish passage and/or listed species are considerations.

B. Reporting and Notification Requirements

Project proponents with projects authorized under this Order shall follow notification and reporting requirements described in this section, and those found in Attachment D of this Order. This Order and its associated monitoring and technical reporting provisions are also adopted pursuant to California Water Code sections 13383 and 13267, subdivision (b)(1). The reports required under this Order are necessary to verify and ensure compliance with permitting requirements and protect waters of the state. 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 burden of preparing these reports, including costs, is reasonable to the need and benefits of obtaining the reports. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting. The following section describes the reporting and notification types and timing of submittals. Requirements for the content of these reporting and

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notification types are detailed in Attachment D, including specifications for photo and map documentation. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment D, which must be signed by an authorized representative who meets the signatory requirements specified in Attachment E.

1. Project Status Notifications

- a. **Commencement of Construction:** The project proponent shall submit a Commencement of Construction Notice at least seven (7) days before the start of initial ground-disturbing activities.
- b. Upon request, a construction schedule shall be provided to the approving Water Board.
- c. **Request for Notice of Project Complete Letter:** The project proponent shall submit a Request for Notice of Project Complete Letter within thirty (30) days following completion of all project activities including post-construction monitoring of restoration sites. The Request for Notice of Project Complete Letter shall meet the terms and include the contents listed in Attachment D, Reporting and Notification Requirements. Failure to notify the Water Board or approving Regional Board of project completion may result in continued billing of annual fees until a Notice of Project Complete Letter is issued. Upon approval of the request, the Water Board shall issue a Notice of Project Complete Letter to the project proponent.

2. Project Reporting

- a. **Annual Reporting:** If required in the Notice of Applicability (NOA) issued by the approving Water Board, the project proponent shall submit an Annual Report within one month of the anniversary of the effective date of the NOA. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the project proponent.

3. Conditional Notifications and Reports

The following notifications and reports are required, as applicable:

- a. **Accidental Discharge of Hazardous Material¹ Report:** Following an accidental discharge of a reportable quantity of hazardous material, sewage,

¹ "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the 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. (California Health & Safety Code, § 25501.)

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or an unknown material, the following applies (California Water Code, § 13271):

- i. As soon as (A) project proponent 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:
 - first call – 911 (to notify local response agency);
 - then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911; and
 - lastly follow the required OES procedures as set forth in the most current version of the California Hazardous Materials Spill/Release Notification Guidance. At the time of issuance of this Order, the current version is dated February 2014, and is accessible at:
https://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf.
 - ii. Following notification to OES, the project proponent shall notify the Water Board contact person identified in the NOA as soon as practicable (ideally within 24 hours). Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
 - iii. Within five (5) working days of notification to the Water Board, the project proponent must submit an Accidental Discharge of Hazardous Material Report to the Water Board contact person identified in the NOA (see Attachment D.)
- b. Violation of Compliance with Water Quality Standards Report:** The project proponent 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.
- i. 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.
 - ii. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.
- c. In-Water Work and Diversions Water Quality Monitoring Report:**
- i. If required in the NOA issued by the approving Water Board, the project proponent 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 e-mail, delivered written notice, or other verifiable means.

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- ii. Within three (3) working days following completion of work in water or stream diversions, an In-Water Work and Diversions Water Quality Monitoring Report must be submitted to the Water Board.
- d. **Project Modifications:** Prior to implementing any change to the project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the project proponent shall obtain prior written approval of the approving Water Board Executive Director or Officer. If the approving Water Board is not notified of the material change to the discharge, it will be considered a violation of this certification, and the project proponent may be subject to Water Board enforcement action(s).

Minor or non-material changes may be addressed with an 'Order Deviation' as provided in Attachment F. The approving Water Board will review the notification and determine whether the deviation can be approved under this Order or is subject to additional permitting requirements.

- e. **Transfer of Property Ownership Notification:** Authorization by an NOA under this 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:
 - i. The project proponent 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 Notification. The project proponent and purchaser must sign and date the notification and provide such notification to the Water Board at least ten (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 project proponent in a revised NOA.
 - ii. Until such time as the NOA has been modified to name the purchaser as the project proponent, the current project proponent shall continue to be responsible for all requirements set forth in this Order.
- f. **Transfer of Long-Term GPM Maintenance Notification:** If maintenance responsibility for post-construction GPMs is legally transferred, the project proponent must submit to the Water Board a copy of such documentation and must provide the transferee with a copy of a long-term GPM maintenance plan that complies with manufacturer or designer specifications. The project proponent must provide such notification to the Water Board at least ten (10) days prior to the transfer of GPM maintenance responsibility.

Until such time as the NOA has been modified to name a new legally responsible party for maintenance of post-construction GPMs, the current project proponent shall continue to be responsible for all maintenance of post-construction GPMs set forth in this Order.

C. Water Quality Monitoring

- 1. General:** In and immediately adjacent to work areas during construction, visual monitoring shall be conducted to detect discharges and threatened discharges of construction related pollutants (e.g., oil and grease, turbidity plume, uncured concrete).
- 2. 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.
- 3. In-Water Work or Diversions:** A dewatering plan shall be submitted to the approving Water Board for acceptance at least thirty (30) days in advance of commencement of project activity. The approving Water Board may require the dewatering plan be submitted before approval of the NOA. Standards for in-water work or diversions are discussed in General In-Water Measures, specifically IWW-6, presented in Attachment A. Project proponent shall comply with the approving Water Board-specific water quality control plan water quality objectives and reporting requirements.
- 4. Post-Construction:** If the proposed project includes ground disturbance, when conducting post-construction monitoring, visually inspect the project site during the rainy season (October 1 – April 30) until a Notice of Project Complete Letter 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, 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.

D. Standard Conditions

- 1.** This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to California Water Code section 13330, and California Code of Regulations, title 23, chapter 28, Article 6 commencing with section 3867. Additionally, the State Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the project proponent, if the State Water Board determines that it is necessary to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act (California Water Code, § 13000 et seq.) or federal Clean Water Act section 303 (33 U.S.C. § 1313). Additionally, the State Water Board may cancel or modify and reissue this Order pursuant to California Code of Regulations, title 23, chapter 28, section 3861.

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2. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought. Project proponent shall notify the State Water Board Division of Water Rights whenever the proposed activities may involve a FERC-licensed facility. Where the proposed restoration activities may involve a FERC-licensed facility, the restoration project may be covered by this Order only upon receipt of written approval by the Deputy Director for the Division of Water Rights or their designee.
3. This Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations and owed by the project proponent.
4. Nothing in this Order shall be construed as Water Board approval of the validity of any water rights, including pre-1914 claims. The State Water Board has separate authority under the California Water Code to investigate and take enforcement action, if necessary, to prevent any unauthorized or threatened unauthorized diversions of water.

E. General Compliance

1. Enrollment and authorization of restoration projects under this Order are for the discharges of waste associated with only the restoration action and shall not be construed as authorization or any compliance determination for any related underlying project or activity. Restoration projects serving as mitigation for a related project or activity may be enrolled under this Order; however, this Order does not include any findings regarding the underlying related activity's impact to water quality, public trust resources, or other matters of public interest. When considering the impact of restoration projects under this Order, the approving Water Board considers only those adverse changes that may result from approval of the new restoration project, including multi-benefit projects that may include non-restoration action elements (e.g., recreation, flood protection).
2. Any plan developed as a condition of this Order requires review and approval by the appropriate Water Board. The Water Board will not approve any plan that does not adequately protect beneficial uses of receiving waters and prevent degradation of water quality. The project proponent shall not implement any plans or reports until after receiving Water Board approval and any other necessary regulatory approvals. The Water Boards may take enforcement action post-enrollment if the project proponent fails to provide or implement a required item outlined in the approved plan(s).
3. This Order shall not be construed as replacement or substitution for any necessary federal, state, and local approvals. The project proponent is responsible for compliance with all applicable federal, state, or local laws or

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ordinances and shall obtain authorization from applicable regulatory agencies prior to the commencement of project activities.

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 state and federal law, including the Porter-Cologne Water Quality Control Act and the Clean Water Act. The project proponent may then be subject to administrative and/or civil liability pursuant to California Water Code section 13385.

4. In response to a suspected violation of any condition of this Order, the Water Board may require a project proponent with authorization under this Order to furnish, under penalty of perjury, any technical or monitoring reports the Water Board deem appropriate, provide that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The additional monitoring requirements ensure that permitted discharges and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.
5. The project proponent must, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support approval of a project under this Order; and all subsequent submittals required as part of approval of a project under this Order. The conditions within this Order and Attachments supersede conflicting provisions within project proponent submittals.
6. This Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the project.
7. Project proponents shall submit a Sacred Lands File & Native American Contacts List Request to the Native American Heritage Commission (NAHC) at the initial stages of project development (or as early as practicable) to determine if a project would have an impact on Native American cultural resources. The project proponent shall coordinate with the approving Water Board or other CEQA lead agency, if applicable, as soon as possible whenever tribes that are traditionally and culturally affiliated to a project area are identified. Any tribe identified by the NAHC, or on the CEQA lead agency's Assembly Bill 52 (AB 52) consultation list, will require notification of the proposed project by the lead agency as soon as practicable during early design, pursuant to AB 52 and the California Governor's Executive Order G-10-22, or not more than 14 days after submittal of the NOI to the approving Water Board.

Tribes will be consulted if a request is received from a tribe after initial notification. Consultation will include discussion regarding project design, cultural resource survey, Tribal Cultural Resources as defined by AB 52, protocols for construction monitoring, and any other tribal concern. The CEQA Notice of Determination (NOD) for the project will not be signed until tribal consultation has

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either concluded or been terminated as defined by AB 52. Construction of the project will not commence until the approving Water Board achieves compliance with the State Water Resources Control Board Tribal Consultation Policy (June 2019).

- 8. Historical Sites:** This Order does not authorize any activity adversely impacting a significant historical or archeological resource; directly or indirectly destroying a unique paleontological resource or site or unique geologic feature; disturbing any human remains; or eliminating important examples of the major periods of California history or prehistory, unless the activity is authorized by the appropriate historical resources agencies.
- 9. Construction General Permit Requirement:** If the project has discharges comprised of storm water associated with construction activity, including, but not limited to, demolition, clearing, grading, excavation, and other land disturbance activities of one or more acres, or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, the Permittee shall apply for coverage and 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, as amended by 2010-0014-DWQ and 2012-0006-DWQ, or any subsequently issued permit) for. As required by the permit, the project proponent shall prepare and implement a site-specific storm water pollution prevention plan (SWPPP) and project plans included with the NOI shall include appropriate erosion and sediment control measures.
- 10. Aquatic Herbicide General Permit Requirement:** If aquatic herbicides are proposed to be applied, the project proponent shall apply for coverage and maintain compliance with conditions described in, and required by, NPDES General Permit for Residual Aquatic Pesticide Discharges To Waters Of The United States From Algae And Aquatic Weed Control Applications (Order No. 2013-0002-DWQ (General Permit No. CAG990005) or any subsequently issued permit). Also, see Section XIII.F., Prohibitions.
- 11. Cumulative Impacts:** Activities permitted under this Order shall not result in adverse 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.

F. Prohibitions

- 1.** Permitted actions shall not cause or contribute to an exceedance of any applicable water quality standards or water quality objectives or impair designated (existing or potential) beneficial uses for receiving waters. The source of any such discharge must be eliminated as soon as practicable.

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2. The approving Regional Board may have the authority to address short-term, construction-related impacts that would affect water quality and allow for exceedances of water quality objectives for limited magnitude and duration during construction of individual restoration projects. A project proponent should contact the approving Regional Board to determine if an exemption is possible.
3. The discharge shall not result in adverse destabilization of the channel or bed of receiving water.
4. The discharge shall not include substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses.
5. The discharge shall not include waste classified as "hazardous" or "designated" as defined in Title 22 California Code of Regulations, Section 66261 and California Water Code Section 13173.

G. Specific Compliance

1. **Programmatic Sideboards** - Project proponents must design and implement projects enrolled under this Order in accordance with the techniques and minimization measures described in the programmatic sideboards in Attachment A. The approving Water Board may authorize modified approaches based on site-specific conditions, technological constraints or advances, or regionally accepted guidance documents.

The Lahontan water quality control plan contains both region-wide and hydrologic unit specific waste discharge prohibitions. As applicable, project proponents must work with Lahontan Regional Board staff to ensure that the following criteria are satisfied in order to be exempted from waste discharge prohibitions: 1. The project will eliminate, reduce or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water, and 2. There is no feasible alternative to the project that would comply with the Lahontan water quality control plan prohibitions, and 3. All applicable and practicable control and mitigation measures have been incorporated into the project to minimize land disturbance, soil erosion, discharges of turbid water, and other potential adverse impacts to water quality and beneficial uses to the minimum necessary to complete the project.

2. **Pre-Application Consultation** – The project proponent will contact the approving Water Board to submit available project information and request a pre-application consultation meeting prior to submittal of the NOI. The approving Water Board may waive the pre-application meeting requirement. Restoration projects can be complex and often benefit from pre-application consultation with the approving Water Board during the early stages of planning and design. During the pre-application consultation, the approving Water Board will review draft project materials and provide project-specific guidance for navigating the approval process. A site visit may also be conducted at the discretion and request of the approving Water Board. The intent of the Order is to streamline

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project reviews and approvals, but the duration of pre-application consultation will depend on project complexity and development of design and planning.

Project information for the pre-application meeting shall include on a case-by-case basis (to the extent available):

- i. Project name
- ii. The project proponent and agent, including contact info
- iii. Project purpose
- iv. Brief project description
- v. Conceptual design (including problem identification, context, objectives, and relevant project design documentation for the project)
- vi. Project location and map, including latitude/longitude
- vii. Brief description of the surrounding area
- viii. Where identified, proposed GPMs, and mitigation measures developed as part of CEQA review
- ix. Grant funding, timelines, and any specific conditions related to the grant
- x. Existing permits
- xi. Any studies completed to date (e.g., aquatic resource delineation, biological assessment, hydrologic or geotechnical study, soil test results).

The approving Water Board will review the project information and may identify concerns, formulate questions and/or recommendations regarding the project design, and inclusion of applicable GPMs, including potential recommendations for modification of GPMs, where necessary, to accommodate and/or address site-specific conditions.

3. Exclusions and Prohibited Activities - The following activities are not within the scope of the Order, and will require separate permitting approvals with the Water Boards:

- i. Use of gabion baskets.
- ii. Use of cylindrical riprap (e.g., Aqualogs).
- iii. Use of undersized riprap (e.g., rock that will not remain in place during a 100-year flow event).
- iv. Construction of permanent dams (does not apply to beaver dam analogs) or concrete-lined channels of any sort.
- v. Use of chemically treated timbers used for grade or channel stabilization structures, bulkheads, or other instream structures.

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- vi. Activities that result in long-term, substantial disruption of the movement of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the project areas (see Attachment A for additional discussion/measures on maintaining passage).
- vii. Elimination of riffle, pool, or riffle/pool complex that is not replaced/enhanced elsewhere by the project. (Note: In some instances, a restoration project may affect or modify a riffle/pool complex. For example, a culvert removal may affect an existing pool. These types of projects would be allowed under the Order.)
- viii. Water diversions, except to temporarily dewater the construction site of a restoration project. Some water conservation projects would be covered; see Section 1.4.5, Water Conservation in Attachment A, for more information.
- ix. With the exception of storage projects to reduce low flow stream diversions (see Section 1.4.5, Water Conservation in Attachment A) off-channel/side-channel habitat projects that require the installation of a flashboard dam, head gate, or other mechanical structures.
- x. Creation or potential creation of a barrier to anadromous fish passage as determined by the NMFS fish passage guidelines (including any associated maintenance activities, or lack thereof).
- xi. Use of riprap bank protection, beyond the minimum amount needed to achieve the project goals, as determined by the approving Water Board.
- xii. Installation of infiltration galleries (i.e., subsurface structure, typically including perforated conduits in gravel, to expedite transfer of water to or from a soil).
- xiii. Managed surrogate floodplain and managed returned flows that do not allow for volitional movement (ingress and egress) of fish to the main channel (up and/or downstream).

4. Monitoring Plan – The project proponent shall identify the goal(s) of monitoring and reporting components in the NOI. The level of detail of the monitoring and reporting requirements shall be commensurate with the scope, complexity, and objectives of the project, and in consideration of project site conditions. See requirements in Attachment D, Post-Construction Monitoring Report. At a minimum, the following information shall be provided to the approving Water Board in the NOI or in a separate Monitoring Plan appended to the NOI:

- i. Function(s) of the impacted water resources and/or newly restored area.
- ii. Project purpose and goal(s).
- iii. Measurable performance standards and success criteria appropriate to each goal.

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- iv. Methods to determine whether performance standards have been met.
- v. The timeframe and responsible party for achieving the performance standards.
- vi. The monitoring schedule.
- vii. Long-term management and maintenance practices and responsible party.
- viii. The reporting schedule as needed to determine achievement of performance standards.

H. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment E.
2. Data and/or reports shall be submitted electronically or in a format accepted by the approving Water Board.
3. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (CESA) (California Fish & Game Code, §§ 2050-2097) or the federal Endangered Species Act (FESA) (16 U.S.C. §§ 1531-1544) except as authorized by an agency with jurisdiction to protect those species under CESA and/or FESA. The project proponent is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.
4. The project proponent 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 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 Order.
 - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
 - d. Sample or monitor for the purposes of verifying compliance with this Order.
5. A copy of this Order must be available at the project site(s) during construction. All personnel performing work on the project, including any consultants, contractors, and subcontractors working on the project, shall be familiar with the content of this Order and its posted location at the project site. The project

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proponent shall be responsible for work conducted by its consultants, contractors, and any subcontractors.

6. Lake and Streambed Alteration Agreement – If issued, the project proponent 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.

I. Restoration and Monitoring of Impacts

1. The project proponent shall restore all areas of temporary impacts as described in the NOA and applicable General Construction Measures, specifically GCM-15, provided in Attachment A. The project proponent shall provide annual monitoring reports, if required in the NOA, in accordance with Reporting and Notification Attachment D.
2. The project proponent shall demonstrate that all permanent impacts to waters of the state are offset by the restoration project. For example, when permanent impacts to waters of the state would occur, the restoration project must result in a net increase in aquatic or riparian resource functions and/or services compared to existing conditions to offset permanent impacts.
3. If restoration of temporary and permanent impacts to waters of the state is not completed within three hundred sixty-five (365) days of the start of post-construction monitoring, the approving Water Board may require the following: compensatory mitigation to offset temporal loss of waters of the state; remedial actions (e.g., re-seeding); and/or extension of the monitoring period if performance standards have not been met or are not likely to be met.

XIV. Water Quality Certification

This Order for Restoration Projects Statewide (*reference number pending Board adoption*) hereby certifies that as long as all of the conditions listed in this Order are met, any discharge from the Implementation of Restoration Projects Statewide 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). This Order is also adopted pursuant to California Water Code section 13263 as waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (California Water Code, § 13000 et seq.). The State Water Board has considered the factors in section 13241 in establishing the requirements in this Order. The ability to discharge waste is a privilege, not a right, and adoption of this Order shall not be construed as creating a vested right to continue discharging waste (California Water Code, § 13263, subd. (g).) Notwithstanding any determinations by any federal agency made pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this Order because the Order also serves as waste discharge requirements.

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Except insofar as may be modified by any preceding conditions, all Order actions are contingent on: (a) discharges being limited and all requirements being completed in strict compliance with the conditions of this Order and the attachments to this Order; and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, the Regional Boards' Water Quality Control Plans and Policies.

CERTIFICATION

I, Jeanine Townsend, Clerk to the Board, do hereby certify that this General Order with all its attachments is a full, true, and correct copy of a General Order adopted by the State Water Board, on <<date>>.

AYE:

NAY:

ABSENT:

ABSTAIN:

Jeanine Townsend
Clerk to the Board