
State Water Resources Control Board

WATER QUALITY ORDER NO. 2019-0038-EXEC CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

Effective Date: August 14, 2019

Program Type: Fill/Excavation

Project Type: Ecological Aquatic/Stream/Habitat Restoration

Project: U.S. Army Corps of Engineers Regional General Permit
No. 41 for Removal of Invasive Plants
Regulatory Measure (RM) ID: 430007
WDID: SB19014GN

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I. Order

This Clean Water Act (CWA) section 401 Water Quality Certification action and Order (Order) and attachments A through C is issued at the request of the U.S. Army Corps of Engineers, Los Angeles District (Corps), for Certification of Regional General Permit (RGP) 41 for Removal of Invasive Plants (Project). This Order is for the purpose described in the public notice issued by the Corps on April 3, 2019.

II. Public Notice

The State Water Resources Control Board (State Water Board) provided public notice of the application from May 13, 2019 to June 27, 2019. The State Water Board did not receive any comments during the comment period.

III. Project Purpose and Description

The Corps proposes to reauthorize RGP 41, which authorizes mechanized removal and chemical treatment of invasive, exotic plants (exotics) from waters of the U.S., including wetlands. RGP 41 authorizes treatment of two classes of areas:

- Fully infested stands: Areas containing at least 80% relative or canopy cover of exotics.
- Partially infested stands: Areas that contain between 50% and 80% relative or canopy cover of exotics.

This RGP is not applicable in areas that have less than 50% relative or canopy cover of exotics. The reissued RGP 41 is essentially unchanged from the previous RGP, except for allowance of removal of additional invasive species, as requested by an applicant on a case-by-case basis, and minor changes to reporting procedures.

IV. Project Location

In any jurisdictional waters of the U.S. throughout the Los Angeles District of the U.S. Army Corps of Engineers within the counties of: San Luis Obispo, Imperial, Inyo, Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, Ventura, Mono, and Kern. A map showing the Project location is found in Attachment A of this Order.

V. Project Impact and Receiving Waters Information

Individual projects authorized under this Order may be located within the jurisdiction of Central Coast, Central Valley, Colorado River Basin, Lahontan, Los Angeles, San Diego, and Santa Ana Regional Water Quality Control Boards (collectively Regional Water Boards). Receiving waters and groundwater potentially impacted by individual projects authorized under this Order are protected in accordance with the applicable water quality control plans (Basin Plans) for the regions, and other plans and policies which may be accessed online at [the State Water Board's Plans and Policies](#)

[webpage](http://www.waterboards.ca.gov/plans_policies/) (http://www.waterboards.ca.gov/plans_policies/). The Basin 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 antidegradation policies.

VI. California Environmental Quality Act (CEQA)

An Addendum (Attachment C) to the Final Negative Declaration (ND) for RGP 41 has been prepared by the State Water Board. This Addendum identifies minor technical changes and additions to the ND, which do not require the preparation of a subsequent negative declaration (California Code of Regulations (CCR) §§15162 and 15164(b)). This document was prepared in accordance with CEQA, Public Resources Code section 21000 et seq., and the state's CEQA Guidelines, CCR section 15000 et seq.

VII. 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.

VIII. Conditions

The State Water Board has independently reviewed the record of the Project to identify impacts to the environment and designated beneficial uses within the watersheds of the Project. In accordance with this Order, Enrollees may proceed with the Project under the following terms and conditions:

A. Reporting and Notification Requirements

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in the Corps' General Permit.

1. Project Notification and Fee Requirements

- a.** As early as feasible but at least 21 days prior to proposed project commencement, Applicants for projects proposed under RGP 41 shall provide a hardcopy of the Corps' required notification package, including identification of the species targeted for removal, to the State Water Resources Control Board and the appropriate Regional Water Quality Control Board (Regional Water Board).
 - A [staff directory](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf) (https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf) that includes Regional Water Board contact

information for the State and Regional Water Board Program Managers may be accessed online at the State Water Board's webpage.

- A [map of Regional Water Board boundaries](https://www.waterboards.ca.gov/waterboards_map.html) (https://www.waterboards.ca.gov/waterboards_map.html) may be accessed online at the State Water Board's webpage.
- b. **Fee Payment:** The application fee amount for individual projects authorized under this Order is determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3), and is calculated as category D – Ecological Restoration and Enhancement Projects. Note that fees are periodically adjusted. Dischargers should confirm the correct fee amount prior to submitting payment.
- c. **Response from the Regional Water Board:** Work may not commence until verification of compliance with RGP 41 and this Order, including fee payment, is confirmed by the affected Regional Water Board, or thirty days have passed since the Regional Water Board received a complete notification package.
- d. **Project Reporting Requirements:** For all enrolled projects, the Enrollee must provide the applicable Regional Water Board copies of all correspondence and reports that are submitted to the Corps to satisfy the requirements of RGP 41.

B. Conditional Notifications and Reports

The following notifications and reports are required as appropriate.

1. Accidental Discharges of Hazardous Materials¹

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Wat. Code, § 13271):

- a. As soon as (A) Enrollee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be

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. (Health & Saf. Code, § 25501.)

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
 - Lastly follow the required OES procedures as set forth in the [OES Notification Guidance Document](#) (http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf).
- b. Following notification to OES, the Enrollee shall notify State 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 State Water Board, the Enrollee must submit an Accidental Discharge of Hazardous Material Report.

2. Violation of Compliance with Water Quality Standards: The Enrollee shall notify the State Water Board and the Regional 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.
- b. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.

3. Transfer of Property Ownership: This Order is not transferable in its entirety or in part to any person or organization except after notice to the appropriate Regional Water Board in accordance with the following term:

- The Enrollee 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 Enrollee 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 State Water Board to be named as the Enrollee in a revised order.
- Transfer of Long-Term Best Management Practice (BMP) Maintenance: If maintenance responsibility for post-construction BMPs is legally transferred, the Enrollee must submit to the appropriate Regional Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that

complies with manufacturer or designer specifications. The Enrollee must provide such notification to the Water Board with a Transfer of Long-Term BMP Maintenance Report at least 10 days prior to the transfer of BMP maintenance responsibility.

C. Water Quality Monitoring

- 1. General:** If surface water is present, continuous visual surface water monitoring shall be conducted to detect accidental discharge of construction related pollutants (e.g. oil and grease, turbidity plume, or 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, Water Board staff may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

D. Standard

1. This 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 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 Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations and owed by the Enrollee.
4. 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. For purposes of Clean Water Act, section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order.

E. Water Quality Order No. 2013-0002-DWQ

1. Permitted activities may include application of algaecides and herbicides to invasive plants in waters of the U.S. Discharges of residual algaecides and/or aquatic herbicides and their degradation byproducts to waters of the U.S. from algae and aquatic weed control applications must comply with [Water Quality Order No. 2013-0002-DWQ \(General Permit No. CAG990005\)](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2013/wqo2013_0002dwq.pdf) (http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2013/wqo2013_0002dwq.pdf), Statewide General National Pollutant Discharge Elimination System (NPDES) Permit For Residual Aquatic Pesticide Discharges To Waters Of The United States From Algae And Aquatic Weed Control Applications, which is available on the State Water Board's webpage, or any subsequent reissuance of the permit.

F. Water Quality Order No. 2009-0009-DWQ

1. As applicable, the Enrollee 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).

G. General Compliance

1. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The Enrollee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.
2. 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 Basin Plans by any applicable Regional Water Board or any applicable State Water Board (collectively Water Boards) water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.
3. In response to a suspected violation of any condition of this Order, the State Water Board may require the Enrollee to furnish, under penalty of perjury, any technical or monitoring reports the Water Boards 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.

4. 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. For purposes of Clean Water Act, section 401(d), this condition constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements of state law.
5. The Enrollee must, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support this Order; and all subsequent submittals required as part of this Order. The conditions within this Order and Attachments supersede conflicting provisions within Enrollee submittals.
6. Permitted activities must be designed to first avoid and then minimize adverse impacts on aquatic resources in a manner that is consistent with the conditions of RGP 41. Compensatory mitigation may be required to offset any remaining unavoidable adverse impacts to aquatic resources.
7. No permanent impacts to any waters of the state, including waters of the U.S., are permitted under this Order. All temporary disturbance to waters, associated riparian areas and any areas where the disturbance may indirectly cause impacts to waters, must be stabilized to prevent erosion and encourage regrowth of desirable native plant species.
8. Any native riparian trees that are removed must be replaced in accordance with the conditions of RGP 41.
9. Site restoration should commence immediately upon the end of the completion of invasive species removal activities.

H. Construction

1. Excavated invasive plant materials stockpiled at sites known to experience flash flooding outside the flood season (the flood season is November 15 to April 15) shall be removed within 15 days of the initial creation of the stockpile in order to contain the potential spread of invasive plant material in such flash-flood prone areas. Stockpiling of excavated invasive plant materials is prohibited during the flood season.
2. The discharge by itself or in combination with other discharges shall not have a significant cumulative effect or degrade water quality or beneficial uses.
3. The discharge shall not destabilize 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.
6. The Enrollee must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the state.
7. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment must not result in a discharge to any waters of the state, and shall be located outside of waters of the state in areas where accidental spills are not likely to enter or affect such waters.
8. Materials and debris from all work areas shall be removed following completion of the project.
9. The Enrollee must implement all necessary BMPs to control erosion and runoff from areas associated permitted projects. The Enrollee must restore all areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the state. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.

I. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment B of this Order.
2. 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 (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 Order held by the Corps, the Corps and/or the Enrollee 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 Corps is responsible for meeting all requirements of the applicable endangered species act for the Project authorized under this Order.
3. The Corps and/or the Enrollee shall grant State Water Board staff, Central Coast, Central Valley, Colorado River Basin, Lahontan, Los Angeles, San Diego, and Santa Ana Regional Water Quality Control 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 Order.
 - Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
 - Sample or monitor for the purposes of assuring Order compliance.
4. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the Project site for the duration of this Order. The Enrollee shall be responsible for work conducted by its consultants, contractors, and any subcontractors.
5. A copy of this Order must be available at the Project site(s) during construction for review by site personnel and agencies. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.

IX. Water Quality Certification

I hereby issue the Order for the U.S. Army Corps of Engineers' Reauthorization of Regional General Permit No. 41 for Removal of Invasive Plants, State Water Board I.D. No. SB19014GN, certifying that as long as all of the conditions listed in this Order are met, any discharge from the referenced Project 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 discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Order to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.). The State Water Board will file a Notice of Exemption (NOE) at the SCH within five (5) working days of issuance of this Order.

Except insofar as may be modified by any preceding conditions, all Order actions are contingent on: (a) the discharge being limited, and all proposed mitigation 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 Water Boards' Water Quality Control Plans and Policies.

8/14/19
Date _____



Eileen Sobeck
Executive Director
State Water Resources Control Board

- Attachment A** RGP 41 Area Map
- Attachment B** Signatory Requirements
- Attachment C** CEQA Addendum