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## Central Valley Regional Water Quality Control Board

8 September 2023

John Hannon  
U.S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

**NOTICE OF APPLICABILITY: STATE WATER RESOURCES CONTROL BOARD ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND WASTE DISCHARGE REQUIREMENTS FOR RESTORATION PROJECTS STATEWIDE (ORDER NO. WQ 2022-0048-DWQ), U.S. BUREAU OF RECLAMATION, KAPUSTA ISLAND SIDE CHANNEL PROJECT, SHASTA COUNTY, WDID NO. 5A45CR00642**

On 21 June 2023, U.S. Bureau of Reclamation (Applicant) filed a Notice of Intent (NOI) requesting coverage under State Water Resources Control Board's Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide, Order No. WQ 2022-0048-DWQ (Statewide Restoration General Order) for the Kapusta Island Side Channel Project (Project). After review of the NOI submitted by the applicant, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has determined that the Project qualifies for enrollment under the Statewide Restoration General Order.

This Notice of Applicability (NOA) is being issued at the request of U.S. Bureau of Reclamation (hereinafter Enrollee) under the Statewide Restoration General Order pursuant to Section 3838 of the California Code of Regulations.

A copy of the Statewide Restoration General Order is enclosed. You may also access the Statewide Restoration General Order on State Water Resources Control Board's General Orders Web Page: [Order WQ 2022-0048-DWQ](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo2022-0048-dwq.pdf) ([https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2022/wqo2022-0048-dwq.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo2022-0048-dwq.pdf)).

The Project must proceed in accordance with the requirements contained in this NOA and the Statewide Restoration General Order. Failure to comply with this NOA and the Statewide Restoration General Order constitutes a violation of the California Water Code and may result in enforcement action and/or termination of enrollment under the Statewide Restoration General Order. The Project is described in the NOI Form requesting coverage and supplementary information (Application Package). Coverage under the Statewide Restoration General Order is no longer valid if the Project is modified from that described in the Application Package.

MARK BRADFORD, CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

## **I. Public Notice**

The Central Valley Water Board provided public notice of the application from 23 June 2023 to 14 July 2023. The Central Valley Water Board did not receive any comments during the comment period.

## **II. Project Description**

The purpose of the Project is to provide fish habitat for salmonids. Components of the Project include 1) providing an outflow to currently existing fish stranding ponds; 2) excavating a river side channel, approximately 1,264 feet in length, for year-round juvenile fish habitat; and 3) placing approximately 1,000 cubic yards of sorted spawning gravel within the mainstem river for reproducing adults. The Project will repurpose removed wood and gravel for habitat structure within the stream channels. Channels will include habitat features such as benches, riffles, runs, and pools. After construction, native plants will be seeded along the banks of the channels and in construction use areas to restore impacted areas following the Kapusta Island Side Channel Revegetation Plan.

Staging and equipment refueling will take place off-island at the Kapusta Open Space Area, an adjacent property owned by the City of Redding. Heavy equipment will access the Project site from a temporary cobble crossing constructed in the Sacramento River between the Kapusta Open Space Area and Kapusta Island. Approximately 2,000 cubic yards of sorted fish rock will be placed across the mainstem river for the temporary crossing. Roughly 95% of cobble placed will be removed prior to construction decommissioning. The crossing will be approximately 30 feet wide at its base, 220 feet long, and 2-4 feet high, with a water clearance of 18 inches to allow boat passage across the top of the crossing. Reflective markers will be used to identify the crossing. Warning signs are placed up and downstream of the crossing for navigators along the river. Metal plates may be used along the crossing in strategic areas to help reduce maintenance of the crossing. Equipment crossings would be minimized as much as possible, concentrating crossings at the beginning of the workday and at the end of the workday. The crossing will be maintained as needed. In-water work will follow fish avoidance and turbidity minimization procedures described as well as any additionally requested environmental requirements.

Earth work and hauling of material on Kapusta Island will be confined within the footprint of excavated channels and along designated access roads to minimize impacts to natural resources. Vegetation within the channel footprint will be conserved or removed prior to excavation. When excavation occurs, the banks of the channels will remain intact as digging and leveling will be made to grade.

Temporary plugs or earthen dams made of existing bank or excavated cobble will be created at the inlet and outlets of side channels to isolate earth work occurring within the channel from the mainstem river. Plugs help to control discharge and minimize environmental impacts to fish, the spread of invasive plants, and impacts to water quality. Dewatering within the excavated side channels to nearby vegetation or cobble for dissipation of seeping ground water may take place when needed.

Following completion of excavation and grading work of channel features, channel plugs will be removed to connect the constructed side channels to flows of the mainstem river, finalizing the construction of the side channel project.

Root wads, cobble, and gravel from excavation will either be repurposed within the channels or will be degraded and stockpiled. Sorting and stockpiling of excavated material will occur on Kapusta Island in existing cobble floodplain areas which were found to not contain *Cryptantha crinita*. Stockpiles will then be leveled to the natural contours of the land before construction decommission. Stockpiles and haul roads will be seeded with native plants as a part of the revegetation plan.

After all earth work is complete, native revegetation efforts will be implemented by Project consultants. Willow and Rushes will be planted along channel banks. Seeding of a native plant mix according to the impacted habitat type will take place where channel excavation, construction staging, stockpiling, and creation of access and haul roads occurred. Direct impacts will occur from grading of access and haul roads, excavation of side channels, spoiling of material, and spawning gravel augmentation.

### III. Project Location

County: Shasta County

Nearest City: Redding

Latitude: 40.49665° and Longitude: -122.34304°

### IV. Project Impact and Receiving Waters Information

The Project is located within the jurisdiction of the Central Valley Water Board. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fifth Edition, February 2019 (Basin Plan). The plan for the region and other plans and policies may be accessed at the [State Water Resources Control Board's Plans and Policies Web page](http://www.waterboards.ca.gov/plans_policies/) ([http://www.waterboards.ca.gov/plans\\_policies/](http://www.waterboards.ca.gov/plans_policies/)). The Basin Plan includes 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.

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 NOA promotes that policy by requiring discharges to meet maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

Project impact and receiving waters information can be found in Attachment B. Table 1 of Attachment B shows the receiving waters and beneficial uses of waters of the state impacted by the Project. Individual impact location and quantity are shown in Table 2 of Attachment B.

## V. Description of Direct Impacts to Waters of the State

Total Project fill/excavation quantities for all impacts are summarized in Tables 1 and 2. Permanent impacts are categorized as those resulting in a physical loss in area and also those degrading ecological condition.

**Table 1: Total Project Fill/Excavation Quantity for Temporary Impacts<sup>1</sup>**

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Riparian	0.11		215
Streambed/Stream bank	0.21	1830	430

**Table 2: Total Project Fill/Excavation Quantity for Permanent Physical Loss of Area Impacts**

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Wetland	0.02	179	37
Riparian	0.11	531	259
Streambed/Stream bank	1.12	3238	1520

## VI. Project Schedule

The Project is estimated to occur between October of 2023 and February of 2024.

## VII. California Environmental Quality Act (CEQA)

On 16 August 2022, State Water Resources Control Board, as lead agency, certified a Program Environmental Impact Report (PEIR) (State Clearinghouse (SCH) No. 2019100230) for the Statewide Restoration General Order and filed a Notice of Determination (NOD) at the SCH on 12 September 2022.

The Central Valley Water Board is a responsible agency under CEQA (Public Resources Code, section 21069) and in making its determinations and findings, must presume that State Water Resources Control Board's PEIR comports with the requirements of CEQA and is valid. (Public Resources Code, section 21167.3; California Code of Regulations, title 14, section 15231.)

The Central Valley Water Board has reviewed and considered the PEIR and finds that the environmental document addresses the Project's impacts within the scope

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<sup>1</sup> Includes only temporary direct impacts to waters of the state and does not include area of temporary disturbance which could result in a discharge to waters of the state. Temporary impacts, by definition, are restored to pre-project conditions and therefore do not include a physical loss of area or degradation of ecological condition.

of the Board's jurisdiction and that no additional environmental review is required. (California Code of Regulations, title 14, section 15096, subdivision (f), 15162, 15163.)

The Central Valley Regional Water Quality Control Board will file a Notice of Determination with the Office of Planning and Research within five (5) working days of issuance of this certification. (California Code of Regulations, title 14, section 15096, subdivision (i).)

## **VIII. Fees Received**

Federal applicants applying for a 401 certification for a dredge or fill project subject to section 404 of the Clean Water Act are not charged fees as identified in section 3833(b)(3)(A) and section 2200(a)(3) of the California Code of Regulations.

## **IX. Findings of Applicability**

This letter serves as formal notice that Order No. WQ 2022-0048-DWQ is applicable to this habitat restoration project. Your waste discharge identification (WDID) number is 5A45CR00642.

## **X. Conditions**

The Enrollee shall comply with all applicable conditions of the Statewide Restoration General Order, including but not limited to the following:

### **A. Reporting and Notification Requirements**

#### **1. In-Water Work and Diversions:**

The Enrollee shall notify the Central Valley Water Board at least forty-eight (48) hours prior to initiating work in flowing or standing water or stream diversions. Notification may be via email, delivered written notice, or other verifiable means.

**XI. Central Valley Regional Water Quality Control Board Contact:**

If you have any questions regarding this Notice of Applicability, please contact Jerred Ferguson at (530) 224-4784 or [Jerred.Ferguson@waterboards.ca.gov](mailto:Jerred.Ferguson@waterboards.ca.gov).

Original Signed by Bryan J. Smith, P.E.  
(for) Patrick Pulupa, Executive Officer  
Central Valley Regional Water Quality Control Board

9/8/2023  
Date

- Attachment A:** Project Maps
- Attachment B:** Receiving Waters, Impacts, and Mitigation Information
- Attachment C:** CEQA Findings of Facts
- Attachment D:** Compliance with Code of Federal Regulations, Title 40, Section 121.7 for Order WQ 2022-0048-DWQ Conditions

Enclosure: State Water Resources Control Board Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide, Order No. WQ 2022-0048-DWQ (Applicant Only)

cc email: U.S. EPA, Region 9, San Francisco  
Water Quality Certification Program, SWRCB, Sacramento  
Hillary Regnart, U.S. Army Corps of Engineers, Redding  
Aurelia Gonzalez, Sacramento River Forum, Red Bluff

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**Attachment A – Project Maps**

**Figure 1. Project Vicinity Map**

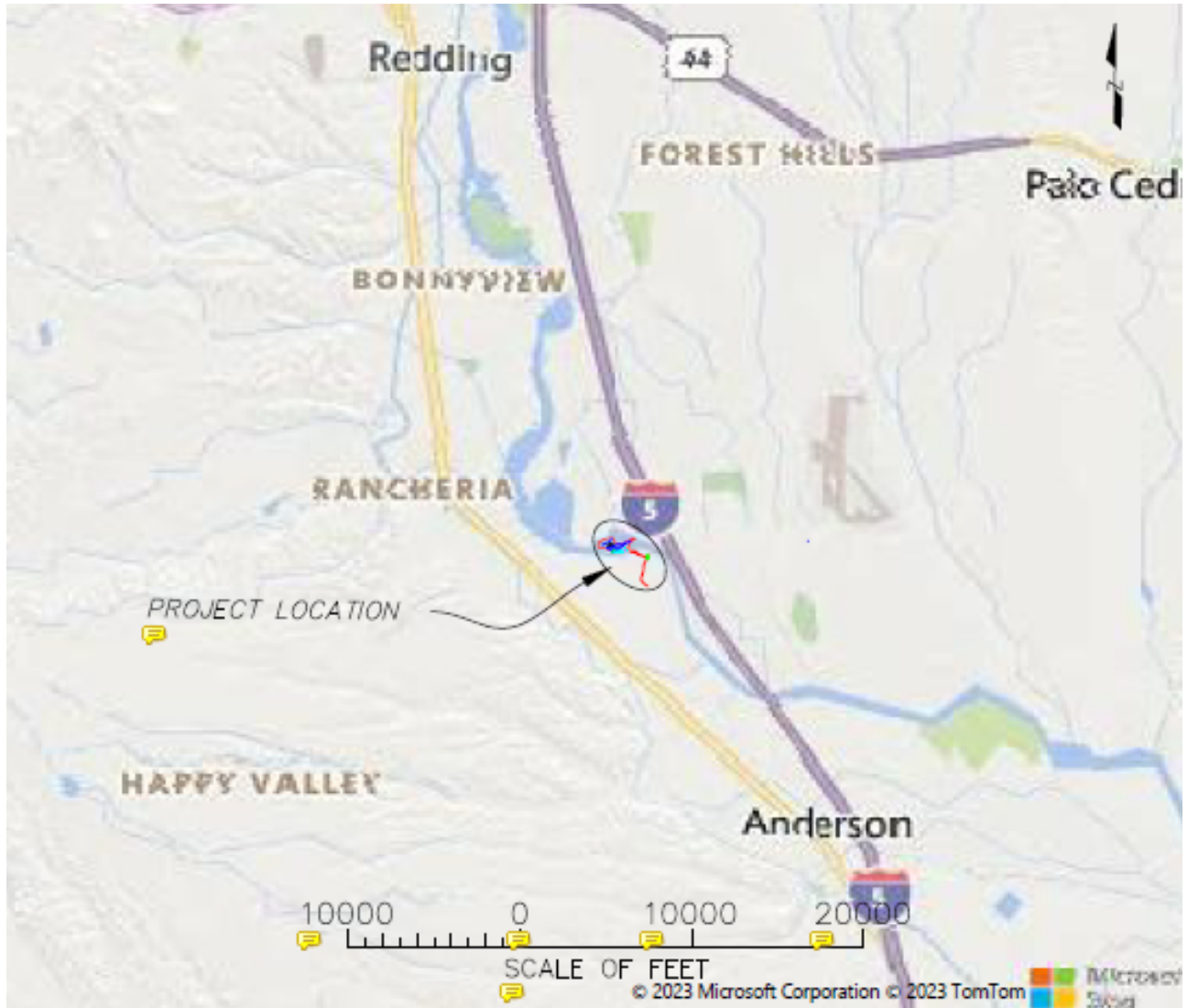
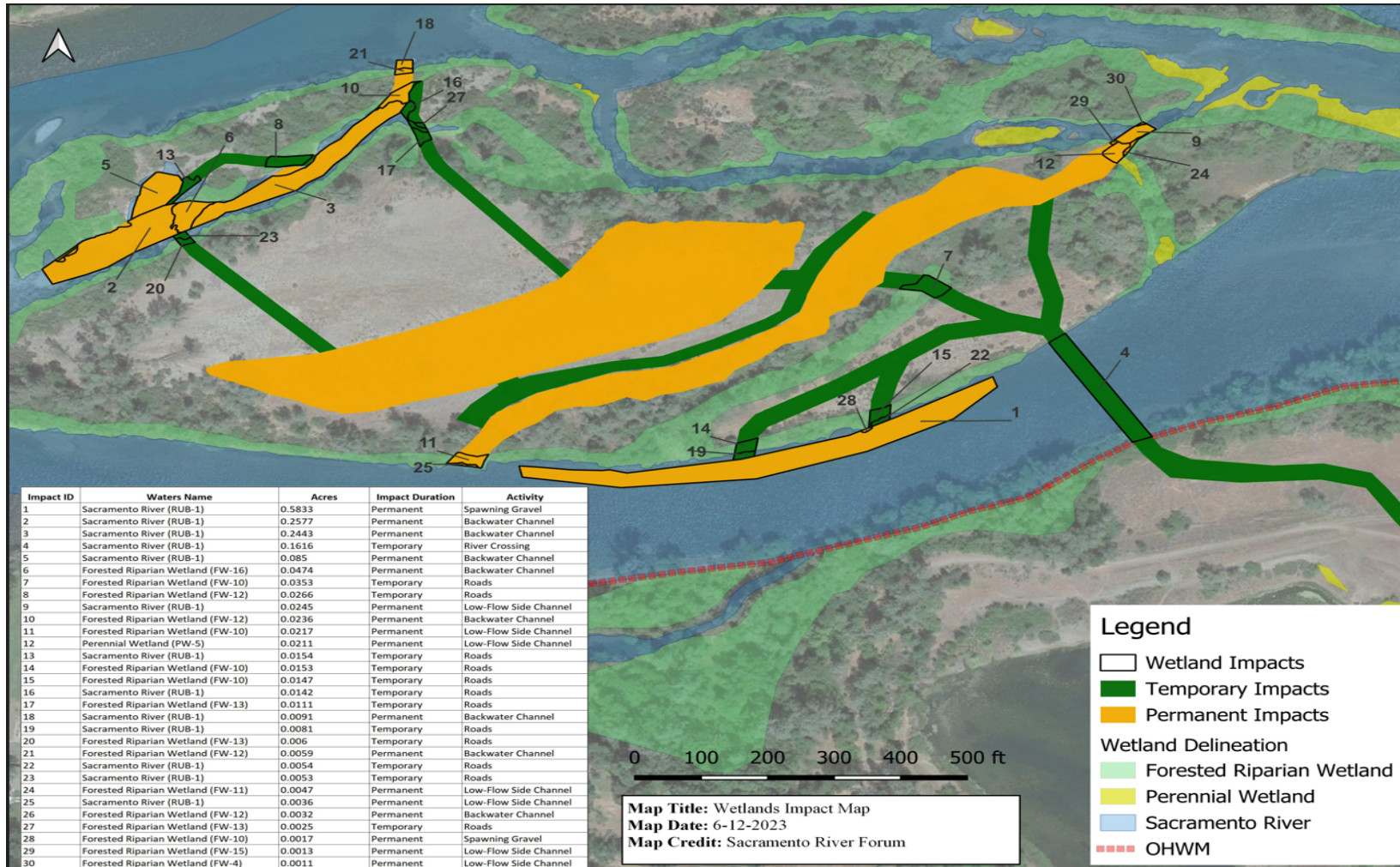




Figure 2. Project Impacts Map



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**Attachment B – Receiving Waters, Impacts and Mitigation Information**

The following table shows the receiving waters associated with each impact site.

**Table 1: Receiving Water Information**

Non-Federal Waters	Impact Site ID	Waterbody Name	Impacted Aquatic Resources Type	Water Board Hydrologic Units	Receiving Waters	Receiving Waters Beneficial Uses	303d Listing Pollutant	California Rapid Assessment Method (CRAM) ID
No	Kapusta Island Side Channel Project	Sacramento River	Stream	508.10	Sacramento River (Shasta Dam to Colusa Basin Drain)	MUN, AGR, IND, POW, REC-1, REC-2, WARM, COLD, MIGR, SPWN, WILD, NAV	Unknown Toxicity	Not Applicable

**Individual Direct Impact Locations**

The following table shows individual impacts.

**Table 2: Individual Temporary Fill/Excavation Impact Information**

Impact Site ID	Latitude	Longitude	Indirect Impact Requiring Mitigation?	Acres	Cubic Yards	Linear Feet
Kapusta Island Side Channel Project (Riparian)	40.49665	-122.34304	No	0.11		215
Kapusta Island Side Channel Project (Streambed/Stream bank)	40.49665	-122.34304	No	0.21	1830	430

**Table 3: Individual Permanent Fill/Excavation Impact Information**

Impact Site ID	Latitude	Longitude	Indirect Impact Requiring Mitigation?	Acres	Cubic Yards	Linear Feet
Kapusta Island Side Channel Project (Wetland)	40.49665	-122.34304	No	0.02	179	37
Kapusta Island Side Channel Project (Riparian)	40.49665	-122.34304	No	0.11	531	259
Kapusta Island Side Channel Project (Streambed/Stream bank)	40.49665	-122.34304	No	1.21	3238	1520

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### **Attachment C – CEQA Findings of Fact**

On 16 August 2022, State Water Resources Control Board, as lead agency, certified a Program Environmental Impact Report (PEIR) (State Clearinghouse (SCH) No.2019100230) for the Statewide Restoration General Order and filed a Notice of Determination (NOD) at the SCH on 12 September 2022.

The Central Valley Water Board is a responsible agency under CEQA (Public Resources Code, section 21069) and in making its determinations and findings, must presume that State Water Resources Control Board's PEIR comports with the requirements of CEQA and is valid. (Public Resources Code, section 21167.3; California Code of Regulations, title 14, section 15231.)

The Central Valley Water Board has reviewed and considered the PEIR and finds that the environmental document addresses the Project's impacts within the scope of the Board's jurisdiction and that no additional environmental review is required. (California Code of Regulations, title 14, section 15096, subdivision (f), 15162, 15163.)

The Central Valley Regional Water Quality Control Board will file a Notice of Determination with the Office of Planning and Research within five (5) working days of issuance of this certification. (California Code of Regulations, title 14, section 15096, subdivision (i).)

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### **Additional Compliance with 40 CFR Section 121.7**

The information set forth in the State Water Resources Control Board (State Water Board) *General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements, Order No. WQ-2022-0048-DWQ* for Restoration Projects Statewide (Statewide Restoration General Order or Order), is sufficient to comply with title 40 Code of Federal Regulations (CFR) section 121.7. This Attachment D provides additional information regarding the conditions set forth in Order WQ 2022-0048-DWQ to comply with 40 CFR section 121.7(d).

Notwithstanding any determinations by the United States Army Corps of Engineers or other federal agency made pursuant to 40 CFR section 121.9, the Enrollee must comply with the entirety of the NOA enrolling the Project (Project) in the Statewide Restoration General Order, which sets forth waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act.

The following information is generally applicable to the conditions set forth in the Statewide Restoration General Order. Waste discharge requirements shall implement any relevant water quality control plans that have been adopted and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of section 13261. (Water Code, section 13263(a).) In addition, California Code of Regulations, title 23,<sup>2</sup> Chapter 28 sets forth regulations pertaining to water quality certifications that must be implemented. Section 3859 requires the implementation of applicable water quality standards and other appropriate requirements. 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 Water Quality Control Board water quality control plans (Basin Plans) incorporate the state's Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR section 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 the United States Environmental Protection Agency (USEPA), dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with USEPA's section 404(b)(1) Guidelines. The State Water Board adopted a modified version of USEPA's section 404(b)(1)

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<sup>2</sup> Unless as otherwise noted, all citations are to title 23 of California Code of Regulations.



Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines) in its *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (Dredge or Fill Procedures). These conditions are necessary to comply with the review and approval requirements set forth in the Dredge or Fill Procedures, Section B.1.

The organization and statements below correspond with the conditions set forth in section XIII of the Statewide Restoration General Order. Statewide Restoration General Order sections I through XII and XIV are not “conditions” as used in 40 CFR section 121.7.

### **XIII. Order WQ 2022-0048-DWQ Conditions**

#### **A. Request for Authorization**

Authorization under the Statewide Restoration General Order is granted through an NOA based on the application submitted. This condition is necessary because the State Water Board and Regional Water Quality Control Boards (collectively Water Boards) are authorized to issue a certification as required under the Federal Water Pollution Control Act (Water Code, section 13160) and this condition is consistent with regulations regarding water quality certifications (Cal. Code of Regs., section 3855). A pre-application meeting request is required pursuant to 40 CFR section 121.4.

#### **B. Reporting and Notification Requirements**

These reporting and notification conditions are necessary to confirm that the general protection measures required under the Statewide Restoration 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. Authorization under the Statewide Restoration General Order is granted based on the application and supporting information submitted. This condition is necessary to ensure that any modifications to the Project do not materially change the character of the discharge from the one that formed the basis for issuance of the NOA. These monitoring and reporting conditions are authorized because the Water Boards have the authority to investigate the quality of any waters of the state within their jurisdiction under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The anticipated costs are minimal as the reporting obligations typically require only visual monitoring and notification reporting.

#### **C. Water Quality Monitoring**

The water quality monitoring conditions are consistent with the Dredge or Fill Procedures, Section IV.A.2.c. Water quality monitoring plans are required for any in-water work, including temporary dewatering or diversions. These conditions are

required to assure that: (1) the discharge shall not adversely affect the beneficial uses of the receiving water or cause a condition of nuisance; (2) the discharge shall comply with all applicable water quality objectives; and (3) treatment and control of the discharge shall be implemented to assure that pollution and nuisance will not occur, and the highest water quality is maintained. A water quality monitoring plan is necessary to conform to water quality standards for oil and grease, dissolved oxygen, pH, turbidity, and temperature. The Basin Plans contain provisions related to all these constituents. These conditions are authorized under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The anticipated costs are minimal as the sampling requirements are typically either visual or only require a grab sample every four (4) hours.

#### **D. Standard Conditions**

The standard conditions are necessary to ensure that this Project will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States. California Code of Regulations, title 23, Chapter 28 sets forth regulations pertaining to water quality certification for point source discharges to waters of the United States. These conditions were included to comply with section 3860, which sets forth conditions that must be included in all water quality certifications. In addition, 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...”**

This condition is necessary to ensure that any discharge authorized under the Statewide Restoration General Order will comply with water quality standards because the NOA only authorizes activities explicitly described therein. (Water Code, section 13264.) Additional activities may have impacts on water quality that need to be separately analyzed and authorized.

Authorization under the Statewide Restoration General Order is granted through an NOA based on the request for authorization and supporting information submitted. The project proponent is required to detail the scope of project impacts in a complete application pursuant to California Code of Regulations, title 23, section 3856, subdivision (h). Pursuant to Water Code section 13260, subdivision (c), each person discharging waste, or proposing to discharge waste shall file a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge. Pursuant to Water Code section 13264, subdivision (a), the project proponent is prohibited from initiating the discharge of new wastes, or making material changes to the

character, volume, and timing of waste discharges authorized herein without filing a report required by Water Code section 13260 or its equivalent for certification actions under California Code of Regulations, title 23, section 3856.

A request for authorization under the Statewide Restoration General Order is required to identify other licenses, permits, and agreements in the application. In the event a project proponent needs authorization from the state or federal authorities, California Code of Regulations, title 23, section 3856, subdivision (e), requires that the project proponent provide copies of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.” This condition helps ensure the integrity of the certification process and its focus on ensuring that Project activities meet water quality standards and other appropriate requirements of state law and nothing in the Statewide Restoration General Order shall be construed as State Water Board findings regarding the underlying related activity’s impact to water quality, public trust resources, or other matters of public interest. The project proponent is responsible for compliance with all applicable federal, state, or local laws or ordinances and shall obtain authorization from applicable regulatory agencies prior to the commencement of project activities.

**2. “Any plan developed as a condition of this Order requires review and approval...”**

This condition is necessary because the Water Boards are authorized to issue a certification as required under the Federal Water Pollution Control Act. (Water Code, section 13160.) Any discharge that is not specifically authorized in the Statewide Restoration General Order is prohibited (Water Code, section 13264.)

**3. “This Order shall not be construed as replacement or substitution for any necessary federal, state and local approvals...”**

This condition is necessary to protect water quality because it makes it clear that additional authorizations may be required and deters violations or threatened violations of the Statewide Restoration General Order conditions. (Water Code, section 13350, 13385.)

**4. “In response to a suspected violation of any condition of this Order...”**

This condition protects water quality by requiring that the project proponent provide monitoring reports after a violation or suspected violation of the conditions of the Statewide Restoration General Order. This monitoring would document whether or not water quality impacts occurred as a result of the violation or suspected violation and allow the Water Boards and project

proponent to act to remedy the situation. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

**5. “The project proponent must, at all times, fully comply with engineering plans, specifications, and technical reports submitted...”**

This condition protects water quality by ensuring that the authorized activity is implemented as proposed and approved. (Water Code, section 13264.) Deviations from the approved plans and practices could result in adverse impacts to water quality.

**6. “This Order and all of its conditions contained herein continue to have full force and effect...”**

This condition protects water quality by ensuring that the Statewide Restoration General Order and all of its conditions that protect water quality remain in place if federal licenses or permits are revoked or expire. Enrollment in the Statewide Restoration General Order serves as waste discharge requirements under the Porter-Cologne Water Quality Act. (Water Code, section 13263.)

**7. “Project proponents shall submit a Sacred Lands File & Native American Contacts List Request to the...”**

This condition is necessary to ensure compliance with water quality requirements because it satisfies the requirements to consult with California Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Res. Code, section 21080.3.1.) (See also California Governor’s Executive Order G-10-22.) The State Water Board Tribal Consultation Policy (June 2019) ensures collaboration and input from all California Native American Tribes and helps the Water Boards advance decisions and policies that better protect California’s water resources.

**8. Historical Sites**

This condition protects water quality by ensuring that the authorized activity is implemented as proposed and approved. (Water Code, section 13264.) This condition is required in order to comply with the National Historic Preservation Act of 1966 (16 United States Code (USC) section 470 et seq.) as amended, pursuant to section 101(c). The regulations adopted under the act are set forth in Part 61 (commencing with section 61.1) of title 36 of the Code of Federal Regulations. Cal. Code Regs. title 14, section 15064.5 defines “historical resources” and details steps that should be taken in the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery.

### **9. Construction General Permit Requirement**

This condition is necessary to ensure compliance with water quality requirements because dischargers who are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit; Order No. 2009-0009-DWQ or 2022-0057-DWQ; NPDES No. CAS00002, as amended or any subsequently issued permit) must obtain separate authorization. (33 U.S.C. section 1342.) For ground disturbing activities that do not require enrollment in the Construction General Permit, the condition requires the implementation of appropriate erosion and sediment control measures. (Water Code, section 13263.)

### **10. Aquatic Herbicide General Permit Requirement**

This condition is necessary to ensure compliance with water quality requirements because dischargers who are required to obtain coverage under the 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) must obtain separate authorization. (33 U.S.C. section 1342.)

### **11. Cumulative Impacts**

This condition is necessary to ensure compliance with water quality requirements because Water Code section 13263 requires consideration of other waste discharges.

## **F. Prohibitions**

These conditions are necessary to prevent violation of state discharge prohibitions and protect water quality objectives. Basin Plans prohibit the discharge of construction materials and byproducts from being discharged into waters of the state. (Water Code, sections 13146, 13247, 13263.)

These conditions also reserve the approving Water Board's authority to add to or modify conditions of the Statewide Restoration General Order in the NOA to ensure that project activities meet water quality objectives and protect beneficial uses. (See Water Code, section 13160.)

Destabilization of the channel or bed of the receiving water can contribute to significant degradation of the waters of the state; therefore, it is necessary to implement actions to limit or eliminate such discharges in order to protect water quality and associated beneficial uses.

Additionally, these conditions are required pursuant to the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*, which prohibits the discharge of substances in concentrations toxic to

human, plant, animal, or aquatic life. Toxic compounds can impair the beneficial uses of cold freshwater habitat, estuarine habitat, marine habitat, preservation of rare and endangered species, fish migration, fish spawning, warm freshwater habitat, and wildlife habitat. Conditions related to toxic and hazardous materials are necessary to ensure discharges comply with any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code. Additionally, the conditions related to hazardous discharges protect water quality by ensuring hazardous materials are not discharged to waters of the state. (Dredge or Fill Procedures, Section IV.B.1.)

## **G. Specific Compliance**

### **1. Programmatic Sideboards**

This condition is necessary to implement relevant water quality control plans, beneficial uses to be protected, water quality objectives, and the need to prevent nuisance. (Water Code, section 13263.) This condition also ensures the authorized project is designed, planned, and implemented in a manner consistent with the techniques and minimization measures presented in the Statewide Restoration General Order, Attachment A, section A.5. Project site-specific conditions may require different approaches to ensure compliance with applicable water quality standards and other appropriate requirements (33 USC section 1341; Cal. Code of Regs., title 23, section 3859, subdivision (a)) and may result in impacts to water quality that require additional environmental review. (Cal. Code of Regs., title 14, sections 15062-15063.) Water Code section 13383 authorizes the Water Boards to establish monitoring, inspection, entry, reporting, and other recordkeeping requirements (e.g., general protection measures listed in Attachment A), as authorized by Water Code section 13160, for any person who discharges, or proposes to discharge, to navigable waters.

### **2. Pre-Application Consultation**

This condition satisfies the 40 CFR section 121.4 requirement to request a pre-filing meeting with the certifying authority at least thirty (30) days prior to submitting a certification request.

### **3. Exclusions and Prohibited Activities**

This condition is necessary to comply with water quality requirements because the identified excluded activities may require additional conditions to protect beneficial uses and prevent nuisance. (Water Code, section 13263.) For instance, erosion and sedimentation can contribute to significant degradation of the waters of the state; therefore, it is necessary to implement actions to limit or eliminate such discharges to protect water quality and associated beneficial uses. The exclusions and prohibited activities listed in the Statewide Restoration General Order section G.3 could result in erosion and sedimentation that could

increase turbidity. Project discharges affected by erosion and increased sediment loads directly impact water quality and associated beneficial uses.

This condition also helps to ensure that an applicant for a federal license or permit that involves a discharge to navigable waters understands that, except as specified in the Statewide Restoration General Order, the Order does not excuse the project proponent from obtaining any other Water Board approvals required for the activity.

#### **4. Monitoring Plan**

This condition is necessary to comply with water quality requirements because it confirms that the general protection measures required under the Statewide Restoration General Order are sufficient to protect beneficial uses and water quality objectives. (Water Code, sections 13267, 13383.)

### **H. Administrative**

#### **1. “Signatory requirements for all document submittals...”**

Signatory requirements are required pursuant to Water Code section 13267, which requires any person discharging waste that could affect the quality of waters of the state to provide to the Water Boards, under penalty of perjury, any technical or monitoring program reports as required by the Water Boards. The signatory requirements are consistent with 40 CFR section 122.22.

#### **2. “Data and/or reports shall be submitted...”**

This condition relates to submittal of data and reports that are authorized due to the Water Boards’ authority to investigate the quality of any waters of the state within their jurisdiction under Water Code sections 13383 and 13267. Monitoring, reporting, and assessment actions, and the information developed through such actions, must be readable, shared, and coordinated with other appropriate entities, and accessible to ensure that a discharge activity complies with water quality requirements. Water Code section 13167 requires the Water Boards to ensure that monitoring data and assessment information are available in a single location and that the information is presented in a manner easily understandable by the public. To fulfill this legislative mandate, this condition requires electronic data submittal in a compatible format with existing system specifications. Compliance with this condition enhances the accessibility of data and transparency of regulatory actions. This allows regulatory agencies and the public to better assess compliance and understand water quality trends or data anomalies by compiling data and making it readily available.

**3. “This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species...”**

Project discharges associated with construction activities have the potential to interfere with native aquatic species, which depend heavily on aquatic food or live in riparian or wetland habitats, and adversely impact habitat use. Implementation of this condition will avoid unreasonable impacts to water quality and the beneficial uses related to aquatic biological resources and wildlife habitat. Water Code section 13160, subdivision (b)(1), allows the State Water Board to issue a certification when there is “reasonable assurance that an activity of any person subject to the jurisdiction of the state board will comply with applicable requirements” of state and federal law. In accordance with the California Endangered Species Act (Fish & G. Code, section 2050 et seq.) and federal Endangered Species Act (16 U.S.C. section 1531 et seq.), this condition does not authorize any act which results in the taking of a threatened, endangered, or candidate species.

**4. “The project proponent shall grant Water Board staff or an authorized representative...”**

This condition protects water quality by allowing the Water Boards, or a representative, to investigate site conditions to ensure that the authorized activity is compliant with the Statewide Restoration General Order. This condition is authorized pursuant to the Water Boards’ authority to investigate the quality of any waters of the state within its region under Water Code sections 13267 and 13383.

**5. “A copy of this Order must be available at the project site(s)...”**

This condition requires site personnel and any agent of the project proponent to be familiar with the content of the Statewide Restoration General Order and availability of the document at each project site. This condition is necessary to ensure that all activities will comply with applicable water quality standards and other appropriate requirements (33 USC section 1341; California Code of Regulations, title 23, section 3859, subdivision (a)) and cannot be adhered to if the project proponent’s agents are unaware of applicable requirements. This condition is required to ensure that any authorized discharge will comply with the terms and conditions of the Order, which requires compliance with all of the water quality objectives and beneficial uses adopted or approved. (Dredge of Fill Procedures, Section IV.B.1.)

**6. “Lake and Streambed Alteration Agreement...”**

This condition is required pursuant to California Code of Regulations section 3856 subdivision (e), which requires that copies be provided to the Water Boards of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be



required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.”

#### **I. Restoration and Monitoring of Impacts**

Conditions in this section are related to restoration and/or mitigation of temporary and permanent impacts. These conditions are necessary to ensure compliance with state and federal anti-degradation policies and are consistent with section IV.B.1.a of the Dredge or Fill Procedures, which requires that the Water Boards will approve a project only after it has been determined that a sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts that cannot be practicably avoided or minimized. (See also California Code of Regulations, section 3856, subdivision (h) [requiring submittal of proposed mitigation and description of steps taken to avoid, minimize, or compensate].) These conditions are also consistent with the Dredge or Fill Procedures, which requires "in all cases where temporary impacts are proposed, a draft restoration plan that outlines design, implementation, assessment, and maintenance for restoring areas of temporary impacts to pre-project conditions." (Dredge or Fill Procedures Section IV. A.2(d) & B.4.) Mitigation is also necessary to ensure compliance with Executive Order W-59-93 that requires no net loss of the structure or function of California's wetland resources.

Furthermore, impacts that are not restored within a reasonable amount of time could contribute to long-term degradation of water quality. The longer the lag time between impact and restoration, the more opportunity there is for water quality degradation. This condition protects water quality by ensuring that restoration is initiated in a reasonable amount of time after impacts have occurred. (Dredge or Fill Procedures, Sections IV.A.2.d, IV.B.4-5.) Technical reporting and monitoring requirements under this condition are consistent with the Water Boards' authority to investigate the quality of any waters of the state and require necessary reporting and monitoring pursuant to Water Code sections 13267 and 13383.