

Regional Water Quality Control Board  
North Coast Region

Staff Summary Report  
April 4, 2024  
Regional Water Board Office  
Santa Rosa, California

**ITEM: 5**

**SUBJECT:** Public Hearing to consider adoption of Proposed Order No. R1-2024-0002, General Waste Discharge Requirements and General Water Quality Certification for Rural Road and Watercourse Construction and Reconstruction in the North Coast Region (Jim Burke).

**BOARD ACTION:** The North Coast Regional Water Quality Control Board (Regional Water Board) will consider adoption of Proposed Order No. R1-2024-0002 (the Proposed Order).

**BACKGROUND:** The Nonpoint Source and Surface Water Protection Division (NPS Division) of the North Coast Regional Water Quality Control Board (Regional Water Board) has developed for Board consideration a new Rural Roads General Order, or RRGO, which will include a General 401 Water Quality Certification and Waste Discharge Requirements intended to streamline the permitting process for routine watercourse crossing and/or road remediation projects.

The primary goals of the RRGO are to improve the Regional Water Board's permitting tools for road-related construction/reconstruction activities, expand regulatory engagement, increase administrative efficiencies, and improve water quality protections.

The proposed Order itself does not require landowners to conduct projects that they otherwise were not planning to do. However, in addition to routine rural road treatment projects, the RRGO may also be used as a permitting tool for those projects that may be required pursuant to a regulatory action by the Regional Water Board or other agency, such as projects that are required through an enforcement action or a TMDL Action Plan.

**Problem Statement**

Many watersheds in the North Coast Region are identified as being impaired due to excess sediment which continues to impact the beneficial uses of water. Most of these impairments are partially or substantially attributed to existing roads and their associated watercourse crossings that are necessary to conduct a variety of land use activities, such as timber harvest, agriculture, rural residential, and recreation.

Road-related erosion and associated sediment discharges to watercourses are a significant challenge for the Regional Water Board. Although some of the Regional Water Board's programs include effective regulatory processes to efficiently address road and watercourse crossing treatments, others do not, which can pose a challenge for landowners and an increased workload for staff.

## **Project Standards**

The Regional Water Board has developed the RRGO to more effectively address existing erosion and sediment discharge associated with road and watercourse crossings, or to expedite new road and watercourse crossing construction activities. Through the development of the RRGO, which requires adherence to established best management practices (BMPs), the Regional Water Board anticipates improved regulatory efficiencies for permitting routine watercourse crossing replacement and remediation activities as well as ensuring that the highest level of water quality protection practices is applied to construction of new roads and watercourse crossings, which will lead to greater erosion controls and reduced sediment discharges to watercourses.

The RRGO will require permittees to adhere to enforceable standards based on current BMPs for projects that upgrade existing infrastructure (e.g., watercourse crossings), reduce road hydrologic connectivity to streams, or construct new infrastructure.

Approvable projects must adhere to pre-established BMPs, construction standards, and schematics (e.g., Pacific Watershed Associates Handbook on Forest, Ranch and Rural Roads, applicable operational provisions of the Forest Practice Rules, 5-County Roads Maintenance Manual) to qualify for one of the five permitting categories described below. Appropriate BMPs must be implemented at all watercourse crossings, hydrologically connected road segments, and any road locations that have the potential to discharge sediment in violation of water quality requirements.

## **Incentives for Restoration/Remediation Actions**

The RRGO provides additional incentives for projects that are undertaken voluntarily for the purpose of improving aquatic habitat conditions (e.g., removal of barriers to fish migration) or to reduce sediment discharges to waterbodies. Projects that Regional Water Board staff determine are beneficial to water quality will qualify for reduced permit fees as provided by Category D – Ecological Restoration and Enhancement Projects, from the State Water Board's fee schedule.

However, the RRGO will also be available to enroll projects regardless of their primary purpose (i.e., new development projects or projects required through enforcement actions) provided they are implemented according to all necessary BMPs to protect waters of the state. These non-restoration or sediment remediation associated projects would not qualify for the EREP fee category and will be subject to the applicable fee as determined by the fee schedule for the project type.

## **Eligible Project Categories**

The RRGO includes three project categories that are designed to qualify for the reduced EREP fee category in the State Water Board's [Dredge and Fill Fee Calculator](https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm), ([https://www.waterboards.ca.gov/resources/fees/water\\_quality/docs/dredgefillcalculator.xlsm](https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm)) and as described below:

1. Voluntary road and watercourse crossing projects that provide a benefit to water quality (see examples above).
2. Grant funded projects that are designed to provide water quality or aquatic habitat restoration benefits, such as those funded through the 319h Nonpoint Source Control Program, CDFW Fisheries Restoration Grant Program, NOAA Fisheries Restoration Center, etc.
3. Projects on roads and trails on California State Parks lands that implement applicable BMPs from the guidance documents.

The RRG0 includes two project categories that are subject to the non-reduced fee categories described in the State Water Board's [Dredge and Fill Fee Calculator](https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm) ([https://www.waterboards.ca.gov/resources/fees/water\\_quality/docs/dredgefillcalculator.xlsm](https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm))(contact the RWB for guidance on which fees apply to your project):

4. New road and/or watercourse crossing construction projects.
5. Projects conducted in response to regulatory enforcement actions by the Water Board, California Department of Fish and Wildlife, or other regulatory agencies.

### **Compensatory Mitigation/No Net Loss**

Some projects authorized through the RRG0 will require compensatory mitigation to offset losses of stream or wetland habitat features and to conform with California's Wetlands Conservation Policy, also referred to as the "No Net Loss Policy" (Executive Order W-59-93). Other road and watercourse crossing projects, like those that provide environmental benefits for water quality or eliminate or remediate pollution discharges, may be considered "self-mitigating", and therefore do not require compensatory mitigation. Applicants will need to contact the Regional Water Board staff to discuss their project type, purpose, and overall effect on the environment to determine whether compensatory mitigation is required. Projects that propose new permanent impacts to wetlands, such as new watercourse crossings where wetland features are present and may be impacted, must include an alternatives analysis, which demonstrates that impacts from the proposed project are the least environmentally damaging, feasible option to meet the landowner's objectives. If requested by the Regional Water Board staff, the analysis must include compensatory mitigation.

### **Post-Project Monitoring**

The RRG0 will require project proponents to conduct monitoring and reporting including post-completion on-site evaluations to indicate whether BMPs and compensatory mitigation were implemented as designed (while still providing a mechanism to allow flexibility to make changes during implementation as conditions warrant) and are functioning properly/self-sustaining, or whether additional work is needed. Default duration of the monitoring requirement will likely be two years for watercourse crossing

and road projects, and up to five years for compensatory mitigation. These timeframes could be modified on a project-specific basis with Regional Water Board staff approval.

Monitoring Reports will be submitted by the project proponent on an annual basis to the Regional Water Board, documenting status of achievement of performance standards and project goals. Monitoring Reports will include:

- A brief summary of findings;
- Identification and discussion of attainment of, or any problems achieving performance standards;
- Proposed corrective measures to address problems described above.

**DISCUSSION:** The Regional Water Board, acting as the lead agency under the California Environmental Quality Act (CEQA), has prepared an Initial Study and Mitigated Negative Declaration as part of the development of this Order. On December 1, 2023, submitted the Initial Study and Mitigated Negative Declaration and supporting documentation, including the draft Order and Attachments to the State Clearinghouse and assigned the State Clearinghouse Number 2023120022.

Also on December 1, 2023, Regional Water Board staff sent out a Notice of Public Hearing and Opportunity to Comment to various entities and interested persons, landowners, watershed groups, county governments, environmental groups, tribal governments, disadvantaged communities and posted the package on the Board's web page. The public comment period closed on January 14, 2024. The purpose of the public notice was to alert interested persons about the RRG0 and solicit input on from stakeholders as part of a public participation process. During the public comment period, Regional Water Board staff received five comment letters, from the following:

- Felice Pace
- Alan Levine
- California Department of Fish and Wildlife (CDF&W)
- Dean Prat
- Mike Miles

Regional Water Board staff's response to comments is included in the agenda package. In response to the draft Order that was released for public review on December 1, 2023, substantive changes have been made to the draft Order and Initial Study.

The CDF&W made several comments recommending that the Order require project applicants to perform biological surveys to address protection of birds and terrestrial plants. Such surveys are outside of the authority of the Regional Water Board. However, Regional Water Board staff met with CDF&W staff on February 9, 2024, to discuss how to include provisions in the proposed Order that would meet the intent of their recommendations while not exceeding our authority. As such, revisions have been made to the Order and Attachment A, General Mitigation Measures, and Attachment B, Notice of Intent.

**RECOMMENDATION:** Adopt Proposed Order No. R1-2024-0002 and associated mitigated negative declaration.

**SUPPORTING DOCUMENTS:**

1. Proposed Order No. R1-2024-0002 and Attachments:
  - A. General Mitigation Measures
  - B. Notice of Intent
  - C. Notice of Termination Form
  - D. Monitoring Inspection Form
  - E. Compensatory Mitigation Guidance
  - F. Supplemental Order Findings
2. Notice of Public Hearing, Draft Order No. R1-2024-0002
3. Regional Water Board staff response to comments on Draft Order No. R1-2024-0002
4. Public Comments on Draft Order No. R1-2024-0002
5. Initial Study and Mitigated Negative Declaration (SCH No. 2023120022)