State Water Resources Control Board

WATER QUALITY ORDER NO. WQ 2023-0014-DWQ
CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

February 28, 2023: Date Signed
February 28, 2028: Expiration Date

Project: Digital 299 Broadband Project (Project)
Project Type: Underground Utility

Program Type: Fill/Excavation
Identifiers:
- **WDID No:** **SB21040IN**
- **USACE No:** **SPN-2019-00233**
- **Place ID:** **878125**
- **Reg. Meas. ID:** **450465**

Applicant: Vero Fiber Networks
Applicant Contact: Josh Nelson
Director of Operations
Vero Fiber Networks
P.O. Box 1110
Boulder CO, 80306
Phone: (303) 350-4060 ext. 117
Email: jnelson@veronetworks.com

Applicant's Agent: Lauren Bingham
Johnson Marigot Consulting, LLC
433 Visitacion Ave
Brisbane CA, 94005
Phone: (415) 500-1231
Email: Lauren.Bingham@johnson-marigot.com

Water Board Staff: Stephen Barlow
Environmental Scientist
1001 I Street
Sacramento CA, 95814
Phone: (916) 327-8546
Email: Stephen.Barlow@waterboards.ca.gov

Water Board Contact Person: If you have any questions, please call State Water Resources Control Board (Water Board) Staff listed above, call (916) 341-5900, or email SB-401Application@waterboards.ca.gov.

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I. Summary

This Clean Water Act (CWA) section 401 Water Quality Certification and Order (Order) is issued at the request of Vero Fiber Networks (hereinafter Permittee) for the Project. This Order is for the purpose described in application materials submitted by the Permittee. The application was received and deemed complete on January 3, 2023.

The Permittee submitted a certification request as defined by 40 CFR section 121.5 concurrently to the Water Board and the U.S. Army Corps of Engineers (Corps) on January 3, 2023. In response to the certification request, the Corps provided a reasonable period of time as defined by 40 CFR 121.6 for the Water Board to act on the request by March 3, 2023.

II. Findings

A. 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 Permittee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.

B. 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.

C. In response to a suspected violation of any condition of this Order, the Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the Water Boards deem appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

D. This Order and all 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.

E. This Order does not provide coverage under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002) (Construction General Permit).

F. This Order does not authorize any act which results in the “take” of a threatened, endangered or candidate species, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Wildlife Code, sections 2050-2097) or the federal Endangered Species Act (16 U.S.C. sections 1531-1544). If a “take” will result from any act authorized under this Order held by the Permittee, the Permittee 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 Permittee is responsible for meeting all requirements of

the applicable endangered species act for the Project authorized under this Order.

G. This Order includes monitoring and reporting requirements pursuant to Water Code sections 13385 and 13267. The burden of preparing these reports, including costs, is reasonable to the need and benefits of obtaining the reports. The reports confirm that the best management practices required under this Order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

III. Project Purpose

The purpose of the Project is to install fiber optic lines to provide broadband services to residents within portions of Humboldt, Trinity, and Shasta Counties between Cottonwood and Eureka, known to have no, or poor, broadband infrastructure.

IV. Project Location

The Project occurs in Humboldt, Trinity, and Shasta Counties. Project alignment generally follows State Route 299 and runs from Samoa/Eureka in the west to Cottonwood in the east. Coordinates provided below are for the approximate center point, western end, and eastern end of the Project alignment.

Approximate Center Point: Latitude: 40.76079° and Longitude: -123.096883°

Eastern End: Latitude: 40.39660° and Longitude: -122.26368°

Western End: Latitude: 41.05854° and Longitude: -124.14723°

Maps showing the Project alignment are found in Attachment A of this Order.

V. Project Impact and Receiving Waters Information

The Project is located within the jurisdiction of the North Coast Regional Water Quality Control Board and the Central Valley Regional Water Quality Control Board (collectively Regional Water Boards). Receiving surface waters and groundwater potentially impacted by this Project are protected in accordance with the applicable water quality control plans (Basin Plans). The plans for each 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/). 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.

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 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. Tables 2a and 2b of Attachment B provide impact location and quantity.

VI. Project Description

Internet connectivity is provided via middle-mile facilities that provide primary infrastructure to deliver broadband through a region, and last-mile facilities that provide connections to homes and businesses. The Project is comprised of middle-mile fiber optic facilities with the ability to connect to various Community Anchor Institutions and local last-mile providers along the route.

VII. Description of Direct Impacts to Waters of the State

The Project's direct impacts to waters of the state will result from vegetation disturbance and removal to allow construction vehicles to access and travel along the Project alignment and trenching and plowing to install the underground conduit. All Project impacts to waters of the state are temporary and impacted areas will be restored to pre-project conditions after construction. The Project will not result in any permanent impacts to waters of the state.

Total Project fill/excavation quantities for all impacts are summarized in Table 1.

Table 1: Total Project Fill/Excavation Quantity for Temporary Impacts[1]

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Stream Channel	0.77	828	11,216
Riparian Zone	4.37	3,735	5,501

VIII. Description of Indirect Impacts to Waters of the State

The Water Board recognizes the potential for indirect impacts to waters of the state associated with the Project. Potential indirect impacts may include destabilization of temporarily impacted stream channels leading to future channel erosion and downstream sedimentation; inadvertent creation of preferential flow paths along installed conduit and the subsequent diversion of stream flow or shallow groundwater flow away from channels and riparian areas; and/or introduction of invasive plant species into the Project area.

[1]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.

IX. Avoidance and Mitigation

The Permittee is avoiding impacts to waters of the state, including wetlands, by installing cable on existing bridges or by using horizontal directional drilling (HDD) methods to bore under these features. The Permittee will minimize and mitigate direct and indirect impacts to waters of the state by adhering to the best management practices (BMPs) and avoidance and minimization measures (AMMs) listed in the application documents and the Project's Mitigated Negative Declaration (MND). These BMPs and AMMs include, but are not limited to, trenching along existing roadways; utilizing existing roads as much as possible; clearly marking the limits of disturbance and features that shall be avoided; limiting direct Project disturbance (e.g., vegetation clearing, vegetation trimming, equipment operation) to a 25-foot wide corridor along the Project alignment; limiting major ground disturbance (e.g., grubbing, ripping, plowing, and trenching) to a 6-foot wide corridor where conduit and cable will be installed; trenching/plowing through ephemeral and intermittent stream channels only when such channels are dry; and returning temporarily impacted areas to pre-construction conditions after construction.

The Project qualified as a tier 3 project and the Project is the least environmentally damaging practicable alternative (State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, section IV.A.1.h).

X. Compensatory Mitigation

The Project will not result in any permanent impacts to waters of the state, so no compensatory mitigation is required for permanent impacts. Mitigation for temporary impacts is required as set forth in section XI.H.

XI. Conditions

Justifications required by Title 40, Code of Federal Regulations (CFR) Part 121.7(d)(1) are provided below each condition, or set of conditions, in italic text.

The Water Board has independently reviewed the record of the Project to analyze impacts to water quality and designated beneficial uses within applicable watersheds. This Order provides reasonable assurance that the authorized Project will comply with state and federally approved water quality requirements, provided that the following conditions are adhered to:

A. Impacts to Waters of the State

Impacts to waters of the state shall not exceed quantities shown in Table 1.

This condition protects water quality by ensuring that the impacts to waters are not greater than what is proposed in the application. Larger impacts lead to a greater potential for adverse impacts on water quality. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

B. 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 Attachment C, including specifications for photo and map documentation during the Project. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment C, which must be signed by the Permittee or an authorized representative.

1. Project Reporting

a. **Quarterly Reporting:** The Permittee must submit a Quarterly Report to the Water Board. The Quarterly Report is due on the first of the month beginning after the first quarter of active construction. Quarterly reporting shall continue until the Water Board issues a Notice of Project Complete Letter to the Permittee.

b. **Annual Reporting:** The Permittee shall submit an Annual Report each year. Annual reporting shall continue until the Water Board issues a Notice of Project Complete Letter to the Permittee.

If the Project is not implemented as approved in this Order, then adverse impacts on water quality and beneficial uses could occur. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

2. Project Status Notifications

a. **Commencement of Construction:** The Permittee shall submit a Commencement of Construction Report at least seven (7) days prior to start of initial ground disturbance activities and, if applicable, corresponding Waste Discharge Identification Number (WDID) issued under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ or 2022-0057-DWQ; NPDES No. CAS000002).

b. **Request for Notice of Project Complete Letter:** The Permittee shall submit a Request for Notice of Project Complete Letter when construction and/or any post-construction monitoring is complete, and no further Project activities will occur. This request shall be submitted to Water Board staff within thirty (30) days following completion of all Project activities. Upon approval of the request, the Water Board staff shall issue a Notice of Project Complete Letter to the Permittee which will end the post discharge monitoring period and associated annual fees. Completion of post-construction monitoring shall be determined by Water Board staff and shall be contingent on successful attainment of restoration and mitigation performance criteria.

If the Project is not implemented as approved in this Order, then adverse impacts on water quality and beneficial uses could occur. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

3. **Conditional Notifications and Reports:** The following notifications and reports are required as appropriate.

   a. **Accidental Discharges of Hazardous Materials[2]:** Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Water Code, Section 13271):

      i. As soon as (A) Permittee 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:

         a. First call – 911 (to notify local response agency)

         b. Then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911

         c. Lastly, follow the required OES procedures as set forth in the Office of Emergency Services' Accidental Discharge Notification Web Page (https://www.caloes.ca.gov/office-of-the-director/operations/response-operations/fire-rescue/hazardous-materials/spill-release-reporting/)

      ii. Following notification to OES, the Permittee shall notify Water Board, as soon as practicable (ideally within 24 hours). Notification may be delivered via written notice, email, or other verifiable means.

      iii. Within five (5) working days of notification to the Water Board, the Permittee must submit an Accidental Discharge of Hazardous Material Report.

[2] "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Safety Code, Section 25501.)

b. Violation of Compliance with Water Quality Standards

i. The Permittee shall notify the Water Board of any event causing a violation of compliance with water quality standards. Notification may be delivered via written notice, email, or other verifiable means.

ii. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.

These conditions protect water quality by alerting the Water Boards to events that cause violations of water quality standards. Being aware of such events allows the water board to assess the cause of the issue and require remediation if necessary. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

c. In-Water Work and Diversions

i. No work in standing or flowing water or water diversions have been proposed by the Permittee, and no such work or diversions are authorized by this Order.

d. Modifications to Project

Modifications may require issuance of a new or amended Order for the Project. The Permittee shall give advance notice to Water Board staff if Project implementation as described in the application materials is altered in any way or by the imposition of subsequent permit conditions by any local, state, or federal regulatory authority by submitting a Modifications to Project Report. The Permittee shall inform Water Board staff of any Project modifications that will interfere with the Permittee's compliance with this Order.

If the Project is not implemented as approved in this Order, then adverse impacts on water quality and beneficial uses could occur. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

e. 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 Water Board in accordance with the following terms:

i. The Permittee 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 Permittee 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 permittee.

ii. Until such time as this Order has been modified to name the purchaser as the permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order.

This condition protects water quality by ensuring that the Permittee and any future legally responsible party has implemented the Project as proposed and approved. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

f. Transfer of Long-Term BMP Maintenance

If maintenance responsibility for post-construction BMPs is legally transferred, the Permittee must submit to the 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 Permittee must provide such notification to the Water Board with a Transfer of Long-Term BMP Maintenance Report at least ten (10) days prior to the transfer of BMP maintenance responsibility.

This condition protects water quality by ensuring that the Permittee and any future legally responsible party has implemented the Project as proposed and approved, that temporary impact sites have been restored, and the Project area is stable. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

C. Water Quality Monitoring

1. General

If surface water is present, continuous visual monitoring shall be conducted during active construction to detect accidental discharge of construction related pollutants (e.g., oil and grease, turbidity, or uncured concrete).

This condition protects water quality by requiring Permittee to maintain the integrity of the waters during work related activities. Water quality objectives are important for maintaining beneficial uses and water quality parameters such as sediment runoff and erosion. (Dredge or Fill Procedures, Section IV.B.1.)

2. Horizontal Directional Drilling (HDD):

During HDD activities, and until the HDD sites are stabilized and the spoils have been removed, the Permittee shall adhere to the “Monitoring Procedures” section within the Digital 299 Fiber Project BH2 Horizontal Directional Drill Contingency Plan dated November 2021 or subsequent Water Board approved plan revision. Documentation that these monitoring procedures were followed and that no inadvertent releases occurred because of HDD activities shall be submitted to the Water Board as part of the Project’s quarterly reports.

If any inadvertent releases associated with HDD activities are discovered, the Permittee shall adhere to the reporting and notification requirements outlined in XI.B.3 of this Order.

This condition protects water quality by alerting the Water Boards to events that cause violations of water quality standards. Being aware of such events allows the water board to assess the cause of the issue and require remediation if necessary. The notification also ensures that corrective actions required to minimize the impact or clean up such discharges can be taken as soon as possible. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

3. Accidental Discharges/Noncompliance

Upon occurrence of an accidental discharge, the Permittee shall determine whether the discharge includes hazardous materials or will cause or contribute to an exceedance of water quality objectives, and if so, notify the Water Board in accordance with XI.B.3. Water Board staff may require additional water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

This condition ensures that corrective actions required to minimize the impact or clean up such discharges can be taken as soon as possible. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

4. Post-Construction

Visually inspect the Project site during restoration to ensure excessive erosion, stream instability (e.g., headcuts, knickpoints, channel incision, and bank erosion), or other water quality pollution is not occurring in or downstream of the Project site. If water quality pollution is occurring, or if stream instability is identified, 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.

Temporarily impacted areas that are not restored could become permanently impacted and contribute to long-term degradation of water quality. This condition protects water quality by requiring temporarily impacted areas to be restored. (Dredge or Fill Procedures, Sections IV.A.2.d, IV.B.1.)

D. General Conditions

1. This action 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 and 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.

E. General Compliance

1. 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 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.

   This condition protects water quality by requiring Permittee to maintain the integrity of the waters during work related activities. Water quality standards are important for maintaining beneficial uses and water quality parameters such as sediment runoff and erosion. (Dredge or Fill Procedures, Section IV.B.1.)
2. The Project must conform to the engineering plans, specifications, and technical reports submitted with the application materials. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

   This condition protects water quality by ensuring that the Project is implemented as proposed and approved. (Wat. Code, § 13264.) Deviations from the approved plans and practices could result in adverse impacts to water quality.
3. The Permittee shall adhere to all requirements in the mitigation monitoring and reporting program (MMRP) found in Section 8 of the final application for the Project dated January 3, 2023, and any additional measures as outlined in Attachment D, CEQA Findings of Fact which is incorporated herein by reference.

   This condition protects water quality by ensuring that the Project avoids impacts that would be significant if not mitigated. (Wat. Code, § 13264.) Deviations from the approved MMRP and avoidance measures in the initial

study/mitigated negative declaration (IS/MND) could result in adverse impacts to water quality.

F. Administrative

1. Signatory requirements for all document submittals pertaining to this Order are presented in Attachment E.

   This condition is authorized by Water Code section 13267, which requires any person discharging waste that could affects the quality of waters to provide 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 C.F.R. section 122.22.

2. **Site Access:** The Permittee shall grant Water Board staff, North Coast Regional Water Board staff, Central Valley Regional 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 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 assuring Order compliance.

   These conditions protect water quality by allowing the Water Boards, or a representative, to investigate site conditions to ensure that the Project is compliant with this Order. These conditions are 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.

3. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on this Project. Copies of this Order shall remain at the Project site for the duration of this Order. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.

   This condition protects water quality by requiring that all construction personnel are familiar with the contents of this Order and that the Order must be kept at Project sites for easy access and reference. Being familiar with the

Order and having it on site will allow the personnel to complete work in accordance with the conditions of the Order. (Wat. Code, § 13263.)

4. **Lake and Streambed Alteration Agreement:** If issued, the Permittee shall submit a signed copy of the California Department of Fish and Wildlife's Lake and Streambed Alteration Agreement to the Water Board prior to any discharge to waters of the state.

   This condition protects water quality by ensuring that this Order and its conditions remain in place with other state permits that may have overlapping jurisdictions. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

G. Construction Conditions

1. All materials and supplies necessary for implementing construction conditions must be on-site and ready for use at the start of the construction activity and must remain in supply and ready for implementation throughout the construction process. All non-structural BMP materials (e.g., training documents and compliance tracking procedures) must be ready for use at the start of construction.

   This condition and other conditions related to BMPs are consistent with the Water Board's authority to establish, "[w]ater quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area" pursuant to Water Code section 13241(c). The activities authorized under this Order have the potential to result in a discharge that exceeds water quality objectives. As required by Water Code section 13369, all Water Quality Control Plans incentivize the use of BMPs to prevent prohibited discharges into waters of the state.

2. Construction material, debris, rubbish, spoils, soil, silt, other organic or earthen material, or any other substances which could be detrimental to water quality or hazardous to aquatic life that is discharged because of project related activities shall be prevented from entering waters of the state. Spoils from excavations shall not be stored in or directly adjacent to waters of the state.

   This condition prohibiting discharge of materials detrimental to water quality or hazardous to aquatic life is also consistent with the Dredge or Fill Procedures, Appendix A, Subpart H, which requires actions to minimize and avoid adverse effects, including actions concerning the location, the material, and controlling the material after the discharge (§ 230.70 et seq.).

3. Environmentally sensitive areas and environmentally restricted areas, including any avoided waters of the state, must be clearly marked in the field prior to the start of construction. Such markings must be properly maintained

until construction and initial restoration activities have been completed. Equipment, materials, or any other substances or activities that may impact waters of the state are prohibited outside of the limits of Project disturbance.

This condition is necessary to assure that Project discharge will comply with state prohibitions that protect beneficial uses and water quality objectives. A delineation of impact sites is necessary to assure that discharge from the Project will comply with water quality objectives established for surface waters (California Code of Regulations, title 23, section 3856(h); Dredge or Fill Procedures section IV.A.1(c).

4. The number of access routes, number and size of staging areas, and the total area of the activity must be limited to the minimum necessary to achieve the Project goal. Access routes, staging areas, and work area boundaries must be clearly demarcated.

This condition is required to assure that the discharges do not exceed water quality objectives established in Basin Plans, including water quality objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity (Water Quality Control Plan for the North Coast Region, section 3.3.11).

5. Temporary materials placed in any water of the state must be removed as soon as construction is completed at that location, and all temporary routes of travel must be re-contoured and restored according to approved re-vegetation and restoration plans.

This condition is required to assure that the discharges from Project activities do not exceed water quality objectives established in Basin Plans, including water quality objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity (Water Quality Control Plan for the North Coast Region, section 3.3.11).

6. Unless authorized for restoration, excavated material not returned to conduit trench must be properly disposed of in an upland area. The disposal site must be located at a sufficient distance away from waters of the state such that the material does not erode or move in any way into any water of the state.

This condition is required to assure that the discharges from Project activities do not exceed water quality objectives established in Basin Plans, including water quality objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity (Water Quality Control Plan for the North Coast Region, section 3.3.11).

7. **Topsoil:** When excavating trenches, the top six (6) to twelve (12) inches of topsoil shall be removed and stockpiled separately from subsoil during

construction. Following conduit installation, the subsoil shall be replaced first, followed by topsoil.

The top six (6) to twelve (12) inches of topsoil tend to be richer in organic matter than other soil horizons below this depth. Therefore, it is essential to stockpile the topsoil layer separately from the rest of the soil to ensure survivorship of riparian vegetation populations upon completion of the Project in accordance with applicable Basin Plans. (Water Quality Control Plan for the North Coast, Appendix D, page 4-104, Urban and Suburban Runoff Management Measures)

8. **Dust Abatement:** Dust abatement activities shall be conducted so that sediment or dust abatement chemicals are not discharged into waters of the state. Dust abatement products or additives that are known to be detrimental to water quality or wildlife shall not be used, unless specific management needs are documented, and product-specific application plans are approved by Water Board staff prior to implementation.

   This condition prohibiting discharge of materials detrimental to water quality or hazardous to aquatic life is consistent with the Dredge or Fill Procedures, Appendix A, Subpart H, which requires actions to minimize and avoid adverse effects, including actions concerning the location, the material, and controlling the material after the discharge (40 CFR §§ 230.70-230.77).

9. **Use of Mechanized Equipment:** Activities permitted under this Order shall be conducted in a manner that minimizes ground disturbance, soil compaction, rutting and other impacts associated with operation of heavy equipment on native soils. Equipment shall be operated and maintained in a manner that reduces the risk of spills or the accidental exposure of fuels or hazardous materials to waters of the state. The Permittee shall adhere to BMPs and AMMs related to equipment cleaning, fueling, operation, and storage that were submitted as part of the application for the Project.

   This condition and other conditions related to BMPs are consistent with the Water Board's authority to establish, "[w]ater quality conditions that could reasonably be achieved through the coordinated control of all factors which affect water quality in the area" pursuant to Water Code section 13241(c). The activities authorized under this Order have the potential to result in a discharge that exceeds water quality objectives. As required by Water Code section 13369, all Water Quality Control Plans incentivize the use of BMPs to prevent prohibited discharges into waters of the state.

10. Culvert construction or maintenance

a. No culvert construction or maintenance was proposed in the Project application. Therefore, installation, replacement, or modification of permanent or temporary culverts are not authorized under this Order.

11. Toxic and Hazardous Materials

a. Activities permitted under this Order shall not discharge toxic substances in concentrations that produce detrimental physiological responses to human, plant, animal, or aquatic life.

b. Discharge of unset cement, concrete, grout, damaged concrete spoils, or water that has contacted uncured concrete or cement, or related washout to surface waters or groundwater is prohibited. If concrete washout is necessary, washout containment shall be used to prevent any discharge or runoff to waters of the state. Wastewater may only be disposed by delivery to a sanitary wastewater collection system/facility (with authorization from the facility's owner or operator) or a properly licensed disposal or reuse facility.

c. Stream flow must not be allowed to come into contact with uncured slurry used for backfill of rock sawed trenches.

d. Appropriate BMPs must be implemented to prevent and control potential leaks/spills/drainage of potentially hazardous materials such as: non-petroleum hydraulic fluid; epoxies; paints and other protective coating materials; cement concrete or asphalt concrete; and washings and cuttings thereof.

e. Activities permitted under this Order shall not discharge waste classified as "hazardous" as defined in California Code of Regulations title 22, section 66261 and Water Code section 13173. Appropriate BMPs for hazardous substances shall be specified by the Permittee in the Spill Prevention and Pollution Plan prepared in accordance with application materials BMP BIO-3 and ISMND Resource Protection Measure HZ-1. The Spill Prevention and Pollution Plan must be submitted to and approved by Water Board staff prior to Project discharges. The Spill Prevention and Pollution Plan shall include the contents proposed in BMP BIO-3 and shall also include the BMPs below:

i. All personnel handling fuels and other hazardous materials shall be properly trained.

ii. Adequate spill prevention and cleanup equipment and materials shall be present on site at all times during Project implementation.

iii. All mechanized equipment shall be maintained in good operating order and inspected on a regular basis.

iv. All on site fuel trucks or fuel containers shall be stored in an area where risk of contamination of water bodies by leaks or spills is minimized.

v. All equipment shall be fueled, maintained, and/or parked overnight in an upland area at least 100-feet from any delineated waters of the state.

vi. Hazardous materials, including chemicals, fuels, and lubricating oils, shall not be stored within 100-feet of any delineated waters of the state, and 300-feet from any perennial stream, lake, or wetland. Hazardous materials shall be stored in appropriate containers with appropriate secondary containment.

vii. Pumps or other stationary equipment operating within 100-feet of any waters of the state shall utilize appropriate secondary containment systems to prevent potential discharges to waters of the state.

viii. Any spills or leaks of hazardous materials, chemicals, fuels, lubricants, or any other potential pollutants shall be promptly and completely treated using appropriate materials and equipment.

ix. Spill containment supplies shall be on site in all work areas in sufficient quantities to allow immediate remediation of fuel, oil, hydraulic fluid or similar leaks and spills.

x. A staging area for equipment and vehicle fueling and storage shall be designated at least 100-feet away from waters of the state, in a location where fluids or accidental discharges cannot flow into waters of the state.

a. Projects that create new or affect existing wetland areas shall be designed to include features or management measures to reduce the production of methylmercury in the wetland, including minimizing the wetting and drying of soils by keeping wetlands flooded and sediment control measures to reduce the transport of total mercury or methylmercury out of the wetland.

Hazardous materials and other waste materials may leak, leach, or fall from equipment or work areas and may be detrimental to water quality. These conditions protect water quality by ensuring that hazardous materials are not discharged to waters of the state when equipment is being used or stored. (Dredge or Fill Procedures, Section IV.B.1.)

12. Invasive Species and Soil Borne Pathogens

a. The Permittee is responsible for ensuring that all Project personnel follow proper weed control practices, and that appropriate weed prevention measures proposed in AMM BIO-9 of the application materials are included in Project plans.

Invasive species can be detrimental to water quality by outcompeting native species, altering soil/water chemistry, causing channel downcutting, lowering groundwater levels, altering allochthonous inputs, altering shading, reducing habitat for native fauna, etc. This condition protects water quality by requiring that the Project does not introduce invasive species into individual Project areas. (Dredge or Fill Procedures, Section IV.B.1.)

b. Any straw, hay or other unprocessed plant material used for any purpose must be certified or documented as being weed free.

Invasive species can be detrimental to water quality by outcompeting native species, altering soil/water chemistry, causing channel downcutting, lowering groundwater levels, altering allochthonous inputs, altering shading, reducing habitat for native fauna, etc. This condition protects water quality by requiring that the Project does not introduce invasive species into individual Project areas. (Dredge or Fill Procedures, Section IV.B.1.)

c. Soil borne pathogens are any nematodes, or any bacterial, protozoan, viral or fungal pathogens that can cause disease or death to native plants, agricultural crops or ornamental plants (e.g., *Phytophthora ramorum*, the cause of sudden oak syndrome, and *Phytophthora lateralis*, the cause of Port Orford cedar root disease). Prior to entering or leaving the Project area from an area of known soil borne pathogen infestation, equipment shall be thoroughly cleaned using methods appropriate for the known pathogen. The fungus that causes Valley Fever, *Coccidioides* spp., is not considered a soil borne pathogen in this certification.

Invasive species can be detrimental to water quality by outcompeting native species, altering soil/water chemistry, causing channel downcutting, lowering groundwater levels, altering allochthonous inputs, altering shading, reducing habitat for native fauna, etc. This condition protects water quality by requiring that the Project does not introduce invasive species into individual Project areas. Conditions related to invasive species and soil borne pathogens are required pursuant to the California Code of Regulations, section 3861 (d) (2) that prohibits discharges that violate any water quality objectives adopted or approved under Section 13170 or 13245 of the Water Code, including the Water Quality Control Plans in California.

13. Work in Delineated Waters of the State

a. Work in waters of the state must not cause or contribute to an exceedance of water quality objectives in the receiving waters. Work in delineated waters commences at the onset of the regulated activity and continues until the activity is finished and all restoration of the affected work area is complete. Work in waters of the state means any ground disturbing

activities in any delineated waters of the state that are permitted under this Order, regardless of the presence or absence of flowing or standing water.

This condition protects water quality by requiring the Permittee to maintain the integrity of the waters during work related activities. Water quality objectives are important for maintaining beneficial uses and water quality parameters such as sediment runoff and erosion. (Dredge or Fill Procedures, Section IV.B.1.)

b. The Permittee shall not install or create any temporary diversions or impoundments of water, cofferdams, or similar structures.

This condition protects water quality by requiring Permittee to maintain streamflow upstream and downstream of the Project. Stream flow is important for maintaining beneficial uses and water quality parameters such as dissolved oxygen and temperature. (Dredge or Fill Procedures, Section IV.B.1.)

c. Equipment must not be operated in standing or flowing waters of the state.

This condition protects water quality by requiring the Permittee to minimize impacts to beneficial uses of waters of the state. (Dredge or Fill Procedures, Section IV.B.1.)

d. If groundwater dewatering is required for the project, the Permittee shall consult with the Water Board to determine if additional permits are required. If additional Water Board permits relating to dewatering are required, the designated Water Board staff contact must be copied on pertinent correspondence pertaining to those other required permits.

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

14. **Stormwater:** If the Project is required to obtain coverage under the NPDES General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ or 2022-0057-DWQ; NPDES No. CAS000002) (Construction General Permit), the Permittee shall comply with the requirements in the Construction General Permit. Generally, coverage under the Construction General Permit is required for construction activity resulting in a land disturbance of one acre or more, or less than one acre but is part of a larger common plan of development or sale that results in a land disturbance of one acre or more. Covered activities are described with additional detail in the Construction General Permit. Compliance with the Construction General Permit constitutes compliance with Erosion and Sediment Control Conditions 18.a.i-ii and Stormwater Management Conditions 18.b.i-ii, below.

If the Project is not required to obtain coverage under the Construction General Permit, Project plans shall include the appropriate erosion and sediment control and stormwater management conditions described below.

a. Erosion and Sediment Control

i. No later than 24 hours prior to the start of a likely rain event, the Permittee shall ensure that disturbed areas that drain to waters of the state are protected with correctly installed erosion control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, or straw) or revegetated with propagules (e.g., seeds, cuttings, or divisions) of locally collected native plants. The likely rain event is defined as any weather pattern that is forecast to have a 50 percent or greater probability of producing precipitation in the Project area. The Permittee shall obtain daily a printed copy of the precipitation forecast information (and keep for record) from the National Weather Service Forecast Office.

Disturbed areas can discharge excess sediment to waters, which will degrade water quality. Disturbed areas require stabilization before predicted rain events so that excessive erosion and sediment discharge does not occur. This condition protects water quality by ensuring that all disturbed areas are stabilized in advance of predicted rainfall events. (Dredge or Fill Procedures, Section IV.B.1.)

ii. The timing for installation of the post-construction stormwater BMP subdrains, soils, mulch, and plants shall be scheduled to ensure that the installed bioretention areas do not receive runoff from exposed or disturbed areas that have not been landscaped. The constructed post-project stormwater BMPs shall not receive site runoff until all Project landscaping is planted, and effective erosion control measures implemented to ensure that the stormwater features are protected from sediment accumulation.

If erosion control BMPs are not implemented, disturbed areas will likely discharge excess sediment to waters, which will degrade water quality. This condition protects water quality by requiring application of erosion and sediment control BMPs to reduce the potential for sediment discharge. (Dredge or Fill Procedures, Section IV.B.1.)

b. Stormwater Management

i. Disturbed areas must be temporarily stabilized to prevent erosion and accidental discharge into waters of the state no later than 24 hours prior to any likely precipitation event. A likely precipitation event is any weather pattern that is forecast to have a 50 percent probability of producing precipitation in the Project area, as predicted by the National Weather Service. If commencement of a precipitation event is predicted to begin less than 24 hours after the forecast is issued,

temporary stabilization of the disturbed in-water work areas must begin immediately.

Disturbed areas can discharge excess sediment to waters, which will degrade water quality. Disturbed areas require stabilization before predicted rain events so that excessive erosion and sediment discharge does not occur. This condition protects water quality by ensuring that all disturbed areas are stabilized in advance of predicted rainfall events. (Dredge or Fill Procedures, Section IV.B.1.)

ii. No individual construction activity that could discharge sediment or other pollutants may be initiated if that activity and its associated erosion control measures cannot be completed prior to the onset of precipitation. After any rain event, the Permittee shall inspect all sites currently under construction and all sites scheduled to begin construction within the next 72 hours for erosion and sedimentation problems and take corrective action as needed. Prior to start-up of any phase of the project that may result in sediment-laden runoff to the project site the Permittee shall consult weather forecasts from the National Weather Service, and construction plans made to meet this condition.

Disturbed areas can discharge excess sediment to waters, which will degrade water quality. Disturbed areas require stabilization before predicted rain events so that excessive erosion and sediment discharge does not occur. This condition protects water quality by ensuring that all disturbed areas are stabilized in advance of predicted rainfall events. (Dredge or Fill Procedures, Section IV.B.1.)

H. Mitigation for Temporary Impacts

1. The Permittee shall restore all areas of temporary impacts to waters of the state and all upland areas of temporary disturbance which could result in a discharge to waters of the state in accordance with the Restoration Plan: Digital 299 Broadband Project dated April 2022 (or subsequent Water Board approved revision), approved through the issuance of this Order and incorporated herein by reference.

Temporarily impacted areas that are not restored could become permanently impacted and contribute to long-term degradation of water quality. This condition protects water quality by requiring temporarily impacted areas to be restored. (Dredge or Fill Procedures, Sections IV.A.2.d, IV.B.1.)

2. Total required Project mitigation information for temporary impacts is summarized in Table 2. [Establishment (Est.), Re-establishment (Re-est.), Rehabilitation (Reh.), Enhancement (Enh.), Preservation (Pres.), Unknown].

Table 2: Required Project Mitigation Quantity for Temporary Impacts by Method Establishment (Est.), Re-establishment (Re-est.), Rehabilitation (Reh.), Enhancement (Enh.), Preservation (Pres.).

Aquatic Resource Type	Mitigation Type	Units	Est.	Re-est.	Reh.	Enh.	Pres.	Unknown
Riparian Zone	Permittee Responsible	Acres			4.37			
Riparian Zone	Permittee Responsible	Linear Feet			5,501			
Stream Channel	Permittee Responsible	Acres			0.77			
Stream Channel	Permittee Responsible	Linear Feet			11,216			

XII. Public Notice

The Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from December 13, 2022, to January 3, 2023. The Water Board did not receive any comments during the comment period.

XIII. California Environmental Quality Act (CEQA)

The CPUC, as lead agency, adopted an IS/MND (State Clearinghouse (SCH) No. 2022010017) for the Project and filed a Notice of Determination (NOD) at the SCH on December 16, 2022. Pursuant to CEQA, the Water Board has made Findings of Facts (Findings) which support the issuance of this Order and are included in Attachment D.

XIV. Petitions for Reconsideration

Any person aggrieved by this action may petition the 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.

XV. Fees Received

Application fees of $2,066.00 and $351.00 were received on August 5, 2021, and December 6, 2021, respectively. The fee amount was determined as required by California Code of Regulations, Title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as Category A - Fill & Excavation Discharges (Fee Code 84) with the dredge and fill fee calculator. An additional fee of $14,818.00 based on total Project impacts was received on April 18, 2022.

XVI. Water Quality Certification

I hereby issue the Order for the Digital 299 Broadband Project, SB21040IN, 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 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 (Water Code, section 13000 et seq.).

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.

Karen Mogus Digitally signed by Karen Mogus
Date: 2023.02.28 14:44:54 -08'00'
Water Boards

Date

Karen Mogus, Deputy Director
Division of Water Quality