



State Water Resources Control Board

October 12, 2021

Michael S. Jewell
U.S. Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, CA 95814-2922

RE: GENERAL ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTION FOR THE U.S. ARMY CORPS' REMAINING NATIONWIDE PERMITS (SWRCB ID SB21031GN)

Michael Jewell:

Enclosed please find a GENERAL ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ACTION, authorized by the State Water Resources Control Board. This General Order is issued to the U.S. Army Corps of Engineers for the remaining 41 Nationwide Permits (NWP) that are expected to be finalized and published in the Federal Register by the end of the calendar year. Attachments A through E of the Enclosure are also part of the General Order.

This General Order is issued in response to a certification request submitted by the U.S. Army Corps of Engineers (Corps) on October 13, 2020, for proposed discharges to waters of the state, to ensure that the water quality standards for all waters of the state impacted by the Project are met. The Corps extended the reasonable period of time to take certification action on these 41 NWP, and the extended reasonable period of time ends on October 12, 2021.

If you require further assistance, please contact Paul Hann by phone at (916) 341-5726 or by email at Paul.Hann@waterboards.ca.gov. You may also contact Beth Payne, Wetlands Permitting and Planning Unit Supervisor by phone at (916) 341-5579 or by email at Elizabeth.Payne@waterboards.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Karen Mogus".

Karen Mogus, Deputy Director
Division of Water Quality, State Water Resources Control Board

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

Enclosure (1): General Order for Clean Water Act Section 401 Water Quality Certification Action for the U.S. Army Corps' remaining Nationwide Permits

cc: [Via email only] (w/ enclosure):

Sahrye Cohen
Wetland Section Manager
U.S. Environmental Protection Agency, Region 9
Cohen.Sahrye@epa.gov

James Mazza
Acting Chief, Regulatory Branch
South Pacific Division, San Francisco District
U.S. Army Corps of Engineers
James.C.Mazza@usace.army.mil

David Castanon
Chief, Regulatory Branch
South Pacific Division, Los Angeles District
U.S. Army Corps of Engineers
David.J.Castanon@usace.army.mil

Paul Souza
Regional Director
U.S. Fish & Wildlife Service, Pacific Southwest Region
Paul_Souza@fws.gov

Joshua Grover
Branch Chief
California Dept. of Fish and Wildlife, Water Branch
Joshua.Grover@wildlife.ca.gov

Matthias St. John
Executive Officer
North Coast Regional Water Quality Control Board
Matt.St.John@waterboards.ca.gov

Michael Montgomery
Executive Officer
San Francisco Bay Regional Water Quality Control Board
Michael.Montgomery@waterboards.ca.gov

Matthew T. Keeling
Executive Officer
Central Coast Regional Water Quality Control Board
Matt.Keeling@waterboards.ca.gov

Renee Purdy
Executive Officer
Los Angeles Regional Water Quality Control Board
Renee.Purdy@waterboards.ca.gov

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board
Patrick.Pulupa@waterboards.ca.gov

Mike Plaziak
Acting Executive Officer
Lahontan Regional Water Quality Control Board
Mike.Plaziak@waterboards.ca.gov

Paula Rasmussen
Executive Officer
Colorado River Regional Water Quality Control Board
Paula.Rasmussen@waterboards.ca.gov

Hope Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board
Hope.Smythe@waterboards.ca.gov

David Gibson
Executive Officer
San Diego Regional Water Quality Control Board
David.Gibson@waterboards.ca.gov

Gil Falcone
Regional Program Manager
North Coast Regional Water Quality Control Board
Gil.Falcone@waterboards.ca.gov

Ryan Bey
Regional Program Manager
North Coast Regional Water Quality Control Board
Ryan.Bey@waterboards.ca.gov

Keith Lichten
Program Manager
San Francisco Bay Regional Water Quality Control Board
Keith.Lichten@waterboards.ca.gov

Diane Kukol
Program Manager
Central Coast Regional Water Quality Control Board
Diane.Kukol@waterboards.ca.gov

Celine Gallon
Program Manager
Los Angeles Regional Water Quality Control Board
Celine.Gallon@waterboards.ca.gov

Stephanie Tadlock
Water Quality Certifications Unit Supervisor
Central Valley Regional Water Quality Control Board, Sacramento
Stephanie.Tadlock@waterboards.ca.gov

Matt Scroggins
Program Manager
Central Valley Regional Water Quality Control Board, Fresno
Matt.Scroggins@waterboards.ca.gov

Lynn Coster
Program Manager
Central Valley Regional Water Quality Control Board, Redding
Lynn.Coster@waterboards.ca.gov

Jan Zimmerman
Program Manager
Lahontan Regional Water Quality Control Board, Victorville
Jan.Zimmerman@waterboards.ca.gov

Elizabeth vanDiepen
Program Manager
Lahontan Regional Water Quality Control Board, South Lake Tahoe
Elizabeth.vanDiepen@waterboards.ca.gov

Kai Dunn
Program Manager
Colorado River Regional Water Quality Control Board
Kai.Dunn@waterboards.ca.gov

Lauma Jurkevics-Willis
Program Manager
Santa Ana Regional Water Quality Control Board
Lauma.Willis@waterboards.ca.gov

Eric Becker
Program Manager
San Diego Regional Water Quality Control Board
Eric.Becker@waterboards.ca.gov

State Water Resources Control Board

**GENERAL ORDER FOR CLEAN WATER ACT
SECTION 401 WATER QUALITY CERTIFICATION ACTION
ORDER NO. WQ 2021-0048-DWQ**

Effective Date: Effective date of the remaining
Nationwide Permits

Reg. Meas. ID:	444647
SWRCB ID:	SB21031GN

Program Type: Fill/Excavation

Project: State Water Board Certification and Denial of the Corps'
Nationwide Permits (Project)

Applicant: Department of the Army, Corps of Engineers
Applicant Contact: Michael S. Jewell
Chief, Regulatory Division
U.S. Army Corps of Engineers, Sacramento District
1325 J Street
Sacramento, CA 95814-2922
Phone: (916) 557-6605
Email: Michael.S.Jewell@usace.army.mil

State Water Board

Contact: Beth Payne
Wetlands Permitting and Planning Unit Supervisor
1001 I Street, 15th floor
Sacramento, CA 95814
Phone: (916) 341-5579
Email: Elizabeth.Payne@waterboards.ca.gov

State Water Board Contact Person:

If you have any questions, please call State Water Resources Control Board (State Water Board) contact listed above or contact your local Regional Water Quality Control Board using the Clean Water Act Section 401 Program [Staff Directory](#) (https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staff_directory_20210616.pdf).

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- Attachment A Notice of Intent Form and Instructions**
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- Attachment D Signatory Requirements**
- Attachment E List of Certified Nationwide Permits**

I. Background and Summary

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the Nationwide Permits (NWP). On January 13, 2021, the Corps published in the Federal Register its final rule reissuing 12 NWP and issuing 4 new NWP, as well as the NWP general conditions and definitions. State Water Board Order No. [WQ] 2020-0039-EXEC applies only to those NWP that went into effect on March 15, 2021.

On June 11, 2021, the Corps submitted a draft final rule to the Office of Management and Budget for the remaining 41 NWP. In a letter to the Board dated August 18, 2021, the Corps extended the reasonable period of time to act on the remaining 41 NWP to October 12, 2021. This State Water Board Clean Water Act section 401 Water Quality Certification action and waste discharge requirements (General Order), which includes attachments A through E, applies to only the remaining 41 NWP as they are described in the Corps' letter dated August 18, 2021.

This General Order conditionally certifies 15 and denies 26 of the Corps NWP. Certification is granted to NWP 1, 3(a), 4, 5, 6, 9, 10, 11, 14, 20, 22, 28, 32, 36, and 54, subject to this General Order's terms and conditions. All other NWP are denied. See Attachment E List of Certified Nationwide Permits. The State Water Board's Certification of the 2017 Nationwide Permits remains in effect for these NWP until the effective date of the Corps' final Nationwide Permits, which is anticipated in 2022.

II. Findings

1. This Order is adopted pursuant section 401 of the Clean Water Act and the California Porter-Cologne Water Quality Control Act (Cal. Water Code §§ 13000, et seq.). Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264. Notwithstanding any determinations made by the U.S. Army Corps or other federal agency pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this Order because the General Order also serves as waste discharge requirements in accordance with State Water Board Water Quality General Order No. 2003-0017-DWQ. Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264.
2. Failure to comply with any condition in this General Order may constitute a violation of the Porter-Cologne Water Quality Control Act and the Clean Water Act. The discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.
3. In the event of any violation or threatened violation of the conditions of this General Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law.
4. In response to a suspected violation of any condition of this General Order, the Water Board may require a discharger with authorization under this General Order to furnish, under penalty of perjury, any technical or monitoring reports the Water

Board deems 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. The additional monitoring requirements ensure that the permitted dischargers and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.

5. This General Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any license or permit issued for the project.
6. This General Order does not provide coverage under the Construction General Permit. As applicable, dischargers shall maintain compliance with conditions described in, and required by, NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002). For ground disturbing activities that do not require enrollment in Order No. 2009-0009-DWQ, project plans included with the NOI shall include appropriate erosion and sediment control measures as described in section VI.B (Stormwater Condition 18) below.
7. This General Order does not authorize any act which results in the taking 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 & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544). If a "take" will result from any act authorized under this General Order, the discharger 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 discharger is responsible for meeting all requirements of the applicable endangered species act for the project authorized under this General Order.
8. This General Order does not authorize any activity adversely impacting a significant historical or archeological resource; directly or indirectly destroying a unique paleontological resource or site or unique geologic feature; disturbing any human remains; or eliminating important examples of the major periods of California history or prehistory, unless the activity is authorized by the appropriate historical resources agencies.
9. This General Order includes monitoring and reporting requirements pursuant to Water Code section 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The reports confirm that the best management practices required under this General Order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions, if any, that are necessary to minimize the impact or clean up such discharges can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

III. Summary of NWPs

The Corps issues NWPs to authorize certain activities that require Corps permits under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbor Act of 1899. The NWPs include general conditions that modify, suspend, or revoke NWPs for specific activities or within specific geographic regions. In addition, districts or divisions add other conditions, called regional conditions, to the general conditions. The Corps is proposing to issue 40 existing, and 1 new NWP, including modifications to the general conditions, and definitions.

IV. Project Location

An individual project authorized by the Water Board under this General Order may occur anywhere within California except as restricted herein. The nine California Regional Water Boards are the: North Coast Regional Water Board, San Francisco Regional Water Board, Central Coast Regional Water Board, Los Angeles Regional Water Board, Central Valley Regional Water Board, Lahontan Regional Water Board, Colorado River Regional Water Board, Santa Ana Regional Water Board and San Diego Regional Water Board (collectively Regional Water Boards). The jurisdictional boundaries of each board can be found on the [State Water Board's map website](https://www.waterboards.ca.gov/waterboards_map.html) (https://www.waterboards.ca.gov/waterboards_map.html).

V. Description of Direct Impacts to Waters of the State

Projects proposed under the Corps' Nationwide Permits cover a wide variety of activities. A complete list of activities, including Corps' supplemental decision documents, is available on the Federal Register for the Nationwide Permits (docket ID number COE-2020-0002).

Direct impacts to waters of the state may include temporary fill activities such as placement of temporary stream crossings, or permanent impacts such as placement of permanent structures in waterways. These activities may result in temporary impacts to water quality or may result in a permanent loss of waters. Impacts are generally of limited scope individually. To ensure that project impacts do not cumulatively cause adverse impacts to waters or interfere with compliance with water quality standards or objectives, this certification includes only a subset of those permits as listed in Attachment E.

VI. Conditions

This General Order provides reasonable assurance that projects authorized under this General Order will comply with state and federally approved water quality requirements, provided that the following conditions are adhered to.

A. General Conditions

1. Pursuant to California state regulations governing certifications, this General Order is subject to modification or revocation upon administrative or judicial review,

including review and amendment pursuant to Water Code section 13330, and California Code of Regulations, title 23, chapter 28, Article 6 commencing with section 3867.

2. This General Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This General Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations.
 - a. Fees are not required for NWPs 1, 4, 9, 10, and 11. An application fee is required for NWPs 3(a), 5, 6, 14, 20, 22, 28, 32, and 54 under this General Order. The application fee amount is determined as required by the California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3). Annual fees may apply. Fees are periodically adjusted. Dischargers should confirm the correct fee amount prior to submitting an NOI.
4. **Cumulative Impacts:** Activities permitted under this General Order shall not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.
5. **Avoidance and Minimization:** Projects authorized under this General Order shall be designed to avoid and minimize impacts to waters of the state to greatest practicable extent.
6. 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 water quality control plans by any applicable Regional Water Board or any applicable State Water Board water quality control plan or policy (including the California Ocean Plan). The source of any such discharge must be eliminated as soon as practicable.
7. **Site Access:** The discharger shall grant Water Board staff or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
 - a. Enter upon the project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.

B. Construction Conditions

1. All materials and supplies necessary for implementing these 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 best management practice (BMP) materials (e.g., training documents, compliance tracking procedures) must be ready for use at the start of construction.
2. Construction material, debris, rubbish, spoils, soil, silt, sawdust, rubbish, steel, welding slag, welding rods, waste material, waste containers, other organic or earthen material, or any other substances which could be detrimental to water quality or hazardous to aquatic life that is discharged as a result of project related activities shall be prevented from entering waters of the state. Spoils from excavations shall not be stored in waters of the state.
3. Environmentally sensitive areas and environmentally restricted areas, including any avoided waters of the state, must be clearly identified in the field for exclusion prior to the start of construction. Such identification must be properly maintained until construction is completed and the soils have been stabilized. Equipment, materials, or any other substances or activities that may impact waters of the state outside of the limits of project disturbance are prohibited.
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. Routes and work area boundaries must be clearly demarcated.
5. Bridges, culverts, dip crossings, or other structures must be installed so that water and in-stream sediment flow is not impeded. Appropriate design criteria, practices and materials must be used in areas where access roads intersect waters of the state.
6. Temporary materials placed in any water of the state must be removed as soon as construction is completed at that location, and all temporary roads must be removed or re-contoured and restored according to approved re-vegetation and restoration plans.
7. A method of containment must be used below any temporary bridge, trestle, boardwalk, and/or other stream crossing structure to prevent any debris or spills from falling into the waters of the state. Containment must be maintained and kept clean for the life of the temporary crossing structure.
8. Unless authorized for restoration, material excavated to prepare a site for placement of the permitted fill material must be properly disposed of in an upland area. The disposal site must be located at a sufficient distance away from flowing or standing water such that the excavated material does not erode or move in any way into any water of the state. The disposal area shall be identified in the project NOI.

- 9. Topsoil:** For any excavation, including utility line trenches, the top 6 to 12 inches of topsoil shall be removed and stockpiled separately during construction. Following installation, the topsoil shall be replaced and seeded with native vegetation.
- 10.** Any structure, including but not limited to, culverts, pipes, piers, and coffer dams, placed within a stream where fish (as defined in Fish and Game Code section 45) exist or may exist, must be designated, constructed, and maintained such that it does not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish due to impedance of their upstream or downstream movement. This includes, but is not limited to, maintaining the supply of water and maintaining flows at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish migration. If any structure results in a long-term reduction in fish movement, the discharger shall be responsible for restoration of conditions as necessary (as determined by the Water Board) to secure passage of fish across the structure.
- 11. Dust Abatement:** Dust abatement chemicals added to water can be hazardous to wildlife and, if allowed to enter streams, detrimental to water quality. Therefore, 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.
- 12. Use of Mechanized Equipment:** Activities permitted under this General Order shall be conducted in a manner that minimizes ground disturbance, soil compaction, rutting and other mechanical impacts. 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 water bodies or wetlands. Appropriate project specific BMPs shall be specified by the discharger and shall be provided as part of the project description included in the NOI.
- 13. Piers or Piles:** Piers or piles placed in the stream channel to support a linear transportation structure over a creek channel must be aligned parallel with the direction of flow to prevent erosive eddies.

14. Culvert Replacement and Maintenance

- a.** Cured in Place Pipe (CIPP) is prohibited where it could cause detrimental physiological responses to human, plant, animal, or aquatic life, or cause discharges to waters of the state that do not comply with water quality objectives or goals.
- b.** Replacement of culverts acting as grade control structures is prohibited. A vertical gap between the outlet of the culvert and the immediate downstream invert of the stream channel indicates that the culvert likely functions as a grade control structure.

- c. Projects proposing to replace culverts must repair any existing scour or headcutting actively discharging sediment, caused by prior culvert design.
- d. The replaced or maintained culvert shall be in alignment with the stream channel upstream and downstream of the culvert.
- e. Any replacement culvert or culvert that is to be left in place by a repair or maintenance project must be placed at a gradient and orientation that will not result in erosional scour at the outlet.
- f. Replacement of a culvert with a similarly sized culvert is allowable only where there is no visual indication that the existing culvert is undersized. Visual indications of undersized culverts include, but are not limited to: sediment aggradation upstream of the culvert; evidence of flow over the top of the culvert (e.g., erosional rills in dirt road surfaces or erosion of shoulders adjacent to paved road surfaces), erosion of the fill cell between the culvert and the road surface, scour pools at the culvert outlet, or erosion of creek banks immediately downstream of the culvert.
- g. Culverts with solid bottoms (e.g., cylindrical culverts or box culverts) may be replaced with arch culverts or free-span bridges, if the existing culvert is not acting as a grade control structure.
- h. The culvert must not be located in a meander bend of the stream channel.
- i. Replacement culverts must be sized to convey a 100-year flow event with debris, without pressurizing flow passing through the culvert. The 100-year flow event should be modeled under climate change projections, if available.

15. Toxic and Hazardous Materials

- a. Activities permitted under this General 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, ground waters, or land is prohibited. If concrete washout is necessary at the site, washout containment shall be used to prevent any discharge. 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. Appropriate BMPs must be implemented throughout project activities 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.

- d.** Activities permitted under this General 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 included in project plans provided in the NOI. These BMPs shall include, at a minimum:
- 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 shall be stored in appropriate containers with appropriate secondary containment.
 - vii.** Pumps or other stationary equipment operating within 100 feet of a waterbody or wetland shall utilize appropriate secondary containment systems to prevent spills.
 - 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 one hundred (100) feet away from waters of the state, in a location where fluids or accidental discharges cannot flow into waters of the state.
- e.** 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.

16. Invasive Species and Soil Borne Pathogens

- a. The discharger is responsible for ensuring that all project personnel follow proper weed control practices, and that appropriate weed prevention measures are included in project plans.
- b. Any straw, hay or other unprocessed plant material used for any purpose must be certified or documented as being weed free.
- 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). Any equipment entering or leaving the project area from an area of known soil borne pathogen infestation shall be thoroughly cleaned using methods appropriate for the known pathogen before entering or leaving the project area. The fungus that causes Valley Fever, *Coccidioides spp.*, is not considered a soil borne pathogen in this certification.

17. In-Water Work

- a. In-water work 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. The term "work" means any ground disturbing activities in any delineated waters of the state that are permitted under this General Order, regardless of the presence or absence of flowing or standing water.
- b. Temporary diversions or impoundments of water, cofferdams, or similar structures installed for the purpose of temporary dewatering work areas may be permitted if the project description provided by the discharger in the NOI includes: (a) an adequate description of the proposed dewatering structures, including design criteria, (b) appropriate BMPs for the installation, operation, maintenance and removal of those structures, and (c) appropriate monitoring for water quality upstream and downstream of diversion structures as required in section VI.D.5 of this General Order.
- c. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to waters of the state.

- d. Except for the following conditions, equipment must not be operated in standing or flowing waters without site specific approval from Water Board staff:
- i. All construction activities must be effectively isolated from water flows to the greatest extent possible. This may be accomplished by working in the dry season or dewatering the work area in the wet season. When work in standing or flowing water is required, structures for isolating the in-water work area and/or diverting the water flow must not be contaminated by construction activities. All open flow temporary diversion channels must be lined with filter fabric or other appropriate liner material to prevent erosion. Structures used to isolate the in-water work area and/or diverting the water (e.g., coffer dam, geotextile silt curtain) must not be removed until all disturbed areas are stabilized.
 - ii. Cofferdams and water barrier construction must be adequate to prevent seepage into or from the work area to the greatest extent feasible.
 - iii. Flow diversions must be conducted in a manner that prevents pollution and/or siltation and in a manner that restores pre-project flows (except for variation in flows due to seasonality, upstream diversions, etc.) upon completion of the activity. Diverted flows must be of sufficient quality and quantity, and of appropriate temperature, to support existing fish and other aquatic life both above and below the diversion. Diversions must be designed, installed, and maintained to reduce erosion. Pre-project flows must be restored to the affected surface water body upon completion of work at that location.
- e. If groundwater dewatering is required for the project, the discharger 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 identified in the project's Notice of Applicability (NOA) must be notified and copied on pertinent correspondence pertaining to those other required permits.
- f. All temporary dewatering methods shall be designed to have the minimum necessary impacts to waters of the state. All dewatering methods shall be installed such that natural flow is maintained upstream and downstream of the diversion area. Any temporary dams or diversions shall be installed such that the diversion does not cause sedimentation, siltation, or erosion upstream or downstream of the diversion area. All dewatering methods shall be removed immediately upon completion of activities for which diversions are needed.

- g. All temporary dewatering activities are subject to the work-in-water reporting and monitoring conditions presented in sections VI.D below.

18. Stormwater: Dischargers that require enrollment in the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002) shall maintain compliance with that Order. Compliance with that Order constitutes compliance with Erosion and Sediment Control Conditions 18.a.i-ii and Stormwater Management Condition 18.b.i-ii, below.

For ground disturbing activities that do not require enrollment in Order No. 2009-0009-DWQ, project plans included with the NOI 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 discharger 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, straw, etc.) or revegetated with propagules (seeds, cuttings, 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 discharger shall obtain on a daily basis a printed copy of the precipitation forecast information (and keep for record) from the National Weather Service Forecast Office.
- 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.

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.

- 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 discharger 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. Seventy-two hour weather forecasts from the National Weather Service shall be consulted prior to start-up of any phase of the project that may result in sediment-laden runoff to the project site, and construction plans made to meet this condition.

C. Mitigation for Temporary Impacts

1. The discharger shall restore all areas of temporary impacts to waters of the state and all project site upland areas of temporary disturbance which could result in a discharge of waters of the state as described in an approved restoration plan. The restoration plan shall be submitted for written acceptance by Water Board staff with the NOI. The restoration plan shall provide the following: a schedule; plans for grading of disturbed areas to pre-project contours; a planting palette with plant species native to the project area; seed collection location; invasive species management; performance standards; and maintenance requirements (e.g., watering, weeding, and replanting).
2. In cases where implementation actions in the restoration plan cannot be reasonably conducted within one year, or where the adverse temporary impacts result in temporary loss of aquatic resource function(s), the discharger may be required to provide compensatory mitigation to offset temporal loss of waters of the state. Examples of additional mitigation include, but are not limited to, enhancement activities such as increasing the presence of native species and reducing dominance of non-native/invasive species, native willow stalking, planting of native riparian vegetation and trash removal.
3. The Water Board may extend the monitoring period beyond requirements of the restoration plan upon a determination by Water Board staff that the performance standards have not been met or are not likely to be met within the monitoring period.

D. Notifications and Reports

The following notifications and reports are required, as applicable:

- 1. Accidental Discharges of Hazardous Materials.**¹ Following an accidental discharge of a reportable quantity of hazardous material, sewage, or an unknown material, the following applies (Wat. Code § 13271):
 - a. As soon as (A) discharger 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:
 1. First call – 911 (to notify local response agency)
 2. Then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
 3. Lastly, follow the required OES procedures as set forth in:
http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf
 - b. Following notification to OES, the discharger shall notify the Water Board, as soon as practicable (ideally within 24 hours). Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
 - c. Within five (5) working days of notification to the Water Board, the discharger must submit an Accidental Discharge of Hazardous Material Report to the Water Board.
- 2. Violation of Compliance with Water Quality Standards:** The discharger shall notify the Water Board of any event causing a violation of compliance with water quality standards. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
 - a. Examples of noncompliance events include: lack of storm water treatment following a rain event, discharges causing a visible plume in a water of the state, and water contact with uncured concrete.

¹ “Hazardous material” means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. “Hazardous materials” include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health and Saf. Code § 25501.)

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

3. In-Water Work:

- a. The discharger shall notify the Water Board at least forty-eight (48) hours prior to initiating work in flowing or standing water or stream diversions. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
- b. Within seven (7) working days following completion of in-water work or stream diversions, an In-Water Work/Diversions Water Quality Monitoring Report must be submitted to the Water.

4. **Modifications to Project:** The discharger shall give advance notice to the Water Board 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 discharger shall inform the Water Board of any project modifications that will interfere with the compliance with this General Order.

5. Water Quality Monitoring

- a. **General:** In work areas during construction, visual monitoring shall be conducted to detect accidental discharge of construction related pollutants (e.g. oil and grease, turbidity plume, or uncured concrete).
- b. **Accidental Discharges/Noncompliance:** Upon occurrence of an accidental discharge of hazardous materials or a violation of compliance with a water quality standard, the Water Board may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.
- c. **In-Water Work or Diversions:** For projects involving planned work in water or stream diversions, a water quality monitoring plan shall be submitted to the Water Board for acceptance at least 30 days in advance of any discharge to the affected water body. Water quality monitoring shall be conducted in accordance with the approved plan.
- d. **Post-Construction:** If the proposed project includes ground disturbance, the discharger shall visually inspect the project site during the rainy season (October 1 – April 30) until a Notice of Completion is issued to ensure excessive erosion, stream instability, or other water quality pollution is not occurring in or downstream of the project site. If water quality pollution is occurring, the discharger shall 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.

E. Application for Coverage and Termination

The following sections describe the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment B, including specifications for photo and map documentation. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment B, which must be signed by the legally responsible person or authorized representative.

1. **Request for Authorization.** The administrative process for authorization by this General Order varies according to NWP, as follows:
 - a. Dischargers shall submit an NOI for certification under NWPs 3(a), 5, 6, 14, 20, 22, 28, 32, 36, and 54 at least 45 days before any project activity. The NOI shall describe all proposed direct project impacts and project design steps taken to first avoid, and then minimize, impacts to waters of the state to the maximum extent practicable. The NOI shall also include a delineation of impact sites. The NOI must also comply with the instructions set forth in Attachment A.
 - b. Other than the accidental discharge of hazardous materials reporting, dischargers with projects authorized under NWPs 1, 4, 9, 10, and 11 need not submit other notifications or reports to the Water Board identified in this General Order. Dischargers shall comply with all other applicable General Order conditions.
2. All document submittals shall comply with the signatory requirements set forth in Attachment D of this General Order.
3. **Project Status Notifications**
 - a. **Commencement of Construction:** The discharger shall submit a Commencement of Construction Notice at least seven (7) days prior to start of initial disturbance activities.
 - b. **Request for Notice of Project Complete Letter:** This request shall be submitted to the Water Board within thirty (30) days following completion of all project activities including post-construction monitoring of restoration sites. Upon approval of the request, the Water Board shall issue a Notice of Project Complete Letter to the discharger. Annual fees will be terminated concurrent with the date of the Project Complete Letter.

4. Project Reporting

- a. **Annual Reporting:** If required in the NOA, the discharger shall submit an Annual Report each year on the date specified in the NOA. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the discharger. The discharger shall provide at least one annual report, in the event the project is completed in less than one year.

5. Transfer of Property Ownership:

Authorization by this General 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:

- a. The discharger 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 discharger and purchaser must sign and date the notification and provide such notification to the Water Board at least 10 days prior to the transfer of ownership. The purchaser must also submit a written request to the Water Board to be named as the discharger in a revised order.
- b. Until such time as this Order has been modified to name the purchaser as the discharger, the discharger named on the NOI shall continue to be responsible for all requirements set forth in this Order.

6. Transfer of Long-Term Best Management Practices Maintenance:

If maintenance responsibility for post-construction best management practices is legally transferred, the discharger must submit to the Water Board a copy of such documentation and must provide the transferee with a copy of a Long-Term Best Management Practices Maintenance Plan that complies with manufacturer or designer specifications. The discharger must provide such notification to the Water Board with a Transfer of Long-Term Best Management Practices Maintenance Report at least 10 days prior to the transfer of best management practices maintenance responsibility.

F. Nationwide Specific Impact Size Limits

1. NWP 3(a) – Maintenance; and NWP 14 – Linear Transportation Projects:

Total impacts (temporary plus permanent) and permanent impacts to waters of the state are subject to the project size limits and restrictions below. This General Order does not authorize any activities seeking coverage under NWP 3 category (b) (removal of accumulation of sediments and debris), or NWP 3 category (c) (temporary structures, fills, and work necessary to conduct maintenance activity).

a. Individual Project Impact Size Limits to Waters of the State:

- i. **Permanent Impact Acreage:** The project shall not result in more than one hundredth (0.01) of an acre of permanent impacts to waters of the state.

- ii. **Total Impact Acreage:** The project shall not result in more than two-tenths (0.2) of an acre of total impacts to waters of the state.
- iii. **Permanent Impact Length:** The project shall not result in more than 100 linear feet of permanent impacts to waters of the state.
- iv. **Total Impact Length:** The project shall not result in more than 300 linear feet of total impacts to waters of the state.

G. Nationwide Specific Compliance

1. **NWP 3(a) – Maintenance:** This General Order authorizes impacts resulting from the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, subject to the size limits in section VI.F.1 and all other applicable General Order conditions, including:

- a. **NWP 3(a) Prohibitions:**

- i. **Lahontan Water Board:** Any NWP 3(a) activity within the Lake Tahoe Hydrologic Unit (HUC; 634.00), the Truckee River HUC (635.00), and the Little Truckee River HUC (636.00) is prohibited.
- ii. **Riparian Vegetation:** Repair, rehabilitation, or replacement is only authorized when trimming of riparian vegetation does not result in significant adverse effects to water quality or impair beneficial uses.
- iii. **Riparian Tree Removal:** If a project involves removal of riparian trees list the following information on the project NOI form for each adult tree proposed for removal: species; common name; diameter breast height; and whether part of the riparian understory or overstory. Any tree removal that results in adverse effects to water quality is prohibited.
- iv. **Roads:** Maintenance of access roads under this General Order shall be confined to the previously existing road prism, except for minor, targeted widening, or improvements. Grading of throughcut roads (any road having a running surface lower than the surrounding terrain on both sides of the road) is prohibited.
- v. **Armoring Facilities:** Placement of in-stream armor above streambed elevation is prohibited, except as otherwise authorized by the Water Boards.
- vi. **Gabions:** Use of gabions (“rock gabions” and similar wire basket structures) in waters of the state is prohibited.

- vii. Riprap Installation:** New riprap installed as part of the maintenance of existing structures shall not increase the footprint of the structure in jurisdictional waters by more than 15 percent or place new fill across the complete width of the active channel in a manner that creates a new grade control structure in the channel.
 - viii. Grouted Riprap:** Use of grouted riprap in waters of the state is prohibited.
 - ix.** Construction, replacement, or expansion of facilities in any ocean, bay, tidal waters, or shores thereof are prohibited.
- b. NWP 3(a) Compensatory Mitigation Requirements:** Compensatory mitigation is required to offset permanent impacts to waters of the state, unless the discharger has demonstrated that the project authorized by this General Order was designed to restore or improve the ecological function of the impacted aquatic resource. When compensatory mitigation is required, the discharger shall provide the following:
- i.** A draft compensatory mitigation plan at a level of detail sufficient to accurately evaluate whether compensatory mitigation offsets the adverse impacts attributed to the project considering the overall size and scope of impact.
 - ii.** Compensatory mitigation at a minimum of a one-to-one mitigation ratio, measured in area or length. The Water Board will require a higher overall mitigation ratio where necessary to ensure replacement of lost aquatic resource functions.
 - iii.** Subject to Water Board approval, the mitigation may be satisfied using any of the following compensatory mitigation methods: restoration, enhancement, establishment, and/or preservation.²
 - iv.** Compensatory mitigation shall be provided through a mitigation bank or in-lieu fee program, where feasible. If no mitigation bank or in-lieu fee program options are available, mitigation may be provided through on-site or off-site permittee responsible mitigation, subject to Water Board approval.
 - v.** No discharge of dredged or fill material to waters of the state shall occur prior to Water Board approval of a final mitigation plan.

² Restoration should generally be the first option considered because the likelihood of success is greater and the impacts to potentially ecologically important uplands are reduced compared to establishment, and the potential gains in terms of aquatic resource functions are greater, compare to enhancement and preservation.

2. NWP 14 – Linear Transportation Projects: This General Order authorizes projects for which one or more NWP 14 has been authorized as long as the individual project size limits in section VI.F.1 are not exceeded. This General Order authorizes impacts resulting from the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, subject to the size limits in section VI.F.1 and all other applicable General Order conditions, including:

a. NWP 14 Prohibitions:

- i. Lahontan Water Board:** Any NWP 14 activity within the Lake Tahoe Hydrologic Unit (HUC; 634.00), the Truckee River HUC (635.00), and the Little Truckee River HUC (636.00) is prohibited.
- ii. Riparian Vegetation:** Repair, rehabilitation, or replacement is only authorized when trimming of riparian vegetation does not result in significant adverse effects to water quality or impair beneficial uses.
- iii. Riparian Tree Removal:** If a project involves removal of riparian trees list the following information on the project NOI form for each adult tree proposed for removal: species; common name; diameter breast height; and whether part of the riparian understory or overstory. Any tree removal that results in adverse effects to water quality is prohibited.
- iv. Roads:** Maintenance of access roads under this General Order shall be confined to the previously existing road prism, except for minor, targeted widening, or improvements. Grading of throughcut roads (any road having a running surface lower than the surrounding terrain on both sides of the road) is prohibited.
- v. Armoring Facilities:** Placement of in-stream armor above streambed elevation is prohibited, except as otherwise authorized by the Water Boards.
- vi. Gabions:** Use of gabions (“rock gabions” and similar wire basket structures) in waters of the state is prohibited.
- vii. Riprap Installation:** New riprap installed as part of the maintenance of existing structures shall not increase the footprint of the structure in jurisdictional waters by more than 15 percent or place new fill across the complete width of the active channel in a manner that creates a new grade control structure in the channel.
- viii. Grouted Riprap:** Use of grouted riprap in waters of the state is prohibited.
- ix.** Projects impacting any ocean, bay, tidal waters, or shores thereof are prohibited.

- b. NWP 14 Compensatory Mitigation Requirements:** Compensatory mitigation is required to offset permanent impacts to waters of the state, unless the discharger has demonstrated that the project authorized by this General Order was designed to restore or improve the ecological function of the impacted aquatic resource. When compensatory mitigation is required, the discharger shall provide the following:
- i. A draft compensatory mitigation plan at a level of detail sufficient to accurately evaluate whether compensatory mitigation offsets the adverse impacts attributed to a project considering the overall size and scope of impact.
 - ii. Compensatory mitigation at a minimum of a one-to-one mitigation ratio, measured in area or length. A higher overall mitigation ratio shall be used where necessary to ensure replacement of lost aquatic resource functions.
 - iii. Subject to Water Board approval, the mitigation may be satisfied using any of the following compensatory mitigation methods: restoration, enhancement, establishment, and/or preservation.
 - iv. Compensatory mitigation shall be provided through a mitigation bank or in-lieu fee program, where feasible. If no mitigation bank or in-lieu fee program options are available, mitigation may be provided through on-site or off-site permittee responsible mitigation, subject to Water Board approval.
 - v. No discharge of dredged or fill material to waters of the state shall occur prior to Water Board approval of a final mitigation plan.

3. NWP 36 – Boat Ramps:

- a. **Lahontan Water Board:** Any NWP 36 activity within the Lake Tahoe Hydrologic Unit (HUC; 634.00), the Truckee River HUC (635.00), and the Little Truckee River HUC (636.00) is prohibited.
- b. To prevent the release of uncured cement components into water, use of concrete in areas where ramps may be submerged before the concrete is fully cured is prohibited.

VII. California Environmental Quality Act (CEQA)

The State Water Board has determined that the projects authorized by this General Order are exempt from review under CEQA pursuant to California Code of Regulations, title 14, section 15061. Specifically, the issuance of this Order and the activities described herein meet the exemption criteria under California Code of Regulations, title 14, section(s) listed in the table provided in Attachment E List of Certified Nationwide Permits. Additionally, the State Water Board concludes that no exceptions to the CEQA

exemption apply to the activities approved by this Order. The State Water Board will file a Notice of Exemption with the State Clearinghouse within five (5) working days from the issuance of this Order (Cal. Code Regs., tit 14 § 15062).

VIII. Public Notice

On October 16, 2020, the State Water Board provided public notice of an application by the Corps to reissue all NWP. The Corps reissued 12 NWPs and issued four new NWPs in January 2021. The remaining 41 NWPs are expected to be finalized and published in the Federal Register by the end of the calendar year. The Corps extended the reasonable time period to take certification action on the remaining 41 NWPs to October 12, 2021. The State Water Board provided a second public notice of the proposed certification of the Corps' NWPs pursuant to California Code of Regulations, title 23, section 3861 from August 18, 2021, to October 2, 2021.

In response to the October 16, 2020, public notice, the State Water Board received one late comment from The Citizens Committee to Complete the Refuge, Center for Biological Diversity, California Coastkeeper Alliance, San Francisco Baykeeper, AquAlliance and Defenders of Wildlife. The comment letter raised a number of concerns regarding the process by which the NWPs are being reissued, including that the Corps failed to comply with applicable federal regulations, and substantive portions of the NWPs, including the removal of linear foot restrictions. The comment letter expressed support for conditional certification of a limited number of NWPs and denial of the remaining NWPs. Although the comment letter was late, State Water Board staff considered the recommendations set forth in the letter but notes that many of the concerns expressed in the letter cannot be addressed through this General Order.

In response to the August 18, 2021, public notice, the State Water Board received one comment letter from the Santa Clara Valley Water District on October 1, 2021. The District requested reducing or eliminating conditions in the General Order, which it viewed as undermining streamlining benefits and/or being redundant with protections already included in the Corps' NWP conditions, and strongly supported the certification of NWPs 3(b) and 3(c). State Water Board staff considered the recommendations set forth in the letter and did not remove conditions or certify NWPs 3(b) or 3(c). Conditions in the General Order reflect state water quality requirements that are not otherwise present in federally-imposed NWP conditions, and while not certified in this General Order, staff may consider future certification of NWPs 3(b) and 3(c) when the Corps reissues them, anticipated in 2026.

IX. General Order Expiration

Except for reporting obligations and enforcement purposes, authorization under this General Order shall extend until the NWPs expire. If a project authorized by the NWPs and by an NOA under this General Order has commenced or is under contract to commence on or before the expiration date of the NWPs, the applicant has up to one year from the General Order expiration to complete the project under the terms of this General Order. If a project has not commenced or is not under contract to commence

by the NWP's expiration date, a new Notice of Intent, or individual application, and applicable fees will be required.

X. Petitions for Reconsideration

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

XI. Nationwide Permits Denied

Clean Water Act section 401 water quality certification for the following NWP's are denied, unless they qualify for coverage under another applicable general certification: 2, 3(b), 3(c), 7, 8, 13, 15, 16, 17, 18, 19, 23, 24, 25, 27, 30, 31, 33, 34, 35, 37, 38, 41, 45, 46, 49, 53, and 59. The State Water Board does not have reasonable assurance that the denied NWP's will comply with the applicable provisions of sections 301, 302, 303, 306 and 307 of the Clean Water Act and appropriate requirements of state law. (See 33 USC § 1341.) This denial does not preclude an applicant from submitting a new or separate project-specific certification request. Information required pursuant to 40 C.F.R. section 121.7(e)(2) is set forth in Attachment C. Clean Water Act section 401 certification action on projects authorized by these denied NWP's will be considered on an individual, project-specific basis, or if eligible, may enroll under another applicable general certification.

XII. Water Quality Certification

I hereby issue the General Order for the State Water Board Certified Corps' Nationwide Permits Project (file number SB21031GN) certifying that as long as all of the conditions listed in this General Order are met, any discharges authorized by NWP's 1, 3(a), 4, 5, 6, 9, 10, 11, 14, 20, 22, 28, 32, 36, and 54 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). The State Water Board will file a Notice of Exemption (NOE) at the SCH within five (5) working days of issuance of this General Order.

In addition to a section 401 certification, this General Order serves as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) as set forth in State Water Board Water Quality General Order No. 2003-0017-DWQ. Notwithstanding any determinations made by the U.S. Army Corps or other federal agency pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this Order. Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264.

Except insofar as may be modified by any preceding conditions, all General Order actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this General Order and the attachments to this General 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: 2021.10.12 16:47:28 -07'00'

Date

Karen Mogus, Deputy Director
Division of Water Quality