
Attachment F
Compliance with 40 CFR section 121.7

The purpose of this attachment is to comply with Title 40, Code of Federal Regulations (CFR) section 121.7(d)(1), which requires an explanation of why a condition is necessary to assure that the authorized discharge will comply with water quality requirements, and a citation to federal, state, or tribal law that authorizes the condition.

This Attachment uses the same organizational structure as Section IX. Conditions, and the statements below correspond with the conditions set forth in section IX. Sections I through VIII, and X through XIV, are not “conditions” as used in 40 CFR section 121.7.

This Attachment includes citations to some sources of authority that are applicable to all conditions. These sources are specifically identified where they are most relevant but are also generally applicable to the conditions below. These conditions are generally required to comply with the state’s Anti-Degradation Policy (State Board Resolution No. 68-16), which requires that for any “activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the state will be maintained.” All Regional Board Water Quality Control Plans incorporate the state’s Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR § 131.12 (a)(1)), which requires “[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” According to U.S. EPA, for dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with U.S. EPA’s section 404(b)(1) Guidelines. The State Water Boards adopted a modified version of U.S. EPA’s section 404(b)(1) Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines).

The State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Dredge or Fill Procedures) was adopted on April 2, 2019 and went into effect on May 28, 2020. The Dredge or Fill Procedures were adopted pursuant to the State Water Board’s authority under Water Code section 13140 (state policy for water quality control) and 13170 (water quality control plan), and accordingly have regulatory effect. Consistent with Government Code, section 11353, a clear and concise summary of the Dredge or Fill Procedures is available in California Code of Regulations, section 3013. Per the Procedures, the permitting authority may only

approve a project if the demonstrations set forth in Section IV.B.1 have been made. The information required by Section IV.A is necessary to ensure compliance with Section IV.B.1.

California Code of Regulations, title 23, Chapter 28 also sets forth regulations pertaining to water quality certifications. Section 3856 sets forth information that must be included in water quality certification requests, includes a description of steps that have or will be taken to avoid, minimize, and compensate for impacts to waters of the state.

XI. Conditions

A. Impacts to Water of the State

Conditions related to discharge prohibitions are necessary to prevent violation of water quality objectives. These conditions are authorized by Water Code section 13264, which prohibits any discharge that is not specifically authorized in this Order.

B. Reporting and Notification Requirements

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. These monitoring and reporting conditions are authorized because the Water Boards have the authority to investigate the quality of any waters of the state within its region under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

Authorization under this Certification is granted based on the application information submitted. This condition is necessary to ensure that if there are modifications to the project, that the project remains eligible for coverage under this Certification. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Certification.

Authorization under this General Order is granted based on the application information submitted, including the legally responsible party. Conditions regarding transfers are necessary to confirm whether the new owner wishes to assume legal responsibility for compliance with this General Order. If not, the original discharger remains responsible for compliance with this Order. Confirmation is also necessary to confirm whether liability for long-term best management practices maintenance is accepted by another entity. If not, the original discharger remains responsible for compliance with this Order. Water Code section 13264 prohibits any discharge that is not specifically authorized in this General Order.

C. Water Quality Monitoring

1. General

This monitoring condition is authorized because the Water Boards have the authority to investigate the quality of any waters of the state within its region under Water Code sections 13383 and 13267. The burden of monitoring, including costs, are reasonable to the need and benefits of obtaining the monitoring. The anticipated costs are minimal as only visual monitoring is required.

2. Accidental Discharges/Noncompliance

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 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. These monitoring and reporting conditions are authorized because the Water Boards have the authority to investigate the quality of any waters of the state within its region under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

3. Post-Construction

The reports confirm that the best management practices required under this order are sufficient to protect beneficial uses and water quality objectives. The reports confirm that the best management practices required under this order are sufficient to protect beneficial uses and water quality objectives. These monitoring and reporting conditions are authorized because the Water Boards have the authority to investigate the quality of any waters of the state within its region under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

D. Standard Conditions

These conditions are necessary to assure that any discharge authorized under the Order will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States. California Code of Regulations, title 23, Chapter 28 sets forth regulations pertaining to water quality certifications for point source discharges to waters of the United States. These conditions were included to comply with section 3860, which sets forth conditions that must be included in all water quality certifications.

E. General Compliance

Conditions related to discharge prohibitions are necessary to prevent violation of water quality objectives. These conditions are authorized by Water Code section 13264, which prohibits any discharge that is not specifically authorized in this General Order.

Authorization under this Order is granted based on the application information submitted, including engineering plans, specifications, and technical reports. Water Code section 13264 prohibits any discharge that is not specifically authorized in this General Order.

This monitoring condition is authorized because the Water Boards have the authority to investigate the quality of any waters of the state within its region under Water Code sections 13383 and 13267. The burden of monitoring, including costs, are reasonable to the need and benefits of obtaining the monitoring. The anticipated costs are minimal as only visual monitoring is required.

F. Administrative

F.1 Conditions related to signatory requirements are also authorized by Water Code sections 13383 and 13267, which requires any person discharging waste that could affect the quality of waters to provide to the Water Boards, under penalty of perjury, any technical or monitoring program reports as required by the Water Boards. The signatory requirements are consistent with 40 C.F.R. section 122.22.

F.2 Conditions related to site access requirements 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 13383 and 13267. Water Code section 13267(c) provides that "the regional board may inspect the facilities of any person to ascertain whether the purposes of this division are being met and waste discharge requirements are being complied with."

F.3 This condition requires site personnel and agencies to be familiar with the content of the Order and mandate availability of the document at the project site. This condition is required to assure that any authorized discharge will comply with the terms and conditions of the Order. (Dredge or Fill Procedures, section IV.B.1.)

F.4 This condition is required pursuant to California Code of Regulations section 3856(e), which requires that copies be provided to the Water Boards of "any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included."

G. Construction Conditions

1. All materials and supplies necessary...

On-site availability of materials and supplies assures best management practices can be reasonably implemented and that the discharge complies with water quality objectives. This condition and other conditions related to best management practices 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 General Order have the potential to result in a discharge that exceeds water quality objectives and work in waters of the state must not cause an exceedance of water quality objectives. (Dredge or Fill Procedures, section IV.B.1.)

2. Measures shall be employed...

Conditions related to erosion and sediment control design requirements are required to sustain fluvial geomorphic equilibrium. Improperly designed and installed BMPs result in excess sediment, which impairs surface waters, adversely affects beneficial uses, and results in exceedance of water quality objectives in the Water Quality Control Plans in California. Water Quality Control Plans impose design requirements to ensure excess stormwater sediment does not exceed water quality objectives in the plans.

Conditions on projects that result in a hydromodification to a water of the state are necessary to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters. Hydromodification is a general term that encompasses effects of projects on the natural hydrologic, geochemical, and physical functions of streams and wetlands that maintain or enhance water quality. Improper project design and installation of any project that results in a hydromodification to a waters of the state may trigger bank failure and channel incision which results in excess sediment impacts to downstream beneficial uses. (Dredge or Fill Procedures, section IV.B.1.)

3. The Permittee shall oversee the work...

This condition requires site personnel and agencies to be familiar with the content of the Order and mandate availability of the document at the project site. This condition is required to assure that any authorized discharge will comply with the terms and conditions of the Order. (Dredge or Fill Procedures, section IV.B.1.)

4. Environmentally sensitive areas...

This condition is necessary to assure that the project discharge will comply with state discharge prohibitions that protect beneficial uses and water quality objectives. A description and delineation of impact sites is necessary to assure that the discharge from the proposed 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), Water Quality Control Plan for the Lahontan Region, section 4.9). In addition, Water Quality Control Plans prohibit the discharge of

construction materials and byproducts from being discharged into waters of the state, including areas that may be environmentally sensitive, such as vernal pools or eel grass beds.

Identification and visible demarcation of areas of avoidance must be obvious to all on-site personnel, to ensure that impacts only occur within the permitted boundaries of project disturbance and to prevent unauthorized discharges to other waters of the state, including environmentally sensitive areas. Furthermore, waters that are not quantified and mapped as either a temporary or permanent impact site in a water quality certification must be fully avoided throughout the duration of the construction activity. This condition is necessary to ensure protection of aquatic resources where no discharge is authorized to occur. (Wat. Code, § 13264.)

5. Topsoil

Conditions related to erosion and sediment control design requirements are required to sustain fluvial geomorphic equilibrium. Improperly designed and installed BMPs result in excess sediment, which impairs surface waters, adversely affects beneficial uses, and results in exceedance of water quality objectives in the Water Quality Control Plans in California. Water Quality Control Plans impose design requirements to ensure excess stormwater sediment does not exceed water quality objectives in the plans. (Dredge or Fill Procedures, section IV.B.1.)

6. Fugitive Dust

Conditions related to erosion and sediment control design requirements are required to sustain fluvial geomorphic equilibrium. Improperly designed and installed BMPs result in excess sediment, which impairs surface waters, adversely affects beneficial uses, and results in exceedance of water quality objectives in the Water Quality Control Plans in California. Water Quality Control Plans impose design requirements to ensure excess stormwater sediment does not exceed water quality objectives in the plans. (Dredge or Fill Procedures, section IV.B.1.)

7. Dust abatement chemicals...

This dust abatement condition is required to assure that the discharge from the proposed project will comply with water quality objectives established for surface waters. Chemicals used in dust abatement activities can result in a discharge of chemical additives and treated waters to surface waters of the state. Therefore, dust abatement activities shall be conducted so that sediment or dust abatement chemicals are not discharged into waters of the state. (Dredge or Fill Procedures, section IV.B.1.)

8. Construction Materials and Equipment

Conditions related to activities that require grading, construction, excavation, and vegetation removal are necessary because such activities may result in erosion, increased sediment loads, turbidity, or other discharges that adversely affect water quality. These conditions are required to assure that the discharges from such activities

do not exceed water quality objectives established in Water Quality Control Plans, including water quality objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity. (Dredge or Fill Procedures, section IV.B.1.)

9. Conditions 16 through 28

The conditions related to roads are necessary to assure that the activities are minimally impacting and comply with water quality objectives. Activities related to road construction or maintenance commonly require grading, construction, excavation, and vegetation removal, and may result in erosion and increased sediment loads, turbidity, etc., that adversely affect water quality. These conditions are required to assure that the discharges from such activities do not exceed water quality objectives established in Water Quality Control Plans, including water quality objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity. These conditions are also necessary to assure that activities related to road construction or maintenance do not create physical barriers to fish passage and spawning activities or degradation associated with hydromodification. (Dredge or Fill Procedures, section IV.B.1.)

10. Conditions 29 through 34

These conditions limit activities such as construction or maintenance of access roads, staging areas, water crossings, and temporary structures to assure that the activities are minimally impacting and comply with water quality objectives. These types of activities commonly require grading, construction, excavation, and vegetation removal, and may result in erosion and increased sediment loads, turbidity, etc., that adversely affect water quality. These conditions are required to assure that the discharges from such activities do not exceed water quality objectives established in Water Quality Control Plans, including water quality objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity. (Dredge or Fill Procedures, section IV.B.1.)

11. Conditions 35 through 41

Conditions related to discharge prohibitions are necessary to prevent violation of water quality objectives. These conditions are authorized by Water Code section 13264, which prohibits any discharge that is not specifically authorized in this General Order.

Conditions related to concrete/cement are required pursuant to the Water Quality Control Plans, which prohibit discharges to waters that adversely raise or lower pH levels.

12. Conditions 42 through 48

Conditions related to erosion and sediment control design requirements are required to sustain fluvial geomorphic equilibrium. Improperly designed and installed BMPs result in excess sediment, which impairs surface waters, adversely affects beneficial uses, and results in exceedance of water quality objectives in the Water Quality Control Plans in California. Water Quality Control Plans impose design requirements to ensure excess

stormwater sediment does not exceed water quality objectives in the plans. (Dredge or Fill Procedures, section IV.B.1.)

Conditions related to activities that require grading, construction, excavation, and vegetation removal are necessary because such activities may result in erosion, increased sediment loads, turbidity, or other discharges that adversely affect water quality. These conditions are required to assure that the discharges from such activities do not exceed water quality objectives established in Water Quality Control Plans, including water quality objectives for oil and grease, pH, sediment, settleable materials, temperature, and turbidity. (Dredge or Fill Procedures, section IV.B.1.)

13. Conditions 49 through 53

These conditions are required pursuant to the Water Quality Control Plans, and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), which prohibit the discharge of substances in concentrations toxic to human, plant, animal, or aquatic life. Toxic compounds can impair the beneficial uses of cold freshwater habitat, estuarine habitat, marine habitat, preservation of rare and endangered species, fish migration, fish spawning, warm freshwater habitat, and wildlife habitat. Conditions related to toxic and hazardous materials are necessary to assure that discharges comply with any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code.

Conditions related to concrete/cement are required pursuant to the Water Quality Control Plans, which prohibit discharges to waters that adversely raise or lower pH levels. (Dredge or Fill Procedures, section IV.B.1.)

H. Temporary Impact Restoration

Conditions in this section related to restoration and/or mitigation of temporary impacts are required by the Dredge or Fill Procedures, which requires "in all cases where temporary impacts are proposed, a draft restoration plan that outlines design, implementation, assessment, and maintenance for restoring areas of temporary impacts to pre-project conditions." (Dredge or Fill Procedures section IV. A.2(d) & B.4.)

I. Compensatory Mitigation for Permanent Impacts

Conditions related to mitigation requirements are required by the Dredged or Fill Procedures, section IV.A.2.b. In addition, section IV.B.1.a of the Procedures require that the Water Boards will approve a project only after it has been determined that a sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts that cannot be practicably avoided or minimized. (See also State Supplemental Guidelines, section 230.10, restrictions on discharge & Cal. Code of Regs., section 3856(h) (requiring submittal of proposed mitigation and description of steps taken to avoid, minimize, or compensate).) Accordingly, compensatory mitigation may be required for projects that would result in permanent impacts. Conditions regarding compensatory mitigation are necessary to ensure

compliance with state and federal anti-degradation policies. Compensatory mitigation conditions are consistent with Executive Order W-59-93 commonly referred to as California's "no net loss" policy for wetlands. Compensatory mitigation requirements are also authorized by Water Code, section 13263, which requires the imposition of requirements that implement water quality control plans, takes into consideration the beneficial uses to be protected, and the need to prevent nuisance.

The condition related to financial securities is necessary to ensure that the discharger has sufficient funds to fulfil the compensatory mitigation required. (Dredge or Fill Procedures, section IV.B.5.f.)