State Water Resources Control Board

WATER QUALITY ORDER NO. WQ 2022-0043-DWQ
CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

Effective Date: July 29, 2022
Expiration Date: July 29, 2027
Program Type: Fill/Excavation

Reg. Meas. ID:	447273
Place ID:	880401
WDID No.:	SB22018IN
USACE No.:	SPL-2022-00226

Project Type: Roads and Highways

Project: Cima Road (Project)

Applicant: Federal Highway Administration

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I. Summary

This Clean Water Act (CWA) section 401 Water Quality Certification action and Order (Order) is issued at the request of Federal Highway Administration (hereinafter Permittee) for the Project. This Order is for the purpose described in application and supplemental information submitted by the Permittee. The application was received on March 23, 2022. The application was deemed complete on June 24, 2022. Prior to receiving a complete application, Water Board staff issued a notice of incomplete application and the Permittee responded to the request for application information on the following date(s):

Date of Notice of Incomplete Application: **April 22, 2022**
Date all requested information was received: **June 24, 2022**

The Applicant 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 March 23, 2022. The reasonable period of time as defined by 40 CFR 121.6 for the Water Board to act on the request is by August 2, 2022.

II. Findings

A. This Order is adopted pursuant to section 401 of the Clean Water Act and the California Porter-Cologne Water Quality Control Act (Cal. Water Code § § 13000, et seq.). Notwithstanding any determinations made by the U.S. Army Corps or other federal agency, dischargers must comply with the entirety of this Order because the 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.

B. 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.

C. 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.

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

E. 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.

F. 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).

G. This 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 & 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.

H. This 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 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 Project is designed to improve road conditions along four main access routes in the Mojave National Preserve for the benefit and safety of visitors. As part of the road improvements, drainage improvements are needed to stabilize and protect the roads at stream crossings to reduce erosion and the potential for road failure during major storm events.

IV. Project Description

The Federal Highway Administration, Central Federal Lands Highway Division (FHWA-CFLHD), in coordination with the National Park Service, Mojave National Preserve, is proposing improvements to approximately 17.6 miles of Cima Road and stabilization of low water crossings on Kelbaker Road, Lanfair Road, and Cedar Canyon Road in San Bernardino County, California. Cima Road (Route 12) improvements would consist of asphalt patching, increasing the roadway width to a consistent 26 feet, minor horizontal realignment, establishing low water crossings, and improving safety with longitudinal and transverse rumble strips, signing, pavement

markings, and paved pullouts. Low water crossings would consist of buried concrete barriers with revetment mattresses.

V. Project Location

The Project area is south of Interstate Highway 15 about 85 miles northeast of Barstow, California. Cima Road is accessed directly off of the interstate, and the other three roads are accessed via other roads within the Mojave National Preserve.

Address: Mojave National Preserve
County: San Bernardino
Assessor's Parcel Number(s): National Park Service-owned lands
Nearest City: Baker
Multiple sections in Townships 11, 12, 13, 14, 15, and 16 North and Ranges 12, 13, 14, 15, and 17 East on the Cima, Cima Dome, Hackberry Mountain, Kelso, Mescal Range, Mid Hills, Pinto Valley, and Valley Wells 7.5-minute quadrangles

Northern End: Latitude: 35.439371° and Longitude: -115.672457°
Southern End: Latitude: 35.011447° and Longitude: -115.653759°
Maps showing the Project alignment are found in Attachment A of this Order.

VI. Project Impact and Receiving Waters Information

The Project is located within the jurisdiction of the Lahontan Regional Water Quality Control Board and Colorado River Regional Water Quality Control Board (collectively Regional Water Boards). Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the applicable water quality control plans (Basin Plan). The plan for the region and other plans and policies may be accessed at the State Water Resources Control Board's Plans and Policies Web page (http://www.waterboards.ca.gov/plans_policies/). The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies.

It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This 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. Individual impact location and quantity is shown in Table 2 and Table 3 of Attachment B.

VII. Description of Direct Impacts to Waters of the State

The proposed road improvements would result in a loss of surface area of ephemeral streams based on the design. Drainage improvements at 22 streams, mostly narrow

ephemeral streams, would cause a permanent loss of surface area of streams, ranging from 0.001 acre to 0.242 acre at each stream crossing. Most of this impact is a result of placing riprap to stabilize drainage crossings and road fill to accommodate re-paving and road improvements. This new fill would be immediately adjacent to existing fill associated with the roadways and would extend only as far out as is necessary to accommodate the road improvements for safety of travelers. Where road fill is required along stream banks or into streams, the stream channel would be maintained to provide proper drainage along and across the road. The placement of riprap into streams is necessary to stabilize the road crossing and prevent scour and erosion during major precipitation events. These stream modifications would not substantially degrade the overall ecological condition, hydrologic function, or beneficial uses of the affected streams.

Total Project fill/excavation quantities for temporary impacts are summarized in Table 1. Temporary impacts are limited to general disturbance during construction with no temporary fill anticipated. Temporarily impacted areas will be restored to pre-Project conditions after Project construction is completed at each work area. Total Project fill/excavation quantities for permanent impacts are summarized in Table 2. Permanent impacts are categorized as those resulting in a physical loss in area and those degrading ecological condition. All impacts will be limited to the minimum necessary to complete the Project.

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

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Stream Channel	0.437	0	935

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

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Stream Channel	0.777	1,380	1,331

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 impacted stream channels leading to future channel erosion and downstream sedimentation. Inadvertent creation of preferential flow paths along altered stream

crossings and the subsequent diversion of stream flow or shallow groundwater flow

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

away from channels; and/or introduction of invasive plant species into the Project area.

IX. Avoidance and Mitigation

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. These BMPs and AMMs include, but are not limited to, conducting road improvements within the existing roadway prism; Utilize appropriate sediment and erosion controls BMPs to avoid impacts to waters water quality that may be adversely impacted due to sediment loads from erosion, these include the use of fiber logs or other BMPs at the downslope edge of the work area, removal of all waste and construction materials immediately from the work area; Development and implementation of a spill containment and clean-up plan in the event of a hazardous material spill; Plant salvage and restoration will occur in addition to reseeding of disturbed areas to re-establish native vegetation due to plant disturbance from equipment operation; Washing construction equipment before any equipment is used onsite to avoid movement of nonnative/invasive plant species; Construction will not occur when water is present or anticipated.

The Project qualified as a tier 2 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 Permittee is required to provide compensatory mitigation for direct impacts, described in section VII for permanent impacts.

XI. Conditions

Specific condition 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.

These conditions are generally required to comply with the state's Anti-Degradation Policy (State Board Resolution No. 68-16), which requires that 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 Part 131.12 (a)(1)), which requires "existing 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, 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 Water Board has independently reviewed the record of the Project to analyze impacts to water quality and designated beneficial uses within the watersheds of the Project. In accordance with this Order, the Permittee may proceed with the Project under the following terms and conditions:

A. Impacts to Waters of the State

Impacts to waters of the state shall not exceed quantities shown in Tables 1 and 2.

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. **Monthly Reporting:** During active construction, the Permittee must submit a Monthly Report to the State Water Board. Monthly reports shall be submitted by 5:00 pm on Friday the week following the reporting period. Monthly reporting shall continue until the State 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.

b. **Annual Reporting:** The Permittee shall submit an Annual Report each year by the anniversary of the effective date of this Order. Annual reporting shall continue until the State 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 corresponding Waste Discharge Identification Number SB22018IN issued under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002).

This condition protects water quality by ensuring that the Permittee is implementing the Project within the proposed work windows. If the Project is not implemented within the proposed and approved work windows, then adverse impacts on water quality and beneficial uses could occur. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

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.

This condition protects water quality by ensuring that the Permittee 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.

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/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf)

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.

These conditions protect water quality by giving the Permittee a series of steps to follow if there is a spill that has the potential to adversely impact water quality and beneficial uses. These steps are intended to help mitigate the damage done by such a spill. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

[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 State 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:**

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 Certification.

These conditions protect water quality by alerting the Water Boards when in water work and/or stream diversions will be taking place and requiring the Monitoring and reporting requirements to be approved. These conditions are authorized by Water Code sections 13267 and 13383.

d. **Modifications to Project:**

Project modifications may require an amendment of this Order. 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 10 days prior to the transfer of ownership.

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.

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 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 within or adjacent to the Project alignment, continuous visual monitoring shall be conducted during active construction periods to detect accidental discharge of construction related pollutants (e.g., oil and grease, turbidity, construction debris, or uncured concrete).

This condition protects water quality by requiring the Permittee to visually monitor for obvious signs of water quality degradation. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383. The anticipated costs are minimal as the reporting obligations require only visual monitoring.

2. **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 notification 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. **Post-Construction**:

   Visually inspect the Project site during restoration monitoring to ensure excessive erosion, stream channel instability (headcuts, knickpoints, channel incision, bank erosion, etc.), or other water quality pollution is not occurring in or downstream of the Project site. At least one post construction inspection must occur after a significant rainfall event to verify channel stability. 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. Standard Conditions

Each standard condition in Section XI.D is required to be included in all water quality certifications by California Code of Regulations, title 23, Chapter 28, Section 3860. These conditions are necessary to assure that any discharge authorized under the Order will comply with water quality requirements.

1. This 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 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 and owed by the Permittee.

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 any applicable 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 stating that the Project must not violate water quality standards or impair beneficial uses. (State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (Dredge or Fill Procedures), Section IV.B.1. See Resolution 2021-0012 and 2019-0015).

2. The Permittee 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. This Order and all of its 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.

This condition protects water quality by ensuring that this Order and all of its conditions that protect water quality remain in place if federal licenses or permits are revoked or expire. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

F. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment D of this Order.

This condition is authorized by Water Code section 13267, which requires any person discharging waste that could affects 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.

2. Site Access: The Permittee shall grant State Water Board staff, Lahontan Regional Board staff, and Colorado River Regional 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. Entry 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. 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 the 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 the Permittee to distribute this Order to all entities working on the Project so that they are aware of the Order conditions and can conduct the work accordingly. (Wat. Code, § 13263.)

G. Construction Conditions

1. Work in Delineated Waters of the State

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 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.)

a. The Permittee shall not use or allow the use of erosion control products that contain synthetic materials within waters of the state at any time.

   This condition protects water quality by limiting the use of synthetic materials. Synthetic, non-biodegradable materials used in erosion control products are persistent in the environment. When they do break down, they break down into smaller and smaller pieces of the original material, which can have adverse effects on water chemistry and fauna. Synthetics should be avoided wherever possible due to their potential effects on water quality and the environment. (Dredge or Fill Procedures, Section IV.B.1.)

b. All work performed within waters of the state shall be completed in a manner that minimizes impacts to beneficial uses.

   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.)

c. Permittee shall not install temporary diversions or impoundments of water, cofferdams, or similar structures as part of this Project.

   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.)

2. **Stormwater**: If the Project is required to obtain 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), 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.

This condition protects water quality by ensuring that grantees whose Project meet the size requirements for the Construction General Permit get coverage under that permit. (40 CFR § 122.26(a)(9)(B).)

3. Site Management

a. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete Project implementation.

Removal of vegetation within and adjacent to waters results in higher water quality degradation through erosion, decreased shading, decreased riparian buffering, decreased allochthonous nutrient and habitat inputs, and other pathways. Limiting this vegetation removal to the minimum necessary to complete the Project is protective of water quality. (Dredge or Fill Procedures, Section IV.B.1.)

b. Where temporary or permanent impacts have not been approved, construction vehicles must not enter waters of the state.

Vehicles operating within waters that are outside of the approved Project boundary will lead to water quality impacts that were not proposed and which are not authorized by this Order. Water quality is protected by restricting this activity. (Wat. Code, § 13264, Dredge or Fill Procedures, Section IV.A.2.d.)

c. When no longer needed, all construction-related equipment, materials, and temporary BMPs shall be removed from Project sites.

The longer equipment and other unneeded materials are left on the Project site the higher the likelihood of a leak, spill, or other unintended impact. Removing these materials as soon as they are no longer needed is protective of water quality. (Dredge or Fill Procedures, Section IV.B.1.)

d. All imported riprap, rocks, and gravels that are used shall be pre-washed. No riprap that has been grouted or cemented is allowed to be used onsite. If any asphalt or concrete grindings, including beneficial reuse, are used onsite for any purpose it must be encapsulated by clean fill materials such as asphalt or concrete to prevent discharge into waters of the state.

Imported rock materials have the potential to harbor unwanted and detrimental invasive species, pathogens, sediments, compounds, etc. Requiring these materials to be washed before being brought to, and used on, site is protective of water quality. (Dredge or Fill Procedures, Section IV.B.1.)

4. Fugitive Dust:

a. If dust suppression measures are utilized, they shall be performed such that they do not result in a discharge to waters of the state.

This condition protects water quality by ensuring that the Permittee does not discharge sediment or other wastes into waters while performing dust suppression activities. (Dredge or Fill Procedures, Section IV.B.1.)

5. Culvert Construction or Maintenance

a. Projects proposing to replace culverts must repair any existing scour or headcutting actively discharging sediment, caused by prior culvert design.

This condition protects water quality by requiring that culverts do not affect stream erosion. Sedimentation or erosion related to culverts could cause long term instability and lead to impacts to water quality and beneficial uses. (Dredge or Fill Procedures, Section IV.B.1.)

b. The replaced or maintained culvert shall be in alignment with the stream channel upstream and downstream of the culvert.

This condition protects water quality by requiring that culverts not affect the alignment of streams. Erosion related to culverts could lead to impacts to water quality and beneficial uses. (Dredge or Fill Procedures, Section IV.B.1.)

c. 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.

This condition protects water quality by requiring that culverts do not affect stream erosion. Sedimentation or erosion related to culverts could cause long term instability and lead to impacts to water quality and beneficial uses. (Dredge or Fill Procedures, Section IV.B.1.)

d. 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.

This condition protects water quality by requiring that the proper sized culvert is installed to prevent impacts to waters. Sedimentation or erosion

related to improperly sized culverts could cause impacts to water quality and beneficial uses. (Dredge or Fill Procedures, Section IV.B.1.)

e. 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.

This condition protects water quality by requiring that culverts are of adequate size for future storm events to prevent stream erosion. Sedimentation or erosion related to pressurized flow through inadequately sized culverts could cause long term impacts to water quality and beneficial uses. (Dredge or Fill Procedures, Section IV.B.1.)

6. Toxic and Hazardous Materials

a. Prior to use in waters of the state, all equipment shall be cleaned of any substances that are detrimental to water quality.

Equipment can harbor the same detrimental substances as the rock materials noted above. Motorized equipment can also introduce petroleum products and other compounds into waters. Requiring that equipment be cleaned of these detrimental substances before being used in waters is protective of water quality. (Dredge or Fill Procedures, Section IV.B.1.)

b. Operation and storage of vehicles and equipment shall not result in a discharge or threatened discharge of oil, grease, other petroleum products, or any other waste that may be detrimental to the quality of waters of the state.

Petroleum products and other waste materials that may leak, leach, or fall from equipment may be detrimental to water quality. This condition protects water quality by ensuring that these materials are not discharged to waters of the state when equipment is being used or stored. (Dredge or Fill Procedures, Section IV.B.1.)

c. Vehicles and equipment that operate in waters of the state shall be regularly inspected for leaks. At no time shall the Permittee allow the use of any vehicle or equipment that leaks any substance possibly detrimental to water quality.

Fluids that leak from vehicles and equipment are generally detrimental to water quality. This condition protects water quality by requiring regular inspections of vehicles and equipment and restricting use of leaking vehicles and equipment. (Dredge or Fill Procedures, Section IV.B.1.)

d. Raw cement, concrete (or washing thereof), asphalt, drilling fluids, lubricants, paints, coating material, oil, petroleum products, or any other

substances which could be hazardous resulting from or disturbed by Project-related activities, shall be prevented from contaminating fill material and/or entering waters of the state.

The materials listed above are detrimental to water quality. These materials can either be directly or indirectly, or chronically or acutely toxic to aquatic organisms and are generally detrimental to water quality through alteration of water chemistry (pH, dissolved oxygen, specific conductance, organic enrichment, dissolved and particulate metals, fine sediment, etc). This condition protects water quality by restricting these compounds from being discharged into waters of the state. (Dredge or Fill Procedures, Section IV.B.1.)

e. Equipment working in waters of the state, including in areas protected by diversions, shall be removed from the delineated waters for fueling, service, or maintenance. Such BMPs should include any precautions as necessary to ensure potential spills and leaks do not result in a discharge into waters of the state.

Fuels and other petroleum products are detrimental to water quality. This condition protects water quality by requiring equipment to be removed from waters before fueling, or, if that is not possible, for special procedures to be developed to mitigate the risk of fueling equipment in waters. (Dredge or Fill Procedures, Section IV.B.1.)

f. On-site containment for storage of chemicals classified as hazardous shall include secondary containment.

Hazardous materials are detrimental to water quality. Secondary containment around hazardous material storage sites helps to ensure that any leaks or spills of such materials do not result in a discharge to waters of the state. (Dredge or Fill Procedures, Section IV.B.1.)

7. Invasive Species and Soil Borne Pathogens

a. Imported fill and planting materials must be free of pathogens that could harm local plant or animal populations.

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. Imported fill material must be free of weed and invasive species' seeds and live plants.

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. Equipment and machinery used in Project construction shall be inspected and cleaned of non-native invasive vegetation prior to use at an individual Project site.

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.)

8. Roads

a. Existing roads shall be used to access Project sites when practicable.

Unpaved roads are a source of excess sediment delivery to streams throughout California. New roads need not be constructed if existing roads can be used. This condition protects water quality by limiting new sources of excess sediment. (Dredge or Fill Procedures, Section IV.B.1.)

b. All existing roads used for the Project shall be left in a condition equal to or better than their condition prior to Project use.

Unpaved roads are a source of excess sediment delivery to streams throughout California. If these roads are properly designed and maintained their impact to water quality can be minimized. These roads often fall into disrepair because due to lack of maintenance or repair. This condition protects water quality by requiring that roads used for this Project are, at the very least, left in the condition that they were in before the Project used them. (Dredge or Fill Procedures, Section IV.B.1.)

c. Where use of existing roads is not practicable, temporary access routes shall be designed and constructed such that they do not cause a discharge of sediment or other wastes to waters of the state.

Unpaved roads are a source of excess sediment delivery to streams throughout California. This condition protects water quality by requiring necessary new roads to be designed and constructed such that they do not discharge excess sediment or other wastes to waters. (Dredge or Fill Procedures, Section IV.B.1.)

d. Construction of new temporary access roads shall be limited to the minimum number and width necessary to complete the Project.

Unpaved roads are a source of excess sediment delivery to streams throughout California. This condition protects water quality by limiting new sources of excess sediment and other wastes. (Dredge or Fill Procedures, Section IV.B.1.)

H. Mitigation for Temporary Impacts

Table 3 presents the mitigation method required for Project temporary impacts.

1. The Permittee 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 to waters of the state in accordance with the individual Project specifications which were submitted as part of the compensatory mitigation plan 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. The State Water Board may extend the monitoring period beyond requirements restoration plan upon a determination by State Water Board Executive Officer or designee that the performance standards have not been met or are not likely to be met within the monitoring period.

Meeting performance measures is required to protect water quality. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

3. Compensatory mitigation may be required for any authorized impact site (as listed in Attachment B, Table 2) where first-year restoration work for disturbed areas in, or immediately adjacent to, waters of the state is not completed within one year of the conclusion of ground-disturbing activity.

Temporarily impacted areas that are not restored could become permanently impacted and contribute to long-term degradation of water quality. The longer the lag time between impact and restoration, the more opportunity there is for water quality degradation. This condition protects water quality by ensuring that restoration is initiated in a reasonable amount of time after impacts have occurred. (Dredge or Fill Procedures, Sections IV.A.2.d, IV.B.4-5.)

Table 3: Required Project Mitigation Quantity for Temporary Impacts by Method

Aquatic Resource Type	Mitigation Type	Units	Est.	Re-est.	Reh.	Enh.	Pres.	Unknown
Stream Channel	Permittee Responsible	Acres			0.437			
Stream Channel	Permittee Responsible	LF			935			

I. Compensatory Mitigation for Permanent Impacts

Compensatory Mitigation is for permanent physical loss and permanent ecological degradation of a water of the state.

1. Final Compensatory Mitigation Plan:

The Permittee shall provide compensatory mitigation for impacts to waters of the state in accordance with Compensatory Mitigation Plan for the Cima Road Project (FHWA No. CA FTNP MOJA 12(1)) (Compensatory Mitigation Plan) dated February 2022, rev. June 2022 and incorporated herein by reference and approved through the issuance of this Order. Any deviations from, or revisions to, the Compensatory Mitigation Plan must be pre-approved by Water Board staff. The monitoring period shall continue until the Water Board staff determines that performance standards have been met. This may require the monitoring period to be extended.

2. Purchase of Mitigation Credits by Permittee for Compensatory Mitigation

a. A copy of the fully executed agreement for the purchase of mitigation credits shall be provided to the Water Board prior to impacts to waters of the state.

b. The Permittee shall retain responsibility for providing the compensatory mitigation and long-term management until Water Board staff has received documentation of the credit purchase and the transfer agreement between the Permittee and the seller of credits.

3. Total Required Compensatory Mitigation

a. The Permittee is required to provide compensatory mitigation for the authorized impact to ephemeral streams by purchasing stream preservation units at a 3:1 ratio.

b. Total required Project compensatory mitigation information for permanent physical loss of area is summarized in Table 4.

[Establishment (Est.), Re-establishment (Re-est.), Rehabilitation (Reh.), Enhancement (Enh.), Preservation (Pres.), Unknown].

c. The Permittee is required to provide compensatory mitigation for the ecological degradation to ephemeral streams by purchasing 3:1 stream preservation units.

d. Total required Project compensatory mitigation information for permanent degradation of ecological condition is summarized in Table 4.

Table 4: Total Required Project Compensatory Mitigation Quantity for Permanent Physical Loss of Area

Aquatic Resource Type	Mitigation Type	Units	Est.	Re-est.	Reh.	Enh.	Pres.	Unknown
Stream Channel	Mitigation Bank Credits	Acres					2.3	

XII. Public Notice

The State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from June 24, 2022, to July 14, 2022. The State Water Board did not receive any comment regarding the Project during the 21-day comment period.

XIII. California Environmental Quality Act (CEQA)

The Water Board has determined that the Project is 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) 15301(c) Existing Facilities. Additionally, the Water Board concludes that no exceptions to the CEQA exemption apply to the activities approved by this Order. The Water Board will file a Notice of Exemption with the State Clearinghouse within five (5) working days from the issuance of this Order. (California Code of Regulations., Title 14, section 15062.)

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

The Permittee is a federal agency seeking certification for a CWA section 404 permit. No fees were required. According to the State Water Board's Billing Guidelines for Federal Facilities, fees are not required for this federal undertaking on federal lands.

XVI. Water Quality Certification

I hereby issue the Order for the Cima Road, SB22018IN, 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, and the Regional Water Boards' Water Quality Control Plans.

Karen Mogus
Digitally signed by Karen Mogus
Date: 2022.07.29 13:03:20 -07'00'

Date

Karen Mogus
Deputy Director
Division of Water Quality