

Final Appendix H Responses to Comments

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

This Appendix of the Consolidated Final Program Environmental Impact Report (PEIR) contains written responses to all comments received by the State Water Resources Control Board (State Water Board) from agencies and the public pertaining to the Draft Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (Order) and Draft PEIR. Section 1 includes comprehensive “master responses” addressing two issues that received multiple comments from various parties. Section 2 presents responses to individual comments raising environmental issues pertaining to the Draft Order and Draft PEIR. Each response provides background regarding the specific issue, how the issue was addressed, and additional clarification and explanation as appropriate to address the comments. Section 3 includes comments received solely in support of the Order and PEIR that require no response.

1 Master Responses

After review and evaluation of the comments received on the Draft Order and Draft PEIR, it was determined that some comments by different commenters were substantially similar in subject matter. In response to these frequently raised comments, single “master responses” were prepared to avoid repetition of individual responses and lengthy duplication of text.

Each of the two master responses below include a summary of the similar comments received and responses to those general topics.

Master Response 1: Definition of Restoration Project

Summary of Comments

Several commenters state that the definition of restoration: is too broad; needs to be consistent with other definitions; should not include multi-benefit or mitigation projects; and may result in unintended adverse consequences to water resources, species, and habitats.

Response

The existing definition of a restoration project in the Order and PEIR serves to include projects by virtue of improving ecosystem functions and/or services. The Order includes commonly proposed and high priority categories of eligible project types and allows for an expedited regulatory review of those eligible restoration projects that do not qualify for the Order for Small Habitat Restoration Projects. The approving Water Board (per Section XIII. Conditions of the Order) may only authorize a proposed project under the Order if it determines that the following requirements are met: 1) the project meets the definition of a restoration project (as defined in Section V. Project Description of the Order); 2) the project adopts and implements all appropriate general protection measures (GPMs) and California Environmental Quality Act (CEQA) mitigation measures to protect water quality and beneficial uses; 3) the project proponent fulfills all approving Water Board requirements for project information and reporting; and 4) the project is designed to protect water quality and beneficial uses in accordance with regional or statewide water quality control plans. Furthermore, “The approving Water Board determines if a proposed project meets the definition of a restoration project and

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

is eligible for authorization under this Order.” has been added to the project description (Section V. Project Description of the Order) to ensure authorization of proposed projects is appropriate and as intended.

The definition of a restoration project for the Order was developed based on input from numerous agencies and to be consistent with multiple permitting agency regulatory practices either existing or under development (e.g., California Department of Fish and Wildlife (CDFW), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), U.S. Army Corps of Engineers (USACE)). Further, the PEIR incorporates by reference the information contained in the programmatic Biological Opinions developed by NMFS for restoration projects for the North Coast (NMFS 2012), Central Coast (NMFS 2016), South Coast (NMFS 2015), and Central Valley (NMFS 2018) regions of California (collectively referred to as the NMFS Programmatic BOs available in Appendix D). The NMFS Programmatic BOs provide federal Endangered Species Act (FESA) coverage for several categories of restoration project types, which are similar to those described in the Order and PEIR and which may affect anadromous fish. Consistent with the definition of a restoration project in the Order, to be eligible for coverage under the NMFS Programmatic BOs, projects must result in a net increase in aquatic or riparian resource functions and/or services. Avoidance and minimization measures are also described in the NMFS Programmatic BOs and must be included in the proposed projects, as applicable. The avoidance and minimization measures included in the NMFS Programmatic BOs are similar to the general and species protection measures developed as part of the Order and PEIR.

Multi-benefit projects have been identified as increasingly important to address multiple factors that have led to degradation of ecosystems, habitats, and the species that depend on them throughout the State. As stated in the PEIR (Section 1.1 Introduction and Overview of the Order),

“A restoration project permitted by the Order may include multiple benefits, such as groundwater recharge, recreation, flood management, water quality improvement, and/or adaptation to climate change. Restoration projects permitted by the Order may also contribute to the protection of existing and potential beneficial uses identified in each of the nine Regional Water Quality Control Boards (Regional Boards) water quality control plans (basin plans).”

An example of prioritization of multi-benefit projects throughout the State can be found in the CDFW funding opportunities for multi-benefit ecosystem restoration and protection projects under Proposition 1 (Water Quality, Supply, and Infrastructure Improvement Act of 2014). The CDFW Proposal Solicitation Notice for Proposition 1 Fiscal Year 2021-2022 focuses on planning, implementation, acquisition, and scientific study projects across multiple priorities, consistent with those identified in the Order (e.g., groundwater recharge, flood management, water quality improvement, and/or adaptation to climate change).

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

In regard to including mitigation projects as being eligible for coverage under the Order, and concerns stated about the Order potentially being used to permit underlying projects, Order Section XIII.E.1. General Compliance:

“Enrollment and authorization of restoration projects under this Order are for the discharges of waste associated with only the restoration action and shall not be construed as authorization or any compliance determination for any related underlying project or activity. Restoration projects serving as mitigation for a related project or activity may be enrolled under this Order; however, this Order does not include any findings regarding the underlying related activity’s impact to water quality, public trust resources, or other matters of public interest. When considering the impact of restoration projects under this Order, the approving Water Board considers only those adverse changes that may result from approval of the new restoration project, including multi-benefit projects that may include non-restoration action elements (e.g., recreation, flood protection).”

For example, a large underlying project not associated with a restoration project, meeting the definition of a restoration project, and/or adhering the conditions in the Order would not be permitted under this Order. Projects not meeting these requirements can be authorized through other permitting methods.

Master Response 2: Construction General Permit and Stormwater Pollution Prevention Plan (SWPPP) Requirements

Summary of Comments

Several commenters request clarification on the applicability of Clean Water Act Section 402 National Pollution Discharge Elimination System (NPDES) permits including the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit). Commenters questioned references in the draft Order that allude to preparation of a SWPPP being a requirement of the Order, which some commentors identified as excessively expensive. Commentators suggest that as written in the draft, General Protection Measure WQHM-2 and Condition XIII.E.9 may expand when the Construction General Permit or other NPDES permits are required. Commentors also request clarification on potential overlap between Section 402 NPDES permits and Section 401 Water Quality Certifications.

Response

Section 402 of the Clean Water Act describes discharges that must be authorized by an NPDES permit. An NPDES permit further describes the scope of discharges covered. The Order is not an NPDES permit. The Order does not change the scope of activities that are required to obtain an NPDES permit, including coverage under the Construction General Permit or a municipal separate storm sewer system (MS4) NPDES permit. Moreover, the Order does not alter any of the requirements set forth in any applicable NPDES permits. For example, the Order does not affect the requirement in the Construction General Permit to prepare a SWPPP. More information about the Construction General Permit and its requirements can be found on the [State Water Board’s Construction Stormwater Program website](https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html) at https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The Construction General Permit covers land disturbing activities that result in a disturbance of one or more acres, or less than one acre but are part of a larger common plan of development or sale that totals one or more acres of land disturbance. The Construction General Permit expressly states that it does not authorize the discharge of dredged or fill material to a water of the state. If a project includes land disturbances of one or more acres and discharges of dredged or fill material, then coverage under the Order and coverage under the Construction General Permit would be necessary.

Order Condition XIII.E.9. Construction General Permit Requirement and Order Attachment A, A.5.2 GPMs WQHM-2 SWPPP and WQHM-3 Erosion and Sediment Control Measures were revised to further clarify the intent to require compliance with any applicable NPDES permit requirements, not to expand or limit the scope of any NPDES permits. Whether any NPDES permits are required may be discussed during the pre-application consultation. If project proponents determine, and the approving Water Board concurs during the pre-application consultation, that obtaining coverage under the Construction General Permit is not required, then the project proponent will be in compliance with Order Condition XIII.E.9 and GPM WQHM-2. Early coordination with the approving Water Board is encouraged to confirm compliance with requirements.

Final Text for Order Condition XIII.E.9. Construction General Permit Requirement:

This Order does not provide coverage under the Construction General Permit. As applicable, project proponents 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. CAS00002, as amended or any subsequently issued permit). For ground disturbing activities that do not require enrollment in Order No. 2009-0009-DWQ, the Notice of Intent (NOI) will include appropriate erosion and sediment control measures to be considered by the approving Water Board.

Final Text for Order Attachment A, GPM WQHM-2: SWPPP: All projects covered by the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit) will prepare and implement the required, site-specific, storm water pollution prevention plan (SWPPP).

Final Text for Order Attachment A, GPM WQHM-3: Erosion and Sediment Control Measures: For projects that do not require coverage under a NPDES permit per GPM WQHM-2, the project proponent will develop and implement erosion and sediment control measures (or plan), which will include appropriate BMPs to reduce the potential release of water quality pollutants to receiving waters. BMPs may include the following measures:

- ◆ Employ tackifiers, soil binders, or mulch as appropriate for erosion control.
- ◆ Install sediment control measures, such as straw bales, silt fences, fiber rolls, or equally effective measures, at repair areas adjacent to stream channels, drainage canals, and wetlands, as needed. Sediment control measures will be monitored during and after each storm event for effectiveness. Modifications,

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

repairs, and improvements to sediment control measures will be made as needed to protect water quality.

- ◆ No sediment control products will be used that include synthetic or plastic monofilament or cross-joints in the netting that are bound/stitched (such as straw wattles, fiber rolls, or erosion control blankets), and which could trap snakes, amphibians, and other wildlife.

2 Responses to Individual Comments

This section contains the comment letters received on the Draft Order and Draft PEIR and the State Water Board’s responses to significant environmental issues raised in those comments. Each letter, as well as each individual comment within the letter, has been given a number for purposes of cross-referencing. Text changes made in response to a comment have been made in the Final documents. These changes are documented in Appendix H by ~~strikeout~~ where text was removed and by double underline where text was added. The changes amplify, clarify, or make modifications or corrections and do not change the results or conclusions of the Order or PEIR.

Table H-1 lists the parties (by cross-referencing number) who submitted individual comments raising environmental issues on the Draft Order and Draft PEIR during the public review period.

**Table H-1
Comments on the Draft Order and Draft PEIR**

Letter #	Commenter
350SV-1	350 Silicon Valley
ACWA-1	Association of California Water Agencies
AMR-1	American Rivers
CALT-1	California Trout
CBD-1	Citizens Committee to Complete the Refuge Center for Biological Diversity California Coastkeeper Alliance Sierra Club California
CDFW-1	California Department of Fish and Wildlife
CDOT-1	California Department of Transportation
CLSN-1	California Landscape Stewardship Network
CVWD-1	Coachella Valley Water District
DSC-1	Delta Stewardship Council
DU-1	Ducks Unlimited
EPA-1	United States Environmental Protection Agency Region IX
IND-1	General Public, Jeff TenPas
IND-2	General Public, Trent Tuthill (Same comment letter as TCD-1)

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Table H-1
Comments on the Draft Order and Draft PEIR

Letter #	Commenter
LACDPW-1	Los Angeles County Department of Public Works
LADWP-1	Los Angeles Department of Water and Power
LAND-1	Soluri Meserve, a law corporation on behalf of Local Agencies of the North Delta
LSLT-1	League to Save Lake Tahoe
PCT-1	Placer County Tomorrow
RRK-1	Russian Riverkeeper
SCC-1	Coastal Conservancy
SFBRWQCB-1	San Francisco Bay Regional Water Quality Control Board
SYRCL-1	South Yuba River Citizens League
TCD-1	Trinity County District 3 Supervisor
TRPA-1	Tahoe Regional Planning Agency
TRRP-1	Trinity River Restoration Program
UAIC-1	United Auburn Indian Community, Tribal Historic Preservation Department
VALW-1	Santa Clara Valley Water District (Valley Water)
VIEJAS-1	Viejas Band of Kumeyaay Indians
WWD-1	Westlands Water District

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Responses to Individual Commenters

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

350SV-1 350 Silicon Valley

350SV-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



August 13, 2021

**Comments on Public Workshop:
Sec. 401 wetlands restoration projects statewide, and supporting EIS**

350 Silicon Valley, with more than 5,000 supporters in California, is pleased to submit the following comments on the August 4, 2021 *Public Workshop: Sec. 401 wetlands restoration projects statewide, and supporting EIS*.

The State Water Board has previously issued a general water quality certification for small habitat restoration projects that (a) shall not exceed five acres or a cumulative total of 500 linear feet of stream bank or coastline and (b) qualify for the CEQA Class 33 Categorical Exemption (Cal. Code Regs., tit. 14, § 15333). Restoration projects that fall outside the project size limits of the general water quality certification or small habitat restoration must obtain individual water quality certifications and/or waste discharge requirements from the State Water Board or Regional Water Quality Control Boards (Regional Boards). This process can be extremely time-consuming and costly, and creates a significant hurdle that greatly contributes to, on average, a 10-year timeline for restoration projects larger than the existing safe harbor.

Therefore, we are happy to see that a draft [General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide](#) dated June 30, 2021 has been issued. When finalized, this order will greatly streamline the process for restoration projects larger than five acres.

We fully support the draft General Order and offer one suggestion for the Boards' consideration.

The draft General Order should specify up front that consideration and application of the Endangered Species Act (ESA) is required as part of the review of restoration projects under consideration—as noted in Appendix A, A.5.4, p. 40 and footnote 10; and consonant with the existing CEQA exemption for smaller projects do (see §15333(a)). We believe it is essential to emphasize to project applicants when they begin the permit application process that the ESA will be considered on larger projects as well.

Wetland restoration is an important tool in combating climate change—as it provides for mitigation against rising sea levels, provides for carbon sinks, and helps to restore the native plant life that is important to support the health of the critical California biosphere reserves. With the addition of language incorporating ESA considerations, we are very happy to provide our full support to the draft General Order.

Thank you for the opportunity to comment on this important matter.

Sincerely,

Janet Cox
Legislation Director
350 Silicon Valley

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

350SV-1 350 Silicon Valley

Responses to Comments from 350SV-1 350 Silicon Valley

350SV-1-1:

The State Water Board appreciates 350 Silicon Valley's (350SV) comments supporting the adoption of the Order. For clarification, the Order has not been adopted but will be considered by the State Water Board for adoption once the response to public comments and CEQA PEIR process is complete.

350SV-1-2:

See PEIR Section 2.5 Authorizations and/or Permits that May Be Required for Restoration Projects for a list of authorizations or permits that may be required for restoration projects authorized under the Order.

As described in Order Section IV. Project Purpose, the Order intends to provide authorization for restoration projects that meet the eligibility criteria in the Order, but do not qualify for authorization under the Order for Small Habitat Restoration Projects.

350SV-1-3:

The State Water Board appreciates 350 Silicon Valley's (350SV) comments supporting the adoption of the Order.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

ACWA-1 Association of California Water Agencies



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

ACWA-1
Bringing
Water
Together

Sent via ELECTRONIC MAIL to commentletters@waterboards.ca.gov

August 13, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000



**RE: Association of California Water Agencies' Comments – Proposed General Order
for Restoration Projects Statewide**

Dear Ms. Townsend,

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide public comments to the State Water Resources Control Board (State Water Board) on the *Proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (proposed General Order) and draft Program Environmental Impact Report (PEIR)*. ACWA represents more than 460 public water agencies that collectively deliver approximately 90 percent of the water in California for domestic, agricultural, and industrial uses.

ACWA appreciates and strongly supports the State Water Board's proposed General Order and PEIR, which is critically needed to streamline permitting for, and accelerate implementation of, habitat restoration projects throughout the state in an environmentally protective manner. ACWA anticipates that the proposed General Order, particularly if adopted with ACWA's below comments included, will help reduce expenses that encumber restoration projects, reduce the permitting time for restoration projects, improve ecological functions and services of degraded habitats, increase habitat connectivity, improve water quality, increase sequestration of carbon, and increase watershed resilience to climate change throughout the state. ACWA also anticipates that by reducing "green tape" and related restoration project delays and soft costs, the proposed General Order will allow restoration project proponents to devote a larger share of grant funds and agency staff resources to actual habitat improvements "on the ground," which will benefit wildlife, waterways, and communities in California.

ACWA believes that the draft General Order and associated PEIR provide a streamlined, yet environmentally thorough, protective, and robust permitting process for restoration projects. ACWA additionally notes that the proposed General Order would be consistent with the goal of the Water Resilience Portfolio to align and improve permitting to help incentivize more multi-benefit and multi-partner restoration projects. In this regard,

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Ms. Jeanine Townsend
State Water Resources Control Board
August 13, 2021 • Page 2



ACWA particularly appreciates the inclusion of Section E.1 in the proposed General Order, which clarifies the conditions that would be applicable when the proposed General Order is used to authorize (a) mitigation projects for otherwise legally permitted and authorized activities, and (b) multi-benefit projects that include non-restoration elements.

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cont.

ACWA has noted in its review that some small, but important additions to the proposed General Order could help to even further incentivize and assure streamlined permitting of restoration projects. To that end, ACWA asks the State Water Resources Control Board to consider the following comments.

Comment 1 – Clarify and assure that quantity-based compensatory mitigation requirements do not preclude the use of the proposed General Order for approval of restoration projects that, by design, convert aquatic habitat types to restore more natural hydrologic functions and improve ecological services.

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ACWA suggests that Section I.2 of the proposed General Order be revised to state that projects designed to return existing features to a more natural hydrologic condition and/or aquatic habitat type, resulting in greater ecological functions and services overall, need not provide a specific quantity (acreage or linear feet) of a degraded habitat type as mitigation. We have concerns that Section I.2 currently runs the risk of being read as a mandate that applicants must provide a specific quantity of in-kind mitigation for low value habitat types that are intentionally converted to higher value habitat types, in addition to providing the intended lift in ecological functions and services. When quantity-based mitigation is mandated by water boards for restoration projects designed to convert low function and service habitat types for the benefit of the environment, that mandate can preclude the implementation of such restoration projects because it imposes expensive, and sometimes infeasible, quantity-based compensatory mitigation requirements.

Clarifying that the increase in habitat functions or services resulting from a restoration project alone may be sufficient mitigation for the project would prevent unnecessary restoration project delays and hurdles, and better assure that the proposed General Order works to expedite environmentally beneficial projects at a larger scale.

Comment 2 – Clarify and assure that restoration projects which provide environmental benefits, but that do not eliminate historical facilities altogether, can be expedited under the proposed General Order.

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ACWA suggests adding clarifications to Attachment A to assure that restoration projects that provide environmental benefits as compared to existing conditions can be approved, even if those projects will not completely eliminate or rectify historical or cultural watershed modifications. Attachment A of the proposed General Order as currently written runs the risk of demanding “environmental perfection,” at the expense

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Ms. Jeanine Townsend
State Water Resources Control Board
August 13, 2021 • Page 3



of encouraging and expediting environmentally “good” and beneficial restoration projects.

Currently, many restoration projects that would result in environmental benefits as compared to existing, historically modified conditions encounter major permitting hurdles and delays because the scope of the project and a water agency’s public health and safety mandates allow improvements to, but preclude the elimination of certain historical facilities. While the historical facilities must remain in place for public health and safety reasons, they often can be redesigned and retrofitted, or operated in a different manner to restore habitats and provide other environmentally valuable functions and services. Often these projects are precluded because, while environmentally beneficial and useful, they do not attain “environmental perfection,” which is often defined as the elimination of the facility altogether.

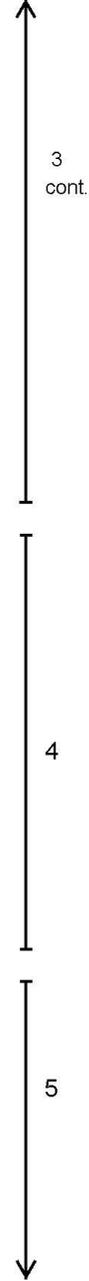
Therefore, ACWA recommends further clarifying in Attachment A to the proposed General Order that restoration projects providing environmental benefits, but not eliminating historical facilities altogether, can be expedited under the General Order.

Comment 3 – Clarify restoration project success and focus long-term project management responsibilities for restoration projects to better incentivize such work.

ACWA suggests it would be beneficial to clarify in the proposed General Order the long-term management goal of restoration projects. The proposed General Order should incorporate a mechanism for State Water Board “sign off” on the success of restoration projects so that applicants’ responsibilities and efforts are focused to the scope of the restoration projects, and complete after meeting success criteria. We are cognizant that restoration project effort duration can vary depending on the work being done, and believe that clarifying the goal of restoration projects to develop natural, self-sustaining, habitat types that change over time in response to watershed conditions would simplify and incentivize permitting of such projects, and reduce applicant concerns regarding retention of extended liability in perpetuity for natural habitat succession and/or potential ongoing ecological function and service effects of restoration projects.

Comment 4 – Clarify NPDES requirements and applicability to the proposed General Order.

ACWA suggests that the proposed General Order and appendices be revised to clarify that National Pollutant Discharge Elimination System (NPDES) permits are not applicable to, and not required for projects that do not result in discharges of waste or pollutants to Waters of the United States (US). Clarification is requested in section IX.E.9 and IX.E.10 on page 13, and A-18, A-39. Further, many applicants already have individual NPDES permits that cover construction projects that occur within the Municipal Separate Storm Sewer System permit boundary. This request seeks clarification that the proposed General Order’s requirements



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Ms. Jeanine Townsend
State Water Resources Control Board
August 13, 2021 • Page 4



to comply with NPDES permits do not conflict with the requirements of the underlying NPDES permits themselves.

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Comment 5 – The proposed General Order cuts “green tape” and will expedite public water agencies’ implementation of specific restoration projects.

Specific public water agency projects planned for 2022 and beyond that could be eligible to use the proposed General Order include, but are not limited to:

- The City of Sacramento, in partnership with the Water Forum, and other regional stakeholders, has 10 river sites that are slated for restoration projects over the next 15 years including Lower Sunrise, Lower Sailor Bar, and Nimbus Basin.
- Sonoma County Water Agency’s Dry Creek Habitat Modification Projects will continue off channel and side channel enhancement work to satisfy Russian River Section 7 obligations.
- The Modesto and Turlock Irrigation Districts have developed the Tuolumne River Management Plan (TRMP) for the proposed operations, improvements, and resource protection measures under a new Federal Energy Regulatory Commission license for the Don Pedro Project. The TRMP proposes a suite of habitat management projects such as a gravel augmentation program, experimental gravel cleaning, increased habitat complexity through site-specific enhancements, and water hyacinth removal.
- The Santa Clara Valley Water District’s Almaden Lake Improvement Project would restore the channel and floodplain of Alamos Creek through Almaden Lake, which is a historical gravel mining pit. In addition to restoring a continuous natural creek and riparian corridor, the project would improve passage conditions for steelhead and remove a significant source of mercury pollution to the Guadalupe River.
- Coachella Valley Water District (CVWD) Projects that will benefit include: CVWD’s proposed Constructed Habitat project developed to satisfy the Coachella Valley Multiple Species Habitat Conservation Plan; as well as the multi-state agency and stakeholder agency project effort: the Salton Sea Management Program 10-year plan.

6

ACWA appreciates the State Water Board’s consideration of these comments. If you have any questions regarding these comments, please contact me at NickB@acwa.com or (916) 441-4545.

7

Sincerely,

Nicholas Blair
Regulatory Advocate

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Ms. Jeanine Townsend
State Water Resources Control Board
August 13, 2021 • Page 5



cc: The Honorable E. Joaquin Esquivel, Chair, State Water Resources Control Board
The Honorable Dorene D'Adamo, Vice Chair, State Water Resources Control Board
The Honorable Laurel Firestone, Board Member, State Water Resources Control Board
The Honorable Sean Maguire, Board Member, State Water Resources Control Board
The Honorable Nichole Morgan, Board Member, State Water Resources Control Board
Ms. Eileen Sobek, Executive Director, State Water Resources Control Board
Mr. Jonathan Bishop, Chief Deputy Director, State Water Resources Control Board
Mr. Phillip Crader, Deputy Director, Division of Water Quality, State Water Resources Control Board
Mr. Dave Eggerton, Executive Director, Association of California Water Agencies
Ms. Cindy Tuck, Deputy Executive Director for Government Relations, Association of California Water Agencies

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

ACWA-1 Association of California Water Agencies

Responses to Comments from ACWA-1 Association of California Water Agencies

ACWA-1-1:

The State Water Board appreciates Association of California Water Agencies' (ACWA) comments supporting the adoption of the Order.

ACWA-1-2:

The Order Section V. Project Description includes the definition of a restoration project as:

“...one that would result in long-term net increase in aquatic or riparian resource area functions and/or services through implementation of the eligible project types, relevant general protection measures (GPMs), and consideration of design guidelines, summarized below and described in detail in Attachment A, Order Description and Eligibility.”

The definition's use of net increase in functions and services indicates a project must have a net environmental benefit and result in an overall enhanced and/or restored environmental condition. Furthermore, the approving Water Board determines if a proposed project meets the definition of a restoration project and is eligible for authorization under the Order. The approving Water Board also determines if a proposed project adopts and implements all appropriate GPMs and CEQA mitigation measures appropriate for authorization under the Order.

No revisions are included in the Order or PEIR because of this comment.

ACWA-1-3:

As discussed above for response to comment ACWA-1-2, the definition of a restoration project uses net increase in functions and services and does not specify requirements to remove all historical features. Projects not meeting conditions of the Order can be authorized through other permitting methods. No revisions are included in the Order or PEIR because of this comment.

ACWA-1-4:

Order XIII.G.4. Monitoring Plan requires project proponents to develop a monitoring plan that identifies measurable performance standards and success criteria, methods to determine whether performance standards have been met, a timeframe and responsibility party for achieving the performance standards, and a reporting schedule. Further, Order XIII.I.3. Restoration and Monitoring Impacts prescribes extending the monitoring period if performance standards have not been met. Order Attachment D, Reporting and Notification Requirements apply to all projects authorized under the Order. As presented in Order Attachment D, the approving Water Board must issue a Notice of Project Complete Letter to affirm the project has completed applicable post-construction monitoring requirements, permit requirements, and achieved performance standards. The Notice of Project Complete Letter would not be issued until the project has achieved performance standards.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

ACWA-1-5:

See Master Response 2: Construction General Permit and SWPPP Requirements.

The Order is not an NPDES permit. It does not provide authorization to discharge under Clean Water Act Section 402. The Order would not alter the scope of activities that may be required to obtain an NPDES permit or the requirements of any NPDES permits. As stated in Order Condition XIII.G.2. Pre-Application Consultation, the approving Water Board will review draft project materials and provide project-specific guidance during the pre-application consultation. During the pre-application consultation, the project proponent and the approving Water Board may discuss whether the project proponent must obtain or maintain coverage under any other permits, such as NPDES permits. Early coordination with the approving Water Board is encouraged to confirm compliance requirements.

ACWA-1-6:

The State Water Board appreciates ACWA's comments supporting the adoption of the Order.

ACWA-1-7:

The State Water Board notes the contact name and number for ACWA.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

AMR-1 American Rivers

AMR-1



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

American Rivers received the Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide (Order). Thank you for the opportunity to comment.

American Rivers is a national organization focused on protecting wild rivers, restoring damaged rivers and conserving clean water for people and nature. We are a leader in meadow and floodplain restoration in California. We have over a decade of restoration experience and with over 15 restoration projects implemented. We were a founding member of the Sierra Meadows Partnership (SMP) and co-authored the Sierra Meadows Strategy, an "all-hands, all-lands" approach to increasing the pace, scale and efficacy of meadow restoration and protection throughout the Greater Sierra Nevada. American Rivers also leads the SMP Regulatory Workgroup and co-leads the Permitting and Engineering Workgroup of CDFW's Restoration Leaders Group, both aimed at improving permitting and environmental compliance for restoration projects.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. Permitting and environmental compliance is acknowledged by the SMP as an onerous, time consuming and costly component of meadow restoration projects and is recognized as a bottleneck for implementation on the ground. There is a need to streamline permitting processes for restoration projects to increase the pace and scale of restoration to meet the targets of state and federal agencies, and to achieve benefits at the regional scale. To this end, programmatic permits and CEQA compliance for restoration projects have been a priority of the SMP since 2017. The proposed Order and PEIR would address this priority.

The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner and will make better use of grant funds and agency staff resources. It will also help grantees complete projects within limited grant timeframes, a frequent challenge with long permitting timelines. In addition, the Order will incentivize larger restoration projects that are often needed to address the root causes of degradation, which are precluded from using the

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

AMR-1

Section 401 General Water Quality Certification for Small Habitat Restoration. Specifically, although most of American Rivers' meadow restoration projects fit the 5 acres criteria, they were typically precluded based on the 500 linear feet of stream channel criteria. Another frequent cause of project delay is CEQA compliance. We are hopeful that the PEIR associated with the project will provide a streamlined process for CEQA that will improve state agencies' willingness to accept the role of lead agency and decrease CEQA timelines.

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The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order to streamline permitting and environmental compliance. This is needed to increase the pace and scale of restoration to achieve the landscape level benefits needed for climate resilience. This is especially urgent under the drought conditions California is currently experiencing and is predicted to continue to experience under climate change. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

In addition to voicing support for the draft Order and associate PEIR, we provide additional specific comments below.

Additional Comments

The new procedures for Section 401 compliance adopted in April 2020 introduced additional items (especially additional plans) that can be required on a case-by-case basis, some specific to Ecological Restoration and Enhancement Projects (as defined by the procedures). Development and multiple reviews of additional items is onerous and can result in delay of project times. This trend toward additional requirements, especially specific to ecological restoration and enhancement projects, is counter to streamlining permitting for ecological benefit. In review of the Order, we note the potential need for numerous plans in addition to the NOI, including the Monitoring Plan (Order Section G.4), Dewatering Plan (Order Section A.5.2 General Protection Measure IWW-6), Erosion Control Plan (Order Section A.5.2 General Protection Measure WQHM -3) and Revegetation Plan (Order Section A.5.2 General Protection Measure GPM-15). We urge the State Water Board to consider the time and capacity burden on the permittee to develop, undergo multiple reviews and report on additional items under the Order and to aim to reduce this burden to the extent practical by restricting the number of items and/or providing sideboards for agency review. Standardized templates may also help with this issue.

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Order Section XIII. E.9 Construction General Permit Requirement and Section a.5.2 General Protection Measure WQHM 2: Stormwater Pollution Prevention Plan.

As written, these sections appear to indicate that if the project includes 1 acre of construction (disturbance) in general, it will require coverage under a NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit) and a Stormwater Pollution Prevention Plan (SWPPP). In American Rivers and other restoration practitioners experience, the criteria to trigger the need for a General Permit and SWPPP has been defined as 1 acre of construction in the upland (i.e. outside Waters of the State). We urge the State Board to continue with the criteria as American Rivers currently understands it and clarify in the language of the Order.

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In addition, the requirements of the General Permit are highly duplicative where a Section 401 Water Quality Certification is already being issued for an aquatic restoration project. Thus, the need to acquire both seems duplicative for these types of projects. Further, the General Permit triggers the need for a SWPPP which requires hiring a Qualified SWPPP

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

AMR-1

Developer and typically costs approximately \$5000-\$6000 dollars. This also triggers the need for a Qualified SWPPP Practitioner to implement the SWPPP during construction, further adding to grant-funded project costs and project complexity.

Through discussions with the Central Valley Regional Water Quality Control Board, veteran meadow practitioners established that if all project components, including upland activities (e.g. access routes, staging areas, etc.) are included in the Area of Potential Effects (APE) for Section 404/401 compliance, then the Section 401 provides water quality protections for all project activities, obviating the need for a separate General Permit. This creates cost savings, expedites approval and reduced complexity for construction. However, this interpretation has not been universally accepted, creating uncertainty. We further urge the State Water Board to adopt and codify this interpretation in the Order, to provide streamlined and reduced costs for restoration projects.

Order Section XII Application Fees states: “Authorization of a project under this Order is not determinative of whether a project is a restoration project in the context of the fee schedule.” This creates undue confusion about the fee schedule. We recommend that if the project meets the definition of a restoration project under the Order, it should meet the categorical fee for a restoration project.

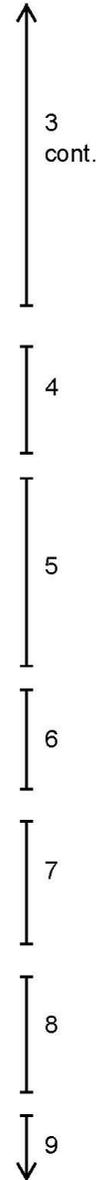
Order Section XIII. C.4 Post-Construction states: “If the proposed project includes ground disturbance, when conducting post-construction monitoring, visually inspect the project site during the rainy season (October 1 – April 30) until a Notice of Project Complete Letter is issued to ensure excessive erosion, stream instability, or other water quality pollution is not occurring in or downstream of the project site.” Sierra meadow project sites are frequently inaccessible from approximately November to May/June due to snowpack and road closures. Consider adding caveat language to address this – eg. “unless not safely accessible.”

Order Section XIII E.5 states “the project proponent must, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support approval of a project under this Order...” Restoration projects typically require some degree of field fit. This does not provide flexibility to allow for field fit. Consider revisiting in this context.

Order Section A.4.6 Floodplain Restoration states: “floodplain restoration project proposals will include information regarding considerations for water supply (channel flow, overland flow, and groundwater), water quality, and reliability; risks of channel changes; and channel and hydraulic grade.” This is the only Category that includes language about information that should be included. This is inconsistent with the other Category descriptions and we suggest removing the language, so it is not misused as requirements.

Order Section A.4.10 Establishment, Restoration, and Enhancement of Stream and Riparian Habitat and Upslope Watershed Sites. We support the incorporation of Upslope Watershed Sites, as addressing these features is key to integrated watershed restoration. We suggest also including addressing the impacts of legacy railroad grades, which can also result in detrimental downstream effects.

Order Section A.5.2 General Protection Measure GPM-5: Environmental Monitoring. The requirement of a biologist seems duplicative with requirements that would be included under the Section 1600 Lake and Streambed Alteration Agreement (LSA). This could cause confusion



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

AMR-1

if there are differences between the requirements of each permit document. This type of monitoring seems more appropriately left to the LSA rather than as an inclusion in the Water Quality Certification. Consider removing.

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cont.

Order Section A.5.2 General Protection Measure VHDR-5: Revegetation Monitoring and Reporting calls for “a standard of success of 60% absolute cover compared to an intact, local reference site.” Appropriate reference sites can be challenging to find and can complicate project monitoring. We suggest that a comparison to pre-project conditions at the project site could serve the same purpose.

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Order Attachment B Draft Notice of Intent, Section VIII.A Total Project Areas states “Identify the acreage and linear feet of the aquatic and upland areas comprising the project site.” It is unclear whether this is asking for the area within the project boundary (e.g. 100 acres) or the area of activities/disturbance, for example as used to determine project area to meet the CEQA Small Habitat Restoration criteria (e.g. 4 acres). Consider rewording to clarify what is desired.

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PEIR Section 1.3.2 Screening of Individual Restoration Projects, notes that a project must meet the following requirements to be eligible for coverage under the Order. It states “Proposes construction and operation and maintenance methods consistent with those described in Section 2.7, Typical Construction, Operation, and Maintenance Methods.” We noted that the Typical Construction, Operation and Maintenance Methods are not included in the Order itself, only in the PEIR. If compliance with this Section is a *requirement* for eligibility under the Order, we suggest this information should be included in the Order itself or be referenced in the Order in case proponents do not read the full PEIR.

12

PEIR Section 1.3.3 Determining the Next Steps under CEQA. We appreciate that this section provides information about how agencies, especially agencies other than the Regional Water Boards, can utilize the PEIR. The scenarios are helpful to illustrate the process. Under Scenario 1, we suggest clarifying what type of document is needed in preparation of the notice of determination (e.g. a project description that includes General Protection Measures and mitigation measures). In addition, we are beginning to engage with the California Board of Forestry and Fire Protection’s California Vegetation Treatment Program (CalVTP), which provides a PEIR for fuel reduction activities. They have developed a number of supplemental materials and templates to guide use of the CalVTP for CEQA compliance available here: <https://bof.fire.ca.gov/projects-and-programs/calvtp/how-to-use-the-calvtp/> These materials have been very helpful. We suggest the State Board develop similar materials to facilitate use of the Order’s PEIR.

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Sincerely,



Julie Fair
Director, Headwaters Conservation
American Rivers
Jfair@americanrivers.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

AMR-1 American Rivers

Responses to Comments from AMR-1 American Rivers

AMR-1-1:

The State Water Board appreciates American River’s (AMR) comments supporting the adoption of the Order and certification of the PEIR and information on AMR.

AMR-1-2:

The Order requirements are consistent with the standard 401 Certification permitting process, including those prescribed by the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, which became effective on May 28, 2020. Only relevant reports would be required by the approving Water Board based upon the details of project activities being proposed. For example, if channel dewatering is not required for project construction, a dewatering plan would not be required. The Order would not add additional burden to the permitting process, in fact, the Order is more tailored to restoration projects compared to those prescribed in the Dredge or Fill Procedures.

AMR-1-3:

See Master Response 2: Construction General Order and SWPPP Requirements.

AMR-1-4:

As presented in Order Section XII. Application Fees, the approving Water Board will confirm the correct fee amount according to current fee regulations at the time of NOI submittal. “Authorization of a project under this Order is not determinative of whether a project is a restoration project in the context of the fee schedule. Projects authorized under this Order may not automatically qualify for a particular fee discharge category.”

In the 2021-2022 fee schedule, a reduced fee is available for only restoration projects that meet the definition of an Ecological Restoration and Enhancement Projects (EREP) set forth in the Dredge or Fill Procedures. Not all projects authorized under the Order would meet the definition of an EREP. The fee structure, including how costs are structured for restoration projects, may change in the future. The fee schedule is adopted on an annual basis by the State Water Board. Interested stakeholders may find more additional information about the fee schedule on the [State Water Board's Fees website](https://www.waterboards.ca.gov/resources/fees/) at <https://www.waterboards.ca.gov/resources/fees/>.

No revisions are included in the Order or PEIR because of this comment.

AMR-1-5:

In response to this comment, Order Section XIII.C.4. Post-Construction was revised as follows:

“If the proposed project includes ground disturbance, when conducting post-construction monitoring, visually inspect the project site at least monthly or at an interval agreed to by the approving Water Board during the rainy season (October 1 – April 30) unless not safely accessible (e.g., high flows, inundation, ground

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

saturation) or visually accessible (e.g., meadows covered in snow, area inundated with high turbidity water) until a Notice of Project Complete Letter 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, 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.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

AMR-1-6:

Order XIII.B.3.d. Project Modifications states, “Minor or non-material changes may be addressed with an 'Order Deviation' as provided in Attachment F. The approving Water Board will review the notification and determine whether the deviation can be approved under this Order or is subject to additional permitting requirements.”

Therefore, if minor or non-material changes are required, an Order deviation(s) should be reported to the approving Water Board (per the instructions in Attachment F) for review and authorization prior to implementation at the project site.

No revisions are included in the Order or PEIR because of this comment.

AMR-1-7:

In response to this comment, Order, Attachment A, Section A.4.6 Floodplain Restoration was revised as follows:

“Project proposals to create off-channel or side-channel habitats, floodplain restoration will include as appropriate information regarding considerations for water supply (channel flow, overland flow, and groundwater), water quality, and reliability; risks of channel changes; and channel and hydraulic grade.”

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

AMR-1-8:

In response to this comment, Order Section A.4.10. Establishment, Restoration, and Enhancement of Stream and Riparian Habitat and Upslope Watershed Sites was revised as follows:

“In addition, infrastructure located along streams and in riparian areas may be removed or relocated. The primary purpose of infrastructure removal is to eliminate or reduce impacts on riparian areas and vegetation, improve bank stability, reduce erosion, reduce sedimentation into adjacent streams, and provide for native revegetation or natural native plant recruitment. Among the types of infrastructure that could be removed or relocated are boat docks, boat haul-out locations, campgrounds and campsites, day-use sites, roads/trails, ~~and~~ off-highway/off-road vehicle routes, and legacy railroad grades that affect aquatic resources or riparian

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

habitat. See Section A.4.7, Removal or Remediation of Pilings and Other In-Water Structures, for further detail on removal of in-water structures.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

AMR-1-9:

In response to this comment, GPM-5, Environmental Monitoring in Order Attachment A was revised as follows:

“As required in the NOA ~~or other agency permit~~, a ~~biologist or resource specialist~~ will ensure that all applicable protective measures are implemented during project construction. The ~~agency-approved biologist or resource specialist~~ will have authority to stop any work if they determine that any permit requirement is not fully implemented. The ~~agency-approved biologist or resource specialist~~ will prepare and maintain a monitoring log of construction site conditions and observations, which will be kept on file.”

Furthermore, the approving Water Board could accept a biologist required in a CDFW Lake and Streambed Alteration Agreement (LSAA) as the resource specialist if the role is similar. These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

AMR-1-10:

In response to this comment, GPM VHDR-5, Revegetation Monitoring and Reporting was revised as follows:

“All revegetated areas will be maintained and monitored for a minimum of 2 years after replanting is complete and until success criteria are met, to ensure the revegetation effort is successful. The standard for success is at least 60% absolute cover compared to pre-project conditions at the project site or at least 60% cover compared to an intact, local reference site (or an available reference site accepted by the approving Water Board). ~~60% absolute cover compared to an intact, local reference site~~. If an appropriate reference site or pre-project conditions cannot be identified, success criteria will be developed for review and approval by the approving Water Board on a project-by-project basis based on the specific habitat impacted and known recovery times for that habitat and geography. The project proponent will prepare a summary report of the monitoring results and recommendations at the conclusion of each monitoring year.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

AMR-1-11:

Order Attachment B NOI, Section VIII, Table A, Total Project Areas refers to the total project area within the project boundary or project limits, including all areas of direct disturbance and temporary access and staging. Order Attachment B Section VIII, Table B Temporary and Permanent Project Impacts and Benefits to Water of the State

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

refers to the areas of direct activities or direct disturbance for project construction/ implementation. The impact areas presented in Table B will likely be smaller than the total project limit areas presented in Table A. The description of information requested in both tables is consistent with the current standard application form for discharges of dredged or fill material to waters of the state.

No revisions are included in the Order or PEIR because of this comment.

AMR-1-12:

As stated in the PEIR Section 2.7 Typical Construction, Operation, and Maintenance Activities and Methods, the Order does not promote construction or operation and maintenance of specific facilities or other specific physical actions by the State Water Board. The typical construction, operation, and maintenance methods in the PEIR are reasonably foreseeable methods that may be used to implement the types of projects and actions that might be taken in the future. These descriptions are not a requirement of the Order.

No revisions are included in the Order or PEIR because of this comment.

AMR-1-13:

The State Water Board may develop supplemental materials and/or templates to guide use of the Order after adoption and will notify the public upon release of any such materials.

No revisions are included in the Order or PEIR because of this comment.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CALT-1 California Trout

CALT-1



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 13, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
1001 I Street, 15th floor, Sacramento, CA 95814
email to: commentletters@waterboards.ca.gov.



SUBJECT: Comments on the State Water Resources Control Board Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Implementation of Large Habitat Restoration Projects Statewide

Thank you for the opportunity to review the extensive documentation provided for the Statewide Restoration General Order (Order) and the accompanying Programmatic EIR. On behalf of my organization - California Trout, I have reviewed as much of the documentation as possible in the review period provided and commend the State Water Board for developing this Order.

Founded in 1971, California Trout (CalTrout) is a leading nonprofit organization whose mission is to ensure resilient, wild fish thriving in healthy waters for a better California. It is our belief that abundant wild fish indicate healthy waters and that healthy waters benefit all Californians. We are dedicated to solving California's complex resource issues while balancing the needs of wild fish and people.

We currently have more than sixty large-scale, "boots on-the-ground" conservation projects underway at various stages of project development, many of which will require permitting authorizations. The State Water Board's General Order and PEIR will establish an authorization process to obtain CEQA authorization more efficiently for many of our environmentally beneficial restoration activities. We strongly support the State Water Board's proposed action and acknowledge the Order will help expedite regulatory approval for large restoration projects while ensuring appropriate protective measures are in place. In addition, the Order will enable our organization and other restoration practitioners to save precious funding resources and allow those resources to be put toward accomplishing more beneficial on-the-ground restoration activities.

The Statewide restoration General Order appears very clear, comprehensive, well needed, and right on the money.

The North Coast region is a high priority area for investment of State bond funds, Federal recovery programs for ESA-listed species, and other funding resources to protect watersheds, rivers and streams, riparian habitat, wetland and estuarine habitats, and water quality. The comprehensive coverage provided by the Order appears to suit the needs of most, if not all, the project types that are designed and implemented by my organization in the North Coast region.

1380 9th Street, Arcata CA 95521
Phone: (707) 845-7810 E-mail: dmierau@caltrout.org



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CALT-1



We strongly encourage the State Water Board to coordinate with other state and local agencies, especially the CA Department of Fish and Wildlife, the California Coastal Commission, the State Lands Commission, and county planning departments to facilitate their recognition of the CEQA authorization provided under the Order for issuing permits. Without this fundamentally important step, the value and utility of the Order will be greatly diminished. CDFW needs to recognize the Order to enable their issuance of both a Lake and Streambed Alteration Agreement (Section 1600) and a Restoration Management Permit for CESA compliance.

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Please consider that areas along the North Coast are currently experiencing sea level rise that is outpacing our ability to design, permit, and implement restoration projects. As I am sure you are aware, areas in the Coastal Zone are subject to the Coastal Act administered by the Coastal Commission. Restoration projects implemented in the coastal zone must therefore obtain a coastal development permit, which is frequently the most challenging and constraining permitting process of all the required authorizations. We therefore strongly encourage you to collaborate with the Coastal Commission and their staff to ensure they are willing and able to recognize the CEQA authorization under the Order for issuing coastal development permits. The Coastal Commission needs to be on board with this streamlining process to facilitate protection and restoration of coastal habitats and resources.

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In addition, County planning departments need to similarly be brought into this permit streamlining process. We recently contacted the Humboldt County Planning and Building Division to inquire about their perspective on the Order, and it appears they may not even be aware of this Order and the process for its adoption and use. Other counties may also not be aware of this important step in permit streamlining. The State Water Board should consider a process for informing and educating local agencies about the General Order.

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The proposed types of restoration projects to be considered under the General Order appears to include the placement fill material, such as the beneficial reuse of dredged sediment or placement of upland material in waters of the state to establish, restore, or enhance wetlands. We strongly support this inclusion, accompanied with proper protective measures. Sediment should be viewed as a highly valuable resource, and placement of dredged sediments on wetlands and floodplain surfaces can be done in ways that are beneficial to these sensitive habitats. Simply put, we need the flexibility to place fill on-site in ecologically beneficial and cost-effective ways, even in the Coastal Zone and even on tidal and freshwater wetlands. This will be an important tool to protect and maintain these habitats, increase coastal resilience in the face of sea level rise, and preserve working landscapes and other open spaces.

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Please provide more clarity on the process by which project proponents would tier off the General Order's PEIR for associated project activities that cannot be authorized under the Order, or alternatively ensure the Regional Boards acting as lead agency are familiar with this process.

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The Order needs to recognize that in some degraded systems, native vegetation can become impactful to water quality and a nuisance; its removal can be acknowledged as a benefit toward rehabilitating degraded habitats and restoring more functional ecological processes.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CALT-1



Please avoid imposing arbitrary standards of success for mitigation and monitoring of project impacts, such as a threshold percent survival required for planted trees and shrubs. That discretion should be maintained by the lead agency.

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Please consider allowing less restrictive turbidity thresholds before projects are considered in violation of 401 water quality standards. It is often very difficult, and therefore expensive, to have to comply with restrictions on the occasional and temporary release of turbidity and these restoration project-related turbidities are typically orders of magnitude lower than conditions that occur in winter that are often related to other anthropogenic activities that go unregulated.

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Please reconsider requiring a Stormwater Pollution Prevention Plan (SWPPP) or enable the authorizing Regional Water Board to make this decision. These Plans are costly, time-consuming, and not always necessary. Requiring these plans in lieu of a water quality certification has just replaced one permitting requirement with another. Project proponents and our construction contractors know how to implement effective and protective sediment and erosion control BMPs.

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Please maintain the discretionary authority of Regional Boards to act as lead agency and authorize projects under the Order.

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CalTrout strongly supports State Water Board action to create a more efficient permitting mechanism for habitat restoration. Our organization implements all types of restoration projects throughout the state. Permitting is certainly one of the greatest barriers to our work. Creating a more efficient permitting process will help us do more on-the-ground work and get environmentally beneficial projects completed more quickly.

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CalTrout supports the proposed General Order and appreciates the efforts of the State Water Board to streamline the permitting process.

If you have any questions regarding this letter, please contact me at (707) 845-7810.

Sincerely,

Darren Mierau

North Coast Director
California Trout, Inc.

1380 9th Street, Arcata CA 95521
Phone: (707) 845-7810 E-mail: dmierau@caltrout.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CALT-1 California Trout

Responses to Comments from CALT-1 California Trout

CALT-1-1:

The State Water Board appreciates California Trout's (CALT) comments on the Draft Order and Draft PEIR, information on CALT, and the North Coast region. The State Water Board collaborated with CDFW and other agencies during the development of the Order and PEIR and will continue to coordinate with federal, state and local agencies throughout the Order adoption and implementation process, as needed.

CALT-1-2:

The Order would not hinder interagency or stakeholder collaboration, nor would the Order alter California Coastal Commission policies or procedures. The State Water Board encourages multi-agency collaboration but cannot prescribe engagement with another state agency. For projects supported by the National Oceanic and Atmospheric Administration Fisheries Restoration Center's Community-based Restoration Program, the California Coastal Commission established federal consistency with the California Coastal Act and California Coastal Management Program. This Consistency Determination applies to restoration of salmonid habitat and related upland, estuarine, and coastal restoration within the entire California Coastal Zone.

CALT-1-3:

The State Water Board encourages collaboration with local agencies but cannot prescribe engagement with other agencies. Further opportunities for public engagement include: (1) participation at the State Water Board Meeting to consider adoption of the Order; (2) availability of Order and PEIR documents on the [State Water Board 401 Program webpage](https://www.waterboards.ca.gov/water_issues/programs/cwa401/) at https://www.waterboards.ca.gov/water_issues/programs/cwa401/; and (3) submission of comments during the public notice period for individual NOIs pertaining to proposed projects considered for authorization under the Order. Furthermore, development and adoption of the Order is also included in materials related to California Natural Resource Agency's (CNRA's) Cutting the Green Tape initiative.

CALT-1-4:

Comment noted; the Order and PEIR acknowledge beneficial reuse of sediment in certain restoration projects.

CALT-1-5:

As described in the PEIR in Section 1.1 Introduction and Overview of the Order, later activities must be examined in light of the EIR to determine whether an additional environmental document must be prepared (Cal. Code of Regs., tit. 14, section 15168). For a proposed restoration project, the CEQA lead agency must determine whether the proposed activity would have effects that were not examined in the PEIR or if no subsequent EIR would be required pursuant to section 15162. Section 15152 governs the process for tiering off a broader EIR. Tiering may be one option where an additional environmental document must be prepared.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CALT-1-6:

Overall project success criteria and measurable performance standards for projects authorized by the Order will be considered by the approving Water Board on an individual project basis as part of the development of the Monitoring Plan (Order XIII.G.4. Monitoring Plan).

Revegetation success criteria described under VHDR-5 has been included for consistency with other regulatory agency restoration permitting practices in place or under development (e.g., NMFS, USFWS). GPM VHDR-5, Revegetation Monitoring and Reporting was revised as follows:

“All revegetated areas will be maintained and monitored for a minimum of 2 years after replanting is complete and until success criteria are met, to ensure the revegetation effort is successful. The standard for success is at least 60% absolute cover compared to pre-project conditions at the project site or at least 60% cover compared to an intact, local reference site (or an available reference site accepted by the approving Water Board). ~~60% absolute cover compared to an intact, local reference site.~~ If an appropriate reference site or pre-project conditions cannot be identified, success criteria will be developed for review and approval by the approving Water Board on a project-by-project basis based on the specific habitat impacted and known recovery times for that habitat and geography. The project proponent will prepare a summary report of the monitoring results and recommendations at the conclusion of each monitoring year.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

CALT-1-7:

Order Section XIII references the specific sections of the California Code of Regulations, California Water Code, and Anti-Degradation Policy that identify the conditions and limitations of the Order to assure compliance with water quality standards and other pertinent requirements of state law. Designating less restrictive standards in this Order is not appropriate. However, Order Section XIII.F.2. Prohibitions states, “The approving Regional Board may have the authority to address short-term, construction-related impacts that would affect water quality and allow for exceedances of water quality objectives for limited magnitude and duration during construction of individual restoration projects. A project proponent should contact the approving Regional Board to determine if an exemption is possible.”

CALT-1-8:

See Master Response 2: *Construction General Permit and SWPPP Requirements.*

CALT-1-9:

Additional language has been added in PEIR Section 1.1 Introduction and Overview of the Order to describe how to determine the appropriate CEQA lead agency for an individual restoration project. Order Section XIII.A. Request for Authorization and Attachment B NOI Form, Step 1 require the applicant to submit an NOI to the applicable

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Water Board. Attachment B NOI Form, Step 5 states, “The NOI must be electronically submitted to the approving Water Board, including an electronic carbon copy (cc) to the State Water Board” where the discharge may occur. If the project is located under the jurisdiction of more than one Regional Board, then the NOI should be submitted solely to the State Water Board.

CALT-1-10:

The State Water Board appreciates California Trout’s comments supporting the adoption of the Order. The State Water Board notes the contact name and number for California Trout.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1 Citizens Committee to Complete the Refuge, Center for Biological Diversity, California Coastkeeper Alliance, and Sierra Club California

CBD-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

August 13, 2021



Via email: commentletters@waterboards.ca.gov

Re: Comments on the Proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (proposed General Order) and supporting California Environmental Quality Act (CEQA) Draft Program Environmental Impact Report (PEIR).

Dear Members of the Board,

On behalf of Citizens Committee to Complete the Refuge, Center for Biological Diversity, California Coastkeeper Alliance, and Sierra Club California, we submit these comments regarding the proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (proposed General Order) and supporting California Environmental Quality Act (CEQA) draft Program Environmental Impact Report (PEIR).

Our organizations support the concept of streamlined permitting for well-designed restoration projects. However, we are concerned that the proposed General Order is overly broad and over inclusive and, as a result, its adoption and application may result in unintended adverse consequences to water resources, species, and habitats. Restoration projects are complex and may have both beneficial and adverse impacts to various resources, it is important to have a transparent public process when the Regional Boards are balancing those factors. Particularly for large-scale restoration projects that will affect many resources and many public interest factors, a public process and review period may be needed to make sure the impacts to various environmental resources are fully considered and resources are adequately protected.

1

Comments re Proposed General Permit for Restoration Projects Statewide

1

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

1. Definition of “restoration projects” in the General Order is Overbroad

We are concerned that the proposed definition of “restoration projects” for this General Order differs significantly from other definitions of restoration projects adopted by the State Water Resources Control Board (SRWCB). The SWRCB and the public spent a tremendous amount of time developing a definition of “restoration projects” in the *“Ocean Waters of California, and the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries for Waters of the United States”* adopted April 2, 2019 and revised April 6, 2021 (Dredge and Fill Procedures). Restoration projects in that document are defined in the following manner:

“Ecological Restoration and Enhancement Project means the project is voluntarily undertaken for the purpose of assisting or controlling the recovery of an aquatic ecosystem that has been degraded, damaged or destroyed to restore some measure of its natural condition and to enhance the beneficial uses, including potential beneficial uses of water.

Such projects are undertaken:

1) in accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the real property interest owner or the entity conducting the habitat restoration or enhancement work and:

- a. a federal or state resource agency, including, but not limited to, the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, Farm Service Agency, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Forest Service, U.S. Bureau of Land Management, California Department of Fish and Wildlife, California Wildlife Conservation Board, California Coastal Conservancy or the Delta Conservancy;
- b. a local agency with the primary function of managing land or water for wetland habitat purposes; or
- c. a non-governmental conservation organization; or

2) by a state or federal agency that is statutorily tasked with natural resource management. These projects do not include the conversion of a stream or natural wetland to uplands or stream channelization. It is recognized that Ecological Restoration and Enhancement Projects may require ongoing maintenance or management to maximize fish, wildlife, habitat, or other ecological benefits, or filling gullied stream channels and similar rehabilitative activities to re-establish stream and meadow hydrology. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during rehabilitation activities are not considered a conversion to another aquatic habitat type. These projects also do not include actions required under

2

Comments re Proposed General Permit for Restoration Projects Statewide

2

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

a Water Board Order for mitigation, actions to service required mitigation, or actions undertaken for the primary purpose of land development. [emphasis added]

↑ 2
cont.

And under the “Amended order for Clean Water Act Section 401 General Water Quality Certification for small habitat restoration projects File #SB12006GN” only the following categories of projects would qualify:

“1. California Environmental Quality Act - The project shall be eligible for a categorical exemption under California Code of Regulations title 14, section 15333, "Small Habitat Restoration Projects." Examples of small habitat restoration projects may include, but are not limited to:

- a. Revegetation of disturbed areas with native plant species.
- b. Wetland restoration, the primary purpose of which is to improve conditions for waterfowl or other species that rely on wetland habitat.
- c. Stream or river bank re-vegetation, the primary purpose of which is to improve habitat for amphibians or native fish.
- d. Projects to restore or enhance habitat that are carried out principally with hand labor and not mechanized equipment.
- e. Stream or river bank stabilization with native vegetation or other bioengineering techniques, the primary purpose of which is to reduce or eliminate erosion and sedimentation.
- f. Culvert replacement conducted in accordance with published guidelines of the California Department of Fish and Game Wildlife (DFG) (CDFW) or National Oceanic & Atmospheric Administration Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation.

3

2. The Project Size - The project size shall not exceed five acres or a cumulative total of 500 linear feet of stream bank or coastline.

The SWRCB’s General Certification for Small Habitat Restoration Projects (SHRP) also specifically disallows the use of this approval process for:

“4. Compensatory Mitigation Projects - The project shall not be a compensatory mitigation project. [emphasis added]

5. Primary Project Purpose - This Order authorizes activities whose primary purpose is habitat restoration. The project shall not be for restoration and enhancement conducted as part of a larger project whose primary purpose is not habitat restoration, e.g., land development or flood management. [emphasis added]

4

Both of these other approaches narrowly define the range of activities considered “restoration” activities. The definition of restoration projects in the Dredge and Fill Procedures makes clear that “restoration” activities do not include “actions required under a Water Board Order for mitigation, actions to service required mitigation, or actions undertaken for the

Comments re Proposed General Permit for Restoration Projects Statewide

3

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

primary purpose of land development.” The General Certification for Small Habitat Restoration Projects reiterates that for projects where restoration and enhancement actions are “conducted as part of a larger project whose primary purpose is not habitat, e.g. land development or flood management” [emphasis added] the use of the General Certification is disallowed.

In contrast the proposed definition of restoration project for this General Order is silent regarding such prohibitions:

An eligible project type that would result in a net increase in aquatic or riparian resource functions and/or services through implementation of relevant protection measures listed in Section 2.6, *Categories of Restoration Projects in the Order*, and Section 2.8, *Programmatic Sideboards, General Protection Measures, and Other Requirements*. The project must also be included in the list of eligible project types (see Section 1.2, *Categories of Eligible Project Types*). A restoration project permitted by the Order may include multiple benefits, such as groundwater recharge, recreation, flood management, water quality improvement, and/or adaptation to climate change. Restoration projects permitted by the Order may also contribute to the protection of existing and potential beneficial uses identified in each of the nine Regional Boards water quality control plans (basin plans).

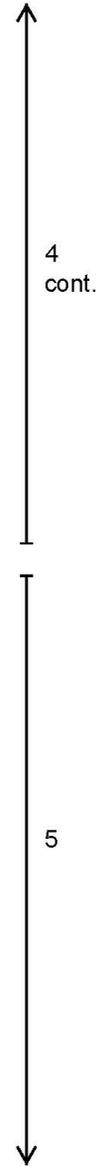
The draft documents fail to provide adequate supporting rationale for the SWRCB to adopt a substantially different and much broader definition of the list of activities that could be covered as “restoration activities” under this draft General Order than under the Dredge and Fill or SHRP.

As stated earlier, we heartily recognize the need to encourage implementation of restoration projects, however, we believe the list of activities that could be covered by the draft General Order is overly broad.

The General Order would allow too wide a range of activities to be permitted than is appropriate for a general certification. 23 C.C.R. § 3861 states for a “general certification action”:

- (b) A class of activities receiving general certification shall
 - (1) consist of the same or similar types of activities;
 - (2) involve the same or similar types of discharges and possible adverse impacts requiring the same or similar certification conditions or limitations in order to alleviate adverse impacts to water quality

The draft General Order provides no limitations that would ensure the order applies only to the same or similar types of activities, discharges or adverse impacts. There are no limits on the size of a large restoration project, the types of projects than can be permitted by the General Order range from restoration projects that include recreation activities, flood



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

management, ground water recharge, bridges, culverts, etc. Given the breadth of the activities that could be covered and the scant information provided in the documents, it is not possible to determine the magnitude of potential impacts to waters and wetlands under this General Order.

At minimum, the PEIR should be revised to provide some estimate of the number of the projects that are projected to be utilized under the different categories of activities per year and per the life of this General Order. The PEIR should provide some indication of the size and scale of restoration projects that are anticipated to be authorized under the proposed General Order. For example, what is the average length of bioengineered bank stabilization projects? How many of these types of projects would be anticipated per year? All we know currently is that the footprint of impacts can range for example from bioengineered bank stabilization projects that are over 500 linear feet in length to an unknown length.

2. Inclusion of Restoration Project that Provide Mitigation for Larger Projects in the General Order May Undermine Adequate Project Review

In addition, we are deeply troubled by the following draft General Order language that seems to remove the restrictions previously imposed on the use of an exemption or expedited permit review for “restoration” projects that are “actions required under a Water Board Order for mitigation, actions to service required mitigation, or actions undertaken for the primary purpose of land development”:

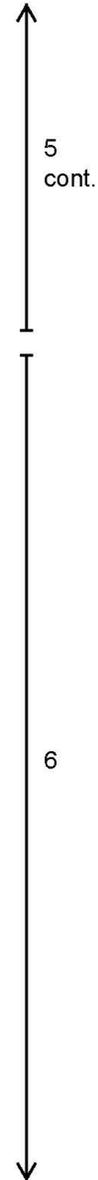
E. General Compliance Enrollment and authorization of restoration projects under this Order are for the discharges of waste associated with only the restoration action and shall not be construed as authorization or any compliance determination for any related underlying project or activity. Restoration projects serving as mitigation for a related project or activity may be enrolled under this Order; however, this Order does not include any findings regarding the underlying related activity's impact to water quality, public trust resources, or other matters of public interest. When considering the impact of restoration projects under this Order, the approving Water Board considers only those adverse changes that may result from approval of the new restoration project, including multi-benefit projects that may include non-restoration action elements (e.g., recreation, flood protection). [emphasis added]

What is meant by an “underlying related project or activity?” Are there restrictions on the type of “underlying related project or activity”? Certainly, this cannot pertain to projects “whose primary purpose is not habitat restoration, such as land development or flood management”? The documents provided fail to explain the basis for this significant deviation from prior, firmly stated exclusions or provide any rationale why restoration projects that include “non-restoration action elements” would be eligible for consideration under this General Order.

We strenuously object to the inclusion of compensatory mitigation projects tied to land development projects because compensatory mitigation is proposed for projects, not as a

Comments re Proposed General Permit for Restoration Projects Statewide

5



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

voluntary action, but because it is required to compensate for adverse impacts to waters of the U.S. and waters of the State that result will result in the loss of habitats, beneficial uses, and the functions and values of waters and wetlands.

↑ 6
cont.

We are also concerned about segmenting the review of restoration activities from those of related non-restoration action elements such as flood protection. The General Compliance language places no restrictions on what is considered a “multi-benefit project” or what is meant by “flood protection.” Could the phrase “flood protection” include traditional engineered levees and seawalls? Is this General Order intended to provide authorization for restoration/compensatory mitigation components of a flood protection project that employs traditional hard engineering (traditional riprap levees, seawalls, etc.) or is the use of this General Order limited to multi-benefit projects with “flood protection” actions such as those listed under the discussion of “floodplain restoration”?

And what is meant by the language in last sentence? Is this sentence saying for example, that for multi-benefit projects that may include non-restoration action elements (e.g., recreation, flood protection), the Water Board will only consider the adverse changes that may result from the restoration components and will not consider the adverse changes that may result from the “non-restoration components”? If so, how and why is it permissible to evaluate a “restoration project” separately from the “underlying related activity’s impacts to water quality, public trust or other matters of public interest”? The Dredge and Fill Procedures clearly state, “Project means the whole of an action that includes a discharge of dredged or fill material to waters of the state.” [emphasis added.] In contrast, the approach described above for the General Order suggests that the SWRCB would allow and encourage piece-meal review of a project’s impacts.

7

We have substantive concerns regarding the impact the General Compliance language of the General Order could have on CEQA review of multi-benefit projects. If, as an example, a multi-benefit project has an upland/flood plain component (e.g. in the arid regions of the state) would the applicant be able to include both aquatic restoration components and upland/flood plain restoration components and bypass any additional site specific CEQA compliance for the project as a whole including any upland components of the project that may affect water quality?

Similarly, with respect to water conservation projects the General Order does not explain what restrictions, if any, are proposed during periods of drought when low fall and winter rains are predicted or how would large infrastructure associated with “water conservation” would be analyzed. For example, if the General Order allows for inclusion of off-stream storage projects where water is collected during high flows and stored does the General Order cover any actual channel or diversion created? If the General Order covers activities such as construction of water storage tanks, pipelines and other infrastructure will the impacts of all of that construction fall within the General Order? If water conservation includes new reservoirs for water to be collected during periods of high flows (i.e. the rainy season), how will the General Order ensure consideration of potential impacts as a consequence of drying

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Comments re Proposed General Permit for Restoration Projects Statewide

6

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

reservoirs in periods of drought? Some examples of potential impacts might include loss of downstream sediment, or the addition of sediment in areas that might adversely impact the aquatic environment, air quality impacts from dry sediment being lofted into the air, which can also later be deposited in nearby streams, etc.

↑ 8
cont.

As explained further below and the SWRCB is well aware, CEQA prohibits “piecemeal” review of the significant environmental impacts of a project. Here, the SWRCB may not divide a single project into smaller individual projects in order to avoid its responsibility to consider the environmental impacts of the project as a whole – it cannot properly consider approval of a restoration project that is part of a larger project separately from the “underlying related activities” that may have also impacts to water quality and other related resources.

↑ 9

While we certainly support encouragement of restoration projects that restore or enhance beneficial uses and water quality, we cannot condone piece-meal review of projects.

3. Net Benefit Standard Needs to be Clearly Defined in the General Order

Net benefit should be clearly defined to require that the analysis of net benefit be within each watershed/stream affected and also consider net benefit to each of the resources. The General Order should ensure that the net benefit analysis can't trade-off improvements in water quality in one watershed against water quality impairment in another watershed and the analysis cannot trade-off benefits to one species and its habitat against impacts to or degraded habitat condition for another species. While we understand that the proposal limits the use of General Order where “take” of listed species will occur “except as authorized by agencies (CDFW and USFWS),” that limitation alone does not ensure that the net benefit analysis is provided for each of the listed species and habitat type and wholly fails to address other rare, imperiled or special status species and habitat types and natural communities that may be affected by the projects covered under the General Order.

↑ 10

4. Other CEQA issues

a. PEIR project description and identification of likely impacts is inadequate

The EIR intended for use as a first-tier EIR for a program or policy should comply with CEQA's standards for an adequate environmental analysis in an EIR for a planning-level action, which is to say that it should “focus on the secondary effects that can be expected to follow from the adoption [of the policy].”¹ In defining the scope of the analysis, the project should be defined to include “the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately,” and “may be subject to several discretionary

↑ 11
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¹ Cal. Code Regs. tit. 14, § 15146. We agree with the CDFW that a program EIR is appropriate in this circumstance because the CalCannabis Licensing program will set the floor for environmental protection related to cannabis cultivation across the state.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

approvals by governmental agencies.”² The entire project being proposed for approval, and not some smaller aspect of the project as a whole, must be described in the EIR.³ “‘Project’ is given a broad interpretation in order to maximize protection of the environment [citation].”⁴ This PEIR fails to do that.

A project description must include all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are a part of the project.⁵ In *San Francisco Ecology Ctr. v. City & County of San Francisco*,⁶ the Court stated that agencies are encouraged under CEQA guidelines to make reasonable forecasts about future conditions. Those reasonable forecasts need to include predicted sea level rise and other climate change related changes to the environment when assessing the likely impacts of the broad range of projects that could be approved under the proposed General Order. The PEIR does not include such an analysis.

It is well settled that CEQA forbids “piecemeal” review of the significant environmental impacts of a project. A public agency may not divide a single project into smaller individual projects in order to avoid its responsibility to consider the environmental impacts of the project as a whole.⁷ This rule derives, in part, from section 21002.1, subdivision (d), which requires the lead agency--in this case, the Commission--to “consider[] the effects, both individual and collective, of *all activities* involved in [the] project.” (Emphasis added.) Courts have considered separate activities as one CEQA project and required them to be reviewed together where, for example, the second activity is a reasonably foreseeable consequence of the first activity,⁸ or both activities are integral parts of the same project.⁹



² *San Joaquin Raptor*, supra, 27 Cal. App. 4th at 730; Guidelines § 15378.

³ See, e.g., *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.

⁴ *San Joaquin Raptor*, 27 Cal. App. 4th at 730.

⁵ *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396. In *Laurel Heights*, the University of California planned to transfer medical laboratories to an office building in a residential neighborhood. *Id.* at 389. Initially, the laboratories were to occupy 100,000 square feet of a 354,000-square-foot building. *Id.* at 398. The University claimed that it had not formally decided to occupy the entire building, but the court noted that statements by the chancellor in the final EIR, public releases in newsletters, public meeting minutes, and private correspondence all indicated the University’s intent to occupy the entire building when another agency’s lease expired in several years.⁵ *Id.* at 397. Accordingly, there was “credible and substantial evidence” that the University’s occupancy of the entire building was a reasonably foreseeable consequence of the decision to move into the building. *Id.* at 398.

⁶ (1975) 48 Cal.App.3d 584, 595.

⁷ *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171.

⁸ *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-84.

⁹ *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 414-415.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

The PEIR also improperly fails to analyze all physical changes to the environment. The PEIR repeatedly fails to identify and analyze significant effects. The determination “whether a project may have a significant effect plays a critical role in the CEQA process.”¹⁰ “The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.”¹¹ “In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.”¹²

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As explained above, given the broad definition of restoration project and the lack of any specific information on the number and scope of projects that could fall within the General Order it is impossible for the public or decision makers to know what impacts are likely and whether they are being adequately addressed by the General Order requirements.

14

b. The Range of Alternatives is too Narrow.

The discussion of mitigation and alternatives is “the core of an EIR.”¹³ The lead agency must select a reasonable range of alternatives for evaluation in the EIR when determining its scope.¹⁴ The scope of alternatives reviewed must be considered in light of the nature of the project, the project’s impacts, relevant agency policies, and other material facts.¹⁵ Alternatives are not properly formulated and fleshed out in the PEIR. Action Alternatives in the PEIR only suggest what “could” be changed from the proposal but do not actually analyze any specific changes or suite of changes to the proposed project. The PEIR then uses overly narrow formulation of the project objectives to reject all action alternatives. This approach undermines clear-eyed assessment of potential impacts that could be avoided through alternatives.

15

When an EIR is considering a General Order that would apply to myriad projects across the state, the complex nature of the projects, scale of potential impacts, number of moving parts should present a broad, nuanced range of alternatives. Mere blanket alternatives which consider the non-implementation of all or part of the project, as presented in the PEIR are not sufficient.

¹⁰ Guidelines, § 15064(b)

¹¹ Id., § 15064(b)

¹² Id., § 15064(d)

¹³ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

¹⁴ Guidelines, §15126.6(a); *Citizens of Goleta Valley*, 52 Cal. 3d at 566.

¹⁵ *Mira mar Mobile Community v City of Oceanside* (2004) 117 Cal. App. 4th 477; *City of Rancho Palos Verdes v City Council* (1976) 59 CA3d 869.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

At minimum, an alternative should be analyzed that uses the dredge and fill procedures definition of "restoration projects" and the categories of actions permitted under the GC for SHRP to assess whether by narrowing the definition in these ways, significant impacts to the environment can be avoided.

↑ 15
cont.

c. Monitoring and Reporting

The General Order should require that all monitoring and reporting for projects that rely on the General Order should be publicly available and posted by the boards on their websites in a timely manner. We are concerned that accurate and current information regarding projects is often difficult for the public to obtain. For example, much of the information currently available on the EcoAtlas website is very incomplete and out of date.

↑ 16

4. Issues Raised in Scoping Were Not Adequately Addressed in the PEIR

Many of the issues raised in these comments were presented to the board earlier, during the scoping process, but are not adequately addressed in the PEIR. The San Francisco Bay Conservation and Development Commission (BCDC) submitted scoping comments in a letter dated November 22, 2019, and in that letter several substantive concerns were raised that have not been adequately addressed in the PEIR or in the language of the draft General Order. One substantive comment is that restoration success is extremely dependent upon site specific design that requires adequate review and time for planning. It is still unclear whether the proposed expedited permit review process in the General Order will ensure and not hinder a rigorous review of proposed restoration plans.

Another concern raised by BCDC is that large scale restoration projects could result in habitat trade-offs where one type of habitat is replaced with another, which is why rigorous local, regional and cumulative review is required to ensure habitat conversions do not adversely impact suites of organisms. The example provided in the BCDC comment letter is where "wetland establishment activities in subtidal or some tidal areas could result in habitat type conversion that inadvertently eliminates or significantly reduces the numbers of certain populations of fish or wildlife (e.g. habitat conversion to another habitat type could disrupt foraging of certain bird guilds)." This issue has not been sufficiently addressed in the PEIR. The threshold of significance provided in the PEIR focuses on avoiding adverse impacts to listed species, but fails to adequately consider the potential individual and cumulative adverse impacts of the General Order related to habitat conversion as described above.

↑ 17

The BCDC letter also stated the PEIR should discuss whether the General Order would consider sea level rise and that the PEIR "...should consider how climate change may alter the way that allowable restoration projects will impact Bay and marsh natural resources (e.g. how might changing precipitation patterns and sea level rise impact the projects that would be allowed through the General Order)." The PEIR has not addressed this issue.

A related concern is that the long-term sustainability of tidal wetlands, restoration projects and proposed restoration projects may be adversely impacted by sea level rise and in

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1

the San Francisco Bay Area. This is significant, especially in light of diminishing sediment supplies that are necessary to sustain these habitats. It is therefore all the more important that large scale restoration projects be carefully reviewed and that coordination occurs across regional jurisdictions to ensure beneficial reuse of sediment is directed towards projects that will be sustainable in the long-term to avoid squandering this precious resource on projects that will only provide short-term gains. Will this be possible under the expedited review proposed by the draft General Order?

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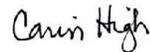
Thank you for the opportunity to submit these comments. We request that we be informed of any future opportunities for public review or comment. Please do not hesitate to contact us if you have any questions.

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Respectfully submitted,



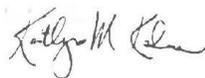
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Comments re Proposed General Permit for Restoration Projects Statewide

11

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1 Citizens Committee to Complete the Refuge, Center for Biological Diversity, California Coastkeeper Alliance, and Sierra Club California

Responses to Comments from CBD-1 Center for Biological Diversity

CBD-1-1:

The State Water Board appreciates the Citizens Committee to Complete the Refuge, Center for Biological Diversity, California Coastkeeper Alliance, and Sierra Club California comments on the Draft Order and Draft PEIR.

See Master Response 1: Definition of Restoration Project for additional details.

Furthermore, in response to this comment, Order Section III. Public Notice was revised to include the following text:

“The approving Water Board will also provide a 21-day public notice of a Notice of Intent (NOI; Attachment B) for an individual project proposed for authorization under this Order.”

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

CBD-1-2:

The definition of a restoration project used in the Order is broader than the definition of EREP as defined in the Dredge or Fill Procedures. The definition was developed based on input from numerous natural resource agencies and to be consistent with multiple permitting agency regulatory practices either existing or under development (e.g., CDFW, NMFS, USFWS, USACE). A broader definition is appropriate for this Order because projects must adhere to protective eligibility requirements. All projects seeking to enroll under the Order would have to meet the Order’s definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), adhere to programmatic sideboards (Order, Attachment A, A.5.1), including adopting GPMs (Order, Attachment A, A.5.2) and design guidelines (Order, Attachment A, A.6), and undergo a pre-application consultation (Order, Attachment A, A.5.3) with the approving Water Board.

In regards to covering mitigation projects, the Order “shall not be construed as authorization or any compliance determination for any related underlying project or activity” (Order Section XIII.E.1. General Compliance).

See Master Response 1: Definition of Restoration Project for additional details.

CBD-1-3:

The definition of a restoration project used in the Order is broader than the definition used in the General Order for Small Habitat Restoration Projects. The definition used in the General Order for Small Habitat Restoration Projects is limited by the scope of the CEQA categorical exemption. There are many common, high priority restoration projects that are not eligible for coverage under the General Order for Small Habitat Restoration

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Projects that were determined to be appropriate for expedited permitting so long as appropriate limitations and protective measures were included as part of the project.

See Master Response 1: Definition of Restoration Project for additional details.

CBD-1-4:

See Master Response 1: Definition of Restoration Project for additional details.

CBD-1-5:

Restoration projects that do not qualify for the General Order for Small Habitat Restoration Projects, or its most recent update, or terms of the Order, must obtain an Individual Water Quality Certification and/or Waste Discharge Requirements from the State Water Board or appropriate Regional Board. Obtaining individual authorization can be more time-consuming and costly than obtaining authorization under a General Order, which provides programmatic coverage. For this reason, the Order is needed to expedite regulatory review of eligible restoration projects that do not qualify for the General Order for Small Habitat Restoration Projects. The Order is intended as a companion to, not a replacement for, the General Order for Small Habitat Restoration Projects.

As described in the Order (Section I. Executive Summary and Attachment A, A.4 Categories of Restoration Projects in the Order), many types of restoration projects would be permitted under the Order. The individual restoration projects could be constructed, operated, and maintained in many different ways to meet regulatory requirements and guidelines. For this reason, the Draft PEIR identified a range of potential effects that could result from implementation of these general types of restoration projects. However, specific project details, such as project sizes, configurations, locations, and operations are not known at this time. For this reason, the potential effects that could result from individual restoration projects permitted under the Order are discussed to the extent feasible in a level of detail to facilitate meaningful review and informed public decision making in the broader context of the Order. The approving Water Board would evaluate each project individually for eligibility for coverage under the Order, and would consider multiple projects, where proposed in a given year and/or region/watershed. Furthermore, “The approving Water Board determines if a proposed project meets the definition of a restoration project and is eligible for authorization under this Order.” has been added to the project description (Section V. Project Description of the Order) to ensure authorization of proposed projects is appropriate and as intended. This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

As described in Chapter 6 Alternatives of the PEIR, a reasonable range of alternatives to the Order were considered, including limiting number of projects permitted under the Order (e.g., specifying more narrowly the types of restoration projects, eliminating certain aspects of restoration projects, and eliminating or excluding an entire category of restoration projects included in the Order). These alternatives were screened and not selected based on their lack of ability to feasibly attain most of the basic project objectives.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CBD-1-6:

Inclusion of restoration projects in the Order that provide mitigation or other benefits for larger (i.e., underlying) projects would not undermine adequate project review of the underlying projects. The Order does not provide authorization for any related underlying project or activity that is the reason why mitigation is required (see Draft Order section XIII.E.1., page 11). Order Section XIII.E.1 (Draft Order, page 11) states:

“Enrollment and authorization of restoration projects under this Order are for the discharges of waste associated with only the restoration action and shall not be construed as authorization or any compliance determination for any related underlying project or activity. Restoration projects serving as mitigation for a related project or activity may be enrolled under this Order; however, this Order does not include any findings regarding the underlying related activity’s impact to water quality, public trust resources, or other matters of public interest. When considering the impact of restoration projects under this Order, the approving Water Board considers only those adverse changes that may result from approval of the new restoration project, including multi-benefit projects that may include non-restoration action elements (e.g., recreation, flood protection).”

See also Master Response 1: Definition of Restoration Project for additional details. Any impacts caused by the underlying project would be fully evaluated and subject to appropriate mitigation requirements as outlined under a permitting method determined by the approving Water Board.

CBD-1-7:

As described in Order Section XIII.E.1. General Compliance (text provided above in CBD-1-6) and response to comment CDB-1-6, enrollment and authorization of restoration projects under the Order are for the discharges of waste associated with only the entire restoration project (including mitigation and multi-benefit [e.g. non-restoration action elements] that meet the definition of a restoration project and shall not be construed as authorization or any compliance determination for any related underlying project or activity, which would have to go through its own environmental review and permit approval processes.

For example, if a future restoration project includes underlying activities that make the entire project not meet the definition of a restoration project as stated in the Order, then this future restoration project would not be permitted under the Order.

Under CEQA Guidelines Section 15378, “project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment...” Under CEQA Guideline Section 15124(b), the project description is required to include a statement of objectives sought by the proposed project. The statement of objectives “will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project and may discuss the project benefits.”

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The PEIR provides a clear project description to determine the Order’s environmentally significant effects, associated mitigation, and alternatives to the Order. The PEIR focuses on reasonably foreseeable changes from implementation of the types of projects and actions that might be taken in the future consistent with the level of detail appropriate for a program-level analysis. The PEIR assumes that the Order is implemented and achieves the desired outcomes. Accordingly, the PEIR evaluates the potential impacts of the types of restoration projects that the Order would encourage and promote in the study area.

The PEIR does not divide a potential restoration project into small individual projects or separate ‘underlying related activities’ from the potential restoration project (e.g., ‘piecemealing’). The PEIR evaluates future restoration projects permitted by the Order, including those with multiple benefits, such as groundwater recharge, recreation, flood management, water quality improvement, and/or adaptation to climate change. PEIR Chapter 3 Environmental Setting, Impacts, and Mitigation Measures identifies and analyzes potential direct and indirect environmental impacts associated with the Order.

Reasonably foreseeable impacts associated with a range of restoration projects, including future restoration projects with multi-benefit elements located in uplands or floodplains (meeting the definition of restoration project as stated in the Order) were evaluated in the Draft PEIR, including impacts to water quality (PEIR, Chapter 3.11 Hydrology and Water Quality).

Further, the whole of a multi-benefit project would be reviewed for eligibility of coverage under the Order and would also need to undergo individual CEQA review. See also detailed requirements in the PEIR regarding programmatic sideboards (Section 2.8.1), general protection measures (Section 2.8.2), prohibitions (Section 2.8.5), and pre-application consultations (Section 2.8.3), which would apply to all projects seeking coverage under the Order, including multi-benefit projects that have flood protection elements.

CBD-1-8:

As described in the PEIR Section 2.6.5 and Order, Attachment A, A.4.5, water conservation projects would include:

“Creation, operation, and maintenance of water conservation projects including offstream storage tanks and ponds and associated off-channel infrastructure (to) reduce low-flow stream diversions and enhance streamflows, particularly base flows for fish and wildlife habitat during the dry season. These projects typically require placing infrastructure (e.g., pumps, piping, screens, and headgates) in or adjacent to the stream to provide alternative water intake facilities.”

See also detailed requirements in the PEIR regarding design guidelines (Section 2.9) and programmatic sideboards (2.8.1) for water conservation projects.

The PEIR assesses the potential for future restoration projects permitted under the Order to result in insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years (PEIR, Chapter 3.19 Utilities and Public Services). In addition, project proponents in

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

coordination with the CEQA lead agency would need to determine if future water conservation projects permitted under the Order could be approved as being within the scope of the PEIR or would need to undergo additional CEQA review.

In regards to diversion of flows and associated water right, Section XIII.A. Request for Authorization of the Order states:

“As applicable to a project, the approving Water Board will consult with the State Water Board, Division of Water Rights on whether the restoration project requires any water right approvals, including but not limited to, a new water right, petition to change purpose/place of use or point of diversion, time extension, or wastewater change petition. There may be limited instances where it may be more appropriate for the Division of Water Rights to process an individual certification to accompany a water right approval depending on the scope of the water right approval needed. If an individual certification is deemed necessary, project proponents must file a new and separate application with the State Water Board pursuant to California Code of Regulation, title 23, section 3855.”

All water conservation projects would require applicable permits or approvals, including those associated with California Fish and Game Code, which may impose conditions (construction and operations) on this category of projects.

CBD-1-9:

See responses to comments CBD-1-6 and CBD-1-7 above.

CBD-1-10:

As described in the Order and PEIR, a project must meet the Order’s definition of a restoration project: an eligible project type that would result in a net increase in aquatic or riparian resource functions and/or services through implementation of relevant protection measures. See PEIR Chapter 2 for categories of restoration projects in the Order (Section 2.6) and detailed requirements in the PEIR regarding programmatic sideboards (Section 2.8.1), general protection measures (Section 2.8.2), design guidelines (Section 2.9), species protection measures (Section 2.10), and other requirements. The approving Water Board is responsible for evaluating whether there is a net increase in aquatic or riparian resource functions within individual watersheds in their jurisdiction.

The analysis of potential impacts to habitats and species in the PEIR Sections 3.5 Biological Resources – Terrestrial and 3.6 Biological Resources – Aquatic identify the potential for temporary impacts associated with construction activities with long-term benefits associated with restoration projects. Implementing the GPMs and species protection measures would avoid or minimize direct construction-related impacts and would address many indirect effects of construction activities. Nonetheless, the GPMs and species protection measures may not necessarily address the unique characteristics and habitat requirements of all habitats/species that could be affected by projects permitted under the Order. If the CEQA lead agency for a restoration project determines that the project’s impacts on habitat/species may remain significant even with these GPMs and species protection measures, additional project-specific and

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

species-specific mitigation measures would be required. In such a case, the lead agency would coordinate with CDFW, USFWS, or NMFS to develop additional project-specific measures to reduce these impacts. This coordination would be initiated as part of the CEQA review (e.g., CDFW is a CEQA trustee agency when projects may affect protected biological resources) and/or part of a required permitting process (e.g., Fish and Game Code Section 1600 and informal and formal consultation under the FESA and California Endangered Species Act (CESA)).

The analysis also identifies the potential for long-term habitat conversion associated with implementation of restoration projects. For example, certain restoration projects—wetland restoration, floodplain restoration, and off-channel/side-channel restoration—are likely to permanently convert an upland-based natural community (e.g., grassland) to a wetland-based natural community (e.g., tidal marsh). For some habitats/species, the effects of restoring seasonal floodplain, wetlands, and/or adjacent upland areas would be either beneficial or adverse. Similar to construction-related impacts, the GPMs and species protection measures may not be sufficient on their own to address all the potential long-term effects of individual restoration projects. If the CEQA lead agency for a future restoration project determines that the project's impacts on habitats/species may remain significant even with implementation of the GPMs and species protection measures, additional project-specific mitigation would be required. In such a case, the lead agency would coordinate with CDFW or USFWS to design additional project-specific measures to reduce operational impacts on sensitive habitats or special-status plants. This coordination would be initiated as part of the CEQA review (e.g., CDFW is always a CEQA trustee agency when projects may affect protected biological resources) and/or part of a required permitting process (e.g., Fish and Game Code Section 1600 and FESA/CESA consultation). To be able to proceed, the project would be required to adhere to any additional avoidance and minimization measures established under these permitting process (e.g., biological opinions and streambed alteration agreements).

CBD-1-11:

See responses to comments CBD-1-6 and CBD-1-7 regarding the details of the Order, including reasonably foreseeable actions that may be permitted under the Order.

As described in Section 3.1 Approach to Environmental Analysis of the PEIR, the impact analysis for resource areas involved reviewing existing information about similar actions and activities to allow the evaluation of a range of “big-picture effects” of multiple projects, consistent with the level of detail appropriate for a program-level analysis. Given the programmatic nature of the Order, individual project details are yet to be determined; impacts and assumptions are identified at a programmatic level, with the reasonable forecasting of construction and operation effects of projects permitted under the Order.

See Section 3.4 Air Quality and Greenhouse Gas Emissions of the PEIR, which addresses potential impacts from future restoration projects permitted under the Order on climate change.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

California courts have held that CEQA does not generally require consideration of the effect of the environment on a project (see *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal.4th 369 (2015)). In addition, in 2018, CEQA Guidelines Section 15126.2 was revised to clarify how an EIR should analyze significant environmental effects the project may cause when locating development in areas susceptible to hazardous conditions, such as areas with sea level rise:

“In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published... The EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example, the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or inland use plans addressing such hazards areas.”

As stated in PEIR Section 3.15 Population and Housing, restoration projects would not include the development of housing or commercial structures, including those areas susceptible to hazardous conditions.

The Order and PEIR acknowledge potential future conditions with climate change, including predicted sea level rise and other climate change-related changes to the environment. Specifically, the Order and PEIR include projects that address climate change in the definition of restoration project “...A restoration project permitted by the Order may include multiple benefits, such as groundwater recharge, recreation, flood management, water quality improvement, and/or adaptation to climate change...” (PEIR Section 1.1 Introduction and Overview of the Order). Additionally, project category descriptions included in Chapter 2 of the PEIR and Attachment A of the Order state that “...Project activities that plan for climate change, including sea level rise, should be considered in tidally influenced locations...” (under Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands discussions). Furthermore, restoration projects are an imperative part of fighting climate change through several mechanisms, including creating (through restoration) more resilient habitats and ecosystems to withstand the effects of climate change and through carbon sequestration (e.g., restoration of riparian forests, marshlands) that combats climate change. Finally, all projects seeking coverage under the Order would be required to undergo pre-application consultation with the approving Water Board and through its own environmental review pursuant to CEQA. No revisions are included in the Order or PEIR because of this comment.

CBD-1-12:

As described in Section 3.1 Approach to Environmental Analysis of the PEIR, the impact analysis for resource areas involved reviewing existing information about similar actions and activities to allow the evaluation of a range of “big-picture effects” of multiple projects, consistent with the level of detail appropriate for a program-level analysis.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Given the programmatic nature of the Order, individual project details are yet to be determined; impacts and assumptions are identified at a programmatic level, with the reasonable forecasting of construction and operation effects of projects permitted under the Order. See also response to comments CBD-1-7 regarding ‘piecemealing.’

CBD-1-13:

As described in Section 3.1 Approach to Environmental Analysis of the PEIR, the impact analysis for resource areas involved reviewing existing information about similar actions and activities to allow the evaluation of a range of “big-picture effects” of multiple projects, consistent with the level of detail appropriate for a program-level analysis. Given the programmatic nature of the Order, individual project details are yet to be determined; impacts and assumptions are identified at a programmatic level, with the reasonable forecasting of construction and operation effects of projects permitted under the Order. PEIR Chapter 3 Environmental Setting, Impacts, and Mitigation Measures properly analyzed all physical changes to the environment, including significant effects.

CBD-1-14:

The PEIR evaluates a broad range of future restoration projects to be permitted under the Order and is consistent with the requirements of Section 15168 of the State CEQA Guidelines.

CBD-1-15:

As described in PEIR Chapter 6 Alternatives, the focus and definition of the alternatives evaluated in this PEIR are governed by the “rule of reason,” in accordance with section 15126.6(f) of the CEQA Guidelines. That is, the range of alternatives presented in the PEIR must permit a reasoned choice by the State Water Board. The CEQA Guidelines (section 15126.6) require that an EIR evaluate at least one “No Project Alternative,” evaluate a reasonable range of alternatives to the project, identify alternatives that were considered during the scoping process but were eliminated from detailed consideration, and identify the “environmentally superior alternative.” PEIR Chapter 6, Section 6.3 Alternatives Considered and Screening Criteria, describes the development of a reasonable range of alternatives, the method used to screen the alternatives, and the alternatives considered but eliminated from detailed consideration in this PEIR.

CEQA Guidelines section 15126.6(a) requires every EIR to describe and analyze a “range of reasonable alternatives” that “would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project.” It does not require an EIR to consider any particular number of alternatives, nor does it mandate certain types of alternatives. CEQA also does not require that any particular alternative be analyzed, even if a specific, proposed alternative was submitted for agency consideration. “The range of alternatives required in an EIR is to set forth only those alternatives necessary to permit a reasoned choice regarding the proposed project.” (CEQA Guidelines section 15126.6(f)). This range is determined, in part, by the particular scope and purpose of the project under review. The selection of alternatives must also be guided by CEQA’s fundamental goal of environmental protection. See Public Resources Code sections 21000, 21001.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

In developing the Order, the State Water Board could conceivably construct various combinations of potential actions and other ways to meet the Order objectives. CEQA, however, does not require the EIR to consider this entire broad array of alternatives, for two reasons. First, the EIR must “focus on alternatives to the project...which are capable of avoiding or substantially lessening any significant effects of the project.” (CEQA Guidelines section 15126.6(b)). Second, CEQA does not require a lead agency consider alternatives to every feature or aspect of a project. Instead, the agency must consider alternatives to the project as a whole. For example, an EIR analyzing the impacts of a proposed housing development does not need to consider alternatives specifically addressing the grading plan or the location of an access road; it is obliged only to consider alternatives to the entire project.

State Water Board gave close attention to all of the alternatives proposed by the public, and many of the specifics of those proposals were incorporated into the alternatives to the Order. PEIR Section 6.3.1 Development of a Reasonable Range of Alternatives contains additional information on the development of the alternatives to the Order, based on information gathered during the development Order and during the PEIR scoping process. PEIR Section 6.3.2 Method Used to Screen Alternatives describes the method to screen alternatives, including those alternatives that avoid or lessen any potentially adverse environmental effect of the Order. Alternatives 1 through 3 (described in PEIR Section 4 Alternatives to the Order) have potential impacts that may be at a lesser magnitude than the impact of the Order.

See also Master Response 1: Definition of Restoration Project.

CBD-1-16:

To acquire reports submitted to the Water Board(s) for any specific project, members of the public may submit a public records request per the California Public Records Act.

CBD-1-17:

As described in the introduction section of each resource area discussed in PEIR Chapter 3, scoping comments were taken into consideration during preparation of the PEIR.

As described in the PEIR Chapter 2 Background and Description of the Order, there are detailed requirements regarding programmatic sideboards (Section 2.8.1), general protection measures (Section 2.8.2), design guidelines (Section 2.9), and species protection measures (Section 2.10) for future restoration projects permitted under the Order.

See response to comments CBD-1-11 regarding climate change and sea level rise.

The PEIR covers future restoration projects permitted under the Order statewide and was developed to be consistent with existing programs (e.g., NMFS Programmatic BOs) and in coordination with other agencies across regional jurisdictions, including those of the Regional Boards, CDFW, USFWS, and other agencies. In addition, individual restoration projects will be evaluated by the appropriate Water Board.

As stated in PEIR Chapter 4 Cumulative Impacts,

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

“Restoration projects (i.e., seasonal wetland or tidal wetland restoration projects) would improve the quality of both wetland and upland habitats, which would result in a beneficial effect on wildlife movement and avian migratory corridors. Expanding riparian habitat would result in a beneficial effect on functionality for the movement of many riparian species, particularly those whose distribution is restricted to riparian habitat.

However, because the extent and location of such actions are yet to be determined, it is not possible to conclude that mitigation measures and applicable general protection measures would reduce the contribution of permitted actions to less than cumulatively considerable in all cases. Therefore, cumulative impacts on terrestrial biological resources would be significant and unavoidable.”

CBD-1-18:

The Citizens Committee to Complete the Refuge, Center for Biological Diversity, California Coastkeeper Alliance, and Sierra Club California will be informed of future opportunities for public review or comment, as requested.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CDFW-1 California Department of Fish and Wildlife

CDFW-1

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State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Deputy Director's Office
Ecosystem Conservation Division
P.O. BOX 944209
Sacramento, CA 94244-2090
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GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812



Re: General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide; Draft Program Environmental Impact Report (SCH No. 2019100230)

Dear Ms. Townsend:

The California Department of Fish and Wildlife (CDFW) is pleased to support State Water Resources Control Board (Water Board) consideration of the proposed Statewide General Order for Restoration Projects (Proposed Order). The opportunity to comment marks an important milestone in the agencies' shared goal to increase the pace and scale of environmental restoration in California by streamlining the state's process to approve and facilitate these projects. CDFW recognizes the importance of the Water Board effort in the broader context of Governor Newsom's leadership as detailed in Executive Order N-82-20, and the related *Cutting the Green Tape* initiative by Secretary Blumenfeld and Secretary Crowfoot. The Water Board's effort, including its ongoing coordination with CDFW, is essential to effectively address the challenges of creating climate change resiliency, maintaining biodiversity, connecting wildlife corridors, protecting water supplies, and restoring ecosystem benefits and services. We commend and support the Water Board's effort, and CDFW will continue to do so with our shared interest.

CDFW offers its support and the comments that follow consistent with its mission as California's trustee agency for fish and wildlife. That mission directs CDFW to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public (Fish and G. Code, § 712.1, subd. (a)). CDFW carries out that mission with an ecosystem-based focus, informed by credible science and with a constant eye to interagency cooperation and coordination, as the current effort highlights (*Id.*, §§ 703.3, 703.5.). We do so in turn, holding California's fish and wildlife in trust on behalf of the all the people in the State (*Id.*, §§ 711.7, subd. (a), 1802).

CDFW also supports the Water Board's lead agency effort under the California Environmental Quality Act (CEQA). We appreciate the Water Board Program Environmental Impact Report (PEIR) for the Proposed Order identifies CDFW as a both a responsible and trustee agency under CEQA (See Pub. Resources Code, §§ 21069, 21070). The PEIR includes a robust analysis of potential effects on fish and wildlife that may result if the Proposed Order is approved, along with a comprehensive mitigation framework that will avoid or substantially lessen those effects to the extent feasible, as CEQA requires. The PEIR provides substantial information regarding potential effects to fish and wildlife to facilitate informed public decision making for both the Water Board and for other agencies that may propose to carry out or approve individual restoration projects in the future, including CDFW.

CDFW offers two comments against this backdrop. First, Section 2.8 (Programmatic Sideboards, General Protection Measures, and Other Requirements), in Chapter 2 of the PEIR, describes pre-application consultation with the applicants under the Proposed Order. Interagency consultation with an applicant that also includes CDFW would improve the process. Interagency consultation and joint review of applications with CDFW would foster open dialogue early in the process.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CDFW-1

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Jeanine Townsend, Clerk to the Board
State Water Resource Control Board
August 12, 2021
Page 2

It would also help to identify permitting needs early on, improve process timelines across multiple agencies, and reduce potential inconsistencies between multiple authorizations that may be required to implement individual projects.

↑ 2
cont.

Second, CDFW expects many of the restoration projects authorized under the Proposed Order, if adopted, will require separate approval under the Fish and Game Code, including the California Endangered Species Act (CESA) or CDFW's Lake and Streambed Alteration Program, as two examples. Most projects should qualify under the Fish and Game Code as voluntary habitat restoration projects, while others may not (See, e.g., Fish & G. Code, § 2081.2, subd. (a)(6)). We highlight the distinction not because it is relevant to Water Board and Regional Water Quality Control Board determinations regarding whether an individual project qualifies under the Proposed Order. We highlight the distinction because it can be relevant to the permitting options available for individual projects under the Fish and Game Code, including permitting tools CDFW has or is developing consistent with the Secretaries' *Cutting the Green Tape* initiative (See, e.g., and compare Fish & G. Code, § 2081, subds. (a)-(b)). The distinction is important, hopefully in rare instances, because some projects authorized under the Proposed Order, if adopted, may not be eligible for restoration permitting pathways under the Fish and Game Code, albeit CDFW expects other permitting tools would be available.

3

Finally, CDFW encourages the Water Board to upload species-specific information developed during preparation of the Proposed Order and PEIR to the California Natural Diversity Database (CNDDDB) (See generally Pub. Resources Code, 21003, subd. (e)). Information regarding the CNDDDB is available on CDFW's web page (<https://wildlife.ca.gov/Data/CNDDDB>). Likewise, we respectfully remind the lead agency to pay the environmental filing fee for an environmental impact report as required by Fish and Game Code section 711.4. These fees fund CDFW's work under CEQA.

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* * *

In closing, CDFW appreciates the opportunity to provide comments to the Water Board regarding the Proposed Order and PEIR. Congratulations again on this important milestone. We look forward to further collaboration.

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Questions regarding this letter or further coordination should be directed to Karen Carpio, Senior Environmental Scientist at karen.carpio@wildlife.ca.gov.

Sincerely,


4680CD38FF6A4E8
Chad Dibble, Deputy Director
Ecosystem Conservation Division

cc: Office of Planning and Research, State Clearinghouse, Sacramento

ec: California Department of Fish and Wildlife

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CDFW-1 California Department of Fish and Wildlife

Responses to Comments from CDFW-1 California Department of Fish and Wildlife

CDFW-1-1:

The State Water Board appreciates CDFW comments supporting the adoption of the Order. In addition, the State Water Board thanks CDFW for its comments as a trustee and responsible agency pursuant to CEQA.

CDFW-1-2:

The Order would not hinder interagency or stakeholder collaboration, nor would the Order alter CDFW policies or procedures. The State Water Board encourages multi-agency collaboration but cannot prescribe engagement with another state agency. Order Section XIII. Conditions, Part A Request for Authorization, last paragraph states:

"Other regulatory agencies may also have authority separate and in addition to this Order to authorize restoration projects. Project proponents are encouraged to collaborate with other applicable regulatory agencies in coordination with the approving Water Board during project design, especially when fish passage and/or listed species are considerations."

Also, Order Attachment B NOI Form, Enrolling Projects Under the Order, Step 4 Pre-application consultation states:

"Note that other regulatory agencies, such as U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife (CDFW), and California Coastal Commission (CCC), may also have authority separate and in addition to this Order to authorize restoration projects. Project proponents are encouraged to collaborate with other applicable regulatory agencies in coordination with the approving Water Board during project design, especially when fish passage and/or listed species are considerations."

CDFW-1-3:

Thank you for your comments regarding CDFW's permitting pathways and constraints. As stated in Response to Comment CDFW-1-2, the State Water Board encourages interagency collaboration throughout the permitting process.

CDFW-1-4:

This comment includes administrative process issues separate from and not appropriate for inclusion in the Order itself (or the PEIR) and are related to processes between future restoration project applicants and CDFW (via applicant interaction with CNDDb to conduct database queries and input).

CDFW-1-5:

The State Water Board appreciates CDFW's comments supporting the adoption of the Order and notes the contact name and number for CDFW.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CDOT-1 California Department of Transportation

CDOT-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: Loy_Carin@DOT
To: commentletters
Cc: Kirkham_Stuart_S@DOT; Nadolski_Jessica@Waterboards
Subject: Comments – Restoration Projects Statewide Order
Date: Wednesday, August 4, 2021 1:37:48 PM

EXTERNAL:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

This comment is to request that the State Water Board ensure that the Restoration Projects Statewide Order apply to restoration projects performed to establish conservation banks, mitigation banks, mitigation credit agreements, as well as establish advance mitigation credits or values in accordance with an advance permittee responsible agreement or another natural resource regulatory agency project-specific agreement.

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Sincerely,
Carin Loy

Carin Loy
Senior Environmental Planner
Office of Biological Science and Innovation
Advance Mitigation Program
California Department of Transportation
1120 N Street, 4th Floor, MS-27
Sacramento, California 95814
916-767-9959 (wk cell)
530-400-5040 (pers cell)



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CDOT-1 California Department of Transportation

Responses to Comments from CDOT-1 California Department of Transportation

CDOT-1-1:

Projects that meet the definition of a restoration project (Order Section V. Project Description) and requirements stated in the Order qualify for coverage under the Order. Furthermore, “The approving Water Board determines if a proposed project meets the definition of a restoration project and is eligible for authorization under this Order.” has been added to the project description (Order Section V. Project Description) to ensure authorization of proposed projects is appropriate and as intended.

Pursuant to Order Section XIII.E.1. General Compliance:

“Enrollment and authorization of restoration projects under this Order are for the discharges of waste associated with only the restoration action and shall not be construed as authorization or any compliance determination for any related underlying project or activity. Restoration projects serving as mitigation for a related project or activity may be enrolled under this Order; however, this Order does not include any findings regarding the underlying related activity’s impact to water quality, public trust resources, or other matters of public interest. When considering the impact of restoration projects under this Order, the approving Water Board considers only those adverse changes that may result from approval of the new restoration project, including multi-benefit projects that may include non-restoration action elements (e.g., recreation, flood protection).”

Therefore, while the Order could authorize restoration projects underlying conservation or mitigation banks, Mitigation Credit Agreements, advance permittee responsible agreements, or agency project-specific agreements, the actual establishment of these banks and agreements would not be covered under the Order because restoration projects permitted by the Order pertain only to construction and operation of those restoration projects, not development of instruments or agreements necessary for Banks, mitigation credit agreements, etc.

See also Master Response 1: Definition of Restoration Project for additional details.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CLSN-1 California Landscape Stewardship Network

CLSN-1



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000
RE: Comments - Restoration Projects Statewide Order



To the State Water Resources Control Board,

We, the [California Landscape Stewardship Network](#) (CLSN) - a statewide network of networks that coordinates efforts to increase the pace and scale of landscape-scale stewardship - are strongly supportive and deeply encouraged by the leadership that the Water Board has shown in developing this draft Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (General Order) and the associated Programmatic Environmental Impact Report (PEIR). The process, the intention, and products resonate clearly with the goals of *Cutting Green Tape* and directly address Recommendation #6 in the November 2020 report entitled, [Cutting Green Tape: Regulatory Efficiencies for a Resilient Environment](#). The set of recommendations in that report are the product of a series of roundtables facilitated by the CLSN in 2019-2020 that convened state agency leadership and restoration practitioners across the state to identify ways to advance beneficial restoration. The CLSN is committed to finding solutions to reduce barriers for scaling beneficial restoration, and the General Order and PEIR provide an important strategy for removing barriers and increasing ecological restoration in California.

Recognizing this, we strongly support adoption of this General Order as soon as possible. To this end, we would like to suggest the following modification to the draft General Order to ensure that it maximizes consistency with the spirit and intent of *Cutting Green Tape* and is able to leverage critical efficiencies that will expedite implementation of urgently needed ecological restoration at-scale.

Please consider the following recommendations as you finalize the General Order:

Recommendation 1.

Aquatic restoration requires working in ecologically sensitive ecosystems. We believe the General Order would benefit from a clear acknowledgement in Section IX. Avoidance and Minimization (page 3) that this Order specifically anticipates (a) that projects covered under it will take place in areas of high biological and ecological sensitivity and (b) that while restoration construction-related impacts to these resources will be avoided and minimized to the greatest extent practicable, they may be unavoidable in order to achieve the project goals and objectives. As practitioners, we believe it is important to explicitly state this in the General Order to ensure that staff understand that restoration construction-related impacts are sometimes unavoidable when implementing critical restoration work.

Recommendation 2.

Through the *Cutting Green Tape* Initiative, the CLSN team has worked extensively with Water Board staff on review of the Construction General Permit. We applaud the Water Board's 402 staff

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Comments on Restoration Projects Statewide Order

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CLSN-1

on working collaboratively with us to craft language in the new Proposed Construction General Permit that explicitly reduces redundancy and confusion for both staff at the Regional Boards and project applicants regarding the applicability of CWA § 401 and/or § 402 for projects within waters of the state (i.e. project that will be obtaining 401 compliance). In the proposed Construction General Permit, Section I. Findings, Item 12, State Board staff developed language that we believe effectively addresses the issues of redundancy.

“Stormwater discharges from dredge spoil placement that occur outside of waters of the state (upland sites) and that disturb one or more acres of land surface from construction activity are covered by this General Permit. This General Permit does not cover the discharge of dredged or fill material to waters of the state. Construction projects that include the discharge of dredged or fill material to waters of the state should contact the applicable Regional Water Board to obtain authorization for the discharge of dredged or fill material to waters of the state.”

We strongly urge the Water Board to insert similar language in the General Order in *Section E.9 General Compliance, Construction General Permit and in Appendix A (page A-30) WQHM-2: Storm Water Pollution Prevention Plan and WQHM-3: Erosion Control Plan*. As currently written in these sections of the General Order, the text states that in any case where disturbance is over 1 acre, the applicant shall prepare and implement a Stormwater Pollution Protection Plan (SWPPP). These sections would benefit from

1. The clarity provided in the proposed Construction General Permit that notes that the trigger for the CGP/SWPPP is 1 acre of disturbance “outside of waters of the state”.
2. Replacing “shall” with “should consult with the appropriate Water Board staff on whether to ...”.

For aquatic restoration projects this nuance can have both significant cost implications and more importantly, significant implications for project success. SWPPP requirements have been developed and vetted for application in uplands, not waters of the state. Conversely, 401 conditions have been specifically designed for application in waters of the state and areas directly adjacent to waters of the state. As such, we strongly recommend utilizing the text from the draft Construction General Permit in the General Order to clarify the triggers for §401 and §402 compliance.

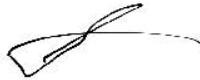
Thank you for the opportunity to share our comments and for your agency’s hard work and collaboration in preparing these documents. Also, thank you for your leadership and support of *Cutting Green Tape*. Please let us know if we can provide additional information.

Sincerely,



Darcie Goodman-Collins

*California Landscape Stewardship Network
Policy & Funding Working Group Co-Chairs*



Kevin Wright



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cont.



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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CLSN-1 California Landscape Stewardship Network

Responses to Comments from CLSN-1 California Landscape Stewardship Network

CLSN-1-1:

The State Water Board appreciates California Landscape Stewardship Network's (CLSN) comments supporting the adoption of the Order and information on CLSN.

CLSN-1-2:

While the Order does not explicitly state that impacts to high biological and ecological sensitivity may be unavoidable in order to achieve the Order goals and objectives, the PEIR acknowledges that restoration projects will take place in highly sensitive habitats and that potential impacts, including significant and unavoidable impacts, may occur, even with implementation of general and species protection measures, programmatic sideboards, and design guidelines. (See PEIR Section 3.5 Biological Resources - Terrestrial, and Section 3.6 Biological Resources - Aquatic.). No revisions are included in the Order or PEIR because of this comment.

CLSN-1-3:

See Master Response 2: Construction General Permit and SWPPP Requirements.

The provisions of the Order do not change the scope of activities that are subject to provisions of issued NPDES orders. While this comment includes quoted language from forthcoming revisions to the Construction General Permit and suggests inclusion of similar provisions in this Order, draft elements of other permits are not appropriate to include in this Order because the context is different. However, clarifying revisions pertaining to the NPDES and Construction General Permit have been made to the Order and PEIR (Master Response 2). The provisions of this Order address compliance with other applicable NPDES permits, including the Construction General Permit as potentially modified in the future. See Master Response 2 for text edits to clarify that compliance with the Construction General Permit will be confirmed by the approving Water Board during the project review process. Further, see Master Response 2 for proposed edits to GPMs WQHM-2 and WQHM-3 to clarify applicability of and requirements for Storm Water Pollution Prevention Plans and Erosion Control Plans, respectively.

CLSN-1-4:

The State Water Board appreciates California Landscape Stewardship Network's comments supporting the adoption of the Order.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CVWD-1 Coachella Valley Water District

CVWD-1



COACHELLA VALLEY WATER DISTRICT
Established in 1918 as a public agency

GENERAL MANAGER
Jim Barrett

CLERK OF THE BOARD
Sylvia Bermudez

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

ASSISTANT GENERAL MANAGER
Robert Cheng

ASSISTANT GENERAL MANAGER
Dan Charlton

August 12, 2021

VIA EMAIL AT COMMENTLETTERS@WATERBOARDS.CA.GOV.

Jeanine Townsend
Clerk to the Board State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



Subject: Proposed General Order for Clean Water Act Section 401 Water Quality
Certification and Waste Discharge Requirements for Restoration Projects Statewide
and Supporting Draft Program Environmental Impact Report

The Coachella Valley Water District (CVWD) understands the California State Water Resources Control Board issued a Notice of Opportunity for Public Comment and Board Workshop on June 30, 2021 regarding the subject topic. Public comments are accepted until August 13, 2021, and a Public Workshop will be held on August 3, 2021.

The proposed General Order and draft Program Environmental Impact Report (PEIR) would apply statewide and establish a permit authorization process for specific types of restoration activities. The State Water Board has previously issued a general water quality certification for small habitat restoration projects that (a) shall not exceed five acres or a cumulative total of 500 linear feet of stream bank or coastline, and (b) qualify for the CEQA Class 33 Categorical Exemption (Cal. Code Regs., tit. 14, § 15333). Restoration projects that fall outside the project size limits of the general water quality certification or small habitat restoration must obtain individual water quality certifications and/or waste discharge requirements from the State Water Board or Regional Water Quality Control Boards (Regional Boards). The process of obtaining individual authorization can be time consuming and increase the cost of regulatory compliance as compared to obtaining authorization under a general order that provides programmatic coverage. Restoration proponents seeking authorization for larger projects beyond the scale of the general water quality certification for small habitat restoration often do not have the funding to seek individual permits. This indicates the need for a general order that will expedite the regulatory approval process for large habitat restoration projects. The proposed General Order for large habitat restoration projects is intended as a companion, not a replacement, to the General WQC for small habitat restoration.

The proposed General Order would provide coverage for the following proposed types of restoration projects: Improvements to Stream Crossings and Fish Passage Removal of Small Dams, Tide Gates, Flood Gates, and Legacy Structures Bioengineered Bank Stabilization Restoration and Enhancement of Off-Channel and Side-Channel Habitat Water Conservation Projects, Floodplain Restoration Removal of Pilings and Other In-Water Structures Removal of Nonnative Terrestrial and Aquatic Invasive Species and Revegetation with Native Plants Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands Establishment, Restoration, and Enhancement of Stream and Riparian Habitat and Upslope Watershed Sites. To be eligible for coverage under the proposed General Order, restoration projects would need to incorporate applicable protection measures, such as design guidelines or avoidance and minimization techniques.

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Coachella Valley Water District
P.O. Box 1058 Coachella, CA 92236
Phone (760) 398-2651 Fax (760) 398-3711

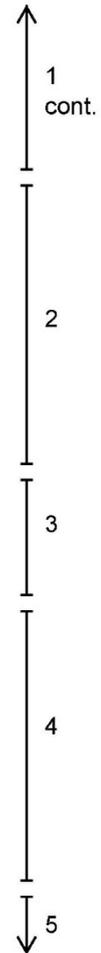
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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CVWD-1

Jeanine Townsend,
Clerk to the Board State Water Resources Control Board
August 12, 2021
Page 2

CVWD would like to acknowledge the usefulness of a General Order for 401 water quality certification and waste discharge requirements related to large scale restoration projects over 5 acres. In the Coachella Valley several large-scale restoration projects are in planning stages and will benefit from streamlined permitting process, thus reducing temporal losses of environmental impacts for which the restoration serves as mitigation. These projects include the Salton Sea Management Plan 10-year plan, as well as CVWD’s proposed Constructed Habitat project developed to satisfy the Coachella Valley Multiple Species Habitat Conservation Plan.



CVWD has identified provisions with uncertainties that could stall or reduce the benefits of the proposed General Order and requests the following clarifications be included the General Order:

- 1) In various locations of the draft general order and appendices the requirement for compliance with NPDES permits is discussed. This includes section IX.E.9 and IX.E.10 on page 13, and A-18, A-39. CVWD recommends the general order and appendices be revised to clarify that NPDES permits are not applicable to and not required for projects that do not impact Waters of the US. The NPDES Program is a federal program that has been delegated to the State of California for implementation through the State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards), collectively Water Boards, to regulate discharges to waters of the United States.
https://www.waterboards.ca.gov/water_issues/programs/npdes/
- 2) CVWD requests revisions to section E9 on page 13 of the proposed General Order to clarify that requirements to comply with NPDES permitting shall not supersede previously established NPDES compliance established by the applicant. Some applicants, including CVWD, already have NPDES permits that cover its construction projects that occur within the Municipal Separate Storm Sewer System permit boundary.
- 3) CVWD requests revisions to section H6 on page 18 of the proposed General Order to provide clarification of the definitions of non-wetland Waters of the State, how it relates to Waters of the US, for determining appropriate applicability of NPDES requirements to the applicant’s project. In the State Wetland definition and Procedures for Discharges of dredged or Fill Material to Waters of the State
https://www.waterboards.ca.gov/press_room/press_releases/2021/procedures.pdf
the definition of non-wetland waters of the state is not specifically defined, rather it was delegated to the interpretation of the Regional Boards and discussed in an accompanied Implementation Guidance Document
https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/dredge_fill/revised_guidance.pdf (page 14).

CVWD recognizes the general order would promote expedient delivery of restoration projects and would also like to submit the following recommendation to improve the effectiveness of the general order in addressing accelerating impacts from Climate Change on habitat communities:

Coachella Valley Water District
P.O. Box 1058 Coachella, CA 92236
Phone (760) 398-2651 Fax (760) 398-3711

www.cvwd.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CVWD-1

Jeanine Townsend,
Clerk to the Board State Water Resources Control Board
August 12, 2021
Page 3

- 4) CVWD recommends an expanded definition of eligible water conservation projects under appendix A 4.5 to address severe drought conditions in California, particularly the desert region, the Colorado River region, and other groundwater dependent environments. These projects can include groundwater replenishment projects, and aquifer protection efforts that indirectly support groundwater dependent ecosystems.

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CVWD appreciates the opportunity to comment on the general order and the time and effort involved to have the requested clarifications made. The clarification and edits will help to avoid any misinterpretation of general order requirements leading to more efficient and streamlined process for both applicant and regulatory staff. If you have any requests for further information from CVWD regarding this letter, please contact me at (760) 398-2661 extension 2545 or wpatterson@cvwd.org.

Sincerely,



William Patterson
Environmental Supervisor

WP: ms\Env Svcs\2021\July\Restoration projects RGP-401 Aug 2021.doc
File: 0645.1, 0022.21

Coachella Valley Water District
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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CVWD-1 Coachella Valley Water District

Responses to Comments from CVWD-1 Coachella Valley Water District

CVWD-1-1:

The State Water Board appreciates Coachella Valley Water District's (CVWD) comments supporting the Order and information on CVWD.

CVWD-1-2:

See Master Response 2: *Construction General Permit and SWPPP Requirements*.

The Order is not an NPDES permit. It does not provide authorization to discharge under Clean Water Act Section 402. The Order would not alter the scope of activities that may be required to obtain an NPDES permit or the requirements of any NPDES permits. As stated in Order Condition XIII.G.2. Pre-Application Consultation, the approving Water Board will review draft project materials and provide project-specific guidance during the pre-application consultation. During the pre-application consultation, the project proponent and the approving Water Board may discuss whether the project proponent must obtain or maintain coverage under any other permits, such as NPDES permits. Early coordination with the approving Water Board is encouraged to confirm compliance requirements.

CVWD-1-3:

See Master Response 2: *Construction General Permit and SWPPP Requirements*.

The Order is not an NPDES permit. This Order would not alter the scope of activities that may be required to obtain an NPDES permit or the requirements of any NPDES permits.

CVWD-1-4:

The comment initially references "section H6 on page 18 of the proposed General Order" which addresses the CDFW LSAA but then discusses the definition of non-wetland waters of the state. Both topics are discussed below.

Regarding the CDFW LSAA program, only CDFW may issue a LSAA. As written, section H.6. Administrative simply requires the project to submit any LSAA's issued for the project to the approving Water Board. Project proponents will need to coordinate with CDFW on the potential need for a LSAA.

Regarding any clarification on the definition of non-wetland waters of the state, the Water Code defines "waters of the state" broadly to include "any surface water or groundwater, including saline waters, within the boundaries of the state." As described in the Executive Summary, the Order applies to discharges to waters of the state, including waters of the U.S. as currently defined and implemented. The project proponent should consult with the approving Water Board regarding the scope of impacts to waters of the state. The State Water Board may consider the definition of non-wetland waters of the state as a separate, future project.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

CVWD-1-5:

As described in the PEIR Section 2.6.5 Water Conservation and Order A.4.5. Water Conservation, these projects would include creation, operation, and maintenance of water conservation projects including offstream storage tanks and ponds and associated off-channel infrastructure that reduce low-flow stream diversions and enhance streamflows, particularly base flows for fish and wildlife habitat during the dry season. These projects typically require placing infrastructure (e.g., pumps, piping, screens, and headgates) in or adjacent to the stream to provide alternative water intake facilities and could be located within the approving Water Board jurisdiction throughout California.

Water conservation projects permitted under the Order would need to meet the definition of a restoration project (Order V. Project Description). Water conservation projects not meeting the conditions of the Order can be authorized through other Water Board permitting methods.

Water conservation projects would also require other applicable permits or approvals, including those associated with the California Fish and Game Code, which may impose conditions (construction and operations) on these projects.

CVWD-1-6:

The State Water Board appreciates CVWD's comments supporting the adoption of the Order and notes the contact name and number for CVWD.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DSC-1 Delta Stewardship Council

DSC-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



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Sacramento, CA 95814
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DELTACOUNCIL.CA.GOV

August 13, 2021



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 15th floor, Sacramento, CA 95814

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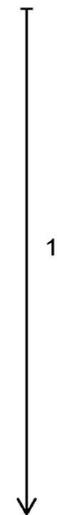
Delivered via email: commentletters@waterboards.ca.gov

RE: Comments – Restoration Projects Statewide Order

Dear Chair Esquivel and Members of the Board:

The Delta Stewardship Council (Council) appreciates the opportunity to comment on the proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (proposed General Order). According to the Notice of Opportunity and draft Environmental Impact Report (EIR), the purpose of the statewide proposed General Order is to “establish a permit authorization process for specific types of restoration activities [and] provide Waste Discharge Requirements as well as Clean Water Act Section 401 Water Quality Certification.” For project proponents to use the Order, their proposed restoration projects would need to comply with the California Environmental Quality Act (CEQA).

The Council is an independent State of California agency established by the Sacramento-San Joaquin Delta Reform Act of 2009, codified in Division 35 of the California Water Code, sections 85000-85350 (Delta Reform Act). The Delta Reform Act charges the Council with furthering the State’s coequal goals for the Sacramento-San Joaquin Delta (the Delta) of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, to be achieved in a manner that protects and enhances the unique cultural, recreational,



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DSC-1

Regarding Restoration Order, Chair Esquivel and Boardmembers, August 13, 2021

natural resource, and agricultural values of the Delta as an evolving place. (Wat. Code § 85054.)

Pursuant to the Reform Act, the Council has adopted the Delta Plan, a legally enforceable management framework for the Delta and Suisun Marsh for achieving the coequal goals. The Delta Reform Act grants the Council specific regulatory and appellate authority over certain actions that take place in whole or in part in the Delta and Suisun Marsh, referred to as “covered actions.” (Wat. Code, §§ 85022(a) and 85057.5.) The Council exercises that authority through regulatory policies set forth in Title 23 of the California Code of Regulations, Sections 5001 through 5016 and recommendations incorporated into the Delta Plan. Water Code section 85057.5(b) provides that a regulatory action of a state agency is *not* a covered action under the Delta Plan.

While the proposed General Order is not a covered action, the Council appreciates the opportunity to acknowledge the significant permitting improvements the General Order would provide and outline how projects complying with the proposed General Order in the Council’s jurisdiction may be covered actions.

Improving Permitting Efficiency Will Accelerate Implementation Of Restoration Projects

As described in the Council’s proposed amendment to the ‘ecosystems’ chapter of the Delta Plan ([draft Delta Plan Chapter 4: Protect, Restore, and Enhance the Delta Ecosystem](#)), improving permitting efficiency is one of the key actions that should be undertaken by government agencies to support implementation of ecosystem restoration. Permitting for ecosystem protection, restoration, and enhancement actions in the Delta can be complex, time-consuming, and costly, requiring coordination among multiple local, state, and federal agencies.

In partnership with other State agencies under the California Natural Resources Agency, the Council contributed funds to Sustainable Conservation’s Accelerating Restoration program to assist in development of the proposed General Order. Implementation of the General Order will accelerate restoration projects by saving time, money, and avoiding the complexities of individual permitting, especially for smaller proponents that may be unfamiliar with navigating the permitting process.

It is currently estimated that it will take approximately 60,000-80,000 acres of net new functional, diverse, and interconnected habitat to achieve the fully restored Delta landscape envisioned in the Delta Reform Act, or roughly 7 to 10 percent of the combined land area of the Delta and Suisun Marsh. A proposed amendment to Delta Plan Chapter 4 envisions restoration of these acres by 2050, and this proposed General Order would help achieve that goal.



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DSC-1

Regarding Restoration Order, Chair Esquivel and Boardmembers, August 13, 2021

Covered Actions

State and local agencies are required to demonstrate consistency with the Delta Plan when carrying out, approving, or funding a covered action. ('certification of consistency', Wat. Code, §§ 85057.5 and 85225.) The proposed General Order is not a covered action, but projects that comply with the proposed General Order may be covered actions if they meet the criteria identified in Water Code section 85057.5(a). A covered action is a plan, program, or project as defined pursuant to CEQA that would: 1) occur in whole or in part within the boundaries of the Legal Delta (Wat. Code, § 12220) or Suisun Marsh (Pub. Res. Code, § 29101) (Wat. Code, § 85057.5(a)(1)); 2) be carried out, approved, or funded by the State or a local public agency (Wat. Code, §85057.5(a)(2)); 3) have a significant impact on the achievement of one or both of the coequal goals or the implementation of a government-sponsored flood control program to reduce risks to people, property, and State interests in the Delta (Wat. Code, § 85057.5(a)(4)); and 4) be covered by one or more of the regulatory policies contained in the Delta Plan (Cal. Code Regs., tit. 23, §§ 5003-5015).

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An existing mechanism for coordination among the agencies responsible for implementation of ecosystem protection, restoration, and enhancement actions and the Council is the early consultation process for covered action certification. State and local agencies may consult with the Council early in the planning process regarding the consistency of proposed projects with applicable regulatory policies in the Delta Plan. For ecosystem restoration projects, it is critically important that early consultation occur in the earliest possible stages of the CEQA review process to ensure that Delta Plan requirements are incorporated as features of proposed projects or as mitigation measures in CEQA documents for such projects.

Delta Plan Policies and Mitigation Measures

Future projects utilizing the proposed General Order that meet the definition of a covered action are required to demonstrate consistency with the Delta Plan and its mitigation measures. Delta Plan Policies most relevant to future restoration projects complying with the proposed general order include¹:

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General Policy **G P1(b)(2)**: Covered actions not exempt from CEQA must include all applicable feasible mitigation measures adopted and incorporated

¹ Descriptions of Delta Plan policies presented in this letter have been abridged to address requirements specific to ecosystem restoration projects. The full text of the Delta Plan's regulatory policies is available at <https://www.deltacouncil.ca.gov/pdf/delta-plan/regulations/2020-05-08-delta-plan-policies-handout.pdf>. The full text should be used in any future certification of consistency resulting from implementation of the General Order.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DSC-1

Regarding Restoration Order, Chair Esquivel and Boardmembers, August 13, 2021

into the Delta Plan or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective ([Cal. Code Regs., tit. 23, § 5002](#) and [Delta Plan Appendix O, Mitigation Monitoring and Reporting Program](#)).

General Policy **G P1(b)(3)**: Requires that all covered actions must document use of best available science, as relevant to the purpose and nature of the project ([Cal. Code Regs., tit. 23, § 5002](#) and [Delta Plan Appendix 1A, Best Available Science](#)).

General Policy **G P1(b)(4)**: Requires that ecosystem restoration covered actions must include adequate provisions, appropriate to the scope of the covered action, to assure continued implementation of adaptive management ([Cal. Code Regs., tit. 23, § 5002](#) and [Delta Plan Appendix 1B, Adaptive Management](#)).

Ecosystem Policy **ER P1**: Provides that the State Water Board's Bay Delta Water Quality Control Plan flow objectives shall be used to determine consistency with the Delta Plan ([Cal. Code Regs., tit. 23, § 5005](#)).

Ecosystem Policy **ER P2**: Provides that habitat restoration actions must be appropriate for the site's elevation, and deviations must be justified by best available science ([Cal. Code Regs., tit. 23, § 5006](#), [Delta Plan Appendix 3, Habitat Restoration](#), and [Delta Plan Appendix 4, Elevation Map](#)).

Ecosystem Policy **ER P3**: Provides that significant adverse impacts to the opportunity to restore habitat within priority habitat restoration areas must be avoided or mitigated ([Cal. Code Regs., tit. 23, § 5007](#) and [Appendix 5 Recommended Areas for Prioritization and Implementation of Habitat Restoration Projects](#)).

Ecosystem Policy **ER P4**: Provides that levee projects must evaluate and where feasible incorporate alternatives, including the use of setback levees in certain locations, to increase floodplains and riparian habitats ([Cal. Code Regs., tit. 23, § 5008](#) and [Appendix 8 Setback Levee Evaluation Areas](#)).

Ecosystem Policy **ER P5**: Provides that the potential for new introductions of, or improved habitat conditions for, nonnative invasive species, striped bass, or bass must be fully considered and avoided or mitigated in a way that appropriately protects the ecosystem ([Cal. Code Regs., tit. 23, § 5009](#)).

Delta as Place Policy **DP P2**: Provides that certain projects, including ecosystem restoration, must be sited to avoid or reduce conflicts with existing uses or those described or depicted in city and county general plans,



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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DSC-1

Regarding Restoration Order, Chair Esquivel and Boardmembers, August 13, 2021

when feasible, considering comments from local agencies and the Delta Protection Commission. Plans for ecosystem restoration must consider sites on existing public lands, when feasible and consistent with a project's purpose, before privately owned sites are purchased ([Cal. Code Regs., tit. 23, § 5011](#)).

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Revisions to Draft EIR

The Council recommends that the Final EIR for the proposed General Order reference the Delta Plan policies above and the mitigation measures required under **G P1(b)(2)** in the following EIR sections or chapters:

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- Resource Impact sections: The Delta Reform Act and the Delta Plan are referenced in the Hydrology impact section, but should be similarly included in other impact sections, including but not limited to the Biological resource sections.
- EIR Appendix C: The Delta Stewardship Council and the Delta Plan should be added to the list of Permits and Authorizations for Restoration Activities, with a focus on Consistency Certification and incorporation of Delta Plan Mitigation Measures.

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While the EIR Appendix E acknowledges that other agencies may require additional protection or mitigation measures committed to as part of the CEQA review process, the Council recommends the Final EIR include the following Delta Plan mitigation measures, or include substitute measures that the lead agency finds are equally or more effective:

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- Agriculture and Forestry Resources: "Manage project operations to minimize the introduction of invasive species or weeds that may affect agricultural production on adjacent agricultural land."
- Biological Resources: "An invasive species management plan shall be developed and implemented for any project whose construction or operation could lead to introduction or facilitation of invasive species establishment. The invasive species management plan will include the following elements:
 - Nonnative species eradication methods (if eradication is feasible)
 - Nonnative species management methods
 - Early detection methods
 - Notification requirements
 - Best management practices for preconstruction, construction, and post construction periods
 - Monitoring, remedial actions and reporting requirements

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DSC-1

Regarding Restoration Order, Chair Esquivel and Boardmembers, August 13, 2021

- Provisions for updating the target species list over the lifetime of the project as new invasive species become potential threats to the integrity of the local ecosystems
- Recreation: "If the substantial impairment, degradation, or elimination of recreational facilities occurs, replacement facilities of equal capacity and quality shall be developed and installed, with ongoing funding provided for maintenance of these facilities."

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Thank you for the opportunity to provide comment. Should you have any questions, please contact Daniel Constable at Daniel.Constable@deltacouncil.ca.gov.

Sincerely,



Jeff Henderson, AICP
Deputy Executive Officer
Delta Stewardship Council

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DSC-1 Delta Stewardship Council

Responses to Comments from DSC-1 Delta Stewardship Council

DSC-1-1:

The State Water Board appreciates Delta Stewardship Council’s (DSC) comments regarding the Order and PEIR as well as information on the DSC, Delta Reform Act, and Delta Plan.

DSC-1-2:

The State Water Board appreciates DSC’s comments regarding the draft Delta Plan Chapter 4: *Protect, Restore and Enhance the Delta Ecosystem* and how the Order could help achieve the ecosystem restoration goals within the Delta Plan.

DSC-1-3:

The State Water Board acknowledges the benefits of early consultation with DSC in the planning process for ecosystem restoration projects requiring consistency with the Delta Plan.

DSC-1-4:

The State Water Board acknowledges those future restoration projects within the boundaries of the Legal Delta or Suisun Marsh permitted under the Order may be required to demonstrate consistency with the Delta Plan and its mitigation measures if they meet the criteria identified in Water Code section 85057.5(a).

DSC-1-5:

In response to this comment, PEIR Section 3.5.3 Regulatory Setting and PEIR Section 3.6.3 Regulatory Setting were revised as follows:

“This topic is discussed in Section 3.11, *Hydrology and Water Quality*.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

DSC-1-6:

In response to this comment, PEIR Section 2.5, Table 2-1 Processes, Permits, and Authorizations that May Be Required for Approval of Restoration Projects was revised as follows:

Resource	Applicable Laws/Regulations/Permits	Regulating Agency
<u>Restoration projects are required to demonstrate consistency with the Delta Plan and its mitigation measures when carrying out, approving, or funding a ‘covered action’ defined by the Delta Plan</u>	<u>Delta Plan Certification of Consistency (Water Code Sections 85057.5 and 85225)</u>	<u>Delta Stewardship Council</u>

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

PEIR Appendix C Existing Programmatic Permits and Processes includes a list of programmatic permits and authorizations for restoration activities. There is no programmatic authorization for restoration projects demonstrating consistency with the Delta Plan, therefore information on the Delta Plan was not added to Appendix C.

DSC-1-7:

Invasive species are addressed in the Order, Attachment A, A.5.2 GPMs (GPM-8, GPM-9, VHDR-2 and VHDR-3). The expectation is that restoration projects requiring consistency with the Delta Plan will include separate invasive species mitigation measure(s), in addition to GPMs and/or mitigation measures, as applicable/required. No revisions are included in the Order or PEIR because of this comment.

DSC-1-8:

An invasive species management plan requirement may be a requirement of an approving Water Board on an individual project basis. The expectation is that restoration projects requiring consistency with the Delta Plan will include a separate invasive species management plan in addition to GPMs and/or mitigation measures, as applicable. No revisions are included in the Order or PEIR because of this comment.

DSC-1-9:

Per CEQA Guidelines, where potentially significant impacts are identified, an EIR should propose and describe mitigation measures designed to minimize, reduce, or avoid each identified potentially significant impact whenever it is feasible to do so (CEQA Section 21002.1(b) and CEQA Guidelines Section 15126.4). In addition, an EIR should focus on mitigation measures that are feasible, practical and effective (Napa Citizens for Honest Govt. v. Napa County Bd. of Supervisors (2001) 91 Cal.App.4th 342, 365). The term “feasible” is defined in CEQA (Public Resources Code Section 21061.1) to mean, “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” PEIR Mitigation Measure REC-1 (Section 3.16 Recreation) meets these requirements and is sufficient. No revisions are included in the Order or PEIR because of this comment.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1 Ducks Unlimited

DU-1



Western Regional Office
3074 Gold Canal Drive
Rancho Cordova, CA 95670
Ph: 916-852-2000, Fax: 916-852-2200
www.ducks.org

August 13, 2021

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



RE: Comments – Restoration Projects Statewide Order

Ms. Townsend,

Ducks Unlimited, Inc. (DU) is pleased to provide comments to the State Water Resources Control Board (SWRCB) on the Proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (Restoration General Order) and Supporting Draft Program Environmental Impact Report (Program EIR). Ducks Unlimited is one of the largest and most effective non-profit wetland conservation organizations in North America. For over 30 years, DU has worked with diverse public and private partners to design and implement over 1300 conservation projects benefitting more than 719,000 acres of wetland and associated upland habitats throughout the state of California. Our wetland restoration and enhancement projects are collaborative, voluntary efforts that are designed and implemented to benefit a suite of ecosystem services, and to result in long-term net increases in aquatic resource functions and services. Our projects often receive public funding, where the efficient and effective use of tax dollars supports the public's trust that grant-funded programs can deliver important conservation projects on time and within budget. None-the-less, permitting large-scale multi-beneficial restoration projects within the current regulatory system can take years and significant sums of money, and place a significant burden on the regulatory staff tasked within implementing wetlands and water quality protection programs.

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Our comments on the Restoration General Order and Program EIR, as provided below, are from the perspective of a practitioner with extensive experience designing, permitting, and constructing large-scale restoration projects across the state. We commend the SWRCB and their staff for prioritizing development of a programmatic process aimed at getting more and larger restoration and enhancement projects in the ground, more quickly. Broad access to the type of programmatic process provided for in the proposed Restoration General Order is essential to both achieving DU's mission of conserving, restoring, and managing wetlands and associated habitats, as well as for realizing Governor Newsom's directive to conserve at least 30% of California's land and coastal waters by 2030.

Thank you for your work, and for the opportunity to comment on the Restoration General Order and Program EIR. We look forward to continuing to collaborate with you on these efforts.

Sincerely,

Jeffrey McCreary
Director of Operations, Western Region

Attachment

Conservations for Generations

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1

Restoration General Order and Program EIR Comments

The following comments are specific to the Restoration General Order (primarily Attachment A) and the Program EIR. Recommendations for modifications or additions to language in these documents are highlighted in ***bold italic text***.

1. Restoration Project Definition

The Restoration General Order defines a restoration project as “one that would result in a net increase in aquatic or riparian resource area, functions and/or services through implementation of the eligible project types, relevant protection measures, and design guidelines.” We recommend the SWRCB clarify that the required net increase in acreage, functions, and services may occur in the future as a result of anticipated habitat improvements associated with the project or as a result of sea level rise – e.g., anticipated sediment accretion in restored tidal marsh, improved hydrologic and vegetative response to changes in water management regimes, or transition of vegetation communities. Many restoration projects result in short-term losses of wetland functions and services, and in some cases acreage, that are offset by long-term improvements in aquatic habitat conditions, including sea level rise resiliency. Adding the words “***long-term***” prior to net increase in the definition would make clear the intention that the Restoration General Order consider the benefits of restoration projects at the temporal scale necessary to support meaningful habitat conservation efforts.

2. Eligible Project Types

We appreciate the breadth and depth of eligible project types included in the Restoration General Order and offer the following specific recommendations based on the descriptions in Appendix A. More generally, we encourage the SWRCB to ensure the Restoration General Order is available to all large-scale multi-benefit conservation and restoration actions across the state, including projects in managed wetland systems and other working landscapes. Managed wetlands and working landscapes provide critical habitat for migratory waterfowl and shorebirds, as well as a suite of other ecosystems services that have otherwise been lost to development and displacement of freshwater and estuarine wetlands throughout the state. When managed properly, these habitats provide numerous beneficial services to people and wildlife, including water quality protection and improvement, floodwater attenuation, carbon sequestration, and sea level rise resiliency. They can also be important recreational amenities for the residents of California, where they provide opportunities for fishing, hunting, boating, bird watching, hiking, and communing with nature.

Please refer to our specific comments below on Category A.4.9 on where explicit mention of these habitat types could be incorporated into the Restoration General Order for clarity.

- a. Category A.4.7 - Removal of Pilings and Other In-Water Infrastructure – Category A.4.7 allows for removal of certain in-water structures to improve water quality and habitat for fish and wildlife. We recommend this category be expanded to allow for both removal *and* replacement of those structures, provided replaced structures are suitable for in-water use and would improve water and habitat quality in the impacted area.
- b. Category A.4.9 - Establishment, Restoration and Enhancement of Tidal, Subtidal and Freshwater Wetlands – We recommend the following modifications to Category A.4.9 to ensure coverage of common enhancement and restoration practices in managed wetlands and working landscapes.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1

- We recommend Category A.4.9 be revised to also include brackish and alkali wetlands to ensure coverage of projects in San Francisco Bay, Suisun Marsh, portions of the Sacramento-San Joaquin Delta, and the Salton Sea.
- We recommend the following sentence be added after the introductory sentence in Appendix A: ***“Restoration and enhancement work under Category A.4.9 may include work in managed wetlands, including those associated with state Wildlife Areas or National Wildlife Refuges, and/or working landscapes, such as flood irrigated pasture and rice fields, where project work would improve aquatic resource functions and services, increase wetland area, increase ecological productivity, and/or enhance wildlife or fish habitat diversity.”***
- We recommend the following sentence be revised to explicitly allow for replacement / installation of infrastructure typical of enhancement / restoration work in managed wetlands and working landscapes: ***“This project type generally includes grading (e.g., creating depressions, berms, and drainage features), installing related infrastructure (e.g., water control structures, siphons, sills), and/or breaching (e.g., excavating breaks in levees, dikes, and/or berms), to create topography, improve water management capabilities, or improve hydrology that:…* Facilitates water delivery and conveyance to benefit aquatic species, wildlife, or wetland vegetative response”***.
- We support the inclusion of ecotones in the activities covered in Category A.4.9. Similarly, we support the broad definition of the types of living shorelines protection that may be used under this Category, including native vegetation, natural materials (shells), and rock armoring in areas where wind, wave or other hydraulic conditions require more substantive erosion protection.

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3. Activities Prohibited Under the Order

Section A.5.5 in Appendix A lists “water diversions” as activities prohibited under the Restoration General Order (with limited exceptions). We request this prohibition be refined as follows to acknowledge the use of water diversions in managed wetland systems:

“Water diversions, except diversions associated with water conservation projects as described in Section A.4.5, Water Conservation; water delivery or conveyance to and within managed wetland habitats as described in Category A.4.9, Establishment, Restoration and Enhancement of Tidal, Subtidal and Freshwater Wetlands; and those necessary to temporarily dewater the construction site of a restoration project.”

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4. General Protection Measures

We appreciate the broad suite of general protection measures provided in Section A.5.2 of Appendix A, and the ability to select and incorporate applicable measures based on site-specific conditions. We also appreciate the language in Section A.5.2 that allows for modification of these measures by the project proponent or as recommended by the authorizing RWQCB based on site-specific conditions or technological constraints or advances. The flexibility to tailor measures to be specific to and most protective of resources at a specific project site will allow broad access to the Restoration General Order.

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We offer the following comments on individual General Protection Measures:

- a. GPM-15: Revegetate Disturbed Areas: We appreciate the allowance for revegetation of some restored sites to come through natural recruitment. This is particularly important in tidal and managed wetlands and working landscapes where disturbed areas typically revegetate with comparable vegetation (e.g., pasture grasses, wetland vegetation) in one growing season, and where seed distributed after

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1

construction would likely be outcompeted as the site revegetates.

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- b. WQHM-2: Storm Water Pollution Prevention Plan. We request this measure be revised to reflect the one acre disturbance threshold for preparation of a SWPPP is limited to work in *upland areas* (i.e., “For project construction sites **with upland disturbance areas** greater than one acre...”). We also encourage the SWRCB to explicitly allow best management practices (BMPs) typical of a SWPPP to developed as part of a stand-alone plan under the Restoration General Order (akin to the Erosion Control Plan under General Protection Measure WQHM-3), rather than a requirement of the Construction Stormwater General Permit. The stringent monitoring and reporting requirements of the Construction Stormwater General Permit are time consuming and expensive, and are often not a good fit for restoration work in aquatic environments. Providing the flexibility for this General Protection Measure to be met through a project-specific plan outside the framework of the Construction General Permit would reduce unnecessary costs while providing water quality protection during construction. Of note, this approach to construction stormwater management has been successfully used in the past for large-scale restoration projects, including the Sears Point Restoration Project in Sonoma County (Order No. R2-2013-0017).
- c. IWW-11 – Sediment Containment During In-Water Pile Driving: We note that the use of turbidity curtains in tidal environments is often ineffective, and can result in adverse impacts on substrate and aquatic vegetation, including eelgrass. Other measures, such as working to the extent practicable during low or incoming tides can be as effective in reducing turbidity issues at some locations. As such, we appreciate the flexibility in this measure that allows for turbidity curtains to be used only where effective and practicable.
- d. IWW-13: Dredging Operations and Dredging Materials Reuse Plan. This measure requires a dredging material management plan include a sampling program for conducting physical and chemical analyses of sediments before disturbance. We request this measure be revised to apply only where materials from an offsite location are being reused onsite; sediment testing should not necessarily be required for reuse of material onsite, unless there is a specific concern about residual contaminants in the soil based on historic land practices (which can be determined on a site-specific basis in collaboration with the RWQCB).
- e. VHDR-3: Revegetation Materials and Methods: This measure should be revised to allow for revegetation through natural recruitment at some restoration sites, consistent with GPM-15. As noted above, natural recruitment as a revegetation method is important in tidal and managed wetlands and working landscapes where disturbed areas typically revegetate quickly and where seed distributed after construction is readily outcompeted.
- f. VHDR-5: Revegetation Monitoring and Reporting. The 2-year monitoring period and success criteria tied to *absolute cover* are appropriate for demonstrating vegetation has reestablished at a reference site. Comparison to an “intact local reference site” is confusing in that it implies consideration of some metric other than absolute cover. We recommend references to a reference site be removed and the measure remain focused on ensuring a restoration site has stabilized and is not contributing to turbidity or sedimentation due to exposure of bare ground.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1

5. CEQA Lead Agency

The ability for large-scale habitat restoration projects to utilize the CEQA analysis provided in the Program EIR is a key benefit of the SWRCB's current effort. However, in instances where additional project-specific CEQA analysis is required, the Program EIR and Restoration General Order lack clarity on how the CEQA lead agency should be determined. In particular, in instances where the only discretionary action(s) triggering CEQA compliance are state or local permit processes, it can be difficult to determine which regulatory agency has the "primary responsibility" for carrying out or approving the project. We recommend the SWRCB develop a decision matrix to assist project proponents and potential CEQA lead agencies in determining the appropriate CEQA lead agency for restoration projects covered under the Restoration General Order and Program EIR. We also recommend the matrix include the SWRCB / RWQCB as the state lead agency in instances where other agencies are unwilling or unable to serve as the CEQA lead agency.

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6. Program EIR Mitigation Measures

We offer the following comments on the mitigation measures provided in the Program EIR.

- a. Mitigation Measures AG-1: Minimize and Avoid Loss of Special Designation Farmland. This mitigation measure requires compensatory mitigation (1:1) for "permanent conversion of Special Designated Farmland" through preservation of other Special Designation Farmland. We request this mitigation measure we revised to reflect compensatory mitigation should only be considered where the Special Designation Farmland impacted by the restoration project has been functioning as viable farmland within the past 5 years and/or is anticipated to continue to function as viable farmland without intervention (i.e., the necessary installation of infrastructure to drain or otherwise manage water onsite). There are many historic agricultural properties that are excellent candidates for freshwater or estuarine wetland restoration, and that no longer function as viable farmland (or will not function in the short-term without intervention) due to a lack of active recent management, despite being Special Designation Farmland. For example, the tidal restoration area associated with the Ocean Ranch Restoration Project in Humboldt County is designated as Prime Farmland, but had not been farmable for over 50 years due to failed levees and lack of water management. Demonstration of recent and ongoing farm viability should be a consideration before compensatory mitigation is required.
- b. Mitigation Measure GEO-3: Conduct Individual Restoration Project Geotechnical Investigation and Report. This mitigation measure requires "a geotechnical investigation be performed for any restoration project that would result in potentially significant grading activities." It is unclear from the language in this measure what amount of grading would qualify as "significant". Moreover, many enhancement and restoration projects in managed wetland and working landscapes require "significant" earth moving (e.g., over 1000 cubic yards) in the form of shallow swales, grading or levelling of fields, and constructing habitat features (e.g., islands, low elevation berms) in areas that have no potential for geotechnical risk. We recommend this mitigation measure be revised to only require a geotechnical investigation where the nature of the project warrants consideration of geotechnical constraints, such as work on flood control levees or in areas with certain soil types subject to impacts such as liquefaction. In those instances, a geotechnical report should only apply to areas where consideration of those constraints is needed to inform design.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1

- c. Mitigation Measure GEO-6: Implement Measures for Waterway Construction Activities. This mitigation measure states:

“For restoration projects that could cause subsurface seepage of nuisance water onto adjacent lands, the following measures shall be implemented:

- Perform seepage monitoring studies by measuring the level of shallow groundwater in the adjacent soils, to evaluate baseline conditions. Continue monitoring for seepage during and after project implementation.
- Develop a seepage monitoring plan if subsurface seepage constitutes nuisance water on the adjacent land.
- If adjacent land is not usable, implement seepage control measures, such as installing subsurface agricultural drainage systems to avoid raising water levels into crop root zones. Cutoff walls and pumping wells can also be used to mitigate the occurrence of subsurface nuisance water.”

As written, the third bullet implies some obligation on the restoration project to correct existing seepage issues on an adjacent property unrelated to the project. We recommend this bullet be revised to state: ***“If it is determined that seepage from the project is responsible for making adjacent lands not usable,.....”***

7. Post-Construction Monitoring Plan

Identification of appropriate metrics and success criteria for measuring the short- and long-term outcomes of a restoration project is important to practitioners, project proponents and regulatory agencies for many reasons. They inform the effectiveness of design strategies and construction techniques in the field; allow for early identification and adaptive management to correct unintended outcomes; and provide a way to measure and record the relative success of a project over time. However, prescriptive “corrective actions” tied to specific “success criteria” are often not pragmatic due to grant funding limitations, and may be outside the regulatory purview of a specific agency. With that in mind, we recommend the Post-Construction Monitoring Plan be required to communicate to the RWQCB the progression of a project, and to identify potential solutions for remedying elements that may contribute to adverse impacts on beneficial uses of waters of the State, but that it not require a specific outcome in terms of project performance. In no instance should the monitoring obligation under the Restoration General Order be more onerous or expensive than that anticipated through an Individual Permit process.

8. Permit Issuance Timeline

The Restoration General Order does not provide a timeline for permit issuance after an application is found to be complete. We recommend the SWRCB include a 60-day period for a permit decision to emphasize the importance of timely review of restoration project permit applications. This timeline is aligned with the current ‘reasonable review period’ being identified by USACE for verification of a project under a Nationwide Permit (NWP) and would allow for up to 4 months of coordination between a project proponent and RWQCB prior to making a permit decision (including pre-application permit and completeness review).

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1

10. Application Fee

We understand that the Restoration General Order does not contemplate a change in the existing WQC/WDR fee structure for restoration projects. We recommend that projects covered under the Restoration General Order be eligible for the flat fee applied to ecological restoration and enhancement projects, regardless of size, and that that fee remain comparable to the current application and annual fees.

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11. Integration with Other Programmatic Processes

We encourage the SWRCB to continue to align the Restoration General Order with other state and federal programmatic or streamlined permit processes. For example, concurrent expansion of something comparable to the Habitat Restoration and Enhancement Act (HREA) to streamline California Endangered Species Act (CESA) and California Fish and Game Code (FGC) Section 1600 permitting of large restoration projects would be exceptionally useful to ensuring efficient delivery of habitat restoration projects.

21

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1 Ducks Unlimited

Responses to Comments from DU-1 Ducks Unlimited, Inc.

DU-1-1:

The State Water Board appreciates Ducks Unlimited (DU) comments regarding the Order and Draft PEIR and information on DU.

DU-1-2:

The definition of a ‘restoration project’ is consistent with other regulatory agency permitting practices in place or under development. Since restoration projects are intended to be permanent solutions to environmental problems, the definition of a restoration project implies that the net increase in aquatic or riparian resource area, functions and/or services would occur as a result of project implementation, over the long-term.

See also Master Response 1: Definition of Restoration Project for additional details.

DU-1-3:

Restoration projects permitted under the Order providing mitigation or other multi-benefits are allowed consistent with Order Section XIII.E.1 General Compliance:

“Enrollment and authorization of restoration projects under this Order are for the discharges of waste associated with only the restoration action and shall not be construed as authorization or any compliance determination for any related underlying project or activity. Restoration projects serving as mitigation for a related project or activity may be enrolled under this Order; however, this Order does not include any findings regarding the underlying related activity’s impact to water quality, public trust resources, or other matters of public interest. When considering the impact of restoration projects under this Order, the approving Water Board considers only those adverse changes that may result from approval of the new restoration project, including multi-benefit projects that may include non-restoration action elements (e.g., recreation, flood protection).”

See also Master Response 1: Definition of Restoration Project for additional details.

DU-1-4:

In response to this comment (and comment SCC-1-7), Order Section A.4.7 was revised as follows:

“Removal or Remediation of Pilings and Other In-Water Structures

Untreated and chemically treated wood pilings, piers, vessels, boat docks, derelict seawalls (within embayments), and derelict fishing gear, and similar structures built using plastic, concrete, and other materials, may be removed and/or remediated to improve water quality and habitat for fish and wildlife. These projects are designed to remove contaminant sources and hazards from stream, river, and estuary habitats.”

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR. The future restoration projects in this category authorized under the Order will need to meet the definition of a restoration project.

DU-1-5:

Order Section A.4.9 Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands was not revised to include brackish and alkali wetlands or the recommended initial introductory sentence, as appropriate projects would be permitted under the Order if all Order Section XIII. Conditions are met.

In response to this comment, Order Section A.4.9 was revised as follows:

“This project type generally involves grading (e.g., creating depressions, berms, and drainage features), installing related infrastructure (e.g., water control structures, siphons, sills, etc.), and/or breaching (e.g., excavating breaks in levees, dikes, and/or berms), or both, to create topography, improve water management capabilities, and/or improve hydrology that:

- ◆ Facilitates water delivery and conveyance to benefit aquatic species, wildlife, or wetland vegetative response...”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR. The future restoration projects in this category permitted under the Order will need to meet the definition of a restoration project.

DU-1-6:

In response to this comment, Order Section A.5.5 Activities Prohibited under the Order was revised as follows:

- ◆ “Water diversions, except diversions associated with water conservation projects as described in Section A.4.5, Water Conservation; diversions associated with delivery or conveyance to and within managed wetland habitats as described in Category A.4.9, Establishment, Restoration and Enhancement of Tidal, Subtidal and Freshwater Wetlands; and those necessary to temporarily dewater the construction site of a restoration project.
- ◆ Installation of flashboard dams, head gates, or other mechanical structures are generally prohibited; however there are exceptions for certain projects that require them to meet ecological goals (e.g., With the exception of storage projects to reduce low flow stream diversions (Section A.4.5), off-channel/side-channel managed floodplain, and managed wetland habitat), and for the required replacement of legacy structures under the Small Dam, Tide Gate, Flood Gate, and Legacy Structure Removal project category habitat projects that require the installation of a flashboard dam, head gate, or other mechanical structures, except storage projects to reduce low flow stream diversions (see Section A.4.5).”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

DU-1-7:

The State Water Board appreciates Ducks DU support regarding this text in the Order.

DU-1-8:

The State Water Board appreciates Ducks DU support regarding this text in the Order.

DU-1-9:

See Master Response 2: Construction General Order and SWPPP Requirements.

DU-1-10:

The State Water Board appreciates Ducks DU support regarding this text in the Order.

DU-1-11:

In response to this comment, GPM IWW-13 was revised as follows:

- ◆ **“IWW-13: Dredging Operations and Dredging Materials Reuse Plan.** Project proponent will develop and implement a dredging operations and dredging materials management plan to minimize the effects that could occur during dredging operations and material reuse and disposal. If material is being imported from off-site or if there are specific concerns about residual contaminants in the soil from historic land use activities (which can be determined on a site-specific basis in collaboration with the approving Water Board), the plan shall describe a sampling program for conducting physical and chemical analyses of sediments before import and/or disturbance. ...”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

DU-1-12:

In response to this comment, GPM VHDR-3 was revised as follows to include a reference to GPM-15: Revegetate Disturbed Areas, which includes development of a revegetation plan and allows for natural recruitment:

- ◆ **“VHDR-3: Revegetation Materials and Methods.** Upon completion of work, site contours will be returned to preconstruction conditions or to contours specified in a Water Board-approved project design that provides enhanced ~~or designed to provide increased~~ biological and hydrological functions. Where disturbed, topsoil will be conserved (and watered at an appropriate frequency) for reuse during restoration to the extent practicable. Native plant species comprising a diverse community structure (plantings of both woody and herbaceous species, if both are present) that follow an agency-approved plant palette will be used for revegetation of disturbed and compacted areas, as appropriate. See also GPM-15: Revegetate Disturbed Areas, which also allows for revegetation through natural recruitment (e.g., in tidal and managed wetlands and working landscapes where disturbed areas typically revegetate more quickly through natural recruitment than through seeding). Any area barren of vegetation as a result of project implementation will be restored to a natural state by mulching, seeding, planting, or other means with native trees, shrubs, willow stakes, erosion control

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

native seed mixes, or herbaceous plant species following completion of project construction. Irrigation may also be required in order to ensure survival of containerized shrubs or trees or other vegetation, depending on rainfall. Soils that have been compacted by heavy equipment will be decompacted, as necessary, to allow for revegetation at project completion as heavy equipment exits the construction area.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

DU-1-13:

Overall project success criteria and measurable performance standards for projects authorized under the Order will be considered by the approving Water Board on an individual project basis as part of the development of the Monitoring Plan (Order XIII.G.4).

Revegetation success criteria described under GPM VHDR-5 has been included for consistency with other regulatory agency restoration permitting practices in place or under development (e.g., NMFS, USFWS, etc.). The text of GPM VHDR-5 was revised as follows:

- ◆ **“VHDR-5: Revegetation Monitoring and Reporting.** All revegetated areas will be maintained and monitored for a minimum of 2 years after replanting is complete and until success criteria are met, to ensure the revegetation effort is successful. The standard for success is at least 60% absolute cover compared to pre-project conditions at the project site or at least 60% cover compared to an intact, local reference site (or an available reference site accepted by the approving Water Board). ~~60% absolute cover compared to an intact, local reference site.~~ If an appropriate reference site or pre-project conditions cannot be identified, success criteria will be developed for review and approval by the approving Water Board on a project-by-project basis based on the specific habitat impacted and known recovery times for that habitat and geography. The project proponent will prepare a summary report of the monitoring results and recommendations at the conclusion of each monitoring year.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

DU-1-14:

Lead agencies for future restoration projects authorized under the Order will be determined according to CEQA Guidelines Section 15050 “Lead Agency Concept” and Section 15051 “Criteria for Identifying a Lead Agency.”

DU-1-15:

In response to this comment, the PEIR Mitigation Measure AG-1 (PEIR Section 3.3.4 Impacts and Mitigation Measures) was revised as follows:

“Based upon the cost and availability of farmland, whether the landowner is sponsoring the project, recent (within 5 years) and ongoing farmland viability, and

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

other factors, the CEQA lead agency for the individual restoration project should consider whether a 1:1 ratio is appropriate and feasible on a case-by-case basis.”

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

DU-1-16:

In response to this comment, the PEIR Mitigation Measure GEO-3 (PEIR Section 3.9.4 Impacts and Mitigation Measures) was revised as follows to help clarify what might qualify as significant grading activities and when geotechnical investigation may be warranted:

“Mitigation Measure GEO-3: Conduct Individual Restoration Project Geotechnical Investigation and Report

When a restoration project involves ~~An individual restoration project’s geotechnical investigation shall be performed and a geotechnical report prepared for any restoration project that would result in potentially significant grading activities and warrants consideration of geotechnical factors and/or constraints (e.g., work on flood control levees, work in areas with certain soil types subject to liquefaction), the project proponent shall conduct and prepare a geotechnical report to address potential issues and concerns.~~ The geotechnical report shall include a quantitative analysis to determine whether excavation or fill placement would result in a potential for damage due to soil subsidence during and/or after construction. Project designs shall incorporate measures to reduce the potential damage to a less-than-significant level. ...”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

DU-1-17:

In response to this comment, the PEIR Mitigation Measure GEO-6 (PEIR Section 3.9.4 Impacts and Mitigation Measures) was revised as follows:

- ◆ ~~“If adjacent land is~~ If it is determined that seepage from the restoration project is responsible for making adjacent lands not usable, implement seepage control measures, such as installing subsurface agricultural drainage systems to avoid raising water levels into crop root zones. Cutoff walls and pumping wells can also be used to mitigate the occurrence of subsurface nuisance water.”

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

DU-1-18:

Performance standards, success criteria, and monitoring obligations will be established on an individual project basis by the project proponent, with input from the approving Water Board. Measurable performance standards and success criteria shall be identified as appropriate to meet the project purpose and goals and documented in the

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Monitoring Plan developed by the project proponent as required in Order Section XIII.G.4. Monitoring Plan. Post-construction monitoring reports will be submitted in accordance with the schedule dictated in the Monitoring Plan developed by the project proponent with input from the approving Water Board.

If the project proponent identifies the need for corrective actions to achieve performance standards, the authorizing Water Board will review and approve the proposed corrective actions.

Revegetation success criteria described under VHDR-5: Revegetation Monitoring and Reporting, has been included for consistency with other regulatory agency restoration permitting practices in place or under development (e.g., NMFS, USFWS, etc.) and VHDR-5 also allows for a project proponent to develop success criteria for review and approval by the approving Water Board on a project-by-project basis based on the specific habitat impacted and known recovery times for that habitat and geography.

In response to this comment, see also revisions to VHDR-5, Revegetation Monitoring and Reporting, discussed above in DU-1-13.

DU-1-19:

The USACE sets the reasonable period of time to act under the Clean Water Act and that time may vary depending on the details of the individual project. For example, the type of federal permit required may vary depending on the individual project. The USACE typically sets a longer reasonable period of time to act for projects requiring individual authorization. The intent of the Order is to streamline project reviews and approvals, but the duration of time it takes for the approving Water Board to make a final decision will depend on project complexity and development of design and planning. It is expected that close and early coordination with the approving Water Board will facilitate timely decisions. No revisions are included in the Order or PEIR because of this comment.

DU-1-20:

As presented in Order Section XII Application Fees, the approving Water Board will confirm the correct fee amount according to current fee regulations at the time of NOI submittal. Authorization of a project under this Order is not determinative of whether a project is a restoration project in the context of the fee schedule. Under the FY 2021-22 water quality fee schedule, projects that meet the definition of an EREP as defined and adopted by the State Water Board on April 2, 2019, can use the Category D flat fee. Though many projects that qualify for authorization under the Order will qualify for the Category D flat fee for EREPs, not all will. The Order's definition of a restoration project is broader than a definition of an EREP. The approving Water Board will identify and confirm the appropriate fee upon project review.

DU-1-21:

Efforts are ongoing to coordinate across various regulatory programs and agencies, including the Cutting the Green Tape initiative.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

EPA-1 United States Environmental Protection Agency Region IX

EPA-1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 13, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-2000



Subject: EPA Comments – Large Restoration Projects Statewide Order

Dear Ms. Townsend,

EPA has reviewed the Proposed General Order For Clean Water Act Section 401 Water Quality Certification And Waste Discharge Requirements For Restoration Projects Statewide (General Order) and respectfully submits the following comments in response to the State Water Resources Control Board's (SWRCB) Revised Public Notice dated July 22nd, 2021. EPA supports the SWRCB's efforts to accelerate restoration of wetlands, streams, and other aquatic ecosystems through efficient and effective permitting procedures, and the following comments are intended to support widespread use of the General Order where appropriate.

1

Consistency with Clean Water Act §401 Rule

As a proposed Clean Water Act Section 401 Water Quality Certification, the General Order must comply with the statutory requirements of 33 U.S.C 1341. To increase efficiency of review and provide the most benefit to the public and the environment, the implementation process for the General Order should align with the process in the 2020 Clean Water Act 401 Certification Rule (40 C.F.R. Part 121). This should include, but is not limited to:

2

- A process for project proponents to request a pre-filing meeting at least 30 days before submitting a certification request
- Concurrent submittal to the SWRCB and the federal agency with the items required in §121.5
- Establishment of a reasonable period of time for actions
- A statement that the proposed project will comply with water quality standards
- Certification conditions in compliance with the requirements of §121.7

Particular attention should be paid in the development of the General Order to ensuring that certification conditions clearly explain why the condition is necessary to assure that any discharge from the proposed project or authorized under the license or permit will comply with water quality requirements. These conditions must also include a citation to federal, state, or tribal law that authorizes the condition.

3

Applicability to Complex and/or Multi-purpose Projects

EPA recommends reexamining the project types expected to be covered under this general order to ensure that covered activities are adequately evaluated under the General Order and that complex aquatic resource restoration projects that require more analysis are not included. We agree with SWRCB's desire to advance permitting for large restoration projects but based on our experience

3

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

EPA-1

improving permitting for highly complex multi-benefit tidal wetlands restoration projects in the San Francisco Bay, these types of projects are best addressed through coordinated permitting procedures and early interagency coordination as embodied in the Bay Restoration Regulatory Integration Team (BRRIT).

We recommend communicating more explicitly that complex multi-benefit tidal wetlands restoration projects will not be covered activities under the General Order. There are necessary, built-in complexities in restoring large-scale resilient baylands that are not well suited to coverage under a general order. In the Bay Area, tidal wetlands restoration means working in areas that are deeply subsided, often contaminated, have multiple endangered species, have experimental design features, and coexist with a myriad of urban infrastructure. These projects are permitted by upwards of six agencies that must all work together to successfully permit a project and address applicants' concerns. To that end, and in recognition of the regulatory challenges that do exist for restoration projects, the Bay Area restoration community is in the midst of a five-year pilot of coordinated permitting for restoration projects through the BRRIT. EPA is concerned that coverage of BRRIT-covered projects in the General Order will exclude the Water Boards from meaningful involvement and review of projects with important ramifications for compliance with EPA-approved Water Quality Standards.

Tidal wetlands, or baylands, restoration projects in the Bay Area have been, and continue to be, implemented on a large-scale through the South Bay Salt Pond Project and other landowners. The experience the restoration community has had with these efforts in places such as Eden Landing (CDFW), Cullinan Ranch (USFWS, San Pablo Bay Refuge), and Bair Island (USFWS, Don Edwards Wildlife Refuge) is instructive to demonstrate that early coordination through the BRRIT, rather than streamlined permitting, has been critical to successfully designing and permitting the projects. For South Bay Salt Pond and Refuge projects, regulatory agency workgroup meetings were held regularly to vet design and permitting challenges. On the Bair Island project website written for the general public, there is a testimonial to the collaborative process- it reads:

"As a whole, the restoration project presents a model for other cooperative efforts elsewhere in the Bay Area—a unique partnership among federal, State and local agencies, together with non-profit organizations and the private sector, to realize an ambitious vision of conservation."

In the Bay Area, we are interested in continuing this model of collaborative restoration design and implementation. EPA recommends re-evaluating tidal wetlands as a category for modification or exclusion from this General Order to ensure that project proponents are guided appropriately to what can and cannot be covered by this General Order. If tidal restoration projects are left in the General Order, then additional language should be added to the order so that project proponents understand that the General Protection Measures and accompanying EIR do not cover all project circumstances and there will be restoration projects that cannot use this order, and that those decisions will be made by the Regional Water Board.

The proposed General Order covers a broad range of activity types. While all activity types involve nature-based approaches, some are not clearly limited to projects that would result in a net gain in aquatic resource function. The proposed category of Bioengineered Bank Stabilization is of particular concern. Nature-based approaches to reducing excessive erosion and protecting property are an important component of watershed restoration, but may still result in adverse impacts to water quality if



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

EPA-1

not appropriately sited & planned. While suspended sediment & turbidity pollution remains a prevalent problem in California streams, many streams are sediment-limited due to historical aggregate mining or trapping of bedload and suspended load behind impoundments. Bioengineered approaches to bank stabilization may exacerbate this “hungry water” phenomenon in sediment-limited streams by reducing or eliminating streambank sediment sources. EPA recommends re-evaluating this category for modification or exclusion from the General Order.

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cont.

Thank you again for the opportunity to comment on the proposed General Order. If there are any questions about EPA’s comments, you can reach me by email at cohen.sahrye@epa.gov or phone at 415-264-4675.

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Sincerely,

Sahrye Cohen
Manager, Wetlands Section
Water Division

cc: Jessica Nadolski, State Water Resources Control Board

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

EPA-1 United States Environmental Protection Agency Region IX

Responses to Comments from EPA-1 Environmental Protection Agency

EPA-1-1:

The State Water Board appreciates U.S. Environmental Protection Agency's (EPA) comments supporting the State Water Board's efforts.

EPA-1-2:

Order Section G.2. Pre-Application Consultation requires a request for a pre-application consultation meeting a minimum of thirty days prior to submittal of the NOI. Any applicable requirements pertaining to the current or future Clean Water Act 401 Water Quality Certification rules will be discussed at the meeting.

Certification conditions, currently and if required in the future, will be included as part of the Notice of Applicability (NOA) for an authorized project under the Order.

EPA-1-3:

The Order was developed to be consistent with the permitting requirements and procedures of several state and federal agencies. For example, the definition of a restoration project was developed based on input from numerous agencies and to be consistent with multiple permitting agency regulatory practices either existing or under development (e.g., CDFW, NMFS, USFWS, USACE). All projects must meet the definition of a restoration project (Order Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5), and undergoing pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

In addition, the Order encourages early interagency coordination (Order, XIII.A. Request for Authorization)

“Project proponents are encouraged to collaborate with other applicable regulatory agencies in coordination with the approving Water Board during project design, especially when fish passage and/or listed species are considerations.”

Further, the Order (Order XIII.G.2.) requires the project proponent contact the approving Water Board to request a pre-application consultation meeting.

“The project proponent will contact the approving Water Board to submit available project information and request a pre-application consultation meeting a minimum of thirty (30) days prior to submittal of the NOI... Restoration projects can be complex and often benefit from pre-application consultation with the approving Water Board during the early stages of planning and design. During the pre-application consultation, the approving Water Board will review draft project materials and provide project-specific guidance for navigating the approval process. A site visit may also be conducted at the discretion and request of the approving Water Board.”

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

In addition, (Order XIII.G.2.) allows for further input from the approving Water Board.

“The approving Water Board will review the project information and may identify concerns, formulate questions and/or recommendations regarding the project design, and inclusion of applicable GPMs, including potential recommendations for modification of GPMs, where necessary, to accommodate and/or address site-specific conditions”

The approving Water Board also has the authority to determine whether the project is eligible for coverage under the Order after reviewing the NOI.

The Order would not hinder interagency or stakeholder collaboration, nor would the Order alter policies or procedures of the San Francisco Bay Regional Board or other regulatory agencies in the San Francisco Bay area. The Order could be utilized in a complementary manner with the San Francisco Bay Restoration Regulatory Integration Team (BRRIT) coordination and project approval program. For example, if the BRRIT elected to review a proposed project, the Regional Board would still have full authority to determine whether coverage under the Order is appropriate for the proposed project. If the Regional Board deemed use of the Order to be appropriate, the project would benefit from collaboration with the BRRIT to improve its effectiveness and be approved in a more efficient and consistent manner with other projects statewide.

Also see response to comment CDFW-1-2, which presents specific references to the Order that cite regulatory agency authority and encouragement to collaborate with other regulatory agencies during project review.

EPA-1-4:

The use of bioengineered bank stabilization techniques must be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4.1 and A.4.3), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A.5 and A.6), and undergo pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

While bioengineered bank stabilization may be required on a site to address specific issues and may be necessary for certain projects, the Order would not cover projects that solely protect property from bank erosion. Further, the Order includes project type-specific design guidelines (Order, Attachment A, A.6), that have been developed with assistance from multiple regulatory agencies (e.g., CDFW, NMFS, USFWS) to help project proponents during the design development of their individual projects, in a manner that is appropriate and sustainable, minimizes adverse effects on aquatic habitats, and maximizes the ecological benefits of the restoration. The design guidelines (Order, Attachment A, A.6) also state that restoration projects should be based on a process-based approach that considers the multiple interactions of physical, chemical, and biological processes over a wide variety of spatial and temporal scales in order to identify the root causes of the problems, and to confirm the proposed solution (project) will be effective and appropriate given the physical setting (see Kondolf et al., 2001; Simon et al., 2007; Smith and Prestegard, 2005; Wohl et al., 2005, Wohl et al., 2015).

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

All projects would be evaluated individually by the approving Water Board to assess if they are eligible for authorization under the Order and will provide an increase in functions and services. No revisions are included in the Order or PEIR because of this comment.

EPA-1-5:

The State Water Board appreciates EPA's comments on the Order and notes the contact name and number for EPA.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

IND-1 General Public, Jeff TenPas

IND-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Jeff TenPas
24 East Main St
Winters, CA 95694
Aug 9, 2021



Jeanine Townsend
Clerk to the Board State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
commentletters@waterboards.ca.gov

Re: Comments – Restoration Projects Statewide Order

Dear Board:

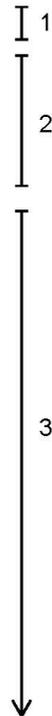
I fully support the goal of a programmatic review and approval of low level restoration projects.

However, a red flag must be raised so that there is further review for projects that use earthmoving and fill to more than minimal extent. For instance, it seems that under this statewide order that projects that alter a mile of stream channel, by modifying an existing channel, creating a new channel on the floodplain, or constructing a new channel in fill, that all these could be allowed.

The problem certain to occur but often go unnoticed is a severe alteration of groundwater connections between the channel, floodplain, and deep groundwater. It must be borne in mind that there are four or more orders of magnitude difference in the hydraulic conductivity of sandy gravel deposits, such as in a buried channel, and fine silt deposits on a floodplain. Disrupting one square yard of the channel connection to a buried gravel deposit can alter or cutoff the groundwater supply to acres of riparian forest and acre feet of groundwater recharge.

Case in point, one mile of stream alteration in Winters, CA between 2011 and 2018 where the channel was partially filled to narrow and decrease depth. Imported fill was emplaced in the channel by earthmovers. The fill was fine and not sandy, it was exceedingly compacted by heavy earthmovers, but worst of all blocked and broke the connection to high permeability layers or buried channels in the old existing floodplain.

As a result, the existing riparian cottonwood forest died, replanted trees grew at first then reached a point where water stress killed them too. Later study revealed falling groundwater levels, and a permanent decrease in groundwater recharge was recorded by stream gauges between pre and post-project. The restoration project had effectively lined the channel with an impermeable liner, and \$ millions spent on restoration were wasted and in fact degraded the environment. Project proponents are not yet ready to admit to this, but the evidence is clear.



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

IND-1

Board
Aug 9, 2021
Page 2

In general there is great ignorance or disregard for floodplain structure and groundwater flow in stream restoration projects. There is great focus on surface water connectivity of channel and floodplain that operates a few days ephemerally during floods, and blindness to maintaining groundwater connectivity that supports riparian forest and groundwater recharge 24 hours 365 days a year.

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cont.

The general order should be amended to exclude projects which risk significantly impacting on groundwater movement by:

- Limiting stream bank disturbance to 100 feet,
- Require particle size analysis of fill, and prohibit importing of fill incongruent with the existing floodplain material.
- Require that fill is not compacted, that low ground pressure equipment is used, and equipment operates on mats were needed. Earthmovers, paddle wheel scrapers, sheepsfoot rollers, and front-end loaders should be prohibited. Track laying equipment rather than wheeled equipment should be used.

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AND for projects disturbing greater than 100 feet,

- Require survey of floodplain structure, mapping, and planning to maintain connectivity of the stream to the existing layers and bodies of coarse texture that provide 99% of groundwater movement, that sub-irrigate the riparian forest, and recharge groundwater.
- Where stream channels are partially filled, require placement of high permeability layers or bodies of coarse textured fill that are aligned to maintain the groundwater connections of stream to floodplain.

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Thank you for the opportunity to comment. I would be happy to provide more information if that would be helpful, or to help revise language. I can be contacted at 920-917-8409, or jtenpas@lvcos.com, or the address above. It is important that floodplain structure and groundwater flow, the anatomy and physiology of the riparian body, become a primary focus of restoration plans. Millions have been spent and wasted on constructed channels in constructed floodplains with no regard to the structure and groundwater flow.

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Sincerely,

Jeff TenPas
Soil Scientist, Hydrologist, Watershed Scientist (US Forest Service, retired)

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

IND-1 General Public, Jeff TenPas

Responses to Comments from IND-1 Jeff TenPas

IND-1-1:

The State Water Board appreciates Mr. TenPas' supportive comments regarding the Order.

IND-1-2:

All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5 and A.6), and undergo a pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

Project proponents in coordination with the CEQA lead agency will need to determine if restoration projects proposed for authorization under the Order can be approved within the scope of the PEIR or would need to undergo additional CEQA review (PEIR Section 1.1).

Adherence to these requirements would ensure that proposed earthmoving and fill would be consistent with project objective requirements and not result in unintended adverse consequences. While the comment does not question the impact analysis conducted in the PEIR, it is important to note that a full range of potential impacts resulting from earthmoving and fill, including from large-scale projects in multiple eligible categories, were analyzed. No revisions are included in the Order or PEIR because of this comment.

IND-1-3:

Project proponents in coordination with the CEQA lead agency will need to determine if restoration projects proposed for authorization under the Order can be approved within the scope of the PEIR or would need to undergo additional CEQA review (PEIR Section 1.1), including addressing potential impacts to groundwater and biological resources. Potential groundwater impacts associated with implementing restoration projects authorized under the Order are addressed in PEIR Section 3.11. Potential impacts to biological resources, including riparian forests, are addressed in PEIR Section 3.5. No revisions are included in the Order or PEIR because of this comment.

IND-1-4:

All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5 and A.6). If the CEQA lead agency for a restoration project determines that the project's impacts on groundwater or habitat/species may remain significant even with implementation of the GPMs and species protection measures in the Order, additional project-specific and species-specific mitigation measures would be required. No revisions are included in the Order or PEIR because of this comment.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

IND-1-5:

See response to comment IND-1-4.

IND-1-6:

The State Water Board appreciates Mr. TenPas' supportive comments regarding the Order and notes the contact name and number for Mr. TenPas.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

IND-2 General Public, Trent Tuthill (Same comment letter as TCD-1)

IND-2

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000



Submitted Via e-mail to: commentletters@waterboards.ca.gov

Subject: **Comments – Restoration Projects Statewide Order**

Dear Ms. Townsend:

I submit these comments to you as a concerned citizen who has witnessed mainstem Trinity River restoration efforts over the past 18 years and as a property owner on the upper section of the Trinity River.

I object to any loosening of regulatory requirements or water quality objectives and standards for the Trinity River Restoration Program (TRRP) or the Bureau of Reclamation. TRRP activities are adversely affecting beneficial uses of the Trinity River through increased turbidity as a result of mainstem projects such as side channels and gravel placement. I have personally witnessed the TRRP projects negative effects on river turbidity during critical anadromous fish spawning migrations and witnessed members taking turbidity level readings well outside the work area, to misrepresent the actual levels. The long-awaited benefits of a restored fishery to compensate for the significant environmental impacts identified in TRRP's CEQA documents has not materialized.

Most recently one of the TRRP member agencies placed gravel in the river at Lewiston without the permission of the Trinity Management Council, without the knowledge of the TRRP executive director, and without any public notice. Numerous complaints were made to me and through social media about elevated turbidity in the river. All of this is now with the backdrop of raging wildfires along the Trinity River and its watershed with imminent erosion and sedimentation expected this winter.

The TRRP is operating under a stale Programmatic EIR from 2009 that should be revised every five years, according to CEQA Guideline Section 15162. Clearly this requires a subsequent EIR to the Master EIR or a supplement to it. Many of the current project types such as engineered logjams are not even discussed in the 2009 MEIR.

Consider the following:

- The Water Right Order 90-5 temperature compliance point at Douglas City cannot be monitored because the temperature probe has been buried since April 15.
- Despite a requirement in 90-5 to not harm the Trinity River, the Bureau of Reclamation's Temperature Management Plan didn't even give predictions of temperatures in the Trinity River, let alone an ability to monitor Douglas City.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

IND-2

The SWRB approved the plan without any discussion of protecting the Trinity River.

- The Bureau of Reclamation is considering additional drawdown of Trinity or Whiskeytown to make up for its overcommitment of water.
- The Water Quality Control Plan for the North Coast Region still contains a 1991 "Interim Action Plan for the Trinity River" that pre-dates the Trinity Record of Decision by nine years. Where is the final action plan for the Trinity River 30 years later?
- Water Quality Order 89-18 and Water Right Order 90-5 both call for a Trinity River water right proceeding to consider amendment of Reclamation's state water permits to ensure no harm is done to the Trinity River from CVP operations. We are still waiting while hundreds of millions are spent on disruptive and unsuccessful restoration projects.
- The TRRP claims that fine sediment in the Trinity River is no longer a problem, yet the Trinity River is still listed as impaired under the SWRCB's Section 303(d) Impaired Waterbodies List. The intensity of the fires and subsequent erosion this winter should eliminate any debate on this issue.

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In conclusion, I'm in favor of providing regulatory ease for upslope restoration projects to improve our watershed, decrease erosion, and improve fish passage, but the TRRP has consistently underfunded those projects. The TRRP's mainstem projects and gravel placement activities should be put under a moratorium for further 401 certifications until a new or supplemental Master EIR is approved. Loosening their regulatory restrictions for turbidity is exactly the opposite of what's needed at this time.

Sincerely,

Trent Tuthill

Property Owner in Poker Bar area along the Trinity River

Cc: Representative Jared Huffman
North Coast Regional Water Quality Control Board
Ernest Conant, Regional Director Bureau of Reclamation
Michael Dixon, TRRP

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

IND-2 General Public, Trent Tuthill (Same comment letter as TCD-1)

Responses to Comments from IND-2 Trent Tuthill

IND-2-1:

This Order does not authorize specific projects. All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5 and A.6), and undergo a pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

IND-2-2:

Thank you for your comment. The Order does not impact any previously authorized Orders, projects, or actions.

IND-2-3:

The State Water Board appreciates Mr. Tuthill's comments regarding the Order. The Trinity River Restoration Program (TRRP) is a large, ongoing restoration program in the region of the North Coast Regional Board. Projects related to TRRP are reviewed by the Regional Board under an existing programmatic 401 water quality certification for the Program. The Regional Board review includes consideration of stringent water quality objectives. The Order would not supersede the existing programmatic certification for the TRRP nor loosen regulatory restrictions pertaining to turbidity or any regional water quality objective.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LACDPW-1 Los Angeles County Department of Public Works

LACDPW-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Toan Duong](#)
To: [commentletters](#)
Cc: [Aracely Lasso](#); [Justin Dulay](#); [Pat Wood](#)
Subject: Comments – Restoration Projects Statewide Order
Date: Thursday, August 12, 2021 10:15:54 AM
Attachments: [image001.png](#)



EXTERNAL:

Ms. Jeanine Townsend,

**DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT
GENERAL ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY
CERTIFICATION AND WASTE DISCHARGE REQUIREMENTS
ENVIRONMENTAL PLAN (RPPL2021007392)**

The project proposes to improve the efficiency of regulatory reviews for projects throughout the state that would restore aquatic or riparian resource functions and/or services. The Order would establish an authorization process for environmentally beneficial restoration project types and associated measures to protect species and the environment.

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The Los Angeles County, Department of Public Works has reviewed the draft Program Environmental Impact Report (PEIR) and has the following comments for your consideration:

1. 1.3 Overview and Use of the PEIR, 1.3.2, Screening of Individual Restoration Projects, Page 1-7

2

Due to the discussion of floodplain management issues in Section 3.11 of the PEIR, it is recommended the PEIR's Step 2 add the following criterion:

"If located in an area mapped by the Federal Emergency Management Agency (FEMA), a state agency, or a local agency as a severe or high-risk flood hazard area, and has obtained written clearance from the federal, State or local floodplain manager having floodplain management jurisdiction over the restoration project property(s), then the restoration project has met the applicable federal, State and local laws, rules and regulations for development in flood hazard areas."

2. 3.11 Hydrology and Water Quality, Federal Emergency Management Agency-Related Laws and Regulations Floodplain Management Regulations, Page 3.11-11

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It is recommended that 44 CFR 59.1 (Definitions) be added to the regulatory references. 44 CFR 59.1 defines development as any human activity. Restoration projects are human activity and thus may be subject to FEMA's regulations regarding activities in floodplains.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LACDPW-1

3. **3.11 Hydrology and Water Quality, Regulatory Setting, State, Pages 3.11-19 through 3.11-26**

It is recommended that Executive Order B39-77 (Flood control, Flood plain management, Flood damage, Department of Water Resources, Government agencies) be added to the regulatory references.

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4. **3.11 Hydrology and Water Quality, Regulatory Setting, Regional and Local, Page 3.11-26**

It is recommended that the discussion also include that local entities may have mapped flood hazard areas in addition to those mapped by FEMA, and local ordinances may regulate activities in those areas.

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5. **3.11.4 Impacts and Mitigation Measures, Impact 3.11-3, Effects of Constructed Facilities, Page 3.11-34**

The discussion of impacts needs to include the potential impacts of increasing the hydraulic roughness (Manning's n value) of a river, stream, or waterway due to removal of smooth surface channel linings (e.g., concrete), plantings that increase instream vegetation density, or a combination of both. Increasing the roughness coefficient decreases the channel's flow carrying capacity unless measures are implemented to offset the impact. It should be noted, during the storms that cause flood damage (e.g., the FEMA 20%, 10%, 1%, 0.2% annual chance floods, other types of floods identified by local entities), flow velocities and pore space in the soil will likely not be sufficient to allow instream percolation to completely offset the loss in the channel's flow-carrying capacity.

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Also, any alterations of levees that have been accredited by FEMA will need engineering analyses of the proposed altered levees to ensure they will meet FEMA's requirements for stability, erosion resistance and freeboard. FEMA will also require documentation and assurances for long term operation and maintenance of the altered levees.

Therefore, it is recommended the criteria to issue the proposed WDRs include the criterion stated in our comment above for PEIR Section 1.3.2.

For questions regarding comments 1 – 5, please contact Patricia Wood of Public Works, Stormwater Maintenance Division at pwood@pw.lacounty.gov or (626) 458-6131.

7

Thank you,

Toan Duong

Civil Engineer
Los Angeles County Public Works
Office: (626) 458-4921



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LACDPW-1 Los Angeles County Department of Public Works

Responses to Comments from LACDPW-1 Los Angeles County, Department of Public Works

LACDPW-1-1:

The State Water Board appreciates Los Angeles County, Department of Public Work’s comments on the Draft Order and Draft PEIR.

LACDPW-1-2:

In response to this comment, PEIR Section 2.5, Table 2-1 Processes, Permits, and Authorizations that May Be Required for Approval of Restoration Projects was revised as follows:

Resource	Applicable Laws/Regulations/Permits	Regulating Agency
<u>Floodplains designated as Special Flood Hazard Area (SFHA)</u>	<u>Permit for Floodplain Development is required before construction or development begins within any SFHA</u>	<u>Federal Emergency Management Agency or local county/city jurisdiction</u>

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

LACDPW-1-3:

In response to this comment, PEIR Section 3.11.3 Regulatory Setting was revised as follows:

“Development” is defined in the Code of Federal Regulations Title 44, 59.1(c). Per 44 Code of Federal Regulations and is any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.”

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

LACDPW-1-4:

Executive Order 11988, Floodplain Management, and Executive Order 13690, Establishing a Federal Flood Risk Management Standard are included in PEIR Section 3.11.3. No revisions are included in the Order or PEIR because of this comment.

LACDPW-1-5:

In response to this comment, the PEIR Section 3.11.3 was revised as follows:

“Local entities may have mapped flood hazard areas, in addition to those mapped by FEMA, and local ordinances may regulate activities in those areas.”

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

LACDPW-1-6:

In response to this comment, PEIR Section 3.11.4 was revised as follows:

“Although floodplain and levee restoration improvements may cause the existing course of a stream or river to change or the hydraulic roughness to increase (e.g., from plantings that increase instream vegetation density). However, such improvements would not be expected to substantially increase surface elevations, or the increase the chance of flooding outside of restored floodplains, or decrease the channel’s flow carrying capacity as floodplain and levee restoration improvements would need to meet design standards and permitting requirements.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

LACDPW-1-7:

The State Water Board appreciates LACDPW’s comments and notes the contact name and number for LACDPW.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LADWP-1 Los Angeles Department of Water and Power

LADWP-1



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



Eric Garcetti, Mayor
Board of Commissioners
Cynthia McClain-Hill, President
Susana Reyes, Vice President
Jill Banks Barad
Mia Lehrer
Nicole Neeman Brady
Yvette L. Furr, Acting Secretary

Martin L. Adams, General Manager and Chief Engineer

August 13, 2021

Submitted via e-mail to commentletters@waterboards.ca.gov

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Dear Ms. Townsend:

Subject: Comments Letter - Proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide

The Los Angeles Department of Water and Power (LADWP) would like to thank the State Water Resources Control Board (SWRCB) for the opportunity to comment on the Proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (Proposed Order). LADWP acknowledges the time and effort the SWRCB has put forth into developing the Proposed Order.

LADWP supports the development of the Proposed Order to streamline the process of obtaining the Clean Water Act Section 401 Water Quality Certifications and Waste Discharge Requirements for restoration projects that are listed as applicable for coverage under the Proposed Order. This will ease the application process and provide consistent guidance for the restoration projects that are covered under the Proposed Order.

LADWP respectfully submits the following comments on the Proposed Order:

1. Section XIII.G.3 Exclusions and Prohibited Activities

The list of prohibited items in the Proposed Order include methods and equipment that are commonly used in restoration projects. For example, gabion baskets are utilized in restoration projects for stream bank stabilization because they are an effective method of erosion control that has been proven over multiple decades. Since gabion baskets are frequently used, for the purpose of streamlining the permitting process for



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LADWP-1

Ms. Jeanine Townsend
Page 2
August 13, 2021

restoration projects, LADWP is recommending that the exclusions and prohibited activities for the Proposed Order be applied only on a case by case basis.

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- 2. Attachment B Step 6 Completeness determination: Within 30 calendar days of receipt of an NOI, the approving Water Board will determine in writing whether the NOI is complete and will transmit the determination to the project proponent.**

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Although the Proposed Order Attachment B states that the Water Board will provide a determination on the NOI within 30 days, to avoid delays, LADWP is recommending that the language also include that the NOI will be automatically approved after 30 days if no action is taken by the Water Board within the 30-day time period.

- 3. Section XIII.B.1.c Request for Notice of Project Complete Letter: The project proponent shall submit a Request for Notice of Project Complete Letter within thirty (30) day 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 project proponent.**

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In section XIII.B.2, it states that “annual reporting shall continue until a Notice of Project Complete Letter is issued to the project proponent.” Also, in section XIII.C.4, it states that the visual inspection at the project site shall continue during the rainy season until the Notice of Project Complete Letter is issued. Delays in receiving a determination for the Project Completion Letter will result in continued inspections and monitoring in compliance with the Proposed Order after construction has concluded at the project site. To avoid delays with the 401 certification termination, LADWP is recommending that the language in the proposed order regarding the submittal for the request for a Project Completion Letter include an automatic approval 30 days after the request is submitted if no action is taken by the Water Board within this same 30 days.

- 4. Section XIII.B.3.c.ii: Within three (3) working days following completion of work in water or stream diversions, an In-Water Work and Diversion Water Quality Monitoring Report must be submitted to the Water Board.**

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Attachment D, Part C, Report Type 7 lists the report contents of the In-Water Work and Diversion Water Quality Monitoring Report. It states that if applicable, water quality sampling data will need to be submitted with the report. In particular, Attachment A In Water Measure IWW-13 for dredging operations and dredging materials reuse plan requires a “sampling program for conducting physical and chemical analyses of sediments before disturbance.” It is difficult to submit a report with sampling data within 3 working days of completing the in-water work. The testing laboratories take a couple of days to complete the sampling, perform quality assurance checks, and upload results to the database. All the proper General Protection Measures (GPM) should be

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LADWP-1

Ms. Jeanine Townsend
Page 3
August 13, 2021

implemented for the in-water work and diversion during a project and should result in minimal to no impacts on water quality while waiting for sample results.

LADWP is recommending that the In-Water Work and Diversion Water Quality Monitoring Report be allowed to be submitted within 7 working days if in-situ sample analysis is required and within 14 working days if additional testing is required. This will allow time for laboratory reports to be finalized and the monitoring report to be completed.

In closing, LADWP would like to express our appreciation to the SWRCB for the opportunity to comment on the Proposed Order and looks forward to continuing to work with the SWRCB to develop the General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide. Please contact Ms. Robin Yamada, of my staff, at (213)367-4230 if there are any questions.

Sincerely,



Katherine Rubin
Manager of Air and Wastewater Quality and Compliance

RY:
c: Ms. Robin Yamada, LADWP

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LADWP-1 Los Angeles Department of Water and Power

Responses to Comments from LADWP-1 Los Angeles Department of Water and Power

LADWP-1-1:

The State Water Board appreciates Los Angeles Department of Water and Power's (LADWP) comments supporting the adoption of the Order.

LADWP-1-2:

Restoration project proponents proposing methods prohibited under the Order may still be authorized through a different permit process. No revisions are included in the Order or PEIR because of this comment.

LADWP-1-3:

Consistent with the Permit Streamlining Act (PSA), the Water Board will determine in writing whether an NOI is complete within 30 days. Failure to comply with this requirement is governed by the PSA. No revisions are included in the Order or PEIR because of this comment.

LADWP-1-4:

A Notice of Project Complete Letter is necessary to ensure that all applicable performance standards and post-construction requirements have been satisfied. The Notice of Project Complete Letter is a regularly used process for section 401 water quality certifications. Any delay in issuance of a Notice of Project Complete Letter can be addressed on an individual basis.

LADWP-1-5:

In response to this comment, Order Section XIII.B.3.c.ii In-Water Work and Diversions Water Quality Monitoring Report was revised as follows to allow for reporting flexibility due to laboratory report constraints:

“ii. Within three (3) working days, or within a timeframe agreed upon by the approving Water Board, following completion of work in water or stream diversions, an In-Water Work and Diversions Water Quality Monitoring Report must be submitted to the Water Board.”

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

LADWP-1-6:

The State Water Board appreciates LADWP's comments on the Order and notes the contact name and number for LADWP.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1 Soluri Meserve, a law corporation on behalf of Local Agencies of the North Delta

LAND-1



tel: 916.455.7300 • fax: 916.244.7300
510 8th Street • Sacramento, CA 95814

August 12, 2021

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

SENT VIA EMAIL (commentletters@waterboards.ca.gov)

State Water Resources Control Board
Attn: Jeanine Townsend, Clerk to the Board
1001 I St, 24th Floor
Sacramento, CA 95812



RE: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend:

These comments on the State Water Board’s (“SWRCB”) Draft General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (“Order”) and Program Environmental Impact Report (“PEIR”) are submitted on behalf of Local Agencies of the North Delta (“LAND”). LAND is a coalition of local reclamation and water districts in the northern Delta working to protect Delta agriculture and communities. LAND member agencies cover approximately 100,000 acres of the northern Delta. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also support the maintenance of the levees that provide flood protection to homes and farms.

The Order would allow 401 Water Quality Certifications to be issued under a programmatic level for large restoration projects. LAND recognizes the desire to expedite permitting for these projects. However, if not properly designed and absent effective mitigation, large restoration projects pose a significant risk to the Delta’s natural resources, communities and agricultural operations. These comments focus on the application of the Order in the Delta. However, many of these comments could also apply to restoration projects statewide.

LAND supports well-planned Delta restoration activities, but the impacts on the environment and adjacent land and water uses must be fully disclosed and fully mitigated in the context of CEQA, the Delta Reform Act, and the Delta Plan; moreover, effective coordination with adjacent landowners must continue throughout the life of each project. LAND is specifically concerned with floodplain restoration, wetland creation and restoration, and removal of small dams and tide gates. These types of restoration projects could potentially expose the Delta ecosystem and its residents to several significant impacts that should be addressed in more detail by the Order and PEIR.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1

SWRCB
August 12, 2021
Page 2 of 9

A. Delta Plan Consistency

The Sacramento-San Joaquin Delta Reform Act of 2009 (Wat. Code, § 85000 et seq. [“Delta Reform Act”]) is only mentioned on pages 2-6, and 3.11-21 of the PEIR. Many of the potential projects covered by the Order and PEIR would likely be constructed within the Delta boundaries, including the restoration that is part of EcoRestore, the effort to comply with the Biological Opinions issued for the state and federal water projects (the CVP and the SWP). Therefore, SWRCB should include more detailed description of Delta Reform Act and Delta Plan requirements for restoration projects. This includes following the restoration guidelines in Chapter 4 of the Delta Plan, as well as the requirement to prepare a certificate of consistency with the Delta Plan.

In enacting the Delta Reform Act, the Legislature intended to “provide for the sustainable management of the Sacramento-San Joaquin Delta ecosystem, to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that would direct efforts across state agencies to develop a legally enforceable Delta Plan.” (Wat. Code, § 85001, subd. (c).) The Legislature found the Delta to be “a critically important natural resource for California and the nation. It serves Californians concurrently as both the hub of the California water system and the most valuable estuary and wetland ecosystem on the west coast of North and South America.” (Wat. Code, § 85002.)

The Delta Reform Act’s Delta Plan requires covered actions to obtain a certification of consistency. (Wat. Code, §§ 85057.5, subd. (a), 85225.) A covered action is a “project” defined by CEQA (Pub. Resources Code, § 21065), that will occur in whole, or in part, within the boundaries of the Delta or Suisun Marsh, have a significant impact on the achievement of coequal goals (see Wat. Code, §§ 85054, 85300, subd. (a)), and is covered by one or more regulatory policy contained in the Delta Plan. Several project types identified in the Order and PEIR would meet these criteria and be required to obtain certifications of consistency.

Additionally, there are several mitigation measures in the Delta Plan that SWRCB should adopt or cross reference to help mitigate impacts from activities the Order would authorize. For example, Delta Plan Mitigation Measure 3-1 provides Best Management Practices for protecting water resources during construction and other activities in the Delta. (Exhibit A, Delta Plan Appendix O, pdf p. 9.) Other Delta Plan mitigation measures address salinity, water quality, Delta communities, flood risk, and biological resources impacts. (See Exhibit A.)

2

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1

SWRCB
August 12, 2021
Page 3 of 9

B. Good Neighbor Policies are Essential to the Success of Restoration Projects

The purpose of the Order is to provide regulatory streamlining for similar classes of restoration activities covered under section 401. This should allow faster implementation with lower costs, however, the Order and the PEIR are not proactive in avoiding environmental impacts that create conflicts with neighboring landowners, and their local reclamation and water districts. These types of conflicts, which can slow down planning and permitting for restoration projects, are usually avoidable with proper planning.

To ensure that restoration proponents consider and reduce impacts on neighbors early in the process, it is suggested that the draft Good Neighbor Policies, attached as Exhibit B, be integrated into the Order and/or the PEIR. Restoration projects can be beneficial in many regards, but they can also negatively affect neighboring properties, agricultural lands, flood protection management, recreational activities, and water resources if not properly mitigated. The draft checklist, prepared by LAND and other entities interested in promoting well-planned restoration, provides an approach whereby restoration proponents and affected landowners and local agencies can communicate concerns and potentially find mutually agreeable compromises at the early planning stages of the project. This allows parties to avoid unnecessary conflict, which can lead to higher project costs, and shows good faith with the neighboring property owners and local agencies. Successful restoration should be a partnership with a community, building trust and achieving the environmental values together.

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C. Comments on the Order and the Program Environmental Impact Report

LAND believes there are several areas of the Order and PEIR that should be strengthened or clarified to ensure beneficial results from restoration projects do not have deleterious effects on surrounding landowners and existing uses. This is especially true in the Delta due to its topography, intrinsic ecology, and intertwined land uses.

1. Water Quality

The Order and the PEIR lack substantive requirements for monitoring and management of water quality before and after project implementation. More stringent requirements should be implemented to ensure completed restoration projects have post-construction monitoring. This would help ensure inadvertent adverse impacts do not occur once the project is constructed, or if they do occur, that they can be resolved. The Order contains several measures that may be necessary for a project to avoid and

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1

SWRCB
August 12, 2021
Page 4 of 9

minimize impacts to water quality. However, these measures focus on construction activities, and do not include post-construction monitoring. (Order, pp. E-31 – E-36.)

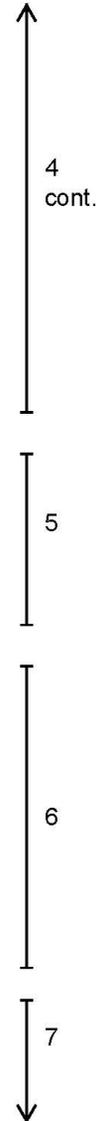
The Order states, “The project proponent shall identify the goal(s) of monitoring and reporting components in the NOI. The level of detail of the monitoring and reporting requirements shall be commensurate with the scope, complexity, and objectives of the project, and in consideration of project site conditions.” (Order, p. 16.) It then references Attachment D, Post-Construction Monitoring Report. However, it is unclear why the project proponent is identifying the goals of monitoring and reporting for a 401 certification. Additionally, Attachment D only pertains to projects that fall under the National Marine Fisheries Service Programmatic Biological Opinions, which are limited to “Humboldt, Del Norte, Trinity, Siskiyou, and a part of Mendocino counties.” (Order, Attachment D, p. 2, 6.) The Order should clarify the water quality management and monitoring requirements for a project once it is deemed complete for all of the regions to which the Order would apply.

Additionally, the PEIR lacks post-construction water quality monitoring. The PEIR relies heavily on existing regulatory schemes to prevent adverse effects to water quality. The PEIR should have clear language indicating what monitoring actions are required post-construction; as written, it is unclear whether a project must be monitored, how long it must be monitored, or how monitoring and reporting requirements will be enforced. SWRCB should require specific water quality monitoring and reporting to ensure water quality around the project area is not degraded.

2. Invasive Weed Control and Water Supply

Both the PEIR and the Order note that invasive species are a concern, but neither adequately addresses the potential impacts from the spread of these species. The PEIR indicates that these projects may spread invasive species. “The construction of restoration projects permitted under the Order could have another indirect impact: They could accidentally introduce invasive plant species, carried as seeds on construction equipment or personnel, or could spread invasive plant species through soil disturbance, which tends to promote the growth of invasive and other non-native species.” (PEIR, p. 3.5-32.) However, the PEIR does not contain any mitigation measures *specifically* dealing with the spread of invasive species.

The Order does contain *general* protection measures to prevent the spread of invasive species. GPM-8 states, “[w]hen practicable, invasive exotic plants in the project areas shall be removed and properly disposed of in a manner that will not promote their spread.” (Order, p. A-27.) It also contains measure VHDR-2, which provides guidance on how to properly remove invasive vegetation. (Order, Appendix E, p. E-37.)



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1

SWRCB
August 12, 2021
Page 5 of 9

However, these measures exclusively focus on construction equipment and invasive species at the project site, not the overall project’s potential for spreading invasive species. Both documents should implement conditions or mitigation measures to ensure the type of projects being proposed would not provide a catalyst for the spread of invasive species. This is especially important in areas, such as the Delta, that support invasive species that have historically been spread and worsened by restoration activities, and can cause adverse water quality and water supply impacts.

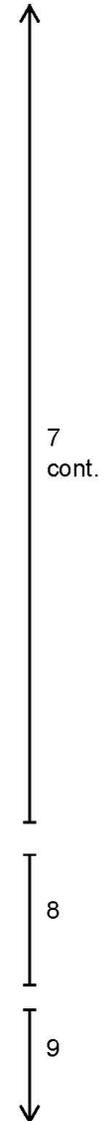
Studies show that exotic invasive plant species can consume more water than naturally occurring species, impacting water available for agriculture and other beneficial uses. (See Exhibit C, Pitcairn et al., *Yellow Starthistle continues its spread in California* (2006).) Water hyacinth is a well-documented Delta invasive plant that uses a considerable amount of water which is lost to the atmosphere due to transpiration. Weeds in arid regions compete for water with native plant or commodity crops, and the weeds can also compete for nutrients, and diminish crop values. (Exhibit D, Abouziena et al., *Water loss by weeds: a review* (2014) 7 Int. Journal of ChemTech Research 1, pp. 323-36.)

Aquatic weeds cause water loss in canals due to extensive root systems and high transpiration rates, in addition to physically blocking the canals. (*Id.* at 326.) Environmental impacts from weed proliferation are potentially significant to the Delta. (See Exhibit E, Ali & Khedr, *Estimation of water losses through evapotranspiration of aquatic weeds in the Nile River* (2018) 32 Water Science, pp. 259- 275.) For example, water loss through evapotranspiration from water hyacinth was 3.7 times that from open water. (Exhibit F, Timmer & Weldon, *Evapotranspiration and Pollution of Water by Water Hyacinth* (1966).) A study on the Nile River supported the doubling of evaporation as a result of hyacinth, and “...concluded that the main problem of water losses through evapotranspiration of aquatic weeds in the Nile River (Rosetta Branch) represented in water hyacinth, according to the present study more than 90% of water losses were from water hyacinth.” (Exhibit E, p. 274.)

The Delta Plan provides guidance on this issue. Delta Plan Mitigation Measure 4-1 requires an invasive species management plan for any project that could lead to or facilitate invasive species. (Exhibit A, Delta Plan Appendix O, pdf pp. 11-13.) The PEIR should include a mitigation measure with similar language requiring an invasive species management plan, and/or cross reference Delta Plan mitigation measures.

3. Harmful Algal Blooms

The potential of restoration projects covered under the Order to lead to the proliferation of harmful algal blooms (“HABs”) is not adequately discussed in the Order



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1

SWRCB
August 12, 2021
Page 6 of 9

or the PEIR. Freshwater HABs are supported by high nutrient concentrations, low salinity, and low flows.¹ Under certain environmental conditions, a rapid increase or accumulation of these microscopic algae can occur, and HABs may result, that can have negative impacts on the environment, people, pets, wildlife, or livestock, as well as the economy. (SWRCB, *California Freshwater Harmful Algal Blooms Assessment and Support Strategy*, p. 29.²) In instances where projects lower flow rates or increase nutrients in an area, due to construction or project design, there would be an increase in residence time and increase the probability or number of HABs. The Order and the PEIR should provide specific information, direct conditions, and mitigation measures to curb the proliferation HABs in project areas, by ensuring adequate flows are maintained and increased temperature profiles and residence times are not extended.

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4. Salinity

Salinity intrusion is not a significant topic in the Order or the PEIR. This is surprising given the amount of research being conducted on this ongoing water quality problem. Several examples were given by Delta lead scientist, Dr. Laurel Larsen, at the August 4, 2021, SWRCB workshop on the draft Order and PEIR. Dr. Larsen noted that due to sea level rise and climate change, salinity intrusion will continue to be a large impact, especially in the Delta. Salinity intrusion can also be problematic in many coastal areas, leading to impacts on groundwater quality. (See Humboldt County, *Sea Level Rise Vulnerability Assessment*,³ City and County of San Francisco, *Sea Level Rise Vulnerability and Consequences Assessment*.⁴)

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The PEIR briefly mentions salinity related impacts stating, “[l]osses of irrigated farmland have resulted in part from drought and salinity-related reductions in water supply and from reclassification of lands” (PEIR, p. 3.3-4), and “projects involving levee setbacks could convert freshwater wetlands to salt marsh” (PEIR, p. 3.5-48). However, no mitigation for these occurrences is included. Changing the area of the tidal prism, or decreasing the ebb of tides can increase salinity concentrations, leading to worsening

¹ Factors leading to HABs in the Delta are described in Berg & Sutula, *Factors affecting Growth of Cyanobacteria With Special Emphasis on the Sacramento-San Joaquin Delta*, attached as Exhibit G.

² See

https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/SWAMP/HABs_strategy_phase%201.pdf.

³ See <https://humboldt.gov/DocumentCenter/View/62872/Humboldt-Bay-Area-Plan-Sea-Level-Rise-Vulnerability-Assessment-Report-PDF?bidId=>.

⁴ See https://sfplanning.s3.amazonaws.com/default/files/plans-and-programs/planning-for-the-city/sea-level-rise/SLRVCA_Report_Full_Report.pdf.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1

SWRCB
August 12, 2021
Page 7 of 9

water quality for native freshwater species, agricultural beneficial uses, and drinking water disinfection byproducts. Additionally, the Order does not provide any information regarding salinity intrusion, and its Water Quality Hazardous Materials Measures fail to provide requirements to ensure projects does not result in higher salinity levels. Both documents fail to analyze this situation, and in turn, fail to provide possible mitigation for this impact. Both mitigation measures and conditions should be adopted to ensure projects are not inadvertently degrading the environment by allowing salinity intrusion to increase or occur in new areas.

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5. Recreation

Many areas of the state are reliant on the local water resources for recreation, even more so in the Delta. People who live, in and around the Delta, rely on its waterways for food, recreation, and tourism. Protecting the few areas available for recreation and recreational access are of the utmost importance. The PEIR states all recreation impacts are either less than significant or would be by implementing mitigation. (PEIR, p. 3.16-10.) However, the PEIR also states that some restoration projects permitted under the Order may create permanent impacts. (PEIR, p. 3.16-9.) Recreation in the Delta relies on the ability to move through waterways, permanently impeding on the ability to traverse these waterways has the potential to cut-off large areas to boating, fishing and other water activities. The PEIR should not allow one benefit to outweigh another. The mitigation for these impacts should be reconsidered, especially where there is a possibility of permanent impacts.

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6. Public Safety

There are already public safety concerns in the Delta due to lack of transportation infrastructure. The PEIR notes that some projects such as levee setbacks, “may require road closures to facilitate construction, which could temporarily physically divide the community during construction.” (PEIR, p. 3.12-7.) Additionally, the PEIR notes, “[s]ome facilities outside of communities could isolate developed areas from urban services. For example, removing roads for construction of a new setback levee might isolate agricultural areas from facilities and communities that provide services and markets to farmers. Also, periodic inundation of roadways from flood widening projects could preclude or inhibit access between communities and services.” (PEIR, p. 3.12-8.) The PEIR must ensure this impact is mitigated in a way that egress and ingress from properties are not diminished and access to emergency services is not reduced.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1

SWRCB
August 12, 2021
Page 8 of 9

7. Agricultural Resources

The Order does not address potential agricultural impacts nor does it provide any general protection measures to reduce impacts to agriculture. The Order should provide general protection measures to ensure projects will not impact agricultural operations by diverting water that is already committed to other beneficial uses, impacting water quality for those uses, increasing the incidence of invasive weeds, or increasing erosion due to changes in runoff or flows, among other potential impacts.

The Order does not identify where the water for restoration projects would come from, the water rights accounting for the changes in consumptive use that would result from conversion of land to open water tidal habitat, or the appropriate means by which other beneficial uses and users would be protected from water supply impacts. This impact is also related to the potential impact to water quality resulting from changes to flow, and is inadequately addressed.

PEIR Impact 3.3-1 states, “[r]estoration projects permitted under the Order could convert Special Designation Farmland to nonagricultural use or conflict with a Williamson Act contract or zoning for agricultural use.” (PEIR, p. 3.3-8.) The majority of Delta land falls under Special Designation Farmland. Mitigation Measure AG-1 requires restoration projects that permanently convert Special Designated Farmland acquire an agricultural easement or contribute to a land trust at a target ratio of 1:1. (PEIR, p. 3.3-11.) However, it goes on to provide a loophole for any contributions that would be too expensive. (*Id.*) Many agricultural areas have already been fragmented to a condition that purchasing other easement credits will not be enough to offset the overall impact. The PEIR should consider implementing mitigation measures that do not rely on off-site mitigation, and close the cost loophole. Otherwise, the cumulative fragmentation impacts are not adequately mitigated, or this impact is not fully mitigated because of the loophole.

D. Conclusion

LAND respectfully requests that the SWRCB revise the Order and the PEIR to address the comments herein. The Order should address these potential impacts by conditioning more stringent monitoring and management of restoration projects to avoid negatively affecting surrounding landowners and local agencies, their beneficial uses of water, and associated impacts of these projects on water quality and quantity. These impacts must also be addressed by implementing more specific mitigation measures in the PEIR. Adequate mitigation measures at the programmatic level will allow projects to be legally defensible and ensure beneficial aspects of restoration projects covered by the Order are realized.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1

SWRCB
August 12, 2021
Page 9 of 9

Thank you for considering these comments and recommendations on the Draft Order and Draft PEIR. Please feel free to contact me (osha@semlawyers.com or 916-455-7300) with any questions about these comments.

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cont.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Osha R. Meserve

ORM/wra

cc: Michael George, Delta Watermaster (michael.george@waterboards.ca.gov)

Attachments:

Exhibit A – 2018 Delta Plan Mitigation Monitoring and Reporting Program

Exhibit B – LAND Good Neighbor Checklist

Exhibit C – Yellow starthistle continues its spread in California

Exhibit D – Water loss by weeds: a review

Exhibit E – Ali & Khedr, Estimation of water losses through evapotranspiration of aquatic weeds in the Nile River

Exhibit F – Timmer & Weldon, Evapotranspiration and Pollution of Water by Water Hyacinth

Exhibit G – Berg & Sutula, Factors Affecting Growth of Cyanobacteria With Special Emphasis on the Sacramento-San Joaquin Delta

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1 Soluri Meserve, a law corporation on behalf of Local Agencies of the North Delta

Responses to Comments from LAND-1 Local Agencies of the North Delta

LAND-1-1:

The State Water Board appreciates Local Agencies of the North Delta's (LAND) comments regarding the Draft Order and Draft PEIR as well as information on the LAND.

LAND-1-2:

All restoration projects authorized under the Order must adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5 and A.6), and undergo pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3). The State Water Board acknowledges restoration projects permitted under the Order meeting the definition of a covered action are required to demonstrate consistency with the Delta Plan and its mitigation measures. In addition, the State Water Board acknowledges the benefits of early consultation with the Delta Stewardship Council in the planning process for restoration projects to determine applicable mitigation measures consistent with the Delta Plan. No revisions are included in the Order or PEIR because of this comment.

LAND-1-3:

The PEIR focuses on reasonably foreseeable changes from implementation of future restoration projects authorized under the Order, consistent with the level of detail appropriate for a program-level analysis. The PEIR assumes that the Order is implemented and achieves the desired outcomes. Accordingly, the PEIR evaluates potential impacts of the types of restoration projects that the Order would encourage and promote in the study area, including impacts to agricultural lands, flood protection management, recreation, and water resources.

All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5 and A.6), and undergo a pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

In addition, future restoration projects authorized under the Order would need to undergo their own CEQA review (PEIR Section 1.1 Introduction and Overview of the Order). No revisions are included in the Order or PEIR because of this comment.

LAND-1-4:

Monitoring requirements presented in the Order and PEIR are consistent with other programs and allow for flexibility based on project complexity (i.e., monitoring requirements commensurate with complexity of the project). It would be unnecessarily burdensome to prescribe additional monitoring requirements. To clarify, the reporting and notification requirements in Order Attachment D refer to requirements that apply to

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

all projects authorized under the Order, whereas PEIR Appendix D refers to the NMFS Programmatic BOs. As discussed in Order Attachment D, the approving Water Board must issue a Notice of Project Complete Letter to affirm the project has completed applicable post-construction monitoring requirements, permit requirements, and achieved performance standards. The Notice of Project Complete Letter would not be issued until the project has achieved performance standards. Further, annual reports that document post-construction monitoring efforts and progress towards achieving performance standards may be required by the approving Water Board.

No revisions are included in the Order or PEIR because of this comment.

LAND-1-5:

The Order requires post-construction monitoring and reporting; see response to comment LAND-1-4.

LAND-1-6:

The Order and PEIR include a comprehensive suite of GPMs and species protection measures that were developed in coordination with multiple agencies and designed to avoid and/or minimize potential adverse effects that could result from implementation of restoration projects eligible for authorization under the Order. The GPMs and species protection measures include multiple measures specifically designed to address issues related to invasive weeds (and other non-native, invasive species). Invasive species are addressed in the Order, including applicable GPMs (GPM-8, GPM-9, VHDR-2 and VHDR-3 [Order, Attachment A, A.5.2]). No revisions are included in the Order or PEIR because of this comment.

LAND-1-7:

Comment is noted regarding GPMs to address construction-related introduction and spread of invasive species. All projects would be reviewed for eligibility of authorization under the Order. In addition, project proponents in coordination with the CEQA lead agency would need to determine if proposed restoration projects could be approved within the scope of the PEIR or would need to undergo additional CEQA review (PEIR Section 1.1 Introduction and Overview of the Order), including the proposed restoration project's ability to spread invasive species. Order Attachment A Sections A.5 provides detailed requirements regarding programmatic sideboards, GPMs, prohibitions, and pre-application consultations, which apply to all proposed projects seeking authorization under the Order. No revisions are included in the Order or PEIR because of this comment.

LAND-1-8:

See response to comment LAND-1-2 regarding Delta Plan mitigation measures and LAND-1-6 regarding invasive species.

LAND-1-9:

The influence of incremental changes in hydrological and water quality factors on the occurrences of freshwater cyanobacterial harmful algal blooms (cyanoHABs), particularly the toxin-producing *Microcystis aeruginosa* (*Microcystis*), in waterways throughout the State (including the Delta) are difficult to assess. This is due to the

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

baseline (environmental setting) against which project-related incremental effects is measured is continually changing. In response to this comment, the PEIR, Section 3.11.2 Hydrology and Water Quality, Environmental Setting was revised as follows:

“Cyanobacterial harmful algal blooms (cyanoHABs), a water quality topic of concern, have been increasing since 2003 (Lehman et al. 2005). Increased occurrences of Microcystis cyanoHABs has been linked with increases in water temperatures which enables the growth rate of Microcystis to become competitive relative to other members of the phytoplankton community (Berg and Sutula 2015). A temperature threshold of 19 degrees Celsius (°C) has been identified as necessary to trigger growth of Microcystis in the Delta (Lehman et al. 2013), whereas temperatures of 25°C and above have been hypothesized to play a role in explaining its interannual variability (Lehman et al. 2018). Whereas water temperature appears to be a trigger for growth, other factors such as nutrient availability and high irradiance are necessary to sustain its growth and lead to the development of a bloom. In other words, once growth of Microcystis has been triggered, it cannot attain high enough growth rates to accumulate biomass and become dominant unless it can 1) maintain itself at the surface of the water column where irradiance is high and 2) there is an ample supply of nutrients available in the water column at the start of the bloom (Visser et al. 2005). At any time during a bloom, if the nutrient supply is depleted or the water mixing rate increases such that the time Microcystis can spend at the surface becomes limited, cells may become stressed and growth may slow down. An additional factor that will retard growth of Microcystis is exposure to saline water. This is evident when water containing Microcystis colonies is advected from the San Joaquin River into the lower Sacramento River or Suisun Bay; salinities in those regions are not conducive to growth resulting in the colonies breaking apart and blooms dissipating (Lehman et al. 2008). When Microcystis cells become sufficiently stressed, due to any environmental factor (e.g., light, nutrients, temperature, salinity), the colonies will settle out of the water column and the bloom will terminate (Visser et al. 1995).”

Additionally, PEIR, Section 3.11.4, Hydrology and Water Quality, Impacts and Mitigation Measures was expanded with the following text:

“Effects of Constructed Facilities (Natural or Artificial Infrastructure) and Operations and Maintenance of those Facilities

Long-term effects on water quality from restoration projects permitted under the Order are expected to be beneficial or sometimes neutral (in the case of fish screens or ladders), because the specific purpose of these projects would be to correct existing conditions that contribute to resource degradation. For example, projects implementing bioengineered bank stabilization would reduce the input of fine sediment, which would improve water quality. Other restoration projects, such as those to remove pilings and other in-water structures, would improve water quality by removing potential contaminant sources and hazards such as untreated and chemically treated wood pilings, piers, and vessels. In addition, restoration projects permitted under the Order could establish, restore, and enhance tidal, subtidal, and freshwater wetlands. For example, living shorelines provide a natural alternative to

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

“hard” shoreline stabilization methods like stone sills or bulkheads, and provide numerous ecological benefits including water quality improvements; floodplain restoration would also improve water quality because floodplains, when inundated with water, act as natural filters by removing excess sediment and nutrients.

In regard to potential impacts associated with cyanoHABs, predicting whether these will either 1) develop, or 2) increase in frequency, severity, and/or duration, relative to a baseline, in a given location due to incremental changes in environmental factors is difficult. At a minimum, it requires knowledge of the factors for triggering (water temperature) and sustaining (high irradiance and high nutrient availability) growth and blooms in any particular location, together with data on how these factors are predicted to change. It is important to keep in mind that all three factors have to occur simultaneously for cyanoHABs to develop. Change in one factor alone will most likely not lead to a change in bloom status. For example, increase in nutrient concentration in a location with a well-mixed water column may not lead to a bloom of cyanoHAB species such as *Microcystis* as continued mixing of colonies to the bottom will prevent them from increasing their growth rate sufficiently to become dominant. Increase in residence time has been shown to increase cyanoHAB occurrences when it results in stratification of the water column (Carey et al. 2021). Stratification allows the surface layer to become isolated from the rest of the water column. This may increase the water temperature, water clarity, and decrease the mixing of cyanoHAB cells and colonies from the surface to the bottom allowing them to be continually exposed to high irradiance, and therefore, maintain maximum growth rates (Visser et al. 2005, Carey et al. 2012). If an increase in residence time does not lead to water column stratification, then the water may not warm sufficiently to trigger growth of cyanoHABs, or the mixing rate may not decrease sufficiently to maintain cyanoHAB species at the surface, effectively preventing the formation of colonies and accumulation of biomass. In addition, a decrease in residence time has to be sufficient that the growth rate of the cyanoHAB species exceeds the flushing rate of the water in order for colonies and biomass to accumulate in the area. If residence time is increased and stratification occurs, but the surface layer is depleted of nutrients, then cyanoHABs may not be able to develop due to nutrient limitation.

As is evident from the above discussion, changes in environmental factors and hydrology in a given location may or may not lead to changes in cyanoHABs depending on the thresholds of bloom development in that location and changes in environmental factors relative to those thresholds. However, restoration projects permitted under the Order would result in a number of improved ecological processes that would counteract these risks. For example, restoration projects have the potential to decrease water temperatures associated with the creation of shade through the restoration and enhancement of vegetation communities (e.g., riparian, emergent marsh). Restoration projects would also have the potential to improve tidal flushing, resulting in a well-mixed water column. The establishment of seagrasses, emergent marsh, and riparian vegetation would also result in increased uptake and removal of nutrients from the water. All of these beneficial ecological processes would counteract risks associated with environmental factors that contribute to

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

increases in cyanoHABs. Finally, all projects must meet the definition of a restoration project, be consistent with categories of restoration projects described in the Order, and adhere to programmatic sideboards, including adopting applicable protection measures and design guidelines, and undergo pre-application consultation with the Water Board staff.

Routine O&M activities for restoration projects permitted under the Order could consist of periodic and routine work such as removing sediment within or near the facilities (e.g., culverts, fish screens and ladders), removing vegetation (e.g., invasive species in aquatic or riparian areas), and inspecting and maintaining facilities and natural features (e.g., replanting trees and shrubs, repairing biotechnical and other features). Routine O&M activities would be similar to those described for construction; however, the level of activity would be less intense during the O&M phase than during construction, so the degree of temporary changes to water quality would be much less.

As described above, the Order does not promote the construction or implementation of individual restoration projects, nor does it describe the specific size, location, implementation timing, or exact configuration of such projects. Because the potential exists for adverse impacts on water quality as a result of the maintenance of restoration projects permitted under the Order, this impact would be **potentially significant**.

However, restoration projects would incorporate general protection measures (listed above under Effects of Project Construction Activities) that would reduce impacts from O&M activities on water quality.

Implementing these general protection measures would reduce impacts from O&M activities on water quality to a **less-than-significant level**. Further, many of the long-term effects of these projects on water quality are expected to be beneficial or neutral, because the specific purpose of these projects would be to correct existing conditions that contribute to resource degradation and/or counteract risks associated with environmental factors that contribute to water quality degradation.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

LAND-1-10:

Regarding sea level rise, climate change, and salinity intrusion impacts, especially in the Delta, as the comment points out, these are issues associated with the environmental baseline (setting) and California courts have held that CEQA does not generally require consideration of the effect of the environment on a project [see California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal.4th 369 (2015)]. In addition, in 2018, CEQA Guidelines Section 15126.2 was revised to clarify how an EIR should analyze significant environmental effects the

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

project may cause when locating development in areas susceptible to hazardous conditions, such as areas with sea level rise:

“In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published... The EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example, the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or inland use plans addressing such hazards areas.”

As stated in the PEIR Section 3.15 Population and Housing restoration projects would not include the development of housing or commercial structures, including those areas susceptible to hazardous conditions.

The Order and PEIR do acknowledge potential future conditions with climate change, including predicted sea level rise and other climate change-related changes to the environment. Specifically, the PEIR includes projects that address climate change in the definition of restoration project “...A restoration project permitted by the Order may include multiple benefits, such as groundwater recharge, recreation, flood management, water quality improvement, and/or adaptation to climate change...” (PEIR Section 1.1 Introduction and Overview of the Order). Additionally, project category descriptions included in Chapter 2 of the PEIR and Attachment A of the Order state that “...Project activities that plan for climate change, including sea level rise, should be considered in tidally influenced locations...” (PEIR Section 2.6.9 and Order Attachment A, A.4.9). Furthermore, restoration projects are an imperative part of fighting climate change through several mechanisms, including creating (through restoration) more resilient habitats and ecosystems to withstand the effects of climate change and through carbon sequestration (e.g., restoration of riparian forests, marshlands) which combats climate change. Finally, all projects seeking authorization under the Order would be required to undergo pre-application consultation with the approving Water Board and through its own environmental review pursuant to CEQA.

Reasonably foreseeable impacts associated with a range of restoration projects, (meeting the definition of restoration project) were evaluated in the PEIR, including impacts to water quality (PEIR, Section 3.11).

The comment reference to “[l]osses of irrigated farmland have resulted in part from drought and salinity-related reductions in water supply and from reclassification of lands” (PEIR, Section 3.3.2) refers to a baseline (setting) condition, which is addressed above. Further, the reference to “projects involving levee setbacks could convert freshwater wetlands to salt marsh” (PEIR, Section 3.5) refers to a project scenario that may result in the conversion of freshwater wetlands on the land-side of a waterway to salt marsh, re-establishing tidal flows. Any potential impacts to native freshwater species (PEIR Sections 3.5 and 3.6), agricultural beneficial uses (PEIR Section 3.3),

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

and drinking water disinfection byproducts (PEIR Section 3.19 and herein) associated with this type of conversion have been analyzed in other sections of the PEIR (see above) and would be identified and addressed through environmental review pursuant to CEQA, as necessary for an individual proposed project.

In regards to restoration projects potentially changing the area of the tidal prism, or decreasing the ebb of tides, which could increase salinity concentrations, PEIR Section 3.11.4, Hydrology and Water Quality, Impacts and Mitigation Measures was expanded with the following text:

“Estuarine salinity levels, including those in the Delta and other estuaries throughout the State, are important to various water users, including municipal, industrial, and agricultural, and fish and wildlife. Salinity extends further into the estuaries during drier seasons and years since low freshwater inflows into the estuaries are diminished and less freshwater is available to offset salinity intrusion.

Restoration projects proposed for coverage under the Order could involve breaching and lowering existing levees and excavating a tidal channel network, thereby re-introducing daily tidal flows to a project site. Restored tidal exchange would also change flow patterns in the connected channels outboard of a project site. Because these tidal flows also distribute salinity within estuaries, these alterations in flow patterns could affect salinity levels in an estuary. Salinity increases are a concern to various municipalities, industries, agricultural interests, and resources agencies that depend on the availability of freshwater to maintain existing beneficial uses.

While these types of potential effects are possible, they would be expected to be rare and small, and only associated with large projects that have the potential to change tidal prism. For example, a model-based analysis of a 3,000-acre tidal marsh restoration project in the north Delta concluded that the project’s salinity effects would be less than significant because the project resulted in negligible or small changes (under worst-case conditions) in salinities that were still in compliance with water quality standards that are protective of beneficial uses (ESA 2019).

As described in Order Section VII, “potential projects seeking coverage under the Order would be required to identify the receiving waters and beneficial uses of waters of the state to be impacted by a proposed project, as listed in the applicable Regional Board water quality control plan.” This information is required in the Notice of Intent (NOI; Order Attachment B), which must be completed by a project proponent to apply for authorization under this Order.

Further, as described under Order Section XIII, “The Water Boards will independently review any project proposed for authorization under this Order to analyze impacts to water quality and designated beneficial uses within the applicable watershed(s). If the eligibility requirements set forth in this Order including Attachment A are not met, Water Boards will not authorize the proposed project under this Order and instead require the project proponent to apply for an individual certification or certification under another Order. Specifically, the approving Water Board will not authorize the proposed project under this Order if it determines that any of the following requirements are not met: 1) the project meets the definition of a

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

restoration project (as defined in Section V of the Order); 2) the project adopts and implements all appropriate GPMs and CEQA mitigation measures to protect water quality and beneficial uses; 3) the project proponent fulfills all approving Water Board requirements for project information and reporting; and 4) the project is designed to protect water quality and beneficial uses in accordance with regional or statewide water quality control plans.”

Any potential restoration projects seeking coverage under the Order would be required to undergo pre-application consultation with the approving Water Board and analyze impacts to water quality and designated beneficial uses within the applicable watershed(s) through its own environmental review pursuant to CEQA; and the project would be required to be designed to protect water quality and beneficial uses in accordance with regional or statewide water quality control plans.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

LAND-1-11:

PEIR Section 3.16 Recreation identifies the potential impacts to recreation associated with implementation of restoration projects authorized under the Order. Implementing the GPMs and mitigation measures in Section 3.16 would reduce potential impacts to less than significant. Nonetheless, the GPMs and mitigation measures may not necessarily address the unique characteristics of the specific area and recreation could be affected by projects authorized under the Order. If the CEQA lead agency for a restoration project determines that the project’s impacts on recreation may remain significant even with implementation of GPMs and mitigation measures, additional project-specific mitigation measures would be required. Conversely, restoring upslope watershed areas, floodplain restoration, and multi-benefit restoration projects may include upgrading or expanding recreation facilities such trails or wildlife-oriented recreation. No revisions are included in the Order or PEIR because of this comment.

LAND-1-12:

PEIR Section 3.12 Land Use and Planning identifies the potential impacts to land use and planning, including the potential to physically divide an established community, associated with implementation of restoration projects authorized under the Order. Because the extent and location of restoration projects authorized under the Order are yet to be determined, and there are no applicable GPMs or mitigation measures applicable to these impacts, it is not possible to conclude that the restoration projects would not physically divide an established community or conflict with a land use plan, policy or regulation adopted to avoid an environmental effect. Therefore, the PEIR finds these impacts to be significant and unavoidable. Per CEQA Guidelines Section 159093, the State Water Board prepared a Statement of Overriding Considerations to balance, as applicable, the benefits of restoration projects authorized under the Order against its unavoidable environmental risks when determining whether to adopt the Order. No revisions are included in the Order or PEIR because of this comment.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LAND-1-13:

PEIR Section 3.3 Agriculture and Forestry Resources identifies the potential impacts to agriculture resources associated with implementation of restoration projects authorized under the Order and this section has both GMPs and mitigation measures to reduce potential impacts to agricultural resources. Nonetheless, the GMPs and mitigation measures may not necessarily address the unique characteristics of the specific area and agricultural resources could be affected by projects authorized under the Order. Per CEQA Guidelines Section 159093, the State Water Board prepared a Statement of Overriding Considerations to balance, as applicable, the benefits of restoration projects authorized under the Order against its unavoidable environmental risks when determining whether to approve the Order.

In addition, project proponents in coordination with the CEQA lead agency would need to determine if proposed restoration projects could be authorized under the Order as within the scope of the PEIR or would need to undergo additional CEQA review (PEIR Section 1.1). A CEQA lead agency for a restoration project may determine additional or different project-specific mitigation measures to reduce potential agricultural impacts.

The PEIR assessed the potential for future restoration projects authorized under the Order to result in insufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years (PEIR Section 3,19). New water rights would not be authorized under the Order.

See response to comment DU-1-15 regarding minor revisions to Mitigation Measure AG-1 (PEIR, Section 3.3).

LAND-1-14:

See responses to comments LAND-1-2 through LAND-1-13 above.

LAND-1-15:

The State Water Board appreciates LAND comments regarding the Draft Order and Draft PEIR and notes the contact name and number for LAND. The attachments provided were reviewed and considered during preparation of responses.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LSLT-1 League to Save Lake Tahoe

LSLT-1



advocate | engage | create

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The League to Save Lake Tahoe (League) received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

The League is dedicated to protecting and restoring the environmental health, sustainability and scenic beauty of the Lake Tahoe Basin. In connection with our mission, we advocate for streamlined restoration projects that build resilience to climate change and prevent fine sediment, the leading cause of Lake Tahoe's dramatic clarity loss over the past half-century, from entering Lake Tahoe. The League also advocates for forest, riparian, aquatic ecosystem, and habitat restoration – all elements in the Restoration Projects Statewide Order.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects in the Lake Tahoe Basin. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order. Projects for climate change adaptation and habitat restoration for imperiled species cannot be delayed. The ongoing drought gives further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

The environment and our organization will benefit from the Order and PEIR by saving time and resources, enabling integral restoration projects to be implemented sooner. The Order and PEIR would also allow shovel-ready projects to be implemented more efficiently, in line with the Natural Resources Secretary Crowfoot's Cutting the Green Tape Initiative and California's

1

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LSLT-1

Page 2 of 2

30x30. The League does want to ensure that this order will not reduce environmental protections within the Lake Tahoe Basin, but instead streamline the process for restoration projects that protect Lake water quality. The impacts of streamlined restoration work under this order would support a myriad of projects in the Tahoe Basin, including forest fuels reduction, aquatic invasive species control and avoidance, and water quality improvement projects which currently require a long permitting process through the Regional Water Board.

2

Thank you again for the opportunity to comment on behalf of the League. Please do not hesitate to reach out to me directly with any questions.

3

Sincerely,



Laura Patten
Senior Science Policy Analyst, The League to Save Lake Tahoe

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

LSLT-1 League to Save Lake Tahoe

Responses to Comments from LSLT-1 League to Save Lake Tahoe

LSLT-1-1:

The State Water Board appreciates League to Save Lake Tahoe's (LSLT) comments supporting the adoption of the Order and information on LSLT.

LSLT-1-2:

The Order would not reduce environmental protections within the Lake Tahoe Basin, nor would the Order alter Water Board policies or procedures. All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards (Order, Attachment A, A.5.1), including adopting protection measures (Order, Attachment A, A.5.2) and design guidelines (Order, Attachment A, A.6), and undergo pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

LSLT-1-3:

The State Water Board appreciates LSLT's comments supporting the adoption of the Order.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

PCT-1 Placer County Tomorrow

PCT-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Michael Garabedian](#)
To: [commentletters](#)
Subject: Comments-Restoration Projects Statewide Order
Date: Friday, August 13, 2021 12:01:13 PM

EXTERNAL:



11:15 a.m.

This Proposed General Order could have deeply disturbing implications and possibilities for existing wetlands, vernal pool prairie, water courses, swales, and other areas of State and Regional Water Board jurisdiction.

1

Most significantly could be if the Order results in the State Board allowing or approving General Orders based on faulty, inadequate or what the board, public or others would or might consider to be inadequate, irresponsible, unnecessary, faulty or other problematic decisions and approvals including environmental mitigation required by other local, state or federal agencies.

2

For example, when an entity has solid CEQA disclosure of major natural area loss accompanied by findings that are legally sufficient?

Second, is concern about applying the General Order to large and even vast, areas of remaining natural resources already reduced, for example, by 90 percent locally, regionally or statewide?

3

Third is the grave problem of affected natural resources with absent, nearly absent, faulty, intentionally exclusionary, misleading if not bordering being unprincipled, claims of having had the public involvement required or necessary. This last point is arguably the case with the Placer County Conservation Plan Fish and Game Code NCCP requirements. The General Order must not actually or in effect ratify this. How could this be overcome?

4

An example of another kind of issue, is the issuance of streamed alteration permits that do not as far as I know, have public comment or involvement.

5

Fourth, what if the science is inadequate, as is the case, for example, of the Desert Energy Renewable Energy Conservation Plan (DRECP). See its two independent science review panel reports.

6

Fifth, what review including effectiveness has the Board given to its use of General Orders?

7

Thank you for this opportunity to comment,

Michael N. Garabedian
Placer County Tomorrow
916-719-7296
1725 Schellbach Dr.
Lincoln, California 95648

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

PCT-1 Placer County Tomorrow

Responses to Comments from PCT-1 Placer County Tomorrow

PCT-1-1:

The State Water Board appreciates Placer County Tomorrow's (PCT) comments on the Draft Order and Draft PEIR. Potential impacts (and benefits) to existing wetlands, vernal pool prairie, water courses, swales, and other areas of Water Board jurisdiction are evaluated in PEIR Sections 3.5, 3.6 and 3.11. Overall, the Order is expected to encourage projects that help to restore the environment.

PCT-1-2:

The definition of a restoration project was developed based on input from numerous agencies and to be consistent with multiple permitting agency regulatory practices either existing or under development (e.g., CDFW, NMFS, USFWS, USACE).

All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards (Order, Attachment A, A.5.1), including adopting protection measures (Order, Attachment A, A.5.2) and design guidelines (Order, Attachment A, A.6), and undergo pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

As discussed in PEIR Section 3.1, if the analysis determined that an impact would remain significant after the incorporation of appropriate GPMs and species protection measures, then the impact conclusion is significant and mitigation measures have been recommended to further reduce the magnitude of the impact. However, some impacts would remain significant and unavoidable.

Per CEQA Guidelines Section 159093, the State Water Board developed a Statement of Overriding Considerations to balance, as applicable, the benefits of restoration projects authorized under the Order against its unavoidable environmental risks when determining whether to adopt the Order.

PCT-1-3:

See response to comments PCT-1-2 regarding the definition of a restoration project and conditions placed on restoration projects authorized under the Order.

PCT-1-4:

PEIR Section 1.1 Introduction and Overview of the Order describes the environmental review and approval process, including public engagement, for the PEIR and Order. Further opportunities for public engagement include: (1) participation at the State Water Board Meeting to consider adoption of the Order; (2) availability of Order and PEIR documents on the [State Water Board 401 Program webpage](https://www.waterboards.ca.gov/water_issues/programs/cwa401/) at https://www.waterboards.ca.gov/water_issues/programs/cwa401/; and (3) submission of comments during the public notice period for individual NOIs pertaining to proposed projects considered for authorization under the Order. Furthermore, development and adoption of the Order is also included in materials related to California Natural Resource Agency's (CNRA's) Cutting the Green Tape initiative.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The Order is intended to complement, not contradict or replace, existing or future conservation and restoration plans, such as Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs). This Order does not ratify or otherwise approve a specific NCCP. Any project meeting the definition of a restoration project as presented in the Order and implementing applicable programmatic sideboards, GPMs, and other requirements is appropriate to be authorized using the Order. Also, each project would be reviewed individually by the approving Water Board. Development projects or projects not meeting the Order restoration project definition and conditions would not be approved under the proposed Order.

PCT-1-5:

PEIR Section 2.5 provides a list of permits and authorizations, including Sections 1600-1607 of the California Fish and Game Code LSAA, that may be required for restoration projects authorized under the Order. Issuance of LSAA's are not under the regulatory purview of the State Water Board or Regional Boards. The Order does not purport to issue or otherwise approve of a LSAA that may be required for a specific project.

PCT-1-6:

The State Water Board appreciates information on the Desert Renewable Energy Conservation Plan. As described in response to comment PCT-1-2, restoration projects authorized under the Order will undergo pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

The comment does not address the adequacy or content of the Order or PEIR; therefore, no revisions are included in the Order or PEIR because of this comment.

PCT-1-7:

As described in Order Section IV. Project Purpose, the State Water Board has previously authorized a General Order for Small Habitat Restoration Projects. The Order for Small Habitat Restoration Projects has been used effectively for smaller restoration projects prompting development of this Order. See response to comment PCT-1-4 for information on the public engagement process for the Order and PEIR.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

RRK-1 Russian Riverkeeper

RRK-1



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 13, 2021

State Water Resources Control Board
Clerk to the Board
Jeanine Townsend
P.O. Box 100
Sacramento, CA 95812-2000



Submitted via email to: commentletters@waterboards.ca.gov

RE: Comments – Restoration Projects Statewide Order

To Whom It May Concern:

On behalf of Russian Riverkeeper (RRK), I welcome the opportunity to submit these comments for the “Restoration Projects Statewide Order.” The Russian Riverkeeper is a local nonprofit that has been successfully protecting the Russian River watershed since 1993. Through public education, scientific research and expert advocacy, RRK has actively pursued conservation and protection for the River’s mainstem, tributaries and watershed. Our mission is to inspire the community to protect their River home, and to provide them with the tools and guiding framework necessary to do so. For that reason, we submit the following comments.

1

I. Restoration in the Russian River Watershed

California is home to a multitude of habitats, species, and other beautiful natural resources—many of which are completely unique to our part of the world. This level of biodiversity brings people from all around the world to visit and has helped create the California we know today. Unfortunately, having this high level of biodiversity also means that there are no one size fits all solutions when it comes to proper resource management. Each unique environment we have requires its own unique solutions as applied to the unique circumstances of that environment. For instance, some rivers may be mountainous headwaters with steep, narrow, rocky bedrock channels, while others are historically long, meandering alluvial floodplains. The two cannot be managed in the same way because they are not the same type of habitat. As such, streamlining projects across the state under the assumption that they will benefit each and every one of California’s unique riparian habitats is incorrect. Lasting solutions that protect the natural habitat cannot result from a one size fits all approach.

2

Of particular concern for us on the Russian River is the allowance of any rock materials in a streamlined bioengineered bank stabilization project. The Russian River is a historical alluvial floodplain which means that it wants to meander through large open spaces and is continually trying to expand beyond the narrow channels that humans have used to try and contain the river. With a long mining history, the Russian River is now deeply incised in many areas and has been forced into narrowly confined channels. As a result, the natural tendency for the river to flood over the banks and provide access to other nutrients has been completely eroded. These modifications to the river’s natural course have greatly diminished the main channel’s former

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

RRK-1



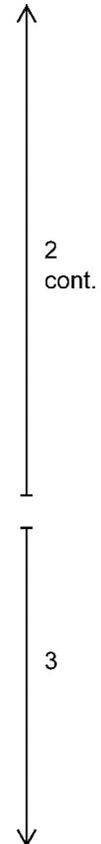
spawning habitat and dramatically reduced access to the nutritious resources juvenile salmon are so reliant on in the floodplains

Local agriculture is the primary proponent of streamlining these types of bank stabilization projects because it allows them to protect their private property from the river's natural course. We recognize that the Order states that outcome is not an intended result of this proposed streamlining process, but it is an on the ground reality that will continue to occur. There are very few groups or individuals out there that will be trying to restore the river for the river's sake through bank stabilization, as opposed to some personal interest and benefit.

If the State Water Board really wants to restore the river and stay clear of projects that "merely protect property from bank erosion" then there are other better avenues such as establishing and enforcing adequate buffer zones so that private property owners are not building or planting right to the bank's edge and causing degradation in the first place. Further, property owners should not be allowed to invest in any restoration project when they are contributing to the overall degradation of their riparian property elsewhere, and this should be considered as part of the "net benefit" calculation. There must be additional checks in place to ensure that any streamlining is actually done for the benefit of the river and that public resources are not being used to protect the worth of private property owners. For the Russian River this means no bank stabilization projects utilizing rocks or boulders without full review for site characteristics and public input.

A. Bioengineered Bank Stabilization

Over the years, Russian Riverkeeper has participated in and been witness to a variety of bank stabilization projects. A limited few have been success stories, but more often than not, they have resulted in failure in short time. This is due to the unique nature of rivers that are part of alluvial flood plains—they naturally want to spread out and carve a large meandering path to the ocean. Channeling such rivers only increases the velocity of flows and the sheer stress that leads to bank erosion until the river's equilibrium is found once again. This is a natural process, not a detriment to the river's health; and instead, as noted above, is a human built concern over loss of private property that gets eroded away by the river trying to break free from these channeled areas. It is actually beneficial to the river's health to allow this erosion as it needs the coarse sediment that comes from this erosion.



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
 PROGRAM ENVIRONMENTAL IMPACT REPORT
 APPENDIX H – RESPONSES TO COMMENTS

RRK-1

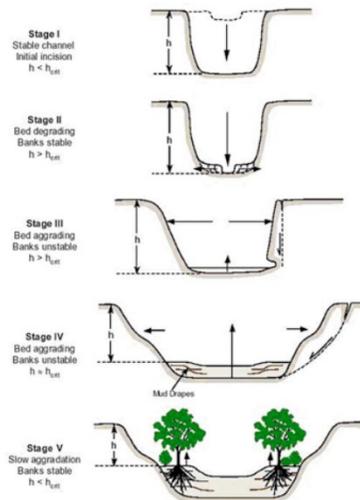


Figure 1: Illustration demonstrating how an incised river channel will naturally erode embankments until it has found its natural course and velocity. Only at that point will banks stabilize.

In fact, bank erosion helps remove the impacts of human channeling and allows further beneficial riparian habitat to flourish. Using rocks to stabilize the bank only locks in past human activities and prevents complete watershed restoration. This is deleterious to the beneficial use of salmon habitat, spawning and rearing which needs the coarse sediment that comes from this bank erosion.

Furthermore, no published reports in the Russian River have analyzed sources of fine sediment. Based on our own water quality monitoring most fine and suspended sediments are actually likely originating from agricultural tillage in vineyards, construction activities, and urban stormwater sources. If fine sediment control is really a concern of the State Water Board, then policies should be implemented to address it at their true source. Bank erosion is a critical source of coarse sediment and helps to offset human contributions of fine sediment to the riparian system.

In theory, the regional board would be aware of these local realities and be able to account for them before any project approvals occur. However, in many instances it is unlikely the staff bandwidth will be there for this to happen; and instead, largely over-engineered projects will likely be put in place to hold back embankments and prevent erosion from private property. Until the river reclaims its historical alluvial floodplains, the river will continue to erode away at the banks due to the higher flow velocity that stems from the artificial narrowing of the river in past years. Projects designed to hold the embankments up would be counter to this trajectory, and

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

RRK-1



would only ensure that the narrowed channels created by historic mining continue to persist. The same is true of projects in the mainstem that are centered around reintroducing vegetation to the banks. Until the river has reclaimed its natural balance of width to depth rock-based stabilization projects will not prove lasting. As such, stabilization projects that would alter the river's natural evolution should require additional scrutiny.

Four of the five biggest bank stabilization projects in the Russian River have failed in recent years because they seek to impose a static solution in a dynamic environment, and go to support our concerns over bank stabilization projects in our watershed, especially those that involve rock structures. Any introduction of large rock to "stabilize" bank toes that are located on top of sand and gravel channel beds, such as in the Russian River, is doomed to fail from the start. This is because during flood events and high velocity flows, the river is able to scour that substrate away with little effort and all support is removed.

A great example is a stabilization project along the river below Stuhlmuller Vineyards. The project was permitted under the Army Corps nationwide permit and various state general permits, with funding coming from California's Department of Fish and Wildlife. The first major high flow event eroded 95% of installed plants, and at least 50% of the placed rock and fill, which ultimately resulted in even more bank erosion. All bank stabilization projects using bioengineered approaches have failed in the Russian River except at Oddfellows Recreation Park near Guerneville, and this was only because of the presence of a stable bedrock substrate. Without this firm substrate to anchor the larger stabilization rocks it would have also eroded in short time.



Figure 2: This photo was taken after completion of a bioengineered bank stabilization project on the Russian River at Stuhlmuller Vineyards.



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cont.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

RRK-1



Figure 3: This photo is of the same stretch of project following the first high velocity flow event that the project experienced. It is clearly seen here that all the vegetation was removed during that high velocity event and the bank was further degraded.



Figure 4: Following the high velocity event at the Stuhlmuller project shown in Figures 1 and 2, that river stretch became very rocky in comparison to the rest of the river's more natural features. As a result, this stretch became prime habitat for bass and pike minnows which prefer those rocky areas. In contrast, the river's protect salmon species do not like this type of rocky habitat. So not only did the bank stabilization project fail, it created prime habitat for predators of our



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cont.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

RRK-1



protected salmon species. Neither of those results were in the benefit of the river's health.

Restoration of our river to its historical state is necessary, but must be done with the river itself in mind. There is a right way to protect and restore our natural resources, and there is a wrong way. As such, we strongly object to any streamlined permitting for any bank stabilization project in alluvial reaches of the Russian River because of the history of failure and resulting increased negative impacts and disturbance to the river and beneficial uses. We are attaching three papers that lay out our concerns over bank stabilization in more detail.

3
cont.

B. Suggested Improvements to Regional Water Board Oversight

When done properly, restoration of our natural resources is vital and important work. However, to ensure this Order is carried out in the way intended, there must be adequate funding for regional staff to sufficiently complete the tasks required of this Order. Regional Boards are frequently understaffed, underfunded, and consistently given a wider scope of work to complete. For restoration projects like this it is important that they are handled regionally where more site-specific knowledge is had, but designated funding must also come with it. Thus, we would like to emphasize the need for sufficient funding to fully support this program to ensure proper authorization of restoration projects is occurring and proper oversight is occurring.

4

C. Need for Public Oversight Opportunities

Due to the unique nature of the Russian River, there must be some form of public oversight over any proposed bank stabilization projects. We have witnessed to many projects be built, wiped out, and subsequently cause even more harm to the river and it cannot continue. As such, we ask that there be public notice provided for bank stabilization project that is applied for under this order and that there is an opportunity for public comment. The public must be given the opportunity to provide comment on projects, especially since there is a long history of insufficient oversight by agencies in regards to bank stabilization projects.

5

II. Conclusion

We appreciate the opportunity to provide comment and welcome any questions that you may have.

6

Sincerely,

Jaime Neary
Staff Attorney
Russian Riverkeeper

Don McEnhill
Executive Director
Russian Riverkeeper

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

RRK-1 Russian Riverkeeper

Responses to Comments from RRK-1 Russian Riverkeeper

RRK-1-1:

The State Water Board appreciates Russian Riverkeeper's (RRK) comments regarding the Draft Order and Draft PEIR as well as information on the RRK.

RRK-1-2:

The State Water Board appreciates RRK's information regarding individual watersheds throughout the State, including the Russian River being unique, and ongoing issues with bank stabilization along the Russian River.

In regards to concerns over the use of bioengineered bank stabilization techniques, all projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards (Order, Attachment A, A.5.1), including adopting protection measures (Order, Attachment A, A.5.2) and design guidelines (Order, Attachment A, A.6), and undergo pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

While bioengineered bank stabilization may be required to address specific issues and may be necessary for certain projects, the Order would not cover projects that merely protect property from bank erosion. Further, the Order includes project type-specific design guidelines that have been developed with assistance from multiple regulatory agencies (e.g., CDFW, NMFS, USFWS) to help project proponents design individual projects in a manner that is appropriate and sustainable, minimizes adverse effects on aquatic habitats, and maximizes the ecological benefits of the restoration. The design guidelines also state that restoration projects should be based on a process-based approach that considers the multiple interactions of physical, chemical, and biological processes over a wide variety of spatial and temporal scales in order to identify the root causes of the problems, and to confirm the proposed solution (project) will be effective and appropriate given the physical setting (see Kondolf et al., 2001; Simon et al., 2007; Smith and Prestegard, 2005; Wohl et al, 2005, Wohl et al., 2015).

All projects would be evaluated individually by the approving Water Board to assess if they meet all the eligibility requirements for authorization under the Order.

RRK-1-3:

State Water Board notes comments pertaining to the Russian River and bank stabilization projects. The North Coast Regional Board would be the approving Water Board for proposed projects along the Russian River. The North Coast Regional Board has typically authorized bio-engineered bank stabilization projects through an individual certification process and does not necessarily consider such projects (e.g., a bio-engineered bank stabilization project that impedes natural stream process) to qualify as restoration or be eligible for an expedited permit process for restoration projects.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The Order Section V. Project Description includes the definition of a restoration project as:

“...one that would result in long-term net increase in aquatic or riparian resource area functions and/or services through implementation of the eligible project types, relevant general protection measures (GPMs), and consideration of design guidelines, summarized below and described in detail in Attachment A, Order Description and Eligibility.”

The definition’s use of net increase in functions and services indicates a project (under the Order) must have a net environmental benefit and result in an overall enhanced and/or restored environmental condition. Furthermore, the approving Water Board determines if a proposed project meets the definition of a restoration project and is eligible for authorization under the Order. The approving Water Board also determines if a proposed project adopts and implements all appropriate GPMs and CEQA mitigation measures appropriate for authorization under the Order.

RRK-1-4:

The approving Water Board will be determined by project location, and either be the appropriate Regional Board if solely located within their jurisdiction or State Water Board if a project is proposed to cross regional boundaries. Projects to be authorized under the Order are currently authorized as part of staff workload through other permit methods. The Order is intended to facilitate the authorization process for restoration projects as defined by the Order.

RRK-1-5:

PEIR Section 1.1 Introduction and Overview of the Order describes the environmental review and approval process, including public engagement for the Order and PEIR. Further opportunities for public engagement include: (1) participation at the State Water Board Meeting to consider adoption of the Order; (2) availability of Order and PEIR documents on the [State Water Board 401 Program webpage](https://www.waterboards.ca.gov/water_issues/programs/cwa401/) at https://www.waterboards.ca.gov/water_issues/programs/cwa401/; and (3) submission of comments during the public notice period for individual NOIs pertaining to proposed projects considered for authorization under the Order (Order Section III Public Notice). Furthermore, development and adoption of the Order is also included in materials related to California Natural Resource Agency’s (CNRA’s) Cutting the Green Tape initiative.

RRK-1-6:

The State Water Board appreciates RRK’s comments regarding the Draft Order and Draft PEIR.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SCC-1 Coastal Conservancy

SCC-1



September 27, 2021

State Water Resources Control Board,
Jessica Nadolski, Jeanine Townsend
Comments sent via email to
Jessica.Nadolski@waterboards.ca.gov
commentletters@waterboards.ca.gov
via Office of Planning and Research (SCH Number 2019100230)

From: State Coastal Conservancy

Subject: Comments- Restoration Projects Statewide Order

To: State Water Resources Control Board,

Thank you for the opportunity to provide comments from the State Coastal Conservancy (SCC) on the newly proposed **General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide** per the 7/7/21 Draft Order. The SCC is a non-regulatory and project-driven state agency whose mission is to purchase, protect, restore, and enhance coastal resources. SCC has a long history of funding, planning, permitting, and implementing riparian, estuarine, watershed, and coastal restoration projects statewide. We have developed strong working relationships with many public agencies and nonprofits on habitat restoration efforts. The regional networks of partners in the Southern California Wetlands Recovery Project, the San Francisco Bay Restoration Authority, and other regional efforts are recognized as extensive and diverse collaborations of public and private agencies and landowners engaged in collaborative restoration projects. Our goal is to implement projects based on best habitat protection and design practices, to monitor outcomes, and to share results and lessons learned from the projects, so that successful nature-based techniques can be incorporated into future restoration project.

Living shorelines have been shown to be a successful method of a combined natural bank stabilization and habitat enhancement approach that can also be utilized as a climate adaptation strategy in low- to medium-energy coastal and estuarine environments. Living shorelines and other nature-based climate adaptation approaches have been successfully tried and tested by US Fish and Wildlife Service, NOAA, and other partners for more than two decades on the East Coast and the Gulf Coast, and since 2012 by the SCC and multiple local, state, federal, and non-profit partners at

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SCC-1

Page 2

multiple sites in California. The projects have resulted in increased wave attenuation benefits, sediment stabilization and shoreline protection, and habitat restoration and enhancement for fish, mammals, birds, and a wide variety of aquatic species.

There is strong and growing interest in testing nature-based aquatic restoration and climate adaptation approaches on the West Coast- but a shorter history of projects on the Outer Pacific Coast and associated estuaries, and a smaller number of projects that have been constructed and monitored. This results in a great need for experimentation and testing of pilot projects, in order to document success, and to document ecosystem services and functions resulting from various approaches. We greatly support this new programmatic permitting tool to make 401 permitting more standardized and efficient for aquatic restoration projects in CA, that also supports and recognizes experimentation.

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Specific Comments and Questions:

Please accept these specific comments re the Draft General Order.

General:

1. The State Coastal Conservancy is pleased at this effort to create a programmatic 401 certification for aquatic habitat restoration projects. Our agency is engaged in implementing a wide variety of aquatic habitat restoration projects of all sizes in riparian, estuarine, and coastal areas. We support this effort to make Section 401 permit requirements and conditions more standardized, and to create a programmatic mechanism to qualify for the permit versus every project having to apply individually.
2. What is the associated federal action with this new General Order and PEIR? We are aware of a programmatic Biological Opinion being prepared by the US Fish and Wildlife Service. Are there additional actions being considered by US Army Corps of Engineers (USACE) and NOAA's National Marine Fisheries Service (NMFS)? Will this connect to any particular USACE Nationwide permits such as NWP 27 or NWP 13? Are there new regional general permits being considered? Are there any related actions being considered by the US EPA?
3. Please consider making more explicit references to estuarine and coastal habitats, including intertidal, tidal, and subtidal habitat types and project types. This Draft General Order is focused on riparian general protection measures and design guidelines, which is understandable since there is a longer body of practice and more riparian focused engineering and biological design guidance. Please consider including additional examples of tidal and estuarine design guidance, site conditions, tidal range, and substrate types so that it is clear that this General Order would be applied to projects and conditions in brackish and saltwater estuarine and coastal environments.
4. We appreciate seeing the supportive language and inclusion of projects that include testing and experimentation with new methods and techniques - there are very few living shoreline projects in San Francisco Bay and on the West Coast, and pilot projects must be conducted in order to document ecosystems services and functions from various design scales, methods, and habitat approaches. Some of our comments below focus on encouraging inclusion of additional innovative project types - such as enhanced rock slope protection

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C a l i f o r n i a S t a t e C o a s t a l C o n s e r v a n c y

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
 PROGRAM ENVIRONMENTAL IMPACT REPORT
 APPENDIX H – RESPONSES TO COMMENTS

SCC-1

Page 3

and living seawall pilot projects- within the ‘Removal and modification of dams and other structures’, ‘Bioengineered Bank Stabilization’, and ‘Tidal, Subtidal, and Freshwater Wetland Establishment, Restoration, and Enhancement’.

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Attachment A:

Programmatic Sideboards Section:

5. Much of the material referenced in the Programmatic Sideboards section refers to Riparian restoration work and guidance. Please include these coastal and estuarine focused guidance documents in the list of reference documents and design guidance:

- San Francisco Bay Subtidal Habitat Goals Report
- Baylands Habitat Goals Science Update
- San Francisco Estuary Adaptation Atlas
- San Francisco Estuary Blueprint
- Native Oyster Restoration Guidelines
- San Francisco Bay Eelgrass Restoration Program
- San Francisco Bay New Life for Eroding Shorelines Report
- Wetlands on the Edge: the Future of Southern California’s Wetlands (Southern California Wetlands Recovery Project Regional Strategy Update 2018)
- California Climate Adaptation Strategy
- California 4th Climate Assessment/ Coastal Natural Infrastructure Design Guidance
- US Fish and Wildlife Service’s Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California
- Federal Highway Transportation Administration Nature-Based Design Guidelines
- USACE’s International Design Guidelines for Nature-Based Features for Flood Control
- Global Harbour Project (vertical living seawall approaches)
- Seattle Seawall (vertical living seawall design components)

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Project Types:

5. **Section A.4.2 Removal of small dams, tidegates, floodgates, and legacy structures:** Can removal of derelict/failing seawalls be included? Can enhancements to structures be included, such as tiles and ledges attached to seawalls to provide more surface texture that benefits habitat, or wrapping pilings with other materials?
6. **Section A.4.3 Bioengineered Bank Stabilization:** There is a focus on riparian banks, does this also include estuarine banks such as shoreline earthen and rock levees? Can biological enhancements to estuarine and coastal bank stabilization structures be included, such as crown plantings and other biological treatments made to traditional CALTRANS rock slope protection designs?
7. **Section A.4.7 Removal of pilings and other in-water structures:** Similar comments as above- in addition to removal of pilings, piers, and docks, can enhancement of pilings, piers, and docks be included, as well as vertical living seawall approaches?
8. **Section A.4.9 Establishment of tidal/subtidal/ and freshwater wetlands:** Please confirm and include language that this includes revegetation and enhancement work in the associated upland transition zones, and the associated intertidal and subtidal habitats that aren’t wetlands (ie Living Shorelines multi-habitat and multi-objective approaches to

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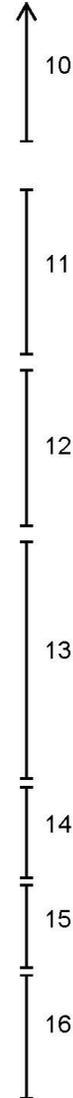
C a l i f o r n i a S t a t e C o a s t a l C o n s e r v a n c y

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
 PROGRAM ENVIRONMENTAL IMPACT REPORT
 APPENDIX H – RESPONSES TO COMMENTS

SCC-1

Page 4

protect wetlands, such as placement of oyster reefs, eelgrass plantings, etc.). Does this category include placement of features in offshore estuarine and coastal habitats, in addition to areas adjacent to shorelines and wetlands? Do habitat enhancements to seawalls and riprap in the intertidal and subtidal zones fit within this category? We encourage inclusion of pilot living seawall and green riprap projects in this programmatic permit, with consultation and more information for the regional boards upon request.



General Protection Measures:

9. **GPM #3 Construction Hours:** Construction in estuarine and coastal areas includes tidally driven work windows that don't always match with business hours 9am-5pm. Please consider language that allows for exception to this for tidally influenced projects, especially those in shallow nearshore areas that are hard to access, based on consultation and input from Regional Board staff. Most dredging projects in SF Bay are allowed a 24 hour window for this reason, and it is appropriate to give the same conditions to habitat restoration efforts.
10. **GPM #7 Fencing of environmentally sensitive areas:** Please include language that this is matched to the appropriate scale of project and habitat area and will not cause more harm than the proposed action. For example, a small transition zone native planting project that would occur in a short time frame should not require exclusion fencing which can impact habitat through trenching and can be avoided by strong biological monitoring and conservation measures to clear the area before planting and manage work practices to avoid impacts.
11. **GPM #8 Prevent Spread of invasive species:** We are extremely supportive of this language regarding equipment cleaning and other methods to prevent introduction or spread of invasive species. We recommend strengthening text to also include more reference to estuarine and coastal invasive species in addition to existing text on riparian (ie use example such as native oyster vs Pacific oyster focus, native Pacific cordgrass vs east coast forms). It would be helpful to provide some acknowledgement that in estuarine aquatic areas like SF Bay there are substantial non-native aquatic invertebrate, plant, and fish species that are now present in the bay and can't be controlled at the site level; but project design and success criteria can encourage monitoring and actions to take if treatments increase non-native species compared to baseline or control data at nearby sites.
12. **GPM #11 Revegetate disturbed areas:** Hydroseeding is often ineffective if not done with native species and the right attention to planting medium, watering, and maintenance. Please include best design guidance for hydroseeding in riparian, estuarine, and coastal areas; and also include potential for container plantings as needed
13. **IWW-1 Appropriate in water material placement:** Please also include clean shell (oyster half shell, other) as a material allowable for in water placement. Include reference to ensuring shell material is cured and inspected and free of pathogens or non-native species.
14. **IWW-3: In-Water Placement of Materials, Structures, and Operation of Equipment:** Please include more estuarine and coastal focus on language and examples- currently heavily focused on riparian information. Can construction of living seawall demonstration projects be included? Can encouragement of green-grey hybrid approaches to structure design be included (combination of lower intertidal shoreline berm plus oyster reefs offshore, etc.)?

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SCC-1

Page 5

15. **VHDR-6. General Herbicide Use.** Chemical control may at times have less environmental impact or result in less habitat disturbance than other methods, yet the order stipulates that “Chemical control of invasive plants and animals shall only be used when other methods are determined to be ineffective or infeasible.” Please add the text “or when chemical control will result in significantly less environmental impact than other methods.”

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Design Guidelines:

16. **Bioengineered Bank Stabilization:** (similar as previous comment on this project type)- Can biological enhancements to estuarine and coastal bank stabilization structures be included, such as crown plantings and other biological treatments made to traditional CALTRANS rock slope protection designs?
17. **Piling and Other In-Water Structure Removal:** One condition states to keep all equipment out of the water- this may be riparian focused comment- in an estuarine site, piling removal is most often conducted via barge and cranes in the water. Equipment is used to grasp piling at the mudline or benthos and extract full pile if possible or cut pile below mudline if necessary. We recommend cutting pile to 2-3’ below mudline, in order to ensure that there are no pile stubs remaining above the benthos that can cause safety, navigational, and environmental hazards.
18. **Tidal, Subtidal, and Freshwater Wetland Establishment, Restoration, and Enhancement:** Please improve language regarding estuarine and coastal areas and techniques. For areas such as San Francisco Bay that are highly altered due to historic fill, it is not always possible to base site plans and designs on historic conditions or locations. We are pleased to see support for experimental techniques and are glad to see that monitoring plans and reporting is required so that innovative techniques are tracked and assessed to make they are functioning as planned and providing data on outcomes. Please improve language regarding additions of native oyster spat to include justification of need, as many sites are substrate limited and not limited in available local oyster larvae; and include reference to strong oversight on source locations for oyster spat, and prevention of spread of any pathogens or disease.

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Thank you very much for your review of these comments. Please contact myself (mary.small@scc.ca.gov) or Marilyn Latta (marilyn.latta@scc.ca.gov) if you have any questions or want to discuss any of these comments.

21

Sincerely,

Mary Small

Mary Small
Acting Executive Officer
California State Coastal Conservancy

C a l i f o r n i a S t a t e C o a s t a l C o n s e r v a n c y

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SCC-1

Page 6

C a l i f o r n i a S t a t e C o a s t a l C o n s e r v a n c y

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SCC-1 Coastal Conservancy

Responses to Comments from SCC-1 State Coastal Conservancy

SCC-1-1:

The State Water Board appreciates State Coastal Conservancy’s (SCC) comments regarding the Draft Order and Draft PEIR as well as information on the SCC, living shorelines, nature based aquatic restoration, etc.

SCC-1-2:

The State Water Board appreciates SCC support regarding the Order.

SCC-1-3:

This Order is State Water Board-initiated to improve the efficiency of regulatory reviews for projects throughout the state that would restore aquatic or riparian resource functions and/or services. The Order provides Clean Water Act Section 401 Water Quality Certification for future projects that will require authorization from the USACE under CWA Section 404 and Rivers and Harbors Act of 1899 Section 10 and Section 14 (33 USC 401, known as “Section 408”). This Order also provides Waste Discharge Requirements (WDRs) pursuant to the Porter-Cologne Water Quality Control Act (California Water Code §1300 et seq.). This Order covers projects that may directly or indirectly discharge to “waters of the state,” including “waters of the U.S.”

Although the Order was not formally requested by a federal agency or required by a federal action, there was coordination with the USACE on the proposal to develop an Order. In addition, the definition of a restoration project was developed based on input from numerous agencies and to be consistent with multiple resource agency regulatory practices and policies either existing or under development (e.g., CDFW, NMFS, USFWS, USACE).

Project applicants should coordinate with USACE and other federal agencies to determine the appropriate permitting pathway for their proposed project. PEIR Section 2.5 provides a list of authorizations and/or permits that may be required for restoration projects.

SCC-1-4:

In response to the comment to include more references to estuarine and coastal habitats, the Order (and PEIR) description of eligible project type “Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands” was revised as follows (Order, Attachment A, Section 2.6.9):

“This project category may also include:

- ◆ Constructing transitional tidal marsh habitat (i.e., “horizontal levees,” setback berms, or ecotone slopes, including revegetation and enhancement work in the associated upland transition, intertidal, and subtidal habitat zones)
- ◆ Thin-layer sediment augmentation for tidal marshes and nearshore habitat adaptation to rising sea levels (e.g., USFWS Salt Marsh Sediment Augmentation Project – Seal Beach)

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

- ◆ Biological enhancements to pilings, piers, and docks (e.g., wrapping pilings, and attaching tiles and ledges to increase surface area for intertidal and subtidal species)
- ◆ Biological enhancements to estuarine and coastal shoreline stabilization structures and other nature-based solutions...

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

In response to a request to include removal or replacement of infrastructure within intertidal and subtidal areas to improve water quality and fish, see response to comment SCC-1-7 below.

Furthermore, the Order (and PEIR) references estuarine and coastal habitats, including intertidal and subtidal habitat types across multiple categories of project types. See also response to comment SCC-1-6, below, for additional estuarine and coastal habitat reference documents. For example, see project and design guideline descriptions for the following categories:

- ◆ Removal of Small Dams, Tide Gates, Flood Gates, and Legacy Structures—to improve fish and wildlife migration, tidal and freshwater circulation and flow, and water quality.
- ◆ Removal or Remediation of Pilings and Other In-Water Structures—to improve water quality and aquatic habitat for fish and wildlife.
- ◆ Removal of Nonnative Invasive Species and Revegetation with Native Plants—to improve watershed functions, such as aquatic and riparian habitat for fish and wildlife.
- ◆ Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands—to create or improve wetland ecological functions.

SCC-1-5:

The Order allows for new techniques, which would include innovations. See Order, Attachment A, 2.9:

“The project proponent may modify design approaches that do not conform with the specific guidelines, based on site-specific conditions or technological constraints or advances, or regionally accepted guidance documents.”

All projects must meet the definition of a restoration project (Order, Section V. Project Description) and the conditions (Order, Section XIII) in the Order. Projects not meeting the conditions of the Order can be authorized through other permitting methods. No revisions are included in the Order or PEIR because of this comment.

SCC-1-6:

The State Water Board appreciates the SCC listing various sources of information on working in coastal and estuarine areas.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The Order and PEIR include language that references California’s Climate Adaptation Strategy and the California State Coastal Conservancy’s Climate Change Policy (Order, Attachment A, Section 2.6.9):

“California’s Climate Adaptation Strategy recommends using ecotones and living shorelines as a potential adaptation method to reduce the need for engineered “hard” shoreline protection devices and to provide valuable, functional coastal habitat (CNRA 2018). The California State Coastal Conservancy’s Climate Change Policy also supports the use of living shorelines for their ability to improve the resiliency of estuarine habitat to future sea level rise and other related effects of climate change (SCC 2011).”

In response to this comment, the Order and (PEIR) description of eligible project type Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands (Order, Attachment A, Section 2.6.9) was revised as follows:

“Project activities that plan for climate change, including sea level rise, should be considered in tidally influenced locations. California’s Climate Adaptation Strategy recommends using ecotones and living shorelines as a potential adaptation method to reduce the need for engineered “hard” shoreline protection devices and to provide valuable, functional coastal habitat (CNRA 2018). The California State Coastal Conservancy’s Climate Change Policy also supports the use of living shorelines for their ability to improve the resiliency of estuarine habitat to future sea level rise and other related effects of climate change (SCC 2011). More information about the benefits of these projects for climate change resilience can be found in sources such as the: San Francisco Bay Subtidal Habitat Goals Report, Baylands Habitat Goals Science Update, USFWS Recovery Plan for Tidal Marsh Ecosystems of Northern and Central California, Wetlands on the Edge: the Future of Southern California’s Wetlands [Southern California Wetlands Recovery Project Regional Strategy Update 2018], San Francisco Estuary Adaptation Atlas, San Francisco Estuary Blueprint, San Francisco Estuary Institute & The Aquatic Science Center New Life for Eroding Shorelines Report).”

The Order (and PEIR) description of eligible project type Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands (Order, Attachment A, Section 2.6.9) was also revised as follows:

“Living shorelines can provide a natural alternative to “hard” shoreline stabilization methods like stone sills or bulkheads; they provide numerous ecological benefits, including water quality improvements, habitat for fish and invertebrates, and buffering of the shoreline from waves and storms.

Living shoreline projects use a suite of habitat restoration techniques to reinforce the shoreline, minimize coastal erosion, and maintain coastal processes while protecting, restoring, enhancing, and creating natural habitat for fish and aquatic plants and wildlife (e.g., wetlands, dunes, beaches, seaweed beds, rocky intertidal areas). The term “living shorelines” was coined because the approach provides living space for estuarine and coastal organisms. Strategic placement of native vegetation and natural materials or shells for native shellfish settlement enhances

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

habitat values by creating new living space. The techniques also increase the connectivity of wetlands and deeper intertidal and subtidal lands while providing a measure of shoreline protection.”

The eligible project type category of Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands (Order, Attachment A, Section 2.6.9) was also revised as follows:

“This project category may also include:

- ◆ Beach renourishment
- ◆ Constructing open water areas
- ◆ Constructing noncommercial, native oyster habitat (e.g., reefs) over an unvegetated bottom in tidal waters
- ◆ Conducting noncommercial, native shellfish seeding
- ◆ Establishing submerged aquatic vegetation (e.g., eelgrass beds) in areas where those plant communities previously existed (e.g., San Francisco Bay Eelgrass Restoration)”

And the Design Guidelines in the Order, Attachment A, A.6 (and PEIR) was revised as follows:

“Native species and disease – When possible, species native to the project area should be used. Any shellfish transported across state lines or grown through an aquaculture facility should be certified disease free (see also A Guide to Olympia Oyster Restoration and Conservation, June 2015 or the most recent update for example implementation approaches).”

The remaining reference documents in the comment letter have elements that are specific to infrastructure-focused projects that may not meet the definition of a restoration project (Order, Section V. Project Description), therefore those documents are not referenced in the Order.

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

In addition, the Order includes language that allows for programmatic sideboards to include future guidance documents, where appropriate (Order, Attachment A, Section A.5.1):

“Individual habitat restoration projects authorized through the Order should be designed, planned, and implemented in a manner consistent with the techniques and minimization measures presented in the following guidance documents, as appropriate to project type:

- ◆ *Stream Habitat Restoration Guidelines (Cramer 2011)*

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

- ♦ *Any relevant future updates, guidance, and/or agency requirements, where appropriate”*

Response to comment SCC-1-5 above shows where the Order allows for new techniques to be applied to project design.

SCC-1-7:

In response to this comment (and comment DU-1-4), Order Section A.4.7 was revised as follows:

“Removal or Remediation of Pilings and Other In-Water Structures

Untreated and chemically treated wood pilings, piers, vessels, boat docks, derelict seawalls (within embayments), and derelict fishing gear, and similar structures built using plastic, concrete, and other materials, may be removed and/or remediated to improve water quality and habitat for fish and wildlife. These projects are designed to remove contaminant sources and hazards from stream, river, and estuary habitats.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR. The future restoration projects in this category authorized under the Order will need to meet the definition of a restoration project.

SCC-1-8:

In response to this comment related to estuarine and coastal habitats, see response to comment SCC-1-4 above.

SCC-1-9:

All projects must meet the definition of a restoration project (Order, Section V. Project Description) and the conditions (Order, Section XIII.) in the Order. Projects not meeting the conditions of the Order can be authorized through other permitting methods.

In addition, response to comments related to enhancement of pilings, piers, and docks and vertical living seawall approaches, see response to comment SCC-1-4 above.

SCC-1-10:

The Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands projects category includes revegetation and enhancement work in the associated upland transition zones and the associated intertidal and subtidal habitats that are not wetlands (e.g., living shorelines). The category description also specifically identifies living shorelines, oyster beds/reefs, and planting bed (which would include eelgrass) restoration as projects that would be included under this category. See also response to comment SCC-1-4 above for clarifying revisions to the Order to address work in transition zones.

Projects in offshore estuarine and coastal habitats may be considered under this category, as long as they are within State Water Board jurisdiction associated with this Order and meet the definition of a restoration project (Order, Section V. Project Description) and the other conditions (Order, Section XIII.) in the Order. Projects not

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

meeting the conditions of the Order can be authorized through other permitting methods. No revisions are included in the Order or PEIR because of this comment.

Enhancements to seawalls and riprap in the intertidal and subtidal zones may be considered under this category or under the Bioengineered Bank Stabilization category of projects, depending on the specific details of the proposed project. See response to comment SCC-1-4 above for revisions to address this comment.

Development of new pilot living seawalls and/or new green riprap projects may not meet the definition of a restoration project (Order, Section V. Project Description) and therefore may not be authorized under the Order but may be considered in future amendments.

SCC-1-11:

In response to this comment, the Order (and PEIR) GPM-3 was revised as follows:

- ◆ **“GPM-3: Construction Hours.** Construction activities shall generally be limited to daylight hours, to the extent feasible. If nighttime construction is necessary, including in tidally influenced waters where tides may limit daylight access and work schedules, all project lighting (e.g., staging areas, equipment storage sites, roadway, and construction footprint) will be selectively placed and directed onto the roadway or construction site and away from aquatic habitats. Light glare shields will be used to reduce the extent of illumination into aquatic habitats. If the work area is near surface waters, the lighting will be shielded so that it does not shine directly into the water.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

SCC-1-12:

In response to this comment, the Order (and PEIR) GPM-7 was revised as follows:

- ◆ **“GPM-7: Environmentally Sensitive Areas:** Monitoring, flagging, or fencing will be used, where appropriate, to minimize disturbance to environmentally sensitive areas (e.g., waters and wetlands).”

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

SCC-1-13:

GPM-8: Prevent Spread of Invasive Species, applies to all environments where restoration projects could be authorized under the Order, including coastal and estuarine areas. No revisions are included in the Order or PEIR because of this comment. See also response to comment SCC-1-15 below.

SCC-1-14:

This comment refers to GPM-15 (not GPM-11). GPM-15 allows for multiple planting approaches and requires the development of a plan that would be tailored to specific

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

project site conditions. No revisions are included in the Order or PEIR because of this comment.

SCC-1-15:

In response to this comment, the Order (and PEIR) GPM IWW-1 was revised as follows:

- ◆ **“IWW-1: Appropriate In-Water Materials.** Selection and use of gravels, cobble, boulders, and instream woody materials in streams, and other materials (e.g., oyster shells, other substrates) for reef/bed restoration will be performed to avoid and/or minimize adverse impacts to aquatic resources, special-status aquatic species, and their habitats. On-site gravels will be screened and sorted; gravels imported from a commercial source will be clean-washed and of appropriate size. As necessary to protect aquatic species, placement will be overseen by an agency-approved Monitor; implementation timing will be determined based on the least amount of overlap, or impact on, all aquatic natural resources that may be affected and the timing of their use of the receiving area. Imported gravel from outside the project watershed shall not be from a source known to contain historic hydraulic gold mine tailings, dredger tailings, or mercury mine waste or tailings. Materials that may foul or degrade spawning gravels, such as sand or soil eroding from sandbag or earthen dams shall be managed to avoid release and exposure in salmonid streams. Oyster shells or other substrates for reef/bed restoration shall be cured and inspected to be free of pathogens and/or non-native species.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

SCC-1-16:

All projects must meet the definition of a restoration project (Order, Section V. Project Description) and the conditions (Order, Section XIII.) in the Order. Projects not meeting the conditions of the Order can be authorized through other permitting methods.

In response to this comment, the Order (and PEIR) GPM IWW-3 was revised as follows:

- ◆ **“IWW-3: In-Water Placement of Materials, Structures, and Operation of Equipment.** Material used for bank stabilization or in-water restoration shall minimize discharge sediment or other forms of waste to waters of the state. Where feasible, construction will occur from the top of the stream bank, or on a ground protection mat underlain with filter fabric, or a barge. All materials placed in streams, rivers or other waters shall be nontoxic. Any combination of wood, plastic, cured concrete, steel pilings, or other materials used for in-channel structures shall not contain coatings or treatments, or consist of substances toxic to aquatic organisms (e.g., zinc, arsenic, creosote, copper, other metals, pesticides, or petroleum-based products) that may leach into the surrounding environment in amounts harmful to aquatic organisms. Except for the following conditions, equipment must not be operated in

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

standing or flowing waters without site-specific approval from State or Regional Board staff:...”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR. See response to comment SCC-1-10 above on coastal restoration, living seawalls, and green-grey hybrid approaches.

SCC-1-17:

In response to this comment, the Order (and PEIR) GPM VHDR-6 was revised as follows:

- ◆ **“VHDR-6: General Herbicide Use.** Chemical control of invasive plants and animals shall only be used when consistent with water quality control plans (e.g., basin plans) and when other methods are determined to be ineffective or would create greater environmental impacts than chemical control. ~~or infeasible and all projects must be in compliance with Regional Board Basin Plan requirements.~~ ...”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

SCC-1-18:

All projects must meet the definition of a restoration project (Order, Section V. Project Description) and the conditions (Order, Section XIII.) in the Order. Projects not meeting the conditions of the Order can be authorized through other permitting methods.

SCC-1-19:

Description of projects for the Removal or Remediation of Pilings and Other In-Water Structures category includes use of boats and barges. Cutting piles below mudline is also described. No revisions are included in the Order or PEIR because of this comment.

SCC-1-20:

The Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands projects category design guidelines description includes discussions related to oyster bed restoration, including substrates, native oyster larvae, native oyster reestablishment, and prevention of the introduction of pathogens, disease, and non-native species. See also responses to comments SCC-1-4 and SCC-1-6, above.

SCC-1-21:

The State Water Board appreciates SCC’s comments regarding the Draft Order and Draft PEIR and notes the contact name and number for SCC.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SFBRWQCB-1 San Francisco Bay Regional Water Quality Control Board

SFBRWQCB-1



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy to follow

August 13, 2021

State Water Resources Control Board
Attn: Jeanine Townsend, Clerk to the Board
P.O. Box 100
Sacramento, CA 95814
Email: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide General Order

Dear Ms. Townsend:

I would like to thank the State Water Board for the opportunity to speak at the Board's August 4 workshop on the proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (Order) and supporting California Environmental Quality Act (CEQA) draft Program Environmental Impact Report. The proposed Order considers a variety of aquatic and riparian restoration types that take place throughout the State. The Order has the potential to both improve permit timeframes and achieve substantial protection of beneficial uses and ecosystem resilience. There is an opportunity to clarify Order language to make its expectations more transparent and to reduce future staff resources required to determine whether non-restoration projects may be covered under the Order. This letter summarizes the San Francisco Bay Regional Water Quality Control Board's (SF Bay Water Board's) comments on the proposed Order.

1

- **The SF Bay Water Board supports restoration projects, and the Order should support the Water Boards' technical review and interagency coordination roles so we can ensure we are protecting beneficial uses as we help restoration projects move forward.** The regional water boards play an important technical review and interagency coordination role. In addition, the San Francisco Bay Region has a substantial engaged stakeholder community that places significant value on the region's outstanding water resources, recognizes the extent to which they are at risk, and has developed tools to promote restoration and protect riparian areas and wetlands. These tools include the San Francisco Bay Habitat Goals Project's guidance, iconic projects like Napa's Living River, and, Measure AA which established the San Francisco Bay Restoration Authority (for which stakeholders voted to tax themselves for \$500 million over 20 years to support Bay wetland restoration and climate change adaptation. That's why we're working on the Bay Restoration Regulatory Integration Team (BRRIT), have supported development of tools including the Adaptation Atlas, and are participating in a raft of regional restoration and climate change adaptation efforts. We support permitting tools that facilitate efficient and substantive review of restoration projects, and to that end, a key role of the Order is to transparently set expectations regarding what is needed for a good project and to make that process as straightforward as possible.

2

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SFBRWQCB-1

Comments – Restoration Projects Statewide General Order

August 13, 2021

- **The SF Bay Water Board values the collaborative approach we have taken with restoration projects over the past decades and we want to use the Order to continue it.** Restoration project designs are technically complex and often balance impacts and benefits to different resources. Well-designed projects can realize substantial benefits, and poorly designed projects can cause significant adverse impacts. The Order's current approach of requiring projects to implement General Protection Measures (GPMs) and asking project proponents to consider technical guidance would not provide sufficient assurance that projects are well designed and maximize benefits while avoiding potential adverse impacts, because it avoids thoughtful Water Board review of whether the GPMs or design guidance have been sufficiently considered and appropriately applied. The SF Bay Water Board has found the technical discussions with project proponents around those issues to be useful and to result in better projects, and we want to use the Order to facilitate those conversations. Increasing the Order's transparency with respect to expected project analyses and submittals will help ensure that project proponents know what is expected. It will also help us thoughtfully and efficiently review project designs. We appreciate and want to retain the Order's current language allowing Regional Water Boards to require the information necessary to review projects (p. 5). In addition, basis of design reports, which are scalable in size and complexity relative to a project's size and complexity, are a tool that we use to work with project proponents. One way to increase transparency would be to include guidance for project proponents on submittal of basis of design reports as an attachment; and, in addition to the general language regarding information submittal, to include language explicitly noting regional water board authority to require submittal of basis of design reports.

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We look forward to further collaboration with State Water Board staff on edits to the Order. If you have any questions, please contact Keith Lichten of my staff by e-mail to Keith.Lichten@waterboards.ca.gov.

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Sincerely,

for Michael Montgomery
Executive Officer

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SFBRWQCB-1 San Francisco Bay Regional Water Quality Control Board

Responses to Comments from SFBRWQCB-1 San Francisco Bay Regional Water Quality Control Board

SFBRWQCB-1-1:

The State Water Board appreciates the San Francisco Bay Regional Water Quality Control Board's (SFBRWQCB) comments regarding the Draft Order and Draft PEIR.

SFBRWQCB-1-2:

The Order aligns with and would contribute to achieving the goals stated in the comment. The Order would complement existing interagency and stakeholder collaboration as well as Regional Board policies or procedures. For example, the BRRIT can still review the project and the Regional Board can request the applicant apply tools in use in the region, such as the Adaptation Atlas.

SFBRWQCB-1-3:

The Order requires applicants conduct pre-application consultation with the approving Water Board for the purpose of gaining technical guidance from Water Board staff and discussing authorization requirements such as the possible need for a basis of design report. See a detailed description of the pre-application consultation procedures in Order Section XIII.G.2.

All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5 and A.6), and undergo a pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3). The Order can only be used for projects meeting these conditions; the Order is only applicable for projects designed in an appropriate and sustainable manner that minimizes adverse effects on aquatic resources and maximizes the ecological benefits of the restoration, and are consistent with multiple permitting agency regulatory practices. The project proponent must demonstrate consistency with the above-mentioned measures/guidelines to qualify for authorization under the Order. Further, the approving Water Board has the authority to apply the Order after reviewing the proposed project NOI; the Order would not hinder Regional Board policies or procedures for application review.

SFBRWQCB-1-4:

The State Water Board appreciates SFBRWQCB's comments regarding the Order and notes the contact name and number for SFBRWQCB.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1 South Yuba River Citizens League

SYRCL-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



SOUTH YUBA RIVER CITIZENS LEAGUE _____

August 13, 2021

Jeanine Townsend
State Water Resources Control Board
1001 I Street,
Sacramento, CA 95814



Via Electronic Submittal

RE: Proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide and Supporting Draft Program Environmental Impact Report

Dear Ms. Jeanine Townsend,

The South Yuba River Citizens League (hereafter SYRCL) has reviewed the Restoration Projects Statewide Order and supplementary PEIR and appreciates the opportunity to comment. We would like to begin by commending the Board for developing a process to streamline permitting requirements for restoration projects. It is well established that environmental permitting is an obstacle to getting restoration projects on the ground – both financially and temporally. The proposed change in guidelines and the opportunity for public comment prior to any rule changes have the potential to result in meaningful change in removing obstacles to habitat restoration projects.

Since its founding in 1983, SYRCL has become one of California’s largest organizations focused on a single watershed, the Yuba. We are dedicated to landscape-level conservation and restoration, climate change resilience, and community engagement. SYRCL’s mission is to *unite the community to protect and restore the Yuba River watershed*. Indeed, our community is very involved in our work. We have 3,500 members and 1,000 active volunteers that work to improve stewardship in the watershed. Our members use the Yuba River for recreation, wildlife observation, aesthetic enjoyment, and spiritual renewal.

Since 1997, SYRCL has been actively involved in the planning of restoration projects both on the lower Yuba River, and throughout the watershed. SYRCL has been a regular participant in virtually all forums concerning ecosystem restoration in the Yuba River watershed, including the Yuba River Fisheries Technical Working Group, the Upper Yuba River Study Program, the Yuba Accord River Management Team, the Yuba Salmon Forum,



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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1

FERC relicensing processes, and two Integrated Regional Watershed Management groups overlapping the Yuba River watershed. In recent years, SYRCL's Lower Yuba restoration program has grown from a 5-acre project at Hammon Bar to over 200 acres of floodplain restoration and spawning habitat projects at Hallwood, Long Bar, Rose Bar, and multiple meadow restoration projects including at Van Norden, Haskell, and Loney Meadows.

These projects provide many benefits to the watershed, from increasing the amount and quality of juvenile salmon rearing habitat to helping mitigate the impacts of climate change by restoring the water storage capabilities of our high Sierra meadows. Our collaborative efforts in the Yuba watershed provide hydrologic and ecologic benefits throughout the Bay-Delta and provide crucial habitat for our threatened native salmonids. The regulatory and permitting process represents a significant cost and planning barrier to our projects. Agency inefficiencies associated with securing a 401 permit for the Lower Long Bar project (the only permit we were unable to secure in a timely manner) has forced us to delay the project by a year, resulting in increased project costs. The more efficient permitting process proposed in the Order will support SYRCL's efforts to restore aquatic habitats such as riparian zones, floodplains, and meadows along the Yuba River.

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I. General Comments

(a) SYRCL thanks the Board for developing the Order.

SYRCL would like to thank the Board and its staff for developing a programmatic process aimed at implementing restoration projects more quickly. We believe this Order will help achieve the pace of restoration that is critically needed to address drought, climate change, and land use changes across the state. It will help support statewide efforts, such as Governor Newsom's Executive Order N-82-20 calling for conservation of 30% of California's lands by 2030. Additionally, restoration afforded by this Order will help achieve climate goals such as Governor Newsom's directive to achieve carbon neutrality by 2035, as well as international climate goals.

According to the most recent IPCC report, urgent and extensive action is the only way to prevent global warming from exceeding the 1.5°C threshold. The IPCC lists water conservation and restoration of natural infrastructure such as wetlands, forests, and floodplains, as critical endeavors in creating climate resilience for communities and absorbing carbon dioxide from the atmosphere. As climate change fuels heatwaves, wildfires, and amplifies drought and inequity, SYRCL recognizes that the Order will facilitate quick action on vital environmental efforts.

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(b) SYRCL urges the Board to strengthen the definition of "restoration project" in the Draft Order.

The current definition of "restoration project" given in the Draft Order is, "one that would result in a net increase in aquatic or riparian resource area functions and/or services

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1

through implementation of the eligible project types, relevant general protection measures, and consideration of design guidelines... described in detail in Attachment A.” SYRCL feels that this definition, even with the GPMs and design guidelines, leaves too much room for interpretation. We urge the board to shore up the definition of “restoration project.” Specifically, we would like the definition to expressly state that the primary intent and main objective of the project must be restoration, otherwise it will not qualify and must go through an individual 401 certification. This explicit language will rule out bad actors and special interests who are looking to thwart the intent of the Order by including their project based on an incidental, unintentional, or unrelated increase in aquatic or riparian resources. Strengthening the definition of “restoration project” will ultimately help the Board protect its 401 authority.

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Additionally, the phrasing “*net increase* in aquatic or riparian resource area functions and/or services” (emphasis added) is vague. For example, what baseline is the net increase measured from? Who is responsible for taking and reporting these measurements? SYRCL respectfully requests that the Board revise this section to provide clarity on “net increase.” Additionally, any projects that are mandated mitigation resulting from environmental degradation should be held to a strict standard regarding “net benefits.” Their project should only qualify if they can demonstrate that their mitigation and restoration actions will surpass existing baseline conditions regardless of the cause of environmental degradation.

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II. Comments on the Draft Order

Application Fees (XII)

SYRCL understands that the application fee schedule is set forth in the California Code of Regulations, title 23, section 2200(a)(3). SYRCL also understands that project proponents must consult with the approving Water Board to determine the correct fee. However, this process should be made more transparent and streamlined with the General Order.

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(a) The Board should increase transparency around application fees and work to reduce fees associated with restoration.

It is currently unclear which fees our organization would incur when initiating a restoration project. For example, all of our restoration projects require some degree of excavation and/or fill, whether it’s filling channels for meadow restoration, or cutting floodplains for salmon. Ecological Restoration and Enhancement Projects have an application fee of \$551 and an annual fee of \$276 (*Flat Fee Category D*) OR no application or annual fee (*Flat Fee Category G(1)*). However, our projects frequently include the excavation of “...sediment or soil in shallow waters or under no-flow conditions... including channel reconstruction; embankment construction; [and] removing sediment to increase

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1

channel capacity...”¹ These projects could therefore be interpreted to fall under *Category A*, resulting in an application of \$2,066, a charge of \$18,414 per acre restored, and annual fees of \$1,736. The uncertainty in fee category results in an unknown cost which could amount to hundreds of thousands of dollars per project. The room for subjective interpretation of the definition of restoration as described in (b) above suggests that the fee schedule for projects may not be consistent based on the interpretation of the project by the SWRCB and the influence of outside organizations.

We encourage the Board to create a fee schedule with reduced fees for restoration projects, irrespective of how the restoration is set to occur, to (1) eliminate financial burden on small organizations and voluntary landowners that are conducting restoration, and (2) further the Board’s goal to streamline the permitting process and implement restoration projects.

(b) The Board should eliminate annual fees for monitoring restoration projects.

In the Draft Order, a Notice of Project Complete Letter will not be issued until all construction activities *including post-construction monitoring* (Draft Order XII.1.c.) (emphasis added). Monitoring efforts of restoration projects can occur for many years after project construction is completed and may start and stop pending availability of funding, volunteers, and academic interest. Requiring annual fees for the duration of project construction and all monitoring disincentivizes monitoring of restoration projects and therefore limits the ability to better understand the effects of restoration, and to improve upon them. Annual fees would complicate the extension of monitoring, especially if the extension is through additional grants, volunteers, or academic research. The goal of the Order is to streamline restoration permitting to make on-the-ground restoration easier and improve implementation timelines. An annual fee on restoration projects, especially for monitoring activities, is antithetical to the Restoration Order.

Notice of Project Complete (XIII.B.1.c)

According to paragraph 1c on page 7 of the Draft Order, “the project proponent shall submit a Request for Notice of Project Complete Letter within thirty days following completion of *all* project activities including post-construction monitoring of restoration sites” (emphasis added). Additionally, *Figure A-1 Restoration Projects Statewide Order Process Flow Chart* reflects the Notice of Project Complete is requested after both “post-construction monitoring reports,” and “Step 9: Monitor the Project and Document Findings.”



¹ WQC Fee Calculator: Step 1,(A). Accessed on 8/12/2021 at https://www.waterboards.ca.gov/resources/fees/water_quality/docs/dredgefillcalculator.xlsm

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1

(a) The Board should clarify what is meant by “post-construction monitoring” and clearly define expectations of post-construction monitoring (further than those described in Appendix D).

Due to the variable nature of monitoring and monitoring conditions, monitoring activities can be unpredictable. For example, some restorations projects are monitored every year in near-perpetuity, while others might be monitored every other year with volunteers, and others might even remain dormant for many years only to be monitored later as a graduate student’s project. We recommend the Board institute a clearly defined period of time, (1-2 years) to monitor the project to identify issues/potential for project failure. Additionally, we encourage the Board to define its expectations more clearly for post-construction monitoring.

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(b) The Board should issue Notices of Project Complete after the conclusion of construction activities.

Due to (1) variable conditions of monitoring, and (2) annual fees that would disincentivize monitoring, both mentioned above, we encourage the Board to issue Notices of Project Complete after the conclusion of construction activities.

Standard Conditions – Hydroelectric Facilities and FERC Projects (XIII.D.2)

We are heartened by SWRCB’s interest in barring FERC projects from using this Order. We encourage the Board to evaluate the language in this section and make it bulletproof. We are concerned that “restoration activities [that] may involve a FERC-licensed facility” is vague language that could be subject to malevolent interpretation. This passage could be construed to include projects that aren’t truly providing environmental benefits. For example, a dam operator could release spring flows and call them “restoration flows,” but that should not exempt them from going through the full 401 process.

8

Exclusions and Prohibited Activities (XIII.G.3)

(a) iii. Use of undersized riprap

The Order would benefit from a clear legal definition of riprap. The current description is too vague to understand how it would impact restoration project design. For example, is armoring a riffle to prevent headcutting as part of a project design considered the use of riprap? The current description provides for broad interpretation which could block important features of restoration projects statewide. The Board should provide clarification as it relates to size of the material relative to the nature of the project (e.g. diameter), shape (e.g. rock vs A-jacks), and material origin (e.g. material native to the project area vs imported material).

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(b) vii. Elimination of a riffle, pool, or riffle/pool complex that is not enhanced elsewhere in the project

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1

The Yuba watershed, like many Sierran watersheds, has been heavily impacted by historic mining activities. The lower Yuba River has an accumulation of mining sediments so vast that can be seen from space, like a scar on our watershed. The historic alteration of hydrology by dams and sedimentation by mining still negatively impacts the Yuba watershed. Often our restoration projects remove hydrologic features such as pools, *by design*. The intent of removing pools specifically is to eliminate refugia for non-native predators. Having to rebuild these pools elsewhere in a project would negate the restoration.

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Attachment A – Eligibility Requirements

We appreciate the consideration and thoroughness of the project descriptions. We especially appreciate the acknowledgement that river systems are dynamic, and that process-based restoration will lead to dynamic and changing habitat.

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III. Comments on the Draft PEIR

1.3.3 Determining the Next Steps Under CEQA

Scenario 2 demonstrates a clear example of streamlining of the process, whereby a project can tier from the PEIR such that the CEQA document for the individual restoration project only needs to include new effects not considered in the PEIR. This will help streamline restoration projects with complex and nuanced components, which SYRCL values and appreciates.

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2.6.6 Floodplain Restoration

SYRCL appreciates the language, “Floodplains should mimic natural flooding patterns and remain flooded/inundated long enough to activate food webs.” This demonstrates that the Board understands and prioritizes the function and ecosystem services granted by floodplains.

13

2.7 Typical Construction, Operation, and Maintenance Activities and Methods

The intent of many aquatic restoration projects, especially in lower order channels, is to restore processes rather than a specific physical blueprint. SYRCL kindly requests that the Board update this section to reflect more explicit language that long-term physical maintenance of habitat restoration blueprints/plans are not required where the project’s intent is restoration of natural processes.

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IV. Conclusion

Thank you for your consideration of SYRCL’s comments on the Proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1

Requirements for Restoration Projects Statewide and Supporting Draft Program
Environmental Impact Report. For more information, please contact Keiko Mertz, Policy
Manager, South Yuba River Citizens League, at keiko@yubariver.org.

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Sincerely,



Melinda Booth
Executive Director, South Yuba River Citizens League
313 Railroad Ave., Suite 101, Nevada City, CA 95959
530-265-5961 ext. 202, melinda@yubariver.org

Aaron Zettler-Mann
Watershed Science Director, South Yuba River Citizens League
313 Railroad Ave., Suite 101, Nevada City, CA 95959
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Keiko Mertz
Policy Manager, South Yuba River Citizens League
313 Railroad Ave., Suite 101, Nevada City, CA 95959
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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

In the matter of:

**Proposed General Order for Clean Water Act Section 401 Water Quality
Certification and Waste Discharge Requirements for Restoration
Projects Statewide and Supporting Draft Program Environmental Impact
Report**

Proof of Service

I hereby certify that I have this day served by electronic mail the foregoing comments by South Yuba River Citizens League on the Proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide and Supporting Draft Program Environmental Impact Report.

Executed at Nevada City, California this 13th day of August, 2021.



Keiko Mertz
313 Railroad Ave. Suite 101,
Nevada City, CA 95959
keiko@yubariver.org
530-265-5961 ext. 215

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1 South Yuba River Citizens League

Responses to Comments from SYRCL-1 South Yuba River Citizens League

SYRCL-1-1:

The State Water Board appreciates South Yuba River Citizens League’s (SYRCL) comments regarding the Draft Order and Draft PEIR as well as information on SYRCL.

SYRCL-1-2:

The State Water Board appreciates SYRCL’s support regarding the Order.

SYRCL-1-3:

The definition of a restoration project was developed based on input from numerous agencies to be consistent with multiple permitting agency regulatory practices either existing or under development (e.g., CDFW, NMFS, USFWS, USACE). All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5 and A.6), and undergo a pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3). The approving Water Board will determine whether a project meets the definition of a restoration project. Although the definition of restoration project includes mitigation projects, the Order shall not be construed as authorization or any compliance determination for any related underlying project or activity.

See also Master Response 1: Definition of Restoration Project and response to comments CBD-1-6, and CBD-1-7 for additional details. No revisions are included in the Order or PEIR because of this comment.

SYRCL-1-4:

In conjunction with technical assistance received from the approving Water Board during a required pre-application consultation meeting, project proponents would need to demonstrate a net increase in aquatic or riparian resource area, functions and/or services through implementation of the eligible project types, relevant protection measures, and design guidelines that would be compared against baseline conditions (conditions prior to restoration). The project proponent would further be responsible for monitoring and reporting consistent with Order requirements (Order Section XIII.G.4.). The approving Water Board will determine whether a project meets the definition of a restoration project. All projects, including mitigation projects, would be held to the same standard for purposes of authorization under the Order; however, the applicant may be required to conduct separate monitoring and reporting to demonstrate that the project is meeting its mitigation requirements. No revisions are included in the Order or PEIR because of this comment.

SYRCL-1-5:

As presented in Order Section XII. Application Fees, the approving Water Board will confirm the correct fee amount according to current fee regulations at the time of NOI submittal. “Authorization of a project under this Order is not determinative of whether a

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

project is a restoration project in the context of the fee schedule. Projects authorized under this Order may not automatically qualify for a particular fee discharge category.”

In the 2021-2022 fee schedule, a reduced fee is available for only restoration projects that meet the definition of an Ecological Restoration and Enhancement Projects (EREP) set forth in the Dredge or Fill Procedures. Not all projects authorized under the Order would meet the definition of an EREP. The fee structure, including how costs are structured for restoration projects, may change in the future. The fee schedule is adopted on an annual basis by the State Water Board. Interested stakeholders may find more additional information about the fee schedule on the [State Water Board's Fees website](https://www.waterboards.ca.gov/resources/fees/) at <https://www.waterboards.ca.gov/resources/fees/>.

SYRCL-1-6:

Order XIII.G.4. Monitoring Plan requires project proponents to develop a monitoring plan that identifies measurable performance standards and success criteria, methods to determine whether performance standards have been met, a timeframe and responsibility party for achieving the performance standards, and a reporting schedule. Further, Order XIII.I.3. Restoration and Monitoring Impacts prescribes extending the monitoring period if performance standards have not been met. Order Attachment D, Reporting and Notification Requirements apply to all projects authorized under the Order. As presented in Order Attachment D, the approving Water Board must issue a Notice of Project Complete Letter to affirm the project has completed applicable post-construction monitoring requirements, permit requirements, and achieved performance standards. The Notice of Project Complete Letter would not be issued until the project has achieved performance standards.

See response to comment SYRCL-1-5 above for a discussion pertaining to the fee schedule.

SYRCL-1-7:

As provided in response to comment SYRCL-1-6 above, the monitoring plans will be commensurate based on the complexity and circumstances of each project. The monitoring plans will be developed by the project proponent. The project completion criteria (i.e., completed applicable post-construction monitoring requirements, permit requirements, and achieved performance standards) will be established with approving Water Board input but developed by the project proponent. The approving Water Board will review/comment on the plans, but the Order cannot prescribe standard statewide monitoring requirements due to the variability of projects. The timing of issuance of the Notice of Project Complete Letter will be determined in close coordination with the project proponent and approving Water Board regarding agreement on the status of performance standards.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1-8:

The Draft Order is clear regarding restrictions and/or prohibitions for projects associated with FERC-licensed facilities. As described in the Order, Attachment A, Section A.4.:

“...Where restoration activities may involve a FERC-licensed facility, the restoration project may be covered by this Order only upon receipt of written approval by the Deputy Director for the Division of Water Rights or their designee...”

Further, Order Section XIII.D.2 states:

“Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought...”

No revisions are included in the Order or PEIR because of this comment.

SYRCL-1-9:

The description of categories of restoration projects and associated design guidelines provide adequate information of what constitutes materials that could be used and/or would be prohibited under the Order. Further, the Order provides flexibility in designs based on project site-specific conditions and design objectives, and all projects are required to undergo pre-application consultation with the approving Water Board, which allows for specific project needs to be discussed. No revisions are included in the Order or PEIR because of this comment.

SYRCL-1-10:

Comment regarding unique qualities (e.g., history of mining and presence of legacy tailings) of the Yuba River is noted. All projects must meet the definition of a restoration project (Order, Section V. Project Description) and the conditions (Order, Section XIII.) in the Order. Projects not meeting the conditions of the Order can be authorized through other permitting methods.

In order to address these unique features of the Yuba River, as well as other rivers throughout the state, the Order (and PEIR) text for prohibitions regarding the elimination of a riffle, pool, or riffle/pool complex that is not replaced/enhanced elsewhere by the project was revised as follows (Order Section XIII.G.3.vii):

“Elimination of a riffle, pool, or riffle/pool complex that is not replaced/enhanced elsewhere by the project. (Note: In some instances, a restoration project may affect or modify a riffle/pool complex depending on project-specific conditions and design objectives. For example, a culvert removal may affect an existing pool or restored geomorphology of a highly modified river may result in net reduction of certain features. These types of projects would be allowed under the Order.)”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

SYRCL-1-11:

The State Water Board appreciates SYRCL support regarding the Order and PEIR project description.

SYRCL-1-12:

The State Water Board appreciates SYRCL support regarding the Order and PEIR project description.

SYRCL-1-13:

The State Water Board appreciates SYRCL support regarding the Order and PEIR project description.

SYRCL-1-14:

Design guidelines specifically state that the design of restoration projects should be based on a process-based approach that considers the multiple interactions of physical, chemical, and biological processes over a wide variety of spatial and temporal scales in order to identify the root causes of the problems, and to confirm the proposed solution (project) will be effective and appropriate given the physical setting (see Kondolf et al., 2001; Simon et al., 2007; Smith and Prestegard, 2005; Wohl et al, 2005, Wohl et al., 2015).

Order XIII.B.3.d. Project Modifications states, “Minor or non-material changes may be addressed with an 'Order Deviation' as provided in Attachment F. The approving Water Board will review the notification and determine whether the deviation can be approved under this Order or is subject to additional permitting requirements.”

Therefore, if minor or non-material changes are required, an Order deviation(s) should be reported to the approving Water Board (per the instructions in Attachment F) for review and authorization prior to implementation at the project site.

No revisions are included in the Order or PEIR because of this comment.

SYRCL-1-15:

The State Water Board appreciates SYRCL’s comments on the Draft Order and Draft PEIR and notes the contact’s name and number for SYRCL.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TCD-1 Trinity County District 3 Supervisor

TCD-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000



Submitted Via e-mail to: commentletters@waterboards.ca.gov

Subject: **Comments – Restoration Projects Statewide Order**

Dear Ms. Townsend:

I submit these comments to you as a Trinity County District 3 Supervisor. I represent constituents who live along, recreate and make their living on the Trinity River.

I object to any loosening of regulatory requirements or water quality objectives and standards for the Trinity River Restoration Program (TRRP) or the Bureau of Reclamation. TRRP activities are adversely affecting beneficial uses of the Trinity River through increased turbidity as a result of mainstem projects such as side channels and gravel placement. The long-awaited benefits of a restored fishery to compensate for the significant environmental impacts identified in TRRP's CEQA documents has not materialized.

Most recently one of the TRRP member agencies placed gravel in the river at Lewiston without the permission of the Trinity Management Council, without the knowledge of Mr. Dixon, and without any public notice. Numerous complaints were made to me and through social media about elevated turbidity in the river. All of this is now with the backdrop of raging wildfires along the Trinity River and its watershed with imminent erosion and sedimentation expected this winter.

The TRRP is operating under a stale Programmatic EIR from 2009 that should be revised every five years, according to CEQA Guideline Section 15162. Clearly this requires a subsequent EIR to the Master EIR or a supplement to it. Many of the current project types such as engineered logjams are not even discussed in the 2009 MEIR.

Consider the following:

- The Water Right Order 90-5 temperature compliance point at Douglas City cannot be monitored because the temperature probe has been buried since April 15.
- Despite a requirement in 90-5 to not harm the Trinity River, the Bureau of Reclamation's Temperature Management Plan didn't even give predictions of temperatures in the Trinity River, let alone an ability to monitor Douglas City. The SWRB approved the plan without any discussion of protecting the Trinity River.
- The Bureau of Reclamation is considering additional drawdown of Trinity or Whiskeytown to make up for its overcommitment of water.

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TCD-1

- The Water Quality Control Plan for the North Coast Region still contains a 1991 "Interim Action Plan for the Trinity River" that pre-dates the Trinity Record of Decision by nine years. Where is the final action plan for the Trinity River 30 years later?
- Water Quality Order 89-18 and Water Right Order 90-5 both call for a Trinity River water right proceeding to consider amendment of Reclamation's state water permits to ensure no harm is done to the Trinity River from CVP operations. We are still waiting while hundreds of millions are spent on disruptive and unsuccessful restoration projects.
- The TRRP claims that fine sediment in the Trinity River is no longer a problem, yet the Trinity River is still listed as impaired under the SWRCB's Section 303(d) Impaired Waterbodies List. The intensity of the fires and subsequent erosion this winter should eliminate any debate on this issue.

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In conclusion, I'd be all in favor of providing regulatory ease for upslope restoration projects to button up our watershed, decrease erosion, and improve fish passage, but the TRRP has consistently underfunded those projects. The TRRP's mainstem projects and gravel placement activities should be put under a moratorium for further 401 certifications until a new or supplemental Master EIR is approved. Loosening their regulatory restrictions for turbidity is exactly the opposite of what's needed at this time.

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Sincerely,

Liam Gogan

Cc: Representative Jared Huffman
North Coast Regional Water Quality Control Board
Ernest Conant, Regional Director Bureau of Reclamation
Michael Dixon, TRRP

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TCD-1 Trinity County District 3 Supervisor

Responses to Comments from TCD-1 Trinity County District 3

TCD-1-1:

This Order does not authorize specific projects. All projects must meet the definition of a restoration project (Order, Section V. Project Description), be consistent with categories of restoration projects described in the Order (Order, Attachment A, A.4), and adhere to programmatic sideboards, including adopting protection measures and design guidelines (Order, Attachment A, A.5 and A.6), and undergo a pre-application consultation with the approving Water Board (Order, Attachment A, A.5.3).

TCD-1-2:

Thank you for your comment. The Order does not impact any previously authorized Orders, projects, or actions

TCD-1-3:

The State Water Board appreciates Mr. Liam Gogan's comments regarding the Order. The Trinity River Restoration Program (TRRP) is a large, ongoing restoration program in the region of the North Coast Regional Board. Projects related to TRRP are reviewed by the Regional Board under an existing programmatic 401 water quality certification for the Program. The Regional Board review includes consideration of stringent water quality objectives. The Order would not supersede the existing programmatic certification for the TRRP nor loosen regulatory restrictions pertaining to turbidity or any regional water quality objective.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRPA-1 Tahoe Regional Planning Agency

TRPA-1



August 20, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

RE: Comments – Restoration Projects Statewide Order

To the State Water Resources Control Board:

The Tahoe Regional Planning Agency (TRPA) is strongly supportive and deeply encouraged by the leadership that the Water Board has shown in developing this draft Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (General Order) and the associated Programmatic Environmental Impact Report (PEIR). TRPA is a participating organization in the California Landscape Stewardship Network (CLSN) -a statewide network that coordinates efforts to increase the pace and scale of landscape-scale stewardship. The CLSN facilitated a series of roundtables with state agencies and restoration practitioners across the state to identify ways to advance beneficial restoration. The 2020 report, *Cutting Green Tape, Regulatory Efficiencies for a Resilient Environment*, includes recommendations that came out of the roundtable. The draft General Order resonate clearly with the goals of Cutting the Green Tape and directly address Recommendation #6. The General Order and PEIR provide an important strategy for removing barriers and increasing ecological restoration in California.

TRPA supports the adoption of this General Order as soon as possible; we would like to suggest the following modification to ensure that it is consistent with the spirit of Cutting the Green Tape and is able to maximize critical efficiencies that will expedite implementation of urgently needed ecological restoration at-scale.

Please consider the following recommendations and comments as you finalize the General Order and associated PEIR:

- General Order Recommendation 1: Section 1.3 Restoration and Monitoring of Impacts (Page 18)

Restoration to either pre-project or future desired conditions often times takes longer than 365 days. We recommend extending this to two years to allow adequate time for vegetation to become established. Reconsider compensatory

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRPA-1

mitigation to offset temporal impacts. That adds time and money to restoration projects. Instead, we encourage the focus to be on successful restoration and adaptive management of restoration plans if performance standards are not being met.

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- General Order Recommendation 2: The existing General Order for small restoration projects covers projects up to 5 acres or 500 linear feet of streambank/coastline restoration. The proposed draft General Order appears not to have a size limit, but rather relies on a set of design criteria, general protection measures (GPM), and mitigation measures for projects that qualify under the General order. Please clarify that this is accurate, and that size is not a factor in projects being considered for the General Order. TRPA agrees with this update since size is not always equivalent to impacts.

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- General Order Recommendation 3: Section IX. Avoidance and Minimization (page 3)

Aquatic restoration requires working in ecologically sensitive ecosystems. We believe the General Order would benefit from a clear acknowledgement in this section that this Order specifically anticipates (a) that projects covered under it will take place in areas of high biological and ecological sensitivity and (b) that while construction related impacts to these resources will be avoided and minimized to the greatest extent practicable, they may be unavoidable in order to achieve the project goals and objectives. These statements may seem obvious, but from our experience as practitioners, it is critical to explicitly state this in the General Order to ensure that staff understand that construction related impacts are sometimes unavoidable when implementing critical restoration work.

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- General Order Recommendation 4. Section XII. Application Fees (page 4)

This section focuses on use of the dredge and fill calculator to determine fees for projects covered under the General Order. The dredge and fill calculator and fee schedule contain a suite of Flat Fees for unique project types include Category D: Ecological Restoration and Enhancement Projects. In order to both reduce confusion for the applicant and Regional Board staff regarding applicable fees as well as increase consistency with the spirit of Cutting Green Tape, we strongly

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRPA-1

recommend modifying this section to articulate that projects deemed to fit under the General Order should also fit within the flat fee Category D. Not only would this modification make it easier for restoration practitioners to anticipate the fees associated with the obtaining this permit, but it would be consistent with Cutting Green Tape in the state's desire to incentivize larger, more ecologically meaningful projects. Since the traditional dredge and fill calculator fees increase with the area or volume of dredge, the traditional approach results in financial penalties to larger projects, creating a financial disincentive to pursue larger projects. This section should also list entities that are not subject to application fees, as a lot of state agencies are not subject to fees.

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- General Order Recommendation 5. Section E.9 General Compliance, Construction General Permit (page 13).

Through the Cutting Green Tape Initiative, fellow participants in the CLSN have worked extensively with Water Board staff on review of the Construction General Permit. We applaud the Water Board's 402 staff on working collaboratively to craft language in the new Proposed Construction General Permit that explicitly reduces redundancy and confusion for Regional Board staff and project applicants regarding the applicability of CWA § 401 and/or § 402 to projects within waters of the state. In the proposed Construction General Permit, Section I. Findings, Item 12, Board staff developed language that we believe effectively addresses the issues of redundancy.

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“Stormwater discharges from dredge spoil placement that occur outside of waters of the state (upland sites) and that disturb one or more acres of land surface from construction activity are covered by this General Permit. This General Permit does not cover the discharge of dredged or fill material to waters of the state. Construction projects that include the discharge of dredged or fill material to waters of the state should contact the applicable Regional Water Board to obtain authorization for the discharge of dredged or fill material to waters of the state.”

We urge the Water Board to insert similar language in the General Order in *Section E.9 General Compliance, Construction General Permit and in Appendix A (page A-30) WQHM-2: Storm Water Pollution Prevention Plan and WQHM-3: Erosion Control Plan.* As currently written in this section of the General Order,

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRPA-1

the text states that, in any case “where disturbance is over 1 acre, the applicant shall prepare and implement a Stormwater Pollution Protection Plan (SWPPP)”. These sections would benefit from

1. The clarity provided in the proposed Construction General Permit that notes that the trigger for the CGP/SWPPP is 1 acre of disturbance “outside of waters of the state”.
2. Replacing “shall” with “should consult with the appropriate Water Board staff on whether to ...”.

As practitioners, we regularly experience this confusion and what appear to be inaccurate requirements placed on applicants through the 401 processes in regard to compliance with Construction General Permit. To this end, fellow participants in the CLSN have been working extensively with Water Board staff to obtain clarity on when a Construction General Permit is triggered and when it is not. Ensuring that language in this General Order is consistent with the language in the proposed draft Construction General Permit is critical for consistency between Water Board programs and consistency with the recommendation to reduce redundancy between §401 and §402 found in Appendix A of the November 2020 Cutting Green Tape Report. For aquatic restoration projects this nuance can have both significant cost implications and more importantly, significant implications for project success. SWPPP requirements have been developed and vetted for application in uplands, not waters of the state. Conversely, 401 conditions have been specifically designed for application in waters of the state and areas directly adjacent to waters of the state. As such, we strongly recommend utilizing the text from the draft Construction General Permit in the General Order to clarify the triggers for §401 and §402 compliance.

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- General Order Recommendation 6: Section 3. Exclusions and Prohibited Activities # ix (page 16)

The current language in subsection ix is as follows:

“With the exception of storage projects to reduce low flow stream diversions (see Section 1.4.5, Water Conservation in Attachment A) offchannel/side-channel habitat projects that require the installation of a flashboard dam, head gate, or other mechanical structures.”

7

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRPA-1

This exclusion is written in a manner that is extremely hard to understand. We recommended moving the text around and making the following changes to increase the clarity (note letters and words that have been added are in italics):

“Installation of a flashboard dams, head gates, or other mechanical structures, with the exception of storage projects to reduce low flow stream diversions (see Section 1.4.5, Water Conservation in Attachment A) *and* offchannel/side-channel habitat projects that require them in *order to meet ecological goals.*”

This recommendation should also be applied to Section A5.5 in Appendix A on page A-42, where the language is repeated.

- General Order Recommendation 7: Appendix A. Flow Chart for the Process (page A-2)

The flow chart and process description in Appendix A appear to show the Regional Boards committing to approval of projects under this General Order within 30 days of receipt of a complete Notice of Intent (NOI). This chart, in Step 5, seems to indicate that the Regional Boards initiating a 30-day review for completeness after they received an NOI. In Step 6, the Completeness Determination appears to directly trigger a Notice of Applicability (NOA) or Notice of Exclusion (NOE), but there is no timeline included. Without a timeline, the chart can be interpreted to be illustrating that the NOA/NOE decision happens at the time of the Completeness Determination. Is there a step missing in this flow chart or is this General Order committing to the NOA/NOE as part of the Completeness Review? If so, we strong applaud the Water Board for this streamlined approach to project approval permit decision to emphasize the importance of timely review of permit applications for these critical projects. If not, we recommend the Water Board modify this flow chart so that applicants and staff have a clear understanding of realistic timelines for approval. If the 30-day period is only for completeness and will not culminate in the NOA/NOE, we urge the Water Board to add very specific timelines for completing the NOA/NOE after the Completeness Review is done. We believe 60 days is reasonable to accomplish this and gives Water Board staff 90 days in total review time. Finally, this timeline would be consistent with both California Department of Fish and

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER PROGRAM ENVIRONMENTAL IMPACT REPORT APPENDIX H – RESPONSES TO COMMENTS

TRPA-1

Wildlife’s Lake and Streambed Alternation Agreement timelines and with the current ‘reasonable review period’ being identified by USACE for verification of a project under a Nationwide Permit (NWP). We recommend the Water Board include a 60-day period for a permit decision, which would allow for up to 4 months of coordination between a project proponent and Regional Board staff prior to making a permit decision (including pre-application permit and completeness review).

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- General Order Recommendation 8: Appendix A CEQA Flow Chart (Figure A-2, Page A-3)

This flow chart indicates it is up to the applicant to determine if the project is covered by the Statewide Order PEIR. At what point in the process should that be confirmed with the appropriate water board? The Pre-application meeting might be too late if water board feels like a separate CEQA document should be prepared. Also, can applications supplement the Statewide Order PEIR? For example, if there is only one impact that is not covered that is easily addressed through either GPMs or mitigation measures may that be addressed through an addendum, or would it trigger a whole separate CEQA?

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- General Order Recommendation 9: Appendix A GPM-4 Environmental Awareness Training (Page A-26)

Is it up to the agency-approved biologist or resource specialist to determine that the training is adequate or even necessary?

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- PEIR Recommendation 1: Mitigation Measure GEO-3: Conduct Individual Restoration Project Geotechnical Investigation and Report.

This mitigation measure requires “a geotechnical investigation be performed for any restoration project that would result in potentially significant grading activities.” It is unclear from the language in this measure what amount of grading would qualify as “significant”. Moreover, many enhancement and restoration projects in managed wetland and working landscapes require “significant” earth moving (e.g., over 1000 cubic yards) in the form of shallow

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRPA-1

swales, grading or levelling of fields, and constructing habitat features (e.g., islands, low elevation berms) in areas that have no potential for geotechnical risk. We recommend this mitigation measure be revised to only require a geotechnical investigation where the nature of the project warrants consideration of geotechnical constraints, such as work on flood control levees or in areas with certain soil types subject to impacts such as liquefaction. In those instances, a geotechnical report should only apply to areas where consideration of those constraints are needed to inform design.

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- PEIR Recommendation 2: Mitigation Measure GEO-6: Implement Measures for Waterway Construction Activities.

This mitigation measure states:

“For restoration projects that could cause subsurface seepage of nuisance water onto adjacent lands, the following measures shall be implemented:

- Perform seepage monitoring studies by measuring the level of shallow groundwater in the adjacent soils, to evaluate baseline conditions. Continue monitoring for seepage during and after project implementation.
 - Develop a seepage monitoring plan if subsurface seepage constitutes nuisance water on the adjacent land.
 - If adjacent land is not usable, implement seepage control measures, such as installing subsurface agricultural drainage systems to avoid raising water levels into crop root zones. Cutoff walls and pumping wells can also be used to mitigate the occurrence of subsurface nuisance water.”

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As written, the third bullet implies some obligation on the restoration project to correct existing seepage issues on an adjacent property unrelated to the project. We recommend this bullet be revised to state: **“If it is determined that seepage from the project is responsible for making adjacent lands not usable,.....”**

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRPA-1

Thank you for the opportunity to share our comments and for your agency's hard work and collaboration in preparing these documents. Also, thank you for your leadership and support of *Cutting Green Tape*. Please contact me if you would like to discuss any of TRPA's comments at sfriedman@trpa.org or at (775) 901-2800.

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Sincerely,



Shannon Friedman
Senior Planner
Environmental Improvement Division
Tahoe Regional Planning Agency

Shannon
Friedman

Digitally signed by Shannon
Friedman
DN: cn=Shannon Friedman, o=Tahoe
Regional Planning Agency, ou,
email=sfriedman@trpa.gov, c=US
Date: 2021.08.20 13:24:49 -07'00'

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRPA-1 Tahoe Regional Planning Agency

Responses to Comments from TRPA-1 Tahoe Regional Planning Agency

TRPA-1-1:

The State Water Board appreciates Tahoe Regional Planning Agency's (TRPA) comments supporting adoption of the Order.

TRPA-1-2:

Certain restoration projects, especially those relying on restoration of natural processes, may require longer than 365 days to complete actions resulting in impact(s). The Order (Section XIII.I.3) was revised as follows:

“If restoration of temporary and permanent impacts to waters of the state is not completed within three hundred sixty-five (365) days of the start of post-construction monitoring (or a schedule approved by the Water Board during review of the NOI and supplemental materials), the approving Water Board may require the following: compensatory mitigation to offset temporal loss of waters of the state; remedial actions (e.g., re-seeding); and/or extension of the monitoring period if performance standards have not been met or are not likely to be met.”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

TRPA-1-3:

The comment is correct in its characterization of size limits for the Order for Small Habitat Restoration Projects. As described in Order Section IV, Project Purpose, this Order intends to provide authorization for restoration projects that meet the eligibility criteria in this Order, but do not qualify for authorization under the Order for Small Habitat Restoration Projects.

TRPA-1-4:

The Order and PEIR acknowledge that restoration projects will take place in highly sensitive habitats and that potential impacts, including significant and unavoidable impacts, may occur, even with implementation of general and species protection measures, and PEIR mitigation measures (PEIR Sections 3.5 and 3.6). Per CEQA Guidelines Section 159093, the State Water Board developed a Statement of Overriding Considerations to balance, as applicable, the benefits of restoration projects authorized under the Order against its unavoidable environmental risks when determining whether to adopt the Order. No revisions are included in the Order or PEIR because of this comment.

TRPA-1-5:

As presented in Order Section XII. Application Fees, the approving Water Board will confirm the correct fee amount according to current fee regulations at the time of NOI submittal. “Authorization of a project under this Order is not determinative of whether a project is a restoration project in the context of the fee schedule. Projects authorized under this Order may not automatically qualify for a particular fee discharge category.”

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

In the 2021-2022 fee schedule, a reduced fee is available for only restoration projects that meet the definition of an Ecological Restoration and Enhancement Projects (EREP) set forth in the Dredge or Fill Procedures. Not all projects authorized under the Order would meet the definition of an EREP. The fee structure, including how costs are structured for restoration projects, may change in the future. The fee schedule is adopted on an annual basis by the State Water Board. Interested stakeholders may find more additional information about the fee schedule on the [State Water Board's Fees website](https://www.waterboards.ca.gov/resources/fees/) at <https://www.waterboards.ca.gov/resources/fees/>.

TRPA-1-6:

See Master Response 2: Construction General Permit and SWPPP Requirements.

The Order is not an NPDES permit. It does not provide authorization to discharge under Clean Water Act Section 402. The Order would not alter the scope of activities that may be required to obtain an NPDES permit or the requirements of any NPDES permits. As stated in Order Condition XIII.G.2. Pre-Application Consultation, the approving Water Board will review draft project materials and provide project-specific guidance during the pre-application consultation. During the pre-application consultation, the project proponent and the approving Water Board may discuss whether the project proponent must obtain or maintain coverage under any other permits, such as NPDES permits. Early coordination with the approving Water Board is encouraged to confirm compliance requirements.

TRPA-1-7:

As stated in Order Condition XIII.G.2. Pre-Application Consultation, the approving Water Board will review draft project materials and provide project-specific guidance during the pre-application consultation. During the pre-application consultation, the project proponent and the approving Water Board may discuss whether the proposed project is considered an excluded or prohibited activity (Order, Section XIII.G.3.) under the Order. If the proposed project is excluded or prohibited under the Order, the project may be authorized under an alternative permit method per the approving Water Board.

No revisions are included in the Order or PEIR because of this comment.

TRPA-1-8:

As described in the Order, the permitting Water Board will make a completeness determination within 30 days of receiving an NOI. The Order does not set forth a specific timeline for issuing an NOA/NOE. The intent of the Order is to streamline project reviews and approvals, but the amount of time needed to make a decision on an NOI will depend on project complexity.

No revisions are included in the Order or PEIR because of this comment.

TRPA-1-9:

PEIR Section 1.1, Introduction and Overview of the Order includes information on determining the next steps under CEQA for restoration projects authorized under the Order. This section defines the term “project proponent.” If the project proponent is not a public agency and the project proponent implementing the individual restoration project

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

is a private entity (e.g., applicant), that party would coordinate with the public agency with principal responsibility to approve the project, as described in State CEQA Guidelines Section 15050 and 15051. Once an individual restoration project is identified, the project proponent would follow the steps identified in Figure 1-2 Restoration Projects Statewide Order CEQA Process Flow Chart (PEIR, Section 1.1).

It is recommended that the project proponent contact the approving Water Board as soon possible for a pre-application consultation meeting which could be before or during the preparation of the CEQA document.

If an individual restoration project or associated later activity would have impacts that were not fully described or new impacts not examined in this PEIR, the CEQA lead agency would need to prepare an initial study to determine the appropriate environmental document required. Should a separate environmental document be needed—whether that document is a notice of exemption, an addendum or supplemental document to this PEIR, or a document that tiers from or incorporates by reference this PEIR (i.e., negative declaration, mitigated negative declaration, or EIR)—the PEIR could be used to simplify the task of preparing the later environmental document (State CEQA Guidelines Section 15168[d]).

No revisions are included in the Order or PEIR because of this comment.

TRPA-1-10:

Based on the nature of the project activities, the project proponent in coordination with the CEQA lead agency (and in consultation with the approving Water Board) will make a determination regarding whether any individual GPM is necessary to reduce impacts. If GPM-4 is included, training would be required. Training materials may be reviewed for adequacy by the same agency(ies) that approve the biologist or resource specialist.

TRPA-1-11:

In response to this comment (and comment DU-1-16), the PEIR Mitigation Measure GEO-3 (PEIR Section 3.9.4 Impacts and Mitigation Measures) was revised as follows to help clarify what might qualify as significant grading activities and when geotechnical investigation may be warranted:

“Mitigation Measure GEO-3: Conduct Individual Restoration Project Geotechnical Investigation and Report

When a restoration project involves ~~An individual restoration project’s geotechnical investigation shall be performed and a geotechnical report prepared for any restoration project that would result in potentially significant grading activities and warrants consideration of geotechnical factors and/or constraints (e.g., work on flood control levees, work in areas with certain soil types subject to liquefaction), the project proponent shall conduct and prepare a geotechnical report to address potential issues and concerns.~~ The geotechnical report shall include a quantitative analysis to determine whether excavation or fill placement would result in a potential for damage due to soil subsidence during and/or after construction. Project designs shall incorporate measures to reduce the potential damage to a less-than-significant level. ...”

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

TRPA-1-12:

In response to this comment, PEIR Mitigation Measure GEO-6 (PEIR, Section 3.9.4) was revised as follows.

~~“If adjacent land~~ “If it is determined that seepage from the restoration project is responsible for making adjacent lands not usable, implement seepage control measures, such as installing subsurface agricultural drainage systems to avoid raising water levels into crop root zones. Cutoff walls and pumping wells can also be used to mitigate the occurrence of subsurface nuisance water.”

This revision does not change the analyses or conclusions in the Draft Order or Draft PEIR.

TRPA-1-13:

The State Water Board appreciates TRPA’s comments supporting the adoption of the Order and notes the contact name and number for TRPA.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRRP-1 Trinity River Restoration Program

TRRP-1



Trinity River Restoration Program

P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093
Telephone: 530-623-1800, Fax: 530-623-5944

NC-152
2.1.4.13

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 11, 2021

Ms. Jeanine Townsend
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-2000



Dear Ms. Townsend:

I write this letter in support of the State Water Resource Control Board’s efforts to develop programmatic Clean Water Act permitting to streamline the regulatory requirements for large restoration projects. The U.S. Bureau of Reclamation’s Trinity River Restoration Program (TRRP) has worked with North Coast Regional Water Quality Control Board, as our California Environmental Quality Act (CEQA) lead, for years during implementation of large-scale restoration projects on the Trinity River. We applaud your intent as we know the cost and difficulties of permitting such large projects. This type of “large scale” regulatory support is essential to implementing these projects in a timely fashion, so that it becomes easier to legally do the right thing while putting restoration on the ground.

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Today, as wildfires raze our region, it seems promising that this proposed regulatory streamlining might assist in speeding work along the river while also dovetailing with upslope programmatic vegetation management in support of Cal Fire’s California Vegetation Treatment Program. Together these could encourage community protection while also providing trees that are necessary for in-river restoration projects. We need this type of forward-thinking regulatory support for beneficial projects that assist restoration from the ridgetop to the floodplain.

2

As I review the details of your proposal, I am hopeful that your efforts might reduce regulatory challenges which we have encountered and support additional restoration work in our region. As much as this programmatic EIR supports broad restoration objectives and categories, it also requires several site-specific details. For instance, it appears that the Project Details (e.g., size of rock stabilization or allowable turbidity levels) need to be approved on a project-specific basis. Because of that level of required detail, I question whether the proposed large-scale permitting of restoration could specifically streamline our Trinity River work when compared to projects already authorized under our existing Master EIR¹ for restoration activities (NCRWQCB and USBR 2009). That said, while the proposed regulatory effort might not directly benefit our work, it has the potential to expedite other projects that might synergistically benefit our own.

3

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRRP-1

2

Finally, I offer a couple specific comments related to special species protection. I notice that you have included a programmatic Biological Opinion to cover large-scale restoration projects for federal Endangered Species Act requirements that pertain to anadromous species. However, I don't see similar programmatic coverage included for federally listed terrestrial wildlife. How can we assure that the USFWS will work with programmatic applicants to streamline their permitting? Similarly, I would like to know how you propose to work with the California Department of Fish and Wildlife (CDFW) to ensure that your Programmatic EIR may be used by that agency to meet their needs to protect California listed species and so that they can efficiently provide Lake and Streambed Alteration Agreements for your permitted large-scale restoration projects.

4

Thank you for the opportunity to comment. We support your efforts to cut the green tape in the way of restoration. If the TRRP can assist with the effort in our region, we certainly would appreciate the opportunity, and I would encourage you to reach out to Brandt Gutermuth (fgutermuth@usbr.gov). More information about our program is located at www.trrp.net. For and I can be reached at Mdixon@usbr.gov or (530) 623-1800.

5

Sincerely,

Mike Dixon
TRRP Executive Director

¹ North Coast Regional Water Quality Control Board and U.S. Bureau of Reclamation. 2009. Channel rehabilitation and sediment management for remaining Phase 1 and Phase 2 sites. Master environmental impact report, environmental assessment/environmental impact report for the Trinity River Restoration Program (TRRP). Trinity River Restoration Program, Weaverville, California. Available: <https://www.trrp.net/library/document?id=366>.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

TRRP-1 Trinity River Restoration Program

Responses to Comments from Trinity River Restoration Program

TRRP-1-1:

The State Water Board appreciates Trinity River Restoration Program’s (TRRP) comments supporting adoption of the Order.

TRRP-1-2:

The State Water Board appreciates TRRP information on CalFire’s California Vegetation Treatment Program.

TRRP-1-3:

Because the unique and diverse characteristics of project sites and potential projects throughout the State, the Order requires applicants to provide project-level details as part of the application process in order to be eligible for authorization. If an individual restoration project or associated later activity would have impacts that were not fully described or new impacts not examined in this PEIR, the CEQA lead agency would need to prepare an initial study to determine the appropriate environmental document required. Should a separate environmental document be needed—whether that document is a notice of exemption, an addendum or supplemental document to this PEIR, or a document that tiers from or incorporates by reference this PEIR (i.e., negative declaration, mitigated negative declaration, or EIR)—the PEIR could be used to simplify the task of preparing the later environmental document (State CEQA Guidelines Section 15168[d]).

TRRP-1-4:

Efforts are ongoing to coordinate and align the Order and PEIR across multiple programs, including with the Cutting the Green Tape initiative identified by the California Natural Resources Agency. However, the Order pertains to Water Board authorizations only.

TRRP-1-5:

The State Water Board appreciates TRRP’s comments regarding the Draft Order and Draft PEIR and notes the contact name and number for TRRP.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

**UAIC-1 United Auburn Indian Community, Tribal Historic Preservation
Department**

UAIC-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Anna Starkey](#)
To: [commentletters](#)
Cc: [Anna Cheng](#)
Subject: UAIC Comments - Proposed General Order for Restoration Projects Statewide
Date: Thursday, July 15, 2021 10:00:17 AM
Attachments: [image001.png](#)



EXTERNAL:

Good afternoon,

On behalf of the United Auburn Indian Community, Tribal Historic Preservation Department, thank you for the opportunity to provide comments on the Proposed General Order for Restoration Projects Statewide. We received the chapter for Tribal and Cultural Resources and have the following comments:

1. We appreciate the use of the work “indigenous” in lieu of the term “prehistoric”. Thank you for that.
2. The Environmental Setting for the TCR chapter should NOT be a rehash of the same info from the Cultural Resources chapter. This is unacceptable. The Environmental Setting for the TCR chapter should be unique to the chapter and discuss the contemporary values of Tribal Nations and how they are stewards of their ancestors sites and landscapes. Please update this section to accurately reflect the background for TCRs.
3. The Mitigation Measures are written for archaeological resources and do not include tribal values. They need to be revised to be specific to TCRs and SEPARATE mitigation measures for both TCRs and Cultural resources. Below are what TCR mitigation measure SHOULD be in RED. Please revise each of the mitigation measures to be specific for each type of resource (Cultural and Tribal Cultural). Do NOT combine:

Mitigation Measure ~~CUL~~TCR-2: Conduct Inventory and Significance Evaluation of ~~Archaeological~~ Tribal Cultural Resources with Tribes that are culturally and geographically affiliated with the area.
See Section 3.7.4, Impacts and Mitigation Measures, in Section 3.7, Cultural Resources.

Mitigation Measure ~~CUL~~TCR-3: Implement Measures to Protect ~~Archaeological~~ Tribal Cultural Resources during Project Construction or Operation. These measures include, but are not limited to, those outlined in PRC Section 2.1084.3.

4. Mitigation Measure CUL-2 states that an archaeological sensitivity assessment deems if an archaeological study is or is not needed. What about TCRs? Who decides if additional studies are needed to identify TCRs? These measures are completely one sided



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

UAIC-1

and favors archaeological values. They all must be revised to incorporate tribal values and Tribal input in each of the measures, as separate TCR mitigation measures.

↑ 3
| cont.

5. UAIC reiterates that California Native American tribes traditionally and culturally affiliated with a geographic area may have expertise concerning their tribal cultural resources (PRC Section 21080.3.1). This means that archaeologists shall not identify, evaluate, or make recommendations for cultural items or sites that are considered TCRs unless it is in direct coordination with consulting Tribes.

6. UAIC identifies, but not limited to, the following as TCRs:

- Indigenous archaeological sites
- Sacred Lands
- Traditional Cultural Properties
- Midden soils/disturbed midden soils
- Burials, cremations, and all related burial or ceremonial items
- Burial soils
- Isolated artifacts
- Cultural landscapes
- Significant native plants/gathering areas

4

UAIC requests to review our recommended revisions prior to rereleasing the document. If our recommendations are not incorporated, we ask to be provided the reasons of why they were not included.

5

Thank you for your time and consideration.

Anna Starkey

The United Auburn Indian Community is now accepting electronic consultation request, project notifications, and requests for information! Please fill out and submit through our website. Do not mail hard copy letters or documents. <https://auburnrancheria.com/programs-services/tribal-preservation> Bookmark this link!



Anna M. Starkey, M.A., RPA
Cultural Regulatory Specialist
Tribal Historic Preservation Department | UAIC
10720 Indian Hill Road
Auburn, CA 95603
Direct line: (916) 251-1565 | Cell: (530) 863-6503
astarkey@auburnrancheria.com | www.auburnrancheria.com

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

UAIC-1

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

***UAIC-1 United Auburn Indian Community, Tribal Historic Preservation
Department***

Responses to Comments from UAIC-1 United Auburn Indian Community

UAIC-1-1:

The State Water Board appreciates United Auburn Indian Community's (UAIC) comments regarding the Draft Order and Draft PEIR.

UAIC-1-2:

In response to this comment, the PEIR Tribal Cultural Resources Environmental Setting (PEIR, Section 3.18.2) was revised to add the following text:

“Contemporary Values of California Native Americans

Today, California Native Americans find membership amongst many federally recognized tribes, as well as California Native American Tribes. Tribes continue to maintain a thriving culture, a deep connection to traditional homelands, and reverence for ancestral sites and heritage.

The following discussion regarding Tribal values and cultural continuity has been adapted from Rosenthal et al. (2021):

“Tribal sense of place is “inseparably intertwined” with their historic and contemporary sense of themselves. Places provide the backdrop to religious understanding, traditional stories, knowledge of resources such as varying landscapes, bodies of water, animals and plants, and self-identity. Knowledge of place is central to the continuation and persistence of culture, even if former [Native American] occupants now live removed from the core of their traditional homelands through no fault of their own. [Tribes] view...interconnected sites and places...as living entities within a Native American landscape; their associations and feeling persist and connect with Tribal members today.” (Rosenthal et al., 2021:21).

“Each Tribe has a differing view of [landscapes] with consideration to varying cultural components and values, and a different history within the same [l]andscape. Knowledge is held within each Tribal environment, integral to the thoughts and worldview of each Tribal member. Tribal political, economic, and physical relationships to the landscape are integral to traditional values and beliefs. In this respect, indigenous places continue to exist within, throughout, and outside of modern infrastructure. To the European way of framing worldviews, these concepts may seem abstract, but to many Tribal members, they are only commonsense, and involve innate abilities and traditions.” (Rosenthal et al., 2021:27).

“Tribes maintain a thriving culture and continue to have a deep connection to their traditional homelands and reverence for their ancestral sites and heritage that each of these places evokes.” (Rosenthal et al., 2021:40)”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

UAIC-1-3:

In response to this comment, the Tribal Cultural Resources Impacts and Mitigation Measures section (PEIR, Section 3.18.4), was revised as follows:

“As part of the State Water Board or Regional Board’s issuance of a NOA for a restoration project under the Order, compliance with Mitigation Measure ~~CUL-2~~ TCR-1, CUL-3, and TCR-2 and CUL-4 would be required when applicable to a given project. Implementation of this mitigation measure would be the responsibility of the project proponent(s) under the jurisdiction of the State Water Board, appropriate Regional Board, or other authorizing regulatory agency.

~~Mitigation Measure CUL-2: Conduct Inventory and Significance Evaluation of Archaeological Resources~~

~~See Section 3.7.4, Impacts and Mitigation Measures, in Section 3.7, Cultural Resources.~~

Mitigation Measure TCR-1: Conduct Inventory and Significance Evaluation of Tribal Cultural Resources with Tribes that are Culturally and Geographically Affiliated with the Project Vicinity

Before implementation of any project permitted under the Order, the following shall be conducted: consultation with California Native American Tribes pursuant to PRC Section 21080.3; a tribal cultural resources records search; a California Native American Heritage Commission (NAHC) Sacred Lands File (SLF) search; and an inventory and significance evaluation of tribal cultural resources identified that could be impacted by the project. These tasks shall be conducted as follows.

- ◆ Project proponent shall submit an NAHC SLF & Native American Contacts List Request at the initial stages of project development (or as early as practicable) to determine if a project would have an impact on tribal cultural resources.
- ◆ Project proponent shall coordinate with the approving Water Board or other CEQA lead agency, if applicable, as soon as possible to identify California Native American Tribes that are traditionally and culturally affiliated to a project area. The CEQA lead agency shall then conduct Tribal consultation, pursuant to PRC Section 21080.3, and as soon as practicable during early design, with such Tribes to determine whether any tribal cultural resources could be affected by the project. Consultation will include discussion regarding project design, cultural resources surveys, identification of tribal cultural resources, protocols for construction monitoring, and any other Tribal concerns. Construction of the project will not commence until the approving Water Board or other CEQA lead agency achieves compliance with the California Environmental Protection Agency Tribal Consultation Protocol (April 2018) and consultation pursuant to PRC Section 21080.3 has been concluded. If potential tribal cultural resources that may be impacted by the project are identified through consultation with California Native American

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Tribes that are traditionally and culturally affiliated to a project area, the following shall be conducted:

- Documentation of any tribal cultural resources identified in the project area, which may require additional tasks such as ethnographic research and interviews.
- ◆ If tribal cultural resources are identified in a project area, develop, before project implementation and in coordination California Native American Tribes that are traditionally and culturally affiliated to a project area, an approach for reducing such impacts. If any such tribal cultural resources are on or in the tide and submerged lands of California, this process shall also include coordination with the California State Lands Commission.

Mitigation Measure CUL-3: Implement Measures to Protect Archaeological Resources during Project Construction or Operation

See Section 3.7.4, Impacts and Mitigation Measures, in Section 3.7, *Cultural Resources*.

Mitigation Measure TCR-2: Implement Measures to Protect Tribal Cultural Resources during Project Construction or Operation. These measures include, but are not limited to, those outlined in PRC Section 21084.3.

If tribal cultural resources or indigenous archaeological resources that may qualify as tribal cultural resources are encountered during project construction or operation of any project permitted under the Order, all activity within 100 feet of the find shall cease and the find shall be flagged for avoidance. The lead agency, a qualified archaeologist, defined as one meeting the U.S. Secretary of the Interior's Professional Qualifications Standards for Archeology, and California Native American Tribes that are traditionally and culturally affiliated to a project area shall be immediately informed of the discovery. The qualified archaeologist and representatives from the notified Native American Tribes shall inspect the discovery and notify the lead agency of their initial assessment.

If the lead agency determines, based on recommendations from the qualified archaeologist and California Native American Tribes that are traditionally and culturally affiliated to a project area, that the resource may qualify as a tribal cultural resource (per PRC Section 21074), then the resource shall be avoided if feasible. If avoidance of the resource is not feasible, the lead agency shall consult California Native American Tribes that are traditionally and culturally affiliated to a project area to determine treatment measures to minimize or mitigate any potential impacts on the resource pursuant to PRC Section 21083.2 and State CEQA Guidelines Section 15126.4. If any such resources are on or in the tide and submerged lands of California, this process shall also include coordination with the California State Lands Commission. Once treatment measures have been determined, the lead agency shall prepare and implement a

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

tribal cultural resources management plan that outlines the treatment measures for the resource. Treatment measures typically consist of the following steps:

- ◆ Determine whether the resource qualifies as a tribal cultural resource (per PRC Section 21074) through analysis that could include additional ethnographic research, archaeological investigations, or laboratory analysis.
- ◆ If it qualifies as a tribal cultural resource (per PRC Section 21074) implement measures for avoiding or reducing impacts such as the following:
 - Avoid and preserve the resource in place through measures that include but are not limited to the following:
 - Plan and construct the project to avoid the resource and protect the cultural and natural context.
 - Plan greenspace, parks, or other open space to incorporate the resources with culturally appropriate protection and management criteria.
 - Treat the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, through measures that include but are not limited to the following:
 - Protect the cultural character and integrity of the resource.
 - Protect the traditional use of the resource.
 - Protect the confidentiality of the resource.
 - Implement permanent conservation easements or other interests in real property, with cultural appropriate management criteria for the purposes of preserving or using the resource or place.

Mitigation Measure CUL-4: Implement Measures to Protect Human Remains during Project Construction or Operation

See Section 3.7.4, Impacts and Mitigation Measures, in Section 3.7, Cultural Resources.

Mitigation Measures CUL-2 TCR-1, CUL-3 TCR-2, and CUL-4 would be implemented to reduce the impacts of restoration projects permitted under the Order. However, because the extent and location of such actions are not known at this time, it is not possible to conclude that the mitigation measures, or equally effective mitigation measures, would reduce significant impacts to a less-than-significant level in all cases. Therefore, this impact would be **significant and unavoidable.**”

These revisions do not change the analyses or conclusions in the Draft Order or Draft PEIR.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

UAIC-1-4:

The State Water Board acknowledges UAIC’s statement about tribal expertise and identified tribal cultural resource types. Project-specific tribal cultural resources will be determined during consultation with Tribes. Per Order XIII.E.7:

“Project proponents shall submit a Sacred Lands File & Native American Contacts List Request to the Native American Heritage Commission (NAHC) at the initial stages of project development (or as early as practicable) to determine if a project would have an impact on Native American cultural resources. The project proponent shall coordinate with the approving Water Board or other CEQA lead agency, if applicable, as soon as possible whenever tribes that are traditionally and culturally affiliated to a project area are identified. Any tribe identified by the NAHC, or on the CEQA lead agency’s Assembly Bill 52 (AB 52) consultation list, will require notification of the proposed project by the lead agency as soon as practicable during early design, pursuant to AB 52 and the California Governor’s Executive Order G-10-22, or not more than 14 days after submittal of the NOI to the approving Water Board.

Tribes will be consulted if a request is received from a tribe after initial notification. Consultation will include discussion regarding project design, cultural resource survey, Tribal Cultural Resources as defined by AB 52, protocols for construction monitoring, and any other tribal concern. The CEQA Notice of Determination (NOD) for the project will not be signed until tribal consultation has either concluded or been terminated as defined by AB 52. Construction of the project will not commence until the approving Water Board achieves compliance with the State Water Resources Control Board Tribal Consultation Policy (June 2019).”

No revisions are included in the Order or PEIR because of this comment.

UAIC-1-5:

The Tribal Cultural Resources section of Proposed Final PEIR was sent to UAIC by the State Water Board prior to release to the general public.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

VALW-1 Santa Clara Valley Water District (Valley Water)

VALW-1



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon
Clean Water • Healthy Environment • Flood Protection

August 13, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide General Order

Dear Ms. Townsend,

The Santa Clara Valley Water District (Valley Water) appreciates the opportunity to comment on the *Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide* (General Order) and associated *Programmatic Environmental Impact Report* (PEIR). Valley Water is a public agency that manages an integrated water resources system that includes the supply of safe, clean water; flood protection; and environmental stewardship on behalf of Santa Clara County’s 2 million residents. Our primary comment is we urge the State Water Resources Control Board to certify the PEIR and adopt the proposed General Order as quickly as possible, and, if feasible, prior to the Spring of 2022, to expedite restoration and multi-benefit projects that can assist with the drought and other major challenges facing water supply agencies.

1

Valley Water strongly supports the draft General Order. Also, as a member agency, Valley Water supports the comments of the Association of California Water Agencies (ACWA) on the General Order and PEIR. More specifically, Valley Water concurs that the General Order will be more effective to expedite and facilitate restoration projects if ACWA’s suggested clarifications are made to address:

- Sufficiency of increases in ecological functions and services to satisfy compensatory mitigation obligations;
- Access to the General Order for authorization of restoration projects that provide environmental benefits, but do not eliminate historical facilities needed to protect public health and safety;
- Limitations on long-term management responsibility and liability; and
- Clarification that the General Order does not impose new National Pollutant Discharge Elimination System requirements.

2

The General Order, particularly with the incorporation of ACWA’s comments, will effectively incentivize implementation of the many restoration projects planned by Valley Water and other California water agencies engaged in environmental stewardship. Valley Water also appreciates that the General Order furthers the “cutting the green tape” initiative, and, consistent with the Water Resilience Portfolio, also streamlines permitting for multi-benefit projects that include non-restoration elements, as well as mitigation projects for otherwise legally permitted and authorized activities.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

VALW-1

Page 2
August 13, 2021

Valley Water has implemented many restoration and multi-benefit projects. In our experience, the process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. This can result in a lost opportunity to move forward with critical restoration projects. Having this General Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change. These projects benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

3

We offer one additional suggestion that we believe would further expedite restoration projects if addressed in the General Order. We suggest that it would be beneficial to list the range of instruments that have already been approved for use by state and federal regulatory agencies to financially assure performance of environmental restoration projects under the template California Mitigation Bank Enabling Instrument (e.g., an irrevocable standby letter of credit, a check, a cashier's check, a performance bond, or an endowment fund in an amount determined appropriate using Property Analysis Record or a similar methodology). This would help clarify one of the current recurring issues that often results in significant restoration project delays, particularly for public agencies such as Valley Water, and would provide consistent guidance to the Regional Water Quality Control Boards.

The General Order and associated PEIR, particularly with clarifications submitted by ACWA, would provide an environmentally thorough, protective, and robust permitting process that will help applicants efficiently meet state requirements, while significantly streamlining and expediting implementation of restoration projects. We urge the State Water Resources Control Board to prioritize certification of the PEIR, and adoption and active use of the General Order by staff and the Regional Water Quality Control Boards. Projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought increases the urgency of providing an efficient mechanism for permitting restoration and multi-benefit projects. We also ask the Board to maintain a clear, implementable, and efficient General Order that retains expediting and streamlined permitting for these projects as public comment is considered.

With the above recommended revisions, Valley Water would benefit from the General Order and PEIR by saving time and resources, enabling restoration projects to be implemented faster and at a lower cost. Increased efficiency in environmental review and permitting would help Valley Water undertake additional restoration work. Valley Water's Almaden Lake Improvement Project is an example of a project that could benefit from implementation of the General Order. This project would restore the channel and floodplain of Alamos Creek through Almaden Lake, which is a historical gravel mining pit. In addition to restoring a continuous natural creek and riparian corridor, the project would improve passage conditions for steelhead and remove a significant source of mercury pollution in the sediments of Almaden Lake, which can be transported to the Guadalupe River. These regionally important benefits will, however, require the conversion of existing, degraded and mercury-impacted lake habitat to higher quality riverine, riparian, and buffer habitats. This habitat type conversion, while environmentally beneficial, creates the need for more streamlined permitting mechanisms.

4

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

VALW-1

Page 3
August 13, 2021

In closing, Valley Water strongly supports the General Order and PEIR because it will help to accelerate implementation of greatly needed habitat restoration projects that so many times are delayed due to the complexity of the permitting process. We look forward to the adoption of the General Order and the streamlined approach it would allow for the improvement of the environment for all.

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Sincerely,



Melanie Richardson, P.E.
Assistant Chief Executive Officer

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

VALW-1 Santa Clara Valley Water District (Valley Water)

Responses to Comments from VALW-1 Santa Clara Water District

VALW-1-1:

The State Water Board appreciates Santa Clara Valley Water District's (VALW) comments regarding the Draft Order and Draft PEIR as well as information on the VALW.

VALW-1-2:

The State Water Board appreciates VALW's comments supporting adoption of the Order. The items listed in this comment would be considered during individual proposed project review by the approving Water Board. See also responses to comments ACWA-1-2 through ACWA-1-5 addressing relevant changes to the Order and PEIR associated with comments from the Association of California Water Agencies (ACWA).

VALW-1-3:

The State Water Board appreciates VALW's suggestion to help further expedite restoration project implementation. The Order is only for qualifying restoration projects that require Waste Discharge Requirements and Clean Water Act section 401 Water Quality Certification. Since the California Mitigation Banking Enabling Instrument template is routinely updated, and approved methods of financial assurance for mitigation bank performance may change and are a separate compliance issue from Waste Discharge Requirements and Water Quality Certification, specifying methods of financial assurance for mitigation bank performance would be outside the scope of the Order. Further, the referenced financial commitments are compensatory mitigation terms, and it would not be relevant to include compensatory mitigation financial assurance requirements with this statewide Order.

VALW-1-4:

The State Water Board appreciates VALW's comments regarding the Draft Order and Draft PEIR.

VALW-1-5:

The State Water Board appreciates VALW's comments regarding the Draft Order and Draft PEIR.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

VIEJAS-1 Viejas Band of Kumeyaay Indians

VIEJAS-1



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Ray Teran](#)
To: [commentletters](#)
Cc: [Ernest Pingleton](#)
Subject: FW: Notice of Opportunity for Public Comment and Board Workshop Pertaining to the Proposed General Order for Restoration Projects Statewide
Date: Thursday, July 1, 2021 1:00:48 PM

EXTERNAL:

In reviewing the above referenced project the Viejas Band of Kumeyaay Indians ("Viejas") would like to comment at this time.

The project area may contain many sacred sites to the Kumeyaay people. We request that these sacred sites be avoided with adequate buffer zones.

Additionally, Viejas is requesting, as appropriate, the following:

- All NEPA/CEQA/NAGPRA laws be followed
- Immediately contact Viejas on any changes or inadvertent discoveries.

Please call Ernest Pingleton at 619-655-0410 or email, epingleton@viejas-nsn.gov, for additional information. Thank you.

From: Ernest Pingleton
Sent: Thursday, July 1, 2021 12:51 PM
To: Ray Teran <rteran@viejas-nsn.gov>
Subject: Fwd: Notice of Opportunity for Public Comment and Board Workshop Pertaining to the Proposed General Order for Restoration Projects Statewide

Sent from my iPhone

Begin forwarded message:

From: "Nadolski, Jessica@Waterboards" <Jessica.Nadolski@waterboards.ca.gov>
Date: July 1, 2021 at 12:08:26 PM PDT
To: Ernest Pingleton <epingleton@viejas-nsn.gov>
Subject: Notice of Opportunity for Public Comment and Board Workshop Pertaining to the Proposed General Order for Restoration Projects Statewide

Dear Ernest Pingleton:

The State Water Resources Control Board (State Water Board) provided notification of consultation opportunity regarding the proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (proposed General Order) with California Native American Tribes via letter on July 19, 2019. State Water Board staff conducted consultation between October 2019 and January 2020. During consultation, State Water Board received a request to notify the Viejas Band of

1

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

VIEJAS-1

Kumeyaay Indians when draft documents pertaining to the proposed General Order became available for review.

The State Water Board is now accepting comments on the proposed General Order and the supporting draft Program Environmental Impact Report. The proposed General Order establishes a streamlined permit process for specific types of environmentally beneficial restoration activities statewide.

The documents and details on how to submit comments are available on the following webpage:
https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalordersunderdev

Comments must be received by the Board Clerk (commentletters@waterboards.ca.gov) no later than 12:00 noon on August 13, 2021. The Board will also accept comments at a public workshop on Tuesday, August 3, 2021, 9:00 a.m. The workshop is scheduled to take place virtually via video and teleconference only, but the format may be changed in future to allow for in-person attendance. The agenda with instructions for meeting access is available at the State Water Board Calendar page:
https://www.waterboards.ca.gov/board_info/calendar/.

If you have any questions regarding this email, please do not hesitate to contact me at (916) 341-5290 or jessica.nadolski@waterboards.ca.gov. I will also be sending this information to you via certified mail.

Very Respectfully,

Jessica A. Nadolski

Senior Environmental Scientist
Wetlands Permitting and Enforcement Unit, Supervisor
Division of Water Quality
State Water Resources Control Board
(916) 341-5290
Jessica.Nadolski@waterboards.ca.gov

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

VIEJAS-1 Viejas Band of Kumeyaay Indians

Responses to Comments from VIEJAS-1 Viejas Band of Kumeyaay Indians

VIEJAS-1-1:

The State Water Board appreciates Viejas Band of Kumeyaay Indians' (VIEJAS) comments regarding the Draft Order and Draft PEIR. Per Order XIII.E.7:

“Project proponents shall submit a Sacred Lands File & Native American Contacts List Request to the Native American Heritage Commission (NAHC) at the initial stages of project development (or as early as practicable) to determine if a project would have an impact on Native American cultural resources. The project proponent shall coordinate with the approving Water Board or other CEQA lead agency, if applicable, as soon as possible whenever tribes that are traditionally and culturally affiliated to a project area are identified. Any tribe identified by the NAHC, or on the CEQA lead agency’s Assembly Bill 52 (AB 52) consultation list, will require notification of the proposed project by the lead agency as soon as practicable during early design, pursuant to AB 52 and the California Governor’s Executive Order G-10-22, or not more than 14 days after submittal of the NOI to the approving Water Board.

Tribes will be consulted if a request is received from a tribe after initial notification. Consultation will include discussion regarding project design, cultural resource survey, Tribal Cultural Resources as defined by AB 52, protocols for construction monitoring, and any other tribal concern. The CEQA Notice of Determination (NOD) for the project will not be signed until tribal consultation has either concluded or been terminated as defined by AB 52. Construction of the project will not commence until the approving Water Board achieves compliance with the State Water Resources Control Board Tribal Consultation Policy (June 2019).”

In addition, PEIR Section 2.5 provides a list of authorizations or permits that may be required for restoration projects authorized under the Order.

The State Water Board notes the contact name and number for VIEJAS.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

WWD-1 Westlands Water District

WWD-1

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



Via ELECTRONIC MAIL to commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



RE: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The consensus of the scientific community appears to be that restoration of habitat is a critical tool for reviving primary production and the health of ecosystems. Such habitat projects have particular importance for those ecosystems that have been highly altered. The results of a study published this month “show that a 77% loss of wetland habitats (primarily marshes) has reduced ecosystem [net primary production] by 94%, C (energy) flow to herbivores by 89%, and detritus production by 94%.”¹

Westlands Water District (“District”) recently completed one of the largest tidal habitat restoration projects in the State, the Lower Yolo Restoration Project. Based on its experience designing, permitting, and obtaining approval for that historic project, the District submits these comments in support of the State Water Resources Control Board’s (“State Water Board”) adoption of the proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (proposed General Order). The District appreciates the State Water Board’s consideration of the proposed General Order and offers the following three comments.

1. It is essential to reduce undue delay in the permitting process. The General Order for 401 Certification and Waste Discharge Requirements (WDRs) will establish a consistent permitting process, which should improve coordination among the multiple agencies involved in permitting restoration projects and reduce the risk of undue delay. Many restoration projects occur in areas that have limited work windows because of seasonal hydrologic changes. Even minor delays in approvals can push project completion from one calendar year to the next, which prevents or postpones projects from providing much needed ecosystem restoration of biological functions and creates other ancillary impacts such as increased costs or loss of grant funding.

¹ Cloern et al., On the Human Appropriation of Wetland Primary Production, Science of the Total Environment 785 (2021)

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

WWD-1

2. Several sections of the proposed General Order, such as Section A, Section B.3.c.i, 3.B.3.d, C.3, E.2, contemplate State Water Board consideration of requests for approval. To ensure the General Order achieves the intended permit streamlining, and the related benefits of consistency and certainty, the District recommends that statements be added that reflect a time period by which the State Water Board would be expected to act on each request.

3

3. Section D.1 contemplates that the State Water Board may suspend, cancel, modify, or reissue an order after providing notice to the project proponent. The District recommends: (1) including a notice and opportunity to cure prior to taking any of the actions described above (the District suggests 60 days), and (2) limiting the authority to suspend, cancel, or modify an order to the period prior to construction.

4

The proposed General Order represents a positive step forward. The District appreciates the efforts by the State Water Board and its staff and welcomes any questions regarding these comments.

5



Jose L. Gutierrez, P.E.
Chief Operating Officer

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

WWD-1 Westlands Water District

Responses to Comments from WWD-1 Westlands Water District

WWD-1-1:

The State Water Board appreciates Westlands Water District's (WWD) comments regarding the Draft Order and Draft PEIR as well as information on the benefits of restoration projects and information on WWD's Lower Yolo Restoration Project.

WWD-1-2:

As noted, the Order should improve coordination and reduce the risk of undue delay. The intent of the Order is to streamline project reviews and approvals.

WWD-1-3:

The intent of the Order is to streamline project reviews and approvals. Because this Order covers a wide range of restoration projects with varying levels of complexity, a specific time frame in which to take action on an NOI has not been included. Note that the Permit Streamlining Act may apply as well as the reasonable period of time to act under the Clean Water Act.

WWD-1-4:

Order Section XIII.D.1 refers to modification or revocation of the entire Order from judicial or administration review. This condition is a standard condition required in all water quality certification actions pursuant to California Code of Regulations, title 23, section 3860. In addition, California Code of Regulations, title 23, section 3861 allows revision or revocation to a general certification. Any change shall not apply to activities subject to a federal license or permit issued before such a change is made. This section states that notice will be provided to project proponents if any changes occur.

WWD-1-5:

The State Water Board appreciates WWD's comments regarding the Draft Order and Draft PEIR.

3 Support Only Letters

State Water Board appreciates comments supporting the adoption of the Draft Order and certification of the Draft PEIR. Letters received including only support of the Draft Order and Draft PEIR are listed in Table H-2 and presented below.

Table H-2

Support Only Comments on the Draft Order and Draft PEIR

Agency or Affiliation	Commenter
Big Sur Land Trust	Rachel Saunders
Butte County Federal/State Land Use Coordinating Committee	Paula Daneluk
California Association of Resource Conservation Districts	Karen Buhr

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Table H-2
Support Only Comments on the Draft Order and Draft PEIR

Agency or Affiliation	Commenter
California Invasive Plant Council	Doug Johnson
California Watershed Network	Michael Wellborn
Conservation and Natural Resources Group, LLC	Leslie Friedman Johnson
Department of Water Resources	Teresa Connor
East Bay Municipal Utility District	Jose Setka
Environmental Defense Fund	Ann Hayden
Floodplain Forward Coalition (on behalf of): Northern California Water Association, American Rivers, Audubon California, California Rice Commission, California Trout, California Waterfowl, Conaway Preservation Group, Ducks Unlimited, Ecosystem Investment Partners, Environmental Defense Fund, Glenn-Colusa Irrigation District, Lundberg Family Farms, The Nature Conservancy, Point Blue Conservation Science, Reclamation District 108, Reclamation District 1500, River Garden Farms, River Partners, Sacramento River Settlement Contractors, Sutter Mutual Water Company, Yuba Water Agency	David Guy, Amy Merrill, Meghan Hertel, Tim Johnson, Jacob Katz, Jeff Volberg, Kyriakos Tsakopoulos, Jeff McCreary, Adam Davis, Ann Hayden, Thad Bettner, Mike Denny, Rodd Kelsey, Catherine Hickey, Lewis Bair, Brad Mattson, Roger Cornwell, Julie Rentner, Roger Cornwell, Brad Mattson, Willie Whittlesey
General Public	Angela Nomellini
General Public	Arthur Miller
General Public	Conor Ofsthun
General Public	Emmy Cattani
General Public	Frank Boren
General Public	Jeff Loomans
General Public	Lauren Dachs
General Public	Sally Liu
General Public	Teri Biancardi
General Public	Tim Vendlinski
General Public	Tina Quinn
Gordon and Betty Moore Foundation	Dan Winterson
Grassroots Ecology	Junko Bryant

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Table H-2
Support Only Comments on the Draft Order and Draft PEIR

Agency or Affiliation	Commenter
Humboldt Redwood Company, Humboldt Sawmill Company, Mendocino Redwood Company, Mendocino Forest Products, Allweather Wood	John Andersen
Marin Agricultural Land Trust	Thane Kreiner
Mattole Salmon Group	Nathan Queener
Mid Klamath Watershed Council	Luna Latimer
Morro Bay National Estuary Program	Lexie Bell
Natural Heritage Institute	Gerald Meral
Northern California Water Association	Todd Manley
Port of San Diego	Eileen Maher
Resource Conservation District of Monterey County	Paul Robins
Resource Conservation District of the Santa Monica Mountains	Rosi Dagit
Resources Legacy Fund	Michael Mantell
Sacramento-San Joaquin Delta Conservancy	Campbell Ingram
San Francisco Public Utilities Commission	Tim Ramirez
San Jose Water	Andrew Gere
Sanctuary Forest	Tasha McKee
Santa Clara Open Space Authority	Andrea Mackenzie
Santa Clara Valley Habitat Agency	Edmund Sullivan
Scott River Watershed Council	Betsy Stapleton
Sequoia Riverlands Trust	Adam Livingston
Sonoma Ecology Center	Richard Dale
Sonoma Resource Conservation District	Jessica Pollitz, Katie Robbins, Aaron Fairbrook, Kevin Cullinen, Kari Wester, Erica Mikesh
Symbiotic Restoration	Garrett Costello
The Land Conservancy of San Luis Obispo County	Kaila Dettman
The Watershed Research & Training Center	Joshua Smith
Water Foundation	Andrew Fahlund
Wine Institute	Noelle Cremers

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Via email

August 12, 2021

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000



SUBJECT: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Thank you for the opportunity to offer comments on the proposed Order and PEIR for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide. We commend the Board for its efforts to expedite the regulatory approval process for large habitat restoration projects and are supportive of the proposed Order and PEIR.

Big Sur Land Trust (BSLT) is a non-profit organization with a mission to inspire love of land across generations, conservation of our unique Monterey County landscapes, and access to outdoor experiences for all. Since 1978, our generous donors and partners have conserved over 40,000 acres throughout Monterey County. BSLT, like many other non-profit organizations statewide, plans and implements multi-benefit habitat restoration projects on our lands such as the types described in the proposed Order: *Improvements to Stream Crossings and Fish Passage, Floodplain Restoration, Removal of Nonnative Terrestrial and Aquatic Invasive Species and Revegetation with Native Plants, Establishment, Restoration, and Enhancement of Tidal, Subtidal, and Freshwater Wetlands and Establishment, Restoration, and Enhancement of Stream and Riparian Habitat and Upslope Watershed Sites*. The process of obtaining authorization for these projects is time consuming and expensive. Any effort to streamline the permitting process is much appreciated and will allow us to complete habitat restoration more quickly and efficiently.

Thank you again for the opportunity to comment on this Order. We are in strong support of these efforts.

Sincerely,

Rachel T. Saunders

Rachel T. Saunders
Director of Conservation

P. O. Box 4071, Monterey, CA 93942 t: 831-625-5525 f: 831-658-0716 www.bigsurlandtrust.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



BUTTE COUNTY FEDERAL/STATE LAND USE
COORDINATING COMMITTEE

7 COUNTY CENTER DRIVE
OROVILLE, CA 95965



August 2, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The Butte County Federal/State Land Use Coordinating Committee (the Committee) received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

The Committee is charged with facilitating public interaction and comment on the management and enjoyment of public lands and advising the Board of Supervisors on current public lands management issues. The Committee functions under the Brown Act for public meetings.

The Committee strongly supports the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Butte County partners with other agencies, such as the Butte County Resource Conservation District and the Lassen and Plumas National Forests, to assist in obtaining grant funding for essential watershed restoration projects that benefit not only our local communities and riparian habitats, but also water users throughout the State. The recent wildfires experienced in and around the county (2018 Camp Fire, 2020 North Complex Fire, 2021 Dixie Fire) have heavily impacted our watersheds. Extensive work will be needed to restore these hard hit areas. A programmatic approach will meaningfully impact our ability to achieve restoration goals.

Some of the benefits recognized by the Committee upon approval of this Order and PEIR include:

- Saving time and resources, enabling projects to be implemented sooner
- More “bang for the buck” from funding dollars means more money available for on-the-ground work
- Utilization of clear guidelines for implementation of projects to streamline planning and design

Once again, we appreciate the thoughtfulness that has gone into the proposed order and PEIR, and support its implementation. We appreciate the opportunity to comment.

Sincerely,



Paula Daneluk, Director, Butte County Development Services
Butte County Federal/State Land Use Coordinating Committee

CC: Butte County Board of Supervisors
Butte County Forest Advisory Committee
Butte County Resource Conservation District
Sacramento River Watershed Program

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER PROGRAM ENVIRONMENTAL IMPACT REPORT APPENDIX H – RESPONSES TO COMMENTS



July 30, 2021

To Whom it May Concern,

We are writing today in support of a quick approval of the State Water Resources Control Board Statewide Restoration General Order (Order) and Programmatic Environmental Impact Report (PEIR). As you know, the 96 Resource Conservation Districts in California are committed to environmental quality, restoration, and species preservation while maintaining a focus on communities and agricultural productivity. At any given moment, we are actively completing hundreds of restoration projects on private and public lands in partnership with farmers, ranchers, communities and state and federal agencies. With climate change and the growing need for development, we see an urgent need to protect species and habitat now. Removing barriers to our work while maintaining the utmost commitment to ecological health would help us address this urgency by ramping up the pace of restoration. For this reason, we strongly support the Order and PEIR being adopted quickly.

Working with private landowners and managers to implement restoration is incredibly challenging. It takes time to develop the relationships with landowners, create solid plans, make sure the project won't interfere with the viability of the farm, secure funding (often multiple sources), get permits from multiple agencies and then implement within the given windows of time that are available for work in and around streambeds. At times, making all of these items line up to get a project completed is nearly impossible and can take 10 years.

One of the biggest obstacles to private land conservation is permitting. The cost of getting permits, time delays of working with multiple permitting agencies, adjusting the plans to meet each agency's specifications (sometimes based on conflicting guidance), and grant funding windows causes many farmers and ranchers to back out of projects or projects to be delayed or never implemented. RCDs are small, mostly unfunded agencies that accomplish amazing restoration work on a shoestring budget. Because RCDs don't have ample base funding to pay for the permitting process they have to secure planning grants to pay for permitting fees. Planning grants are incredibly hard to come by.

These challenges get in the way of farmers and ranchers who volunteer their land for conservation simply to do the right thing. These are precisely the projects we should be promoting and making easier. Instead, we are creating high hurdles to conservation and barriers to getting great work done.

While the order and PEIR would not solve all of these problems, it would help ease the burden on these projects speeding them up exponentially while reducing the overall planning burden. Planning grants that are available (mostly from the State) will be much more effective and efficient. Given that our natural world is rapidly changing with the climate and that we are losing species every day, we just don't have the luxury of delaying conservation any longer and must use every dollar to its highest efficiency.

California Association of Resource Conservation Districts
801 K Street, MS 14-15, Sacramento, CA 95814
(916) 457-7904 www.carcd.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The timing of this order and PEIR couldn't be better. The California State Legislature has appropriated over \$2 billion in funding for conservation in the 2021-2022 general fund budget. Much of this funding is for restoration work. The order and PEIR will help to get this funding out and on the ground quickly, effectively and with the highest benefit projects. We have a chance to get traction in supporting the natural world in our fight against climate change. The order and PEIR is a critical component of making that happen.

Sincerely,

A handwritten signature in black ink that reads "Karen Buhr". The signature is written in a cursive, flowing style.

Karen Buhr
Executive Director

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



1442-A Walnut St., #462
Berkeley, CA 94709
(510) 843-3902
fax: (510) 217-3500
www.cal-ipc.org

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Board of Directors

Julia Parish, President
American Conservation Experience

Drew Kerr, Vice President
*San Francisco Estuary Invasive
Spartina Project*

Laura Pavliscak, Secretary
Santa Clara River Conservancy

Jason Giessow, Treasurer
Dendra, Inc.

Steven Addison
Oakland Civic Corps

Gina Darin
California Dept. of Water Resources

Doug Gibson
Nature Collective

Sarah Godfrey
Center for Natural Lands Management

Metha Klock
San Jose State University

Juli Matos
Channel Islands National Park

Tanya Meyer
Yolo County Resource Conservation District

LeeAnne Mila
El Dorado County Dept. of Agriculture

Scott Oneto
*Central Sierra Cooperative Extension
UC Agriculture & Natural Resources*

Steve Schoenig
California Dept. of Fish & Wildlife (retired)

Amanda Swanson
California Dept. of Fish & Wildlife

Marcos Trinidad
Audubon Center at Debs Park, Los Angeles

Cheryl Wilen
UC Agriculture & Natural Resources (retired)

Student Liaisons

Katherine Brafford, *UC Davis*

Robert Fitch, *UC Santa Barbara*

Clarissa Rodriguez, *UC Riverside*

Noah Teller, *UC Riverside*

[Affiliations for identification only]

August 11, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000

RE: Restoration Projects Statewide Order

Dear Ms. Townsend,

I am writing to comment on the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide.

Cal-IPC supports the State Water Resources Control Board's proposed Order and Programmatic Environmental Impact Report (PEIR). These actions will facilitate the implementation of important habitat restoration projects by reducing the time and expense currently needed to obtain environmental permitting for projects that are themselves designed to protect the environment.

We represent the community of natural resource managers seeking to protect the environment by controlling invasive species that degrade biodiversity, increase wildfire risk, decrease water availability and climate resiliency, and more. Too many important invasive species management projects simply don't get done because of permitting hurdles. We strongly support the state's efforts to "cut green tape".

We encourage the Board to certify the PEIR and prioritize adoption and active staff use of this Order to facilitate projects needed for climate resiliency and biodiversity protection.

Sincerely,

A handwritten signature in blue ink that reads "Doug Johnson".

Doug Johnson
Executive Director
dwjohnson@cal-ipc.org



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend:

The California Watershed Network (CWN) has received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*.

CWN is a 501(c)(3) non-profit organization formed in 2000, with the mission to help people protect and restore the natural environments of California's watersheds while ensuring healthy and sustainable communities. CWN works to develop a coordinated network of community-based watershed management efforts in California.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, and efficient Order as public comment is considered.

Sincerely,

A handwritten signature in blue ink that reads 'Michael Wellborn'.

Michael Wellborn, President

Mission Statement

To help people protect and restore the natural environments of California watersheds while ensuring healthy and sustainable communities.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



Conservation and Natural Resources Group, LLC
2394 South Fitch Mountain Road
Healdsburg, CA 95448

October 12, 2020

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

I received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

I have worked for more than 30 years in the fields of natural resources, water policy and ecosystem restoration in California, and have witnessed how the process of implementing regulations, many of which have been instituted to protect the environment, can create obstacles to restoring important and often imperiled habitats.

I strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner and will make better and more efficient use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. I respectfully urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority.

Sincerely,

Leslie Friedman Johnson
Partner, Conservation and Natural Resources Group

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

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STATE OF CALIFORNIA – CALIFORNIA NATURAL RESOURCES AGENCY

GAVIN NEWSOM, Governor

DEPARTMENT OF WATER RESOURCES

NORTHERN REGION OFFICE
2440 MAIN STREET
RED BLUFF, CA 96080-2356



August 12, 2021

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

State Water Resources Control Board
Division of Water Quality
Attention: Jeanie Townsend, Clerk to the Board
Post Office Box 100
Sacramento, California 95812-2000
E-mail: commentsletters@waterboards.ca.gov



Subject: Restoration Projects Statewide Order PEIR

The California Department of Water Resources' (DWR) mission is to sustainably manage the water resources of California, in cooperation with other agencies, to benefit the State's people and protect, restore, and enhance natural and human environments. DWR is a proponent of habitat restoration and enhancement efforts across the State to increase ecosystem function and support endangered and threatened species recovery. DWR's Northern Region Office (NRO) is actively involved in fisheries restoration efforts within the Sacramento River and its tributaries, as well as meadow restoration efforts further upslope in the watersheds.

DWR commends the State Water Resources Control Board (SWRCB) for its effort to develop a General Order for the Clean Water Act Section 401 that establishes an authorization process to improve permit efficiency for beneficial restoration activities. DWR strongly supports SWRCB's proposed action and acknowledges the General Order will help expedite regulatory approval for large restoration projects. The current process for obtaining the necessary environmental clearances and permits for large restoration projects can be time consuming and costly. A more efficient permitting process, such as the proposed General Order for implementation of large habitat restoration projects, will directly support DWR's efforts to implement aquatic and riparian habitat restoration efforts in a timely and more cost-effective manner.

The majority of NRO's restoration efforts within the Central Valley are funded and in support of the Central Valley Project Improvement Act (CVPIA), and we would like to confirm large-scale restoration and enhancement programs like CVPIA will benefit from this proposed General Order. We also anticipate future restoration efforts will include funding under voluntary agreements in accordance with the Clean Water Act, so confirmation that voluntary agreement-funded restoration efforts would also be covered under this proposed General Order would be very beneficial to completing restoration as envisioned under the agreement.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

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State Water Resources Control Board
August 12, 2021
Page 2

Thank you for the opportunity to provide comments. If you have any questions or comments, you may contact Brian Humphrey at (530) 529-7307 or brian.humphrey@water.ca.gov.



Teresa Connor
Region Manager
Northern Region Office

cc: Brian Humphrey, Senior Environmental Scientist (Specialist)

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000
commentletters@waterboards.ca.gov

VIA EMAIL

Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to express our support of the proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide. As stewards of the Mokelumne River, EBMUD has worked with multiple partners on a myriad of restoration projects to enhance the river ecosystem and improve long-term sustainability of ecosystem functions. The proposed General Order would enable EBMUD and our partners at the Lower Mokelumne River Partnership to significantly increase the breadth of environmentally beneficial restoration projects with a welcome enhancement to regulatory efficiency.

EBMUD has conducted habitat restoration in the lower Mokelumne River for nearly three decades. From 1990 to 2019, over \$1.8 million was invested on the lower Mokelumne River to support gravel enhancement, gravel replenishment, and the development of side channels and floodplains to improve habitat complexity and promote healthy salmonid populations. The Mokelumne River habitat restoration program is recognized as one of the most effective in the Central Valley, but a continued legacy of amplified actions is essential to provide key adaptations for climate change.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Setka'.

Jose D. Setka
Environmental Affairs Officer

375 ELEVENTH STREET . OAKLAND . CA 94607-4240 . TOLL FREE 1-866-40-EBMUD . (1-866-403-2683)

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 11th, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Environmental Defense Fund received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

Environmental Defense Fund is dedicated to enhancing water system resilience to climate change and other stressors by supporting collaborative and data-driven management. Timely, cost-effective, and coordinated restoration is an important tool to support California’s communities and ecosystems.

We strongly support the State Water Resources Control Board’s (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and swift implementation of this Order because projects for climate change adaptation and habitat restoration for imperiled species can’t be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Sincerely,

A handwritten signature in black ink, enclosed in a yellow rectangular box. The signature appears to read "Ann Hayden".

Ann Hayden,
Senior Director Western Water and Resilience Landscapes
Environmental Defense Fund

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
 PROGRAM ENVIRONMENTAL IMPACT REPORT
 APPENDIX H – RESPONSES TO COMMENTS



August 13, 2021

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Jeanine Townsend, Clerk to the Board
 State Water Resources Control Board
 P.O. Box 100, Sacramento, CA 95812-2000
 Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend:

On behalf of the Floodplain Forward Coalition, we are writing to support the State Water Resources Control Board’s (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help accelerate floodplain reactivation, multi-benefit water management, nature-based solutions, and the implementation of habitat restoration projects throughout the state. Many of us will provide individual comments to the State Water Board, but here we join together to express our appreciation for specifically including **floodplain restoration** in the proposed Order.

We are a diverse coalition of conservation organizations, farmers and other landowners, local governments, water suppliers and academic institutions who care deeply about the future of California and have come together as the Floodplain Forward Coalition to advance a new model for water management and land use as shown in [Reactivating our Floodplains: A New Way Forward](#). We have developed [A Portfolio for Fish and Wildlife](#) that showcases the types of restoration projects we are advancing to reactivate our floodplains in the Sacramento Valley and which would benefit from this proposed Order. We “support the development of expedited and cost-effective permitting mechanisms for common types of restoration and enhancement projects” as called for in the Water Resilience Portfolio ¶13.2.

The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed.

We are all very excited that farmland (primarily ricelands), wildlife refuges, and the bypasses currently designed for flood protection can be managed to work together for dynamic fisheries and wildlife conservation and to mimic the historic floodplain in the Sacramento River Basin, while continuing to provide flood protection for Sacramento, rural communities and lands. Spreading out and slowing down water across this landscape is a nature-based solution that mimics natural floodplain processes and provides multiple benefits year-round by allowing farmers to cultivate rice and other crops for humans during the spring and summer; habitat for birds, reptiles, and other fauna in the fall; and food for migratory birds and juvenile native fish species in the winter. This holistic water management can bring our ecosystem and farmlands to life through the careful interaction of water, sun and land.

Sincerely yours,

Amy Merrill
AMERICAN RIVERS

Meghan Hertel
AUDUBON CALIFORNIA

Tim Johnson
CALIFORNIA RICE COMMISSION

Jacob Katz
CALIFORNIA TROUT

Jeff Volberg
CALIFORNIA WATERFOWL

Kyriakos Tsakopoulos
CONAWAY PRESERVATION GROUP

Jeff McCreary
DUCKS UNLIMITED

Adam Davis
ECOSYSTEM INVESTMENT PARTNERS

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Ann Hayden
ENVIRONMENTAL DEFENSE FUND

Thad Bettner
GLENN-COLUSA IRRIGATION DISTRICT

Mike Denny
LUNDBERG FAMILY FARMS

Rodd Kelsey
THE NATURE CONSERVANCY

David Guy
NORTHERN CALIFORNIA WATER ASSOCIATION

Catherine Hickey
POINT BLUE CONSERVATION SCIENCE

Lewis Bair
RECLAMATION DISTRICT 108

Brad Mattson
RECLAMATION DISTRICT 1500

Roger Cornwell
RIVER GARDEN FARMS

Julie Rentner
RIVER PARTNERS

Roger Cornwell
SACRAMENTO RIVER SETTLEMENT CONTRACTORS

Brad Mattson
SUTTER MUTUAL WATER COMPANY

Willie Whittlesey
YUBA WATER AGENCY

cc: SWRCB Members

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Angela Nomellini and Ken Olivier](#)
To: [commentletters](#)
Subject: Comments – Restoration Projects Statewide Order
Date: Saturday, July 31, 2021 11:59:45 AM

EXTERNAL:

July 31, 2021

Jeanine Townsend, Clerk to the Board

State Water Resources Control Board

P.O. Box 100, Sacramento, CA 95812-2000

Delivered via email to: commentletters@waterboards.ca.gov

Subject: Comments – Restoration Projects Statewide Order



Dear Ms. Townsend,

I received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

As one of the chief funders of the California Salmon and Steelhead Coalition (a united effort by The Nature Conservancy, California Trout and Trout Unlimited to improve instream waterflows for fish), I believe that this order would incrementally speed up the restoration of streams to promote the health of various fish populations in the State. As I'm sure you're aware, given the current climate crisis, rapid progress is more urgently needed than ever.

I strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Sincerely,

Angela Nomellini

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

July 26, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

I have received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

As a native Californian who has always valued our natural resources, and who has supported California environmental causes actively, I have a keen interest in the proposed Order.

I strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

I have had the opportunity to visit a Sustainable Conservation restoration project and have witnessed firsthand the benefits of smaller scale habitat restoration. I believe the draft Order will contribute immeasurably in our efforts to secure our water future in California.

Sincerely,

A handwritten signature in black ink that reads "Arthur S Miller".

Arthur S Miller
1249 Mt View Bl
Walnut Creek, CA 94596

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Conor Ofsthun
cofsthun@moffattnichol.com
3659 Richmond St
San Diego, CA 92103
July 7, 2021



To Whom it May Concern,

I would like to submit this letter of support for the DRAFT RESTORATION PROJECTS STATEWIDE ORDER PROGRAM ENVIRONMENTAL IMPACT REPORT which intends to improve the efficiency of regulatory reviews for restoration projects, both small under the General Order for Small Habitat Restoration Projects (Order #SB12006GN), and larger projects.

Thank you,

Conor Ofsthun

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Emmy Cattani](#)
To: [commentletters](#)
Subject: Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects
Date: Thursday, July 8, 2021 5:07:14 PM

EXTERNAL:

July 8, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

I received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

I strongly support the State Water Resources Control Board's proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

My family and I operate a farming and a cattle ranching business with operations in Kern, Mono and Sacramento Counties. As climate change continues to impact the carrying capacity and productivity of our land, habitat restoration will be an important tool for ensuring that we can continue to support healthy native wildlife species and a thriving family business. A more efficient permitting

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

process for restoration projects will enable family-scale businesses like mine to participate in these opportunities.


Sincerely,
Emmy Cattani

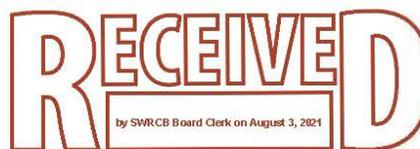
CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Frank Boren
1146 Crest Ave, Pacific Grove
CA 93950
831-5743049

June 11, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000



Re: Comments-Restoration Projects Statewide Order

Dear Ms. Townsend,

As a past President of The Nature Conservancy I support the State Water Resources Control Board's proposed Order and Programmatic Environmental Impact Report.

It is urgent that we accelerate the needed habitat restoration projects throughout the State. The potential of doing so is visionary and positive.

Kindest regards,

A handwritten signature in black ink that reads "Frank Boren".

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 10th, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

My name is Jeff Loomans, and having read the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide* I appreciate the opportunity to comment.

I strongly support the State Water Resources Control Board's proposed Order and Programmatic Environmental Impact Report (PEIR.)

As a homeowner along the Bolinas Lagoon in West Marin, I care deeply about the health of California's tidal lands, wetlands, and riparian areas. While not speaking officially on behalf of these organizations, I have worked actively with the Bolinas Lagoon Advisory Council, the Greater Farallones Association and Marin County's Community Development Agency to pursue aquatic habitat restoration along the Marin coastline. I have seen firsthand that one of the biggest challenges in this urgently needed work is the time and expense of securing individual permits.

The draft Order and PEIR will benefit habitat restoration projects in my area, and throughout the state, by providing programmatic coverage under a pre-written General Order. Our local and regional agencies responsible for restoration will save time and money. With a more efficient process, project delays will be avoided; and with more funds and staff time available, more restoration projects will be undertaken. These projects are urgently needed for maintaining ecosystem health, for water quality, and for responding to climate change. In my area we have already seen broad benefits to people and to wildlife demonstrated in our earliest completed projects. California needs to execute many more of these projects, at a much faster pace. PEIR will help us do that, while maintaining the protections and thoroughness of the permitting process.

I respectfully urge the State Water Resources Control Board to certify the PEIR and prioritize adoption and active staff use of this Order. We have two projects initiated in the Bolinas Lagoon estuarine system vital for imperiled species and for providing upland escape habitat as climate change causes sea levels to rise. These projects are now respectively at, and a few years away from seeking permits. Projects like these across the state cannot afford to be further delayed. I hope that the Board in considering public comments will pass this Order in as clear and efficient a form as possible.

Sincerely,

Jeff Loomans
167 Dipsea Road, Stinson Beach CA 94970

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Lauren B. Dachs
P.O. Box 193809
San Francisco, CA

August 5, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

I received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

As the recently retired President of the S. D. Bechtel, Jr Foundation, which over the period of its spend-down spent hundreds of millions of dollar to address the critical challenge of water in California, I am strongly in support of the effort to stream line permitting. This will allow for much needed habit re-toration as well as providing clean and affordable water for people and the environment.

I strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

California, its citizens and all of us working on improving the land, water and climate which we all share would benefit tremendously from this Order and PEIR. As a philanthropist and active citizen I hope you will move this along as quickly as possible. The effects of the drought and climate are upon us so not a minute to waste.

Sincerely,

Lauren Bechtel Dachs

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

July 28, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

I, **Sally Liu**, received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

I am a board member of Sustainable Conservation and The Nature Conservancy – California Chapter. I also am a supporter of the San Mateo County Resource Conservation District. As a supporter of habitat restoration projects across California and of these organizations, I have heard from landowners and non-profit and governmental agencies how difficult it is to get restoration projects through the permitting process. The process needs to be streamlined and cost-conscious. There is limited time and funding to restore habitats for our native species AND for the ecosystem services that benefit people as well. This is ever more important as climate change pushes us further into drought conditions and we need to keep our freshwater systems in as healthy shape as possible.

I strongly **support** the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Sincerely,

Sally Liu
Tundra Glacier Fund Advisor
Board Member of Sustainable Conservation
Board Member of The Nature Conservancy – California Chapter
Supporter of the San Mateo County Resource Conservation District

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

July 29, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Teri Biancardi, of Meadowview Homeowners Association, received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

Our Homeowner Association's common area open space is being eroded into dangerous channels with ten foot vertical banks by off-site storm water being directed onto our property. We have repaired part of one of these channels through the creation of a bio-engineered stream restoration project, but the permitting was onerous and expensive. We would have liked to do the entire stream course, and address other dangerous areas on our 400 acre property, but the permitting process was a barrier.

We felt the terms of existing permits were designed for developers, not people like us with limited resources, who want to create a safe space, but not at the expense of wetlands and the wildlife it supports.

As the project leader of the above project, I strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Our organization will also benefit from the Order and PEIR by being able to fix our dangerous areas in a way that supports wildlife, wetlands, and the ecosystem services they provide. Our project has also gained a lot of attention and support from the City of Temecula, and the County, as well as the region's

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Flood Control District. It provides a model for green storm water management that provides multiple benefits. It shows that there are other, better options than concrete channels that destroy wetlands, impair water quality, and are blights on the landscape. Our stream restoration project has even been recognized in the Army Corps of Engineers [Atlas of Engineering with Nature, Volume II](#). I am hopeful this sort of project will come to be implemented in many more parts of our watershed, especially with the added incentive of a streamlined permitting process.

Sincerely,

Teri Biancardi

Teri Biancardi

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

30 July 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Thank you for the opportunity to comment on the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*, spearheaded by the non-profit, Sustainable Conservation.

I devoted a 31-year career, and now my retirement years, to the protection of land, water, and air; and to making government work for communities across the country. Twenty-seven of those years were spent at EPA Region 9 in regulatory and non-regulatory roles. I learned about the permitting obstacles faced by farmers and ranchers who wanted to improve the health of the soil, water, and habitats on their private properties. At the same time, I learned what politically-powerful land developers meant when they asked agencies and elected officials for “permit streamlining”. Too often, they wanted special treatment, unwarranted exemptions from regulatory requirements, and the minimum level of constraints on their externalities, e.g., stormwater runoff, degradation of wetlands, fragmentation of stream corridors, etc..

Regulatory agencies should not be unnecessarily stringent when it comes to permitting habitat restoration projects, and unnecessarily lenient when it comes to permitting the destruction of those same habitats. With this draft Statewide Order, the State Water Board has the unique opportunity to “right a wrong” that’s been embedded in our regulatory system for decades.

Please approve the draft statewide Order while keeping it clear, strong, and useful; and certify the Programmatic Environmental Impact Report (PEIR). Together, these documents will save time and money for all concerned, and greatly assisting applicants with adhering to State regulatory requirements. The Statewide Order and the PEIR provide an environmentally thorough, protective, and robust permitting process while avoiding delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people.

Sincerely,

Tim Vendlinski
Oakland, CA

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Tina Quinn](#)
To: [commentletters](#)
Subject: Comments – Restoration Projects Statewide Order.
Date: Saturday, August 7, 2021 12:16:30 PM

EXTERNAL:

August 7, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board

P.O. Box 100, Sacramento, CA 95812-2000

Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

I, Tina Quinn, received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

This has been a topic that I've been involved with for the past 30 years, when Sustainable Conservation was first being formed, and I know that right now you have the opportunity to change the way people implement restoration projects in their communities. Time is of the essence and it is imperative that government takes action to change how restoration projects are permitted. Unfortunately, as you know, right now it's very cumbersome for anyone who wants to upgrade their property and invest time & resources into a restoration project. There are SO MANY benefits to moving forward with this.

I strongly **support** the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Thank you for the good work you are all doing and for bringing this forward.

With much gratitude,

Tina Quinn
tinaquinmail@gmail.com
C: 310-213-9555

"The courage of an expanding heart means learning to sing and cry at the same time." -
Frances Moore Lappé

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

1661 Page Mill Road
Palo Alto, CA 94304
650.213.3000

moore.org



July 27, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

Re: Comments – Restoration Projects Statewide Order

Dear Ms Townsend:

The Gordon and Betty Moore Foundation works to make significant positive impact in the field of environmental conservation. I lead the Foundation's Bay Area Conservation Portfolio, through which we have supported a variety of restoration projects that benefit wildlife and enhance ecosystem services for people.

I strongly support the State Water Resources Control Board's proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be tremendously time-consuming and expensive. Having this Order in place will help save time and money and avoid delays for critically-needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. The drought has given further urgency to addressing this established state priority.

Many projects we fund will see significantly reduced time and cost through the proposed order, which will in turn allow our funding to have an even greater impact.

Sincerely,

A handwritten signature in cursive script that reads "Daniel Winterson".

Dan Winterson
Gordon and Betty Moore Foundation
dan.winterson@moore.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 11, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Grassroots Ecology received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

Grassroots Ecology is a small nonprofit carrying out restoration projects with community volunteers and students in the Silicon Valley region, including projects in riparian areas and on the Bayshore. We partner with local agencies such as cities and open space districts to carry out work on their lands. Over the years, several of our projects have been subject to year(s)-long delays to complete CEQA and permitting work – all are projects that have restoration as the sole project objective – resulting in higher administrative costs and delays in creating habitat improvements.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Sincerely,

A handwritten signature in black ink, appearing to read "Junko Bryant".

Junko Bryant
Assistant Director

3921 East Bayshore Road | Palo Alto, CA 94303-4303 | 650.419.9880 | info@grassrootsecology.org | grassrootsecology.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 10, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000

Re: Comments - Restoration Projects Statewide Order

Dear Ms. Townsend,



On behalf of our businesses, Humboldt Redwood Company, Humboldt Sawmill Company, Mendocino Redwood Company, Mendocino Forest Products, and Allweather Wood, we fully support the proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide and the Programmatic Environmental Impact Report (PEIR). By way of introduction, our companies own 440,000 acres of forestland that are sustainably managed for forest products and are third party certified as operating sustainably.

Since the inception of our companies in 1998, we have been very active in the restoration of fisheries and terrestrial habitats. We have also invested significantly in upgrading watercourse crossings and abandoning streamside roads wherever possible. Through 2020, we have upgraded over 5,800 stream crossings and removed 38 fish barriers, opening over 28 miles of stream habitat.

We support the adoption of this Order and PEIR as it streamlines the process to get this important work completed. Landowners who agree to do this type of work on their land will be encouraged to do more knowing the process has been made much easier as a result of the Order. Additionally, the General Protection Measures are in line with measures we are used to adhering to when conducting restoration work, yet still protective of wildlife and water quality.

We applaud the agencies involved in creating this user friendly and streamlined permit process. Our companies will certainly use the Order to continue the work we have started on our ownership.

Sincerely,

John Andersen
Director, Forest Policy
Humboldt and Mendocino Redwood Companies

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
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Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



Post Office Box 809
Point Reyes Station
California 94956
T 415 663-1158
F 415 663-1099
www.malt.org

July 12, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Marin Agricultural Land Trust (MALT) received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

MALT was the first land trust in the U.S. focused on agricultural conservation and we remain true to our mission: permanently protect Marin’s agricultural land for agricultural use. We are in the midst of the worst drought in at least 50 years, highlighting how resilience to climate change is of critical importance to both our local food systems and our environment.

We strongly support the State Water Resources Control Board’s (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, people, and our food systems. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can’t be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

MALT accompanies ranchers and farmers in Marin County in better stewarding their land for sustainable agriculture; habitat restoration is an element of our Stewardship Assistance Programs (SAP). We believe that the draft order and PEIR will enable restoration projects on farm and ranch lands to be implemented sooner with more funding allocated to on-the-ground work rather than navigating bureaucracy, and consequent greater impact.

BOARD OF DIRECTORS Thane Kreiner, Chief Executive Officer | Neil Rudolph, Chair | Robert McGee, Vice-Chair
Tamara Hicks, Secretary | Diana Hagan, Treasurer | Bill Barboni II | Marcia Barinaga | Barbara Boucke | Sam Dolcini
Andrew Giacomini | Ralph Grossi | Janine Guillot | Lynne Heinrich | Tim Kehoe | Paul Martin | Molly Myerson
Rebecca Patton | Lisa Poncia | Andrew Riesenfeld | David Schrader | Vivan Straus
FOUNDED in 1980 by Phyllis Faber and Ellen Straus



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Post Office Box 809
Point Reyes Station
California 94956
T 415 663-1158
F 415 663-1099
www.malt.org

Sincerely,

A handwritten signature in black ink, appearing to be "TK", written over a horizontal line.

Thane Kreiner, PhD
Chief Executive Officer

BOARD OF DIRECTORS Thane Kreiner, Chief Executive Officer | Neil Rudolph, Chair | Robert McGee, Vice-Chair
Tamara Hicks, Secretary | Diana Hagan, Treasurer | Bill Barboni II | Marcia Barinaga | Barbara Boucke | Sam Dolcini
Andrew Giacomini | Ralph Grossi | Janine Guillot | Lynne Heinrich | Tim Kehoe | Paul Martin | Molly Myerson
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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



Mattole Salmon Group

PO Box 188 ph: (707) 629-3433
1890 Lighthouse Road fx: (707) 629-3435
Petrolia, CA 95558 msg@mattolesalmon.org
www.mattolesalmon.org

August 12, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

Subject: Comments – Restoration Projects Statewide Order



Dear Ms. Townsend:

Thank you for the opportunity to comment on the *Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. I am pleased to see more efficient permitting pathways being developed for restoration projects, and the Mattole Salmon Group strongly supports the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR).

The Mattole Salmon Group has been working to restore self-sustaining runs of salmon and steelhead in the Mattole River watershed since 1980. For the past several decades, we have been heavily focused on restoring the complexity of instream habitat, primarily by adding large wood to streams. In recent years we have been actively trying to scale up our work to more efficiently and effectively improve habitat over multiple miles of stream. The need is for habitat restoration at this scale, as past impacts to aquatic habitat occurred at a large scale, with all large riparian trees and instream wood being removed from most streams in the watershed pre-1970. These streams will continue to offer only very poor salmonid rearing habitat, with insufficient habitat complexity, velocity refuge, and cover, for decades without the addition of large quantities of instream wood.

The previously adopted *General Order for Small Habitat Restoration Projects* is helpful in expediting permitting for small projects, but not applicable to the larger restoration projects that we see as necessary to improve habitat sufficiently to give hope for recovery of salmon and steelhead runs. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources. Implementing these projects is expensive, the need for habitat improvement is great and vast, and reducing time and money spent in permitting enables more work to be done to improve habitat.

We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Sincerely,

Nathan Queener
Fisheries Biologist
Mattole Salmon Group
nathan@mattolesalmon.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Mid Klamath Watershed Council

P.O. Box 409, Orleans, CA 95556 (primary)

P.O. Box 50, Happy Camp, CA 96039

Tel: (530) 627-3202

www.mkwc.org

mail@mkwc.org

Public Comment

Restoration Projects Statewide Order

Deadline: August 13, 2021 by 12 noon

August 4, 2021

Jeanine Townsend, Clerk to the Board

State Water Resources Control Board

P.O. Box 100, Sacramento, CA 95812-2000

Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The Mid Klamath Watershed Council received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

Since 2001, the Mid Klamath Watershed Council (MKWC) has been working to restore the threatened Klamath River in Northern California and the upslope habitats upon which the river depends. The Klamath River and its tributaries, including the Salmon and Trinity Rivers, have some of the largest remaining wild salmon runs in the lower 48 States and hold the promise of significant ecological improvement through restoration programs.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of habitat restoration projects in our service area, as well as throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. The permitting process should not be a hindrance to this much-needed restoration. Having this Order in place will help save time and money, avoid delays, and increase the pace and scale of restoration in the Klamath Basin. Having a more efficient process will make better use of grant funds, our organizational staff resources, and agency staff resources. The Mid Klamath Watershed Council has more prioritized restoration projects than it has resources to implement. This Order will increase our ability to complete more projects, which will lead to more direct, restoration benefits.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Sincerely,

A handwritten signature in blue ink, appearing to read "Luna Latimer".

Luna Latimer
Director
Mid Klamath Watershed Council

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000

Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,



The **Morro Bay National Estuary Program** received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

The Estuary Program is a nonprofit that brings together citizens, organizations, agencies, and landowners to protect and restore the Morro Bay Estuary for people and wildlife. We complete a range of restoration projects in the watershed including floodplain restoration, erosion control, livestock fencing, road improvements, water conservation, nutrient removal best management practices (BMPs), low impact design for stormwater, among others. We also work closely with partners such as the Coastal San Luis Resource Conservation District to implement BMPs for reduction of sediment and nutrient impacts.

We strongly support the State Water Resources Control Board’s proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can’t be delayed. The drought has given further urgency to addressing this established

Office 805-772-3834 | 601 Embarcadero Suite 11, Morro Bay 93442 | MBNEP.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

The Estuary Program would benefit from having a more streamlined process. Implementing these restoration and enhancement projects in the watershed in a timely and efficient manner is essential to providing quality habitat for diverse fish and wildlife species and extending our available resources as projects that take longer tend to cost more. Many grant funds have narrow time periods for permitting and implementation. With the diverse permits needed for improvement projects, having smaller-scale projects streamlined would ensure that funding is utilized most efficiently and habitat improvements are realized sooner.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Lexie Bell', with a horizontal line extending to the right.

Lexie Bell
Executive Director
lbell@mbnep.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

July 9, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,



This is a comment on the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*.

The Natural Heritage Institute has worked on ecological restoration in aquatic environments throughout the world. We are always concerned when environmental compliance slows or stops important ecological restoration projects.

As the former Deputy Secretary of the California Natural Resources Agency, I saw this happen again and again. I sometimes thought we were our own worse enemy: stymied by environmental regulations when we were trying to restore habitat.

For this reason we strongly support the State Water Resources Control Board's proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Living in Marin County, I constantly see examples of the necessity of this proposed order. We are trying to restore native wildlife like beavers and amphibians, but the cost and time-consuming nature of environmental compliance slows down or even stops these projects.

We hope the Order will facilitate the implementation of restoration projects.

Sincerely,

Gerald H. Meral, Ph. D.
Director, California Water Resources Program
Natural Heritage Institute

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



*To advance the economic, social and environmental sustainability of Northern California
by enhancing and preserving the water rights, supplies and water quality.*

August 12, 2021

**Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon**

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



RE: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend:

The Northern California Water Association received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

NCWA is committed to advance the economic, social, and environmental sustainability of the Sacramento Valley by enhancing and preserving its water rights, supplies, and water quality for the rich mosaic of farmlands, refuges and managed wetlands, and meandering rivers that support fisheries and wildlife, and cities and rural communities in the region.

NCWA and our members strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

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PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

NCWA and our members, working with our conservation organization and state and federal agency partners are implementing collaborative, comprehensive programs to promote [salmon recovery](#) and enhance [Pacific Flyway habitat](#) in the Sacramento Valley. Both of these programs are focused on the implementation of habitat projects. The Sacramento Valley Salmon Recovery Program builds upon a [long history](#) of salmon project implementation in the Sacramento Valley. The program is designed to benefit all four runs on Chinook salmon in the Sacramento Valley and implements projects targeted to provide habitat for all salmon freshwater life-cycle stages in the [upper](#), [middle](#) and [lower](#) reaches of the region's rivers. Projects to benefit the Pacific Flyway include [infrastructure improvements to increase water deliveries](#) to National Wildlife Refuges and State Wildlife Areas and [improvements to privately-managed](#) agricultural lands and wetlands. Both fish and birds are benefiting from efforts to [reactivate floodplains](#) in the Sacramento Valley. These projects occur on both the [wet-side](#) and the [dry-side](#) of the region's levees and includes a [portfolio of projects](#) that will need to secure permits prior to implementation. This proposed Order will be of great benefit to the projects contributing to these programs and many others in the Sacramento Valley and NCWA strongly supports its approval.

Sincerely,



Todd N. Manley
Director of Government Relations

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

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Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 13, 2021

Via email: commentletters@waterboards.ca.gov
Jeanine Townsend
Clerk to the Board
State Water Resources Control Board



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend:

The Port of San Diego (Port) appreciates the opportunity to comment on the Clean Water Act Section 401 General Water Quality Certification and Waste Discharge Requirements for Implementation of Restoration Projects Statewide. The Port supports this program to improve the efficiency of regulatory review for environmentally beneficial restoration projects which support the protection of water-dependent species and the environment.

The Port is a self-sustaining public corporation and regional government agency created in 1962 through the California State Legislature's adoption of the San Diego Unified Port District Act (Port Act). Through the Port Act, the Port was granted management of 35 miles of state tidelands and submerged lands around San Diego Bay (Bay) and entrusted with managing and protecting the tidelands and diverse waterfront uses in a manner that is consistent with the Public Trust Doctrine. These public trust uses promote and balance navigation, commerce, fisheries (including aquaculture), recreation, and environmental stewardship in the Bay and in the Pacific Ocean off the City of Imperial Beach.

As coastal resource managers, the Port, as well as other ports, are uniquely positioned to take a leadership role in the development and implementation of nature-based solutions within coastal ecosystems, which includes biologically-friendly shoreline structures in addition to protecting existing wetlands and eelgrass habitats.

The Port, therefore, respectfully requests the bank stabilization restoration project type to be expanded to include any biologically-friendly shoreline structures and living shorelines, in addition to clarifying that tidal habitats are included. Biologically-friendly shoreline structures and living shorelines should be allowed to be constructed with hard materials designed to attract native intertidal species, including shellfish and algae, which will then promote biodiversity by attracting foraging birds, fish, and marine mammals.

As a stakeholder faced with the unique challenges and opportunities for coastal resiliency, the Port welcomes the opportunity to work with the State Water Resources Control Board staff to advance permitting efficiencies during regulatory review. Thank you for the opportunity to provide feedback on the Restoration Projects Statewide Order. Please do not hesitate to contact me via phone at 619-686-6200 or via email at emaher@portofsandiego.org.

Sincerely,

A handwritten signature in cursive script that reads "Eileen Maher".

Eileen Maher
Director, Environmental Conservation

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



744 La Guardia Street, Building A, Salinas, CA 93905

(831) 975-7775

August 12, 2021

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The Resource Conservation District (RCD) of Monterey County received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

The Mission of the RCD of Monterey County is “Conserving and improving natural resources, integrating the public interest in environmental quality with the needs of agricultural and urban users.” As Executive Director for the RCD, I support the State Water Resources Control Board’s (SWRCB) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner and will make better use of grant funds and agency staff resources.

As a small, grant-dependent organization, we anticipate adoption of the Order and PEIR to help us make most efficient use of time and resources, enabling projects to be implemented in a more timely and cost-effective manner. It will free more of our funding dollars for on-the-ground work. This will be particularly valuable for on-farm water quality improvement projects we are starting to scope with farmers that don’t fit under the Small Habitat Restoration Project definition.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the SWRCB to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can’t be delayed. The drought has given further urgency to addressing this established state priority. We also ask the SWRCB to maintain a clear, implementable, and efficient Order as public comment is considered.

Sincerely,

A handwritten signature in black ink that reads 'P. Robins'.

Paul Robins
Executive Director

“Conserving and improving natural resources, integrating the public interest in environmental quality with the needs of agricultural and urban users”

Printed on Recycled Paper

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

	Public Comment	
	Restoration Projects Statewide Order	818.597.8627 phone
	Deadline: August 13, 2021 by 12 noon	818.597.8630 fax
		info@rcdsmm.org
		540 South Topanga Canyon Boulevard Topanga, California 90290

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19 July 2021



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

EXECUTIVE OFFICER
Clark Stevens

Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The Resource Conservation District of the Santa Monica Mountains (RCDSMM) received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

For over 60 years, the RCDSMM has implemented numerous habitat restoration projects within the Santa Monica Mountains and we strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



With the Order and PEIR in place, our projects will save time and resources, more efficiently and cost-effectively implement on the ground projects. In particular, our work assisting property owners in providing more defensible, ecologically sensitive and sustainable native firewise landscapes following the Woolsey Fire will definitely benefit from this streamlined permitting process.

Thank you for your efforts to cut the green tape and help foster implementation efforts.

Sincerely,

A handwritten signature in black ink that reads "Rosi Dagit". The signature is written in a cursive, slightly slanted style.

Rosi Dagit, Sr. Conservation Biologist

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



RESOURCES LEGACY FUND
CREATIVE SOLUTIONS. LASTING RESULTS.

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 10, 2021



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

RE: Proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide, and Supporting Draft Program Environmental Impact Report

Dear Ms. Townsend,

On behalf of the Resources Legacy Fund (RLF), a 501(c)3 non-profit organization headquartered in Sacramento, thank you for this opportunity to comment on the proposed General Order and accompanying draft Program Environmental Impact Report (PEIR) referenced above. RLF views the proposed Order and PEIR from the State Water Resources Control Board (State Water Board) as a significant advancement in the removal of barriers to ecological restoration in California, an important strategy for conserving biodiversity and water resources, addressing climate change, and enhancing equitable access to the outdoors for all Californians.

RLF has supported this strategy since 2002 through grantmaking to non-profit organizations, coordination and collaboration with philanthropic partners and state agencies, and direct engagement with decision makers. In addition, RLF facilitated the new, coordinated permitting system for multi-purpose restoration projects in San Francisco Bay, which resulted in the creation of the Bay Restoration Regulatory Integration Team.

From this basis, RLF is pleased to offer its strong support for the State Water Board's proposed General Order, which has the potential to expand, accelerate, and lower the costs of habitat restoration projects throughout California.

In addition to supporting the strategy of eliminating barriers to restoration, RLF works with an array of partners engaging in ecological restoration projects, including small and large non-profits, resource conservation districts, Tribal governments and organizations, and others. Often, funding availability represents a constraint for their important projects, and the process of obtaining multiple individual state permits for a restoration project represents a significant proportion of costs, diverting time and resources that could be applied to greater restoration. A General Order that provides programmatic coverage could save time and money for these partners, facilitating critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase state resilience to climate change. The draft Order and associated PEIR provide an environmentally protective and robust permitting process that will help applicants better meet state requirements while completing their important work.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Page 2 of 2

A more efficient permitting process for restoration will also make better use of state and federal resources, both in helping increase the on-the-ground impact of restoration grant funding, and in reducing demand for scarce agency staff time for the review of permit applications.

Science-driven, equity-centered ecological restoration is a critical piece of the state's needed response to the intertwined crises of climate change, habitat and biodiversity loss, and water resource management, and every effort should be made to reduce barriers to this solution. RLF will continue to prioritize policies and projects that advance it, and we will continue to support the State of California to do so as well.

Adoption of the proposed general order also aligns with other high level natural resources strategies for the state. It is an important early implementation action called for by Natural Resources Secretary Wade Crowfoot under the California Natural Resources Agency's Cutting the Green Tape Initiative and will help advance Governor Newsom's goal in his Nature-Based Solutions Executive Order to conserve 30 percent of the state's lands and coastal waters by 2030.

Accordingly, we urge the State Water Board to certify the PEIR, prioritize adoption of the General Order for restoration projects, and to invest in the training and coordination needed to ensure broad application of the Order by State Water Board staff.

Thank you for your consideration of our comments, and for your agency's hard work and collaboration with sister agencies and other partners on this important initiative. Please let us know if we can provide additional information.

Sincerely,



Michael A. Mantell
President

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER PROGRAM ENVIRONMENTAL IMPACT REPORT APPENDIX H – RESPONSES TO COMMENTS

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SACRAMENTO - SAN JOAQUIN

DELTA CONSERVANCY

A California State Agency

August 2, 2021

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

Subject: Comments – Restoration Projects Statewide Order



Dear Ms. Townsend,

The Sacramento-San Joaquin Delta Conservancy received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

The Delta Conservancy is a California State agency tasked with being a lead agency for ecosystem restoration and promoting environmental protection and the economic wellbeing of Delta residents. We serve the Delta and the Suisun Marsh. Utilizing voter approved Proposition 1 grant funds, the Conservancy has 29 active restoration projects within our jurisdiction. The Delta is widely viewed as an ecosystem in crisis and efforts to restore ecological function are a high priority for the State. Current processes to obtain individual permits for restoration projects are excessively complex, time consuming, and costly to the point of being a major deterrent for our grantee applicants. In some cases, the permitting process has been so cumbersome that projects have been in the planning stage for decades. Without programmatic permitting it is highly unlikely the State can meet its restoration objectives in this critical estuary.

Therefore, I strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

1450 Halyard Drive, Suite 6, West Sacramento, CA 95691 | (916) 375-2084 | www.deltaconservancy.ca.gov

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

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Our grantees will benefit from the Order and PEIR through significant savings in time, effort and cost of permitting which will allow more of our funding to go directly to restoration benefits. We are currently in the fifth round of solicitation for our Proposition 1 program and anticipate additional funding to expand the program in the future. This represents dozens of potential projects that could directly benefit from the proposed order.

Sincerely,

Campbell Ingram

Campbell Ingram
Executive Officer

1450 Halyard Drive, Suite 6, West Sacramento, CA 95691 | (916) 375-2084 | www.deltaconservancy.ca.gov

August 16, 2022

H-256

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



525 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
T 415.554.3265
F 415.934.5770
TTY 415.554.3488

Natural Resources and Lands Management

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

Subject: San Francisco Public Utilities Commission Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The San Francisco Public Utilities Commission (SFPUC) received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for providing the opportunity to review and provide comments on the contents of the proposed General Order and draft Program Environmental Impact Report (PEIR).

The SFPUC is responsible for delivering high quality, reliable drinking water to approximately 2.7 million customers in the greater San Francisco Bay Area. The SFPUC is committed to the protection and restoration of natural resources that affect or are affected by the operation of the Hetch Hetchy Regional Water System (HHRWS) within the Tuolumne River, Alameda Creek, and Peninsula watersheds. The SFPUC proactively manages the HHRWS and our watershed lands in a manner that maintains the integrity of the natural resources, restores habitats for native species, and enhances ecosystem function. The SFPUC is involved in planning for projects that could be expedited by this proposed General Order and draft PEIR, such as fish barrier removal and habitat enhancement and restoration projects in Alameda Creek and San Mateo Creek.

We strongly support the State Water Resources Control Board's (State Water Board) proposed General Order and supporting PEIR, which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state and within SFPUC watershed lands. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help the save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve

London N. Breed
Mayor

Sophie Maxwell
President

Anson Moran
Vice President

Tim Paulson
Commissioner

Ed Harrington
Commissioner

Newsha Ajami
Commissioner

Michael Carlin
Acting
General Manager

Services of the San Francisco Public Utilities Commission

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



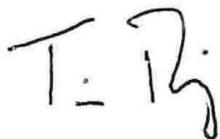
CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

water quality, and increase our resilience to climate change. Having a more efficient process in place is an important incentive to complete restoration projects so their benefits can contribute sooner to the recovery of native species threatened by the effects of climate change.

We urge the State Water Board to certify the PEIR and prioritize adoption of this Order since urgent action is needed for habitat restoration to support biodiversity objectives throughout the state.

Thank you for your time and effort to move restoration projects forward at an accelerated pace.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Ramirez". The signature is stylized with a large "T" and a cursive "Ramirez".

Tim Ramirez
Division Manager

CC: Ellen Natesan, Planning and Regulatory Compliance Manager
Casey Sondgeroth, Senior Environmental and Regulatory Compliance
Planner
Anna Fedman, Environmental and Regulatory Compliance Planner

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



110 W. Taylor Street
San Jose, CA 95110-2131

July 16, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

San Jose Water Company received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

San Jose Water Company (SJW) is an investor owned public water utility serving nearly one-million customers in Santa Clara County. SJW manages more than 6000 acres of watershed land in the Los Gatos Creek Watershed for source water protection, wildfire risk reduction, and habitat preservation. Our watershed lands are vitally important for the maintenance of biodiversity and habitat and for conservation of special-status plants and wildlife that rely on a healthy watershed. The watershed provides a critical high-quality water supply for residents throughout the region. We are significantly invested in ecosystem-based restoration and conservation management in the watershed given increasing risks from climate change and development. As an organization, we are committed to long-term and sustainable management of these resources to address these risks with ecological restoration as a fundamental component of our overall organizational watershed management strategy.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Our organization will also benefit from the Order and PEIR by streamlining permitting and compliance for ecosystem restoration projects and programs, allowing SJW to commit additional resources directly to restoration. Likewise, it will strengthen our ability to develop landscape-scale restoration programs/projects with greater assurance of timelines and funding. Importantly, the Order and PEIR will reduce organizational barriers to restoration by reducing project costs and risk while supporting SJW participation in regional water resiliency programs/projects through targeted restoration focused on water supply and water quality.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew R. Gere".

Andrew R. Gere, P.E.
President and Chief Operating Officer

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Sanctuary Forest

P.O. Box 166
Whitethorn
California 95589

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Retired Teacher

Renee Crowley, Vice President
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Biologist, Restorationist

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Ashley Brookens
Administrative & Program Assistant

Phone: 707-986-1087
Fax: 707-986-1607
sanctuary@sanctuaryforest.org
www.sanctuaryforest.org



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 13, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Sanctuary Forest Inc. received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

Sanctuary Forest is a land and water trust that was founded in 1987 to conserve, steward and restore the forests and streams of the Mattole River headwaters. We work with many state agencies, restoration partners and our diverse community and implement a broad spectrum of projects. In 2002, the Mattole River mainstem stopped flowing for 6 weeks with dire consequences to native salmon, wildlife and our community and since then a pattern of longer dry seasons and extreme low flows has become the norm. Since 2005 we have dedicated our work to improving streamflows and have developed innovative strategies that are now being implemented in other parts of the state. These strategies include storage and forbearance (storing water from the winter for use during the summer) and groundwater recharge (projects that slow runoff and increase groundwater storage). Over the last 15 years we have learned that land use impacts are one of the biggest causes of low flows and that significant watershed scale restoration will be needed to address water scarcity. Restoration is critical for the survival of our native salmon and all wildlife. Without restoration, the impacts of climate change along with past and present land practices will result in extreme water scarcity – including loss of stream habitat as well as increased fire, loss of forests and upland habitat.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Our organization will significantly benefit from the Order and PEIR by saving time and resources such that more projects can be implemented and restoration can more readily be achieved in the timeframe meaningful for the survival of fish and wildlife. In addition, the current permitting process is very complex and time consuming making it very difficult to secure permits within the timeframe needed to start work at the beginning of the restoration season. We are experiencing this problem first-hand as I write this letter, with a project scheduled for implementation on McKee Creek and funded by the Wildlife Conservation Board. On August 10, we learned that our Army Corps permit would be delayed by 3-4 weeks due to delays with the SWRCB 401 permit. This delay will likely make it impossible to complete the work within the seasonal work-window restrictions that require work to stop by Oct 15. Not only does this create problems by adding work to an already full schedule for the following season, but it requires extensions from the funding agencies which are not always possible. We are also experiencing firsthand the amount of time it takes to prepare and shepherd the permit applications. This spring, we spent at least 160 hours of staff time on federal, state and county permit applications for one small restoration project. We are now behind on other projects and very discouraged. If every project requires a similar permitting effort, we will likely be overwhelmed to the point where we may not be able to sustain this work. Examples of specific projects coming up in 2022 and beyond that could be eligible to use the proposed order include:

- North Fork Lost River Flow and Habitat Enhancement Project, funded by Wildlife Conservation Board Prop 1, scheduled for implementation summer of 2022, cost ~ 2.1 million
- Anderson Creek Instream and Riparian Habitat Restoration Project, funded by CDFW Environmental Enhancement project, scheduled for implementation summer of 2022, cost ~\$290,000
- North Fork Baker Creek Fish Passage Project, pending funding from CDFW FRGP, scheduled for implementation summer of 2023, cost ~\$400,000
- Future "shovel ready" implementation projects with CEQA and planning completed through the Mattole Headwaters Streamflow Enhancement Planning Project, funded by Wildlife Conservation Board Prop 1. Implementation 2023 – 2025 and estimated cost of ~ 4 million.
- Future implementation projects currently in the planning phase, with planning and CEQA funded by CDFW FRGP and the California State Coastal Conservancy. Implementation 2026-2030 and estimated cost of ~5 million.

Sincerely,



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The Santa Clara Valley Open Space Authority (Authority) received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

On behalf of the Authority, I express strong support for the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the State.

The Authority is a public, independent special district created by the California State Legislature in 1993 at the urging of community leaders who saw the importance of maintaining the ecological integrity of the region. The Authority conserves the natural environment, supports agriculture, and connects people to nature by protecting open spaces, natural areas, and working farms and ranches for future generations. We currently own or manage over 27,000 acres of open space in southern Santa Clara County and we are a member of the Santa Cruz Mountains Stewardship Network.

The Santa Cruz Mountains Stewardship Network (Network) is a region-wide and cross-sector collaboration of organizations committed to working together to help cultivate a resilient and vibrant region. Many of the conservation and land management organizations who are members of the Network have missions that include preserving and restoring open space. Large-scale restoration projects with multiple benefits that provide habitat for rare species, flood or drought resilience, and waterway benefits are a high priority for many Network organizations. The Authority and Network organizations will benefit from the Order and PEIR by saving time and resources, enabling projects to be implemented sooner and directing more funding for on-the-ground work.

The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which

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San Jose, CA 95119
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408.224.7548 F
openspaceauthority.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER PROGRAM ENVIRONMENTAL IMPACT REPORT APPENDIX H – RESPONSES TO COMMENTS



benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The following are specific projects the Authority is leading in collaboration with Network partners. These examples represent specific projects that could be eligible to use the proposed Order.

- Restoration of Laguna Seca as a wetland complex in Coyote Valley
- Floodplain restoration along Fisher Creek in Coyote Valley
- Floodplain and habitat creation in the Pajaro Valley

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established State priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

We greatly appreciate the opportunity to provide these comments and look forward to partnering with the Network and State agencies to implement priority habitat restoration projects that bring such vital public benefit.

Sincerely,

A handwritten signature in blue ink that reads "Andrea Mackenzie". The signature is written in a cursive, flowing style.

Andrea Mackenzie
General Manager

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Edmund Sullivan](#)
To: [commentletters](#)
Cc: [Gerry Haas](#); [lmonarres@dudek.com](#); [Will Spangler](#)
Subject: Comments – Restoration Projects Statewide Order
Date: Monday, August 9, 2021 2:54:14 PM



EXTERNAL:

Dear State Water Resources Control Board,

Please accept these written comments from the Santa Clara Valley Habitat Agency (SCVHA) on the proposed Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (proposed General Order) and supporting California Environmental Quality Act (CEQA) draft Program Environmental Impact Report (PEIR) as **unqualified support for the proposed General Order as written.**

The SCVHA agrees with the State Water Board assertion that the process of obtaining individual authorization for larger restoration projects can be time consuming and increase the cost of regulatory compliance as compared to obtaining authorization under a general order that provides programmatic coverage. Moreover, as stated in the proposed General Order, restoration proponents seeking authorization for larger projects beyond the scale of the existing general water quality certification for small habitat restoration often do not have the funding to seek individual permits. We agree that this indicates the need for a general order that will expedite the regulatory approval process for large habitat restoration projects. The intended benefit of the proposed General Order for large habitat restoration projects cannot be understated.

SCVHA leads the implementation of the Santa Clara Valley Habitat Plan (Habitat Plan). The Habitat Plan is a 50-year regional plan to protect endangered species and natural resources while permitting future development in Santa Clara County in compliance with both the Federal and State Endangered Species Acts. In 2013 the Habitat Plan was adopted by all local participating agencies and permits were issued from the US Fish and Wildlife Service and California Department of Fish and Wildlife. It is both a Federal habitat conservation plan and a State natural community conservation plan, or HCP/NCCP.

In providing a long-term, coordinated program for habitat restoration and conservation, the Habitat Plan aims to enhance the viability of threatened and endangered species throughout the Santa Clara Valley while streamlining the federal and state permit process. This proposed General Order would facilitate the successful implementation of our HCP/NCCP restoration mission aligning with our already streamlined endangered species permits and Clean Water Act Section 404 Regional General Permit, saving SCVHA and our conservation partners, which includes both the United State Fish & Wildlife Service and the California Department of Fish & Wildlife, time and money.

Sincerely,

Edmund Sullivan

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Executive Officer
Santa Clara Valley Habitat Agency
535 Alkire Avenue, Suite 100
Morgan Hill, CA 95037-4128
(408) 779-7261 Main Tel / (408) 779-7265 Dir Tel
(716) 930-4816 Mobile
edmund.sullivan@scv-habitatagency.org
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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



7/1/2021

Jeanine Townsend, Clerk to the Board State Water Resources Control Board
P.O. Box 100,
Sacramento, CA 95812-2000

Comments – Restoration Projects Statewide Order

Dear Ms. Townsend and State Water Resources Control Board,

I strongly support the adoption of the proposed Restoration Projects Statewide Order. I am the Board Chair of the Scott River Watershed Council and am deeply involved in the Council's restoration project development and permitting. The need to obtain individual water quality and waste discharge permitting for projects larger than 5 acres and/or 500 linear feet of streambank impact has severely limited our ability to implement projects of a size that begins to reach the scale and scope needed to address climate change and other threats to state water resources and the ecosystems dependent upon them. As noted in the notice of the opportunity to comment on this order, the process of obtaining individual authorization can be time consuming and increase the cost of regulatory compliance as compared to obtaining authorization under a general order that provides programmatic coverage.

I appreciate the leadership that the State Water Resources Control Board is exhibiting in moving this very necessary restoration permitting forward. It is in line with the State's "Cutting the Green Tape" initiative, and the Governor's Water Resiliency, Drought Emergency, 30 by 30 and Climate Change plans.

I urge the Board to adopt and place into service this order as quickly as possible so that organizations such as mine can move quickly towards solutions to address the climate emergency we are living through.

Sincerely Yours,

Betsy Stapleton

Betsy Stapleton
Board Chair, Scott River Watershed Council
707 499 7082
PLEASE NOTE NEW EMAIL: betsy@scottriver.org
Address: 514 N State Hwy 3
P.O. Box 355
Etna, Ca 96027
Website: www.scottriver.org



CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 11, 2021

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000



Re: Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide

Dear Ms. Townsend,

I am writing on behalf of Sequoia Riverlands Trust (SRT) to express our strong support for the State Water Resources Control Board (SWRCB's) proposed Order and Programmatic Environmental Impact Report (PEIR), which will lower barriers to greatly needed habitat restoration projects in our region and around the state. SRT is a regional, Land Trust Alliance-accredited nonprofit that holds fee title, conservation easements or deed restrictions on over 40,000 acres of habitat and farmland in the Southern Sierra, Southern San Joaquin Valley and Carrizo Plain. We have extensive experience with land management and habitat restoration, in contexts ranging from prescribed burns and conservation-oriented grazing to the first successful, ecologically-based aggregate mine reclamation in Tulare County.

As a founding member of the Southern Sierra Partnership (SSP)—a coalition of business and conservation organizations that also includes Audubon California, Sierra Business Council, Tejon Ranch Conservancy and The Nature Conservancy—SRT has contributed to climate adaptation planning for a seven-million acre region stretching from the peaks of the Sierra Nevada and Tehachapi Mountains to the center of the San Joaquin Valley, a vision that continues to inform our work.¹ We are also active in multiple Groundwater Sustainability Agencies, a watershed-based Regional Conservation Investment Strategy and other water-related

¹ Southern Sierra Partnership. 2010. *Framework for Cooperative Conservation and Climate Adaptation for the Southern Sierra Nevada and Tehachapi Mountains*. Available at <http://www.southernsierrapartnership.org/ssp-framework.html>.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

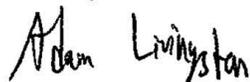
partnerships, where we are helping to build a consensus in favor of conservation-oriented repurposing of land that no longer has the water for irrigated agriculture. In both the climate adaptation and farmland retirement contexts, success will entail not only putting land into permanent conservation status, but also landscape-scale habitat restoration.

For this reason, we are grateful to see that the SWRCB is lowering barriers for habitat restoration projects. The process of obtaining an individual permit for a restoration project can be more time-consuming and expensive than permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will save time and money and avoid delays for critically needed projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and strengthen our resilience to climate change—all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements, and potentially facilitate future SRT habitat restoration projects. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order, because projects for climate change adaptation and habitat restoration for imperiled species cannot be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

We appreciate your consideration, and would welcome the opportunity to discuss these issues further.

Sincerely,

A handwritten signature in black ink that reads "Adam Livingston". The signature is written in a cursive, slightly slanted style.

Adam J. Livingston
Director of Planning and Policy
Sequoia Riverlands Trust

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



SONOMA ECOLOGY CENTER
Protecting the beauty and biodiversity of Sonoma Valley



August 13, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

RE: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Sonoma Ecology Center (SEC) received the Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide. Thank you for the opportunity to comment.

SEC has worked for over three decades in the North San Francisco Bay region on projects focusing on watershed health. We conduct research and implement restoration projects that focus on water quality and quantity, invasive species removal, stormwater capture and flood reduction, and native species and habitat enhancement. We have a staff of over 30.

SEC strongly supports the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements.

PO Box 1486, Eldridge, CA 95431 • (707) 996-0712 • fax (707) 996-2452
Sonoma Garden Park • 19996 7th Street East, Sonoma 95476 • 707 996-4883
Sugarloaf Ridge State Park • 2605 Adobe Canyon Rd .Kenwood, CA 95452 • 707 833-5712
info@sonomaecologycenter.org • www.sonomaecologycenter.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Like many organizations, we would benefit from the proposed Order and PEIR. We currently divert significant staff or consultant time to individual project permitting. While in some cases this is merited, in many cases, especially for routine, predictable projects that occur across a watershed or regional scale, this time costs our organization, and for publicly-funded projects, costs taxpayers, as we wait for review and conduct and often replicate permit-related tasks. These funds could instead be spent on implementation and projects could be implemented in a more time efficient way, sometimes making the difference as to whether a project succeeds.

At this critical time for biodiversity and water resources, there is so much important work to be done and plenty of opportunity to do this work, and we know that a more effective permitting process would benefit the people and resources of our state. We strongly support the State Water Board's proposed Order and PEIR.

Thank you for your consideration of our comments.

Sincerely,



Richard Dale
Executive Director

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



1221 Farmers Lane, Suite F
Santa Rosa, CA 95405

707.569.1448
SonomaRCD.org

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 2nd, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000



Re: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend, Clerk to the Board:

We, the undersigned staff of Sonoma Resource Conservation District, would like to express our support for the Proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide and the California Environmental Quality Act (CEQA) draft Program Environmental Impact Report.

Our organization and others like us are often hindered by the robust and arduous permitting process for projects that are enhancing and restoring natural resources. We understand the necessity of the permitting process and support the protection of waters of the State and U.S. However, viewing and permitting projects like ours, which endeavor to improve and protect these waters, using the same lens as development or projects that negatively impact the environment, is detrimental to our efforts, draining critical staff time and funding that could be spent doing more restoration projects. We believe that the proposed Restoration Projects Statewide Order will help streamline natural resource projects of all sizes and continue to cut the green tape that so often impedes restoration efforts across the state.

Sincerely,

Jessica Pollitz, P.E.
Engineer

Katie Robbins
Project Manager

Aaron Fairbrook
Program Manager

Kevin Cullinen
Project Manager

Kari Wester
Project Manager

Erica Mikesb, P.E.
Partner Engineer

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

From: [Symbiotic Restoration](#)
To: [commentletters](#)
Subject: Comments – Restoration Projects Statewide Order
Date: Wednesday, August 4, 2021 12:49:25 PM

EXTERNAL:

August 4, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Ms. Townsend,

Symbiotic Restoration received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

Symbiotic Restoration builds beaver dam analogs in an attempt to repair incised creeks and rivers. Our low-tech, process based restoration method takes care not to create more harm to an ecosystem than already exists. As an environmental steward of the land, it is of utmost concern to restore the stream and meadow to a healthy condition. Beaver dam analogs help restore streams and meadows to their original condition, increase ground water storage, sequester carbon, and create dynamic habitats for many species. Our company's existing standard operating procedure has measures in place to minimize the likelihood of possible negative issues from happening, such as minimizing contamination, reducing soil compaction and disturbance, as well as reducing the spread of invasive species .

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

Symbiotic Restoration is a member of several collaboratives in the North State that have undergone an assessment of degraded meadows. Many potential projects exist, but are contingent on funding opportunities. Stream lining permit processes make it easier for us to implement projects when funding becomes available. Currently 50-100 projects have been identified as meadows in need of restoration, which if completed could dramatically increase water storage in the upper watershed in our drought stricken state.

Sincerely,

Garrett Costello
Symbiotic Restoration
801-599-9992
symbioticrestoration.com

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Mailing: PO Box 12206, San Luis Obispo, CA 93406
Office: 1137 Pacific Street, Suite A, San Luis Obispo, CA 93401

805 544 9096
805 544 5122
info@lcslo.org
lcslo.org

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 12, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The Land Conservancy of San Luis Obispo County received the Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide. Thank you for the opportunity to comment.

The Land Conservancy of San Luis Obispo County (LCSLO) is a non-profit land trust with a mission to conserve and care for the diverse wildlands, farms, and ranches of the Central Coast. We have decades of experience implementing wetland restoration and enhancement projects to improve water quality, climate resilience and habitat for flora and fauna. One of our greatest hurdles to implementing wetland restoration is the time and expense involved in the permitting process.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

LCSLO plans to implement substantial wetland creation, enhancement and restoration projects on our properties over the next 10 years. This order and PEIR will enable us to scale these projects up in size above the current 5 acre exemption and directly translate to more wetland acreage being restored.

Sincerely,

Kaila A Dettman
Executive Director
(805) 544-9096 Ext.
104 kailad@lcslo.org

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CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

August, 12, 2021
Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

The Watershed Research and Training Center (Watershed Center) received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

My name is Joshua Smith and I'm the Watershed Stewardship Program Director at the Watershed Center. I oversee a number of restoration projects in the Trinity River Watershed and I have closely watched the development of the Restoration Projects Statewide Order for large scale restoration with enthusiasm. We have utilized the HREA pathway in the past and while it was extremely valuable, we have found it to limit the scope and breadth of our potential restoration work. We are very excited that the State has invested in helping to streamline our ability to implement restoration stream projects in a time when anadromous fisheries are disappearing in front of our eyes.

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be much more time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner, and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient Order as public comment is considered.

We are collaborating with the Yurok Tribe on a new restoration project for spring chinook salmon in the South Fork Trinity River and we hope to utilize this PEIR permitting pathway as soon as it is available. Spring Chinook numbered in the tens of thousands in the South Fork in the 1960's, but last year we only counted 15 fish. We need to increase the scope, scale and promptness with which restoration is occurring and this tool will greatly help our efforts. We anticipate implementing the project in the fall of 2022 if the Order is available in time.

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Our organization will also benefit from the Order and PEIR because it will likely be the environmental compliance tool of choice for two other stream restoration projects that are currently in the design phases. We have a groundwater recharge project being designed for Salt Creek and a meadow restoration project being designed for Indian Valley Creek that will both utilize this Order to save time and funding.

With the three restoration projects due to be implemented in the next 5 years the PEIR will save our organization a huge amount of time and effort. Furthermore all of the associated State and Federal grants we have secured for these projects plus the State and Federal regulatory officials will all be saved time, effort and funds due to this streamlined procedure.

Sincerely,

Joshua Smith

The Watershed Research & Training Center

[98 Clinic Ave, Hayfork, Ca 96041-0356](mailto:98ClinicAve@watershedcenter.com)

[\(530\)628-4206](tel:5306284206)

www.thewatershedcenter.com

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon



July 14, 2021

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
Delivered via email to: commentletters@waterboards.ca.gov



Subject: Comments – Restoration Projects Statewide Order

Dear Ms. Townsend,

Water Foundation received the *Notice of Opportunity for Public Comment and Board Workshop for the Proposed Order for Clean Water Act Section 401 Water Certification and Waste Discharge Requirements for Restoration Projects Statewide*. Thank you for the opportunity to comment.

The Water Foundation is a nonprofit philanthropy working to support lasting water solutions for communities, economies, and the environment. The Foundation complements strategic grantmaking with field-building and engagement with high-level decision makers and community leaders, and helps funders identify and act on opportunities to better manage water. We have supported work throughout California's watersheds and a variety of critical policy arenas. Our partners span a broad spectrum: conservation organizations, environmental justice groups, agricultural associations, water providers, business groups, and local, tribal, state, and federal agencies

We strongly support the State Water Resources Control Board's (State Water Board) proposed Order and Programmatic Environmental Impact Report (PEIR), which will help to accelerate implementation of greatly needed habitat restoration projects throughout the state. The process of obtaining an individual permit for a restoration project can be time-consuming and expensive compared to permitting under a pre-written General Order that provides programmatic coverage. Having this Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner and will make better use of grant funds and agency staff resources.

The current draft Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority.

As investors in freshwater restoration throughout California, the Water Foundation will significantly benefit from the Order and PEIR as our grantees save time and resources, implementing projects sooner. The Order

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

will also help maximize the impact of restoration dollars by directing a greater portion of both public and philanthropic resources toward actions on the ground rather than further process that will do little to affect eventual decisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Fahlund". The signature is fluid and cursive, with the first name being more prominent.

Andrew Fahlund
Senior Program Officer

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS



Public Comment
Restoration Projects Statewide Order
Deadline: August 13, 2021 by 12 noon

August 11, 2021

Delivered via e-mail: commentletters@waterboards.ca.gov

Mr. E. Joaquin Esquivel, Chair
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814



RE: Statewide General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide and Supporting Draft Program Environmental Impact Report

Dear Chair Esquivel:

Wine Institute is writing to express support for the adoption of the State Water Resources Control Board's (State Board) proposed General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide and Supporting Draft Program Environmental Impact Report (PEIR). Wine Institute is a public policy advocacy group representing approximately 1,000 California wineries and affiliated organizations responsible for 85 percent of the nation's wine production. California's wineries have a long history of engaging in practices to ensure their long-term sustainability. These practices include supporting and conducting restoration and enhancement projects to improve and restore natural systems in and around California's wine regions. The proposed General Order and PEIR will help accelerate the implementation of habitat restoration projects throughout California and it is for this reason that Wine Institute supports its adoption.

Wine Institute and its members believe voluntary restoration projects are an integral part in ensuring California can maintain important ecosystem functions and the long-term viability of California's fish and wildlife. Unfortunately, the current process for obtaining the necessary permits for restoration projects is cumbersome and can cause significant delays in project implementation. Having this General Order in place will help save time and money and avoid delays for critically needed restoration projects that restore degraded habitats, increase habitat connectivity, improve water quality, sequester carbon, and increase our resilience to climate change – all of which benefit wildlife, waterways, and people. Having a more efficient process in place is an important incentive to complete more restoration projects in a timely manner and will make better use of grant funds and agency staff resources.

The current draft General Order and associated PEIR provide an environmentally thorough, protective, and robust permitting process that will help applicants better meet state requirements. We urge the State Water Board to certify the PEIR and prioritize

915 L Street, Suite 1190, Sacramento, CA 95814 Tel: 916-441-6974 Fax: 916-441-7890 www.wineinstitute.org

CONSOLIDATED FINAL RESTORATION PROJECTS STATEWIDE ORDER
PROGRAM ENVIRONMENTAL IMPACT REPORT
APPENDIX H – RESPONSES TO COMMENTS

August 11, 2021
Page 2

adoption and active staff use of this Order because projects for climate change adaptation and habitat restoration for imperiled species can't be delayed. The drought has given further urgency to addressing this established state priority. We also ask the Board to maintain a clear, implementable, and efficient General Order as public comment is considered.

Wine Institute members have undertaken voluntary efforts to improve riparian habitat. For example, they have placed large woody debris in streams to create fish refugia, removed migration barriers to improve fish passage, enhanced instream flows, constructed fish ladders, and moved roads away from riparian areas. One of the major obstacles to these projects has been the multiple permits needed from numerous local, state, and federal agencies. The adoption of the proposed General Order will help reduce one of these barriers and make the implementation of restoration and enhancement projects easier. Ultimately it should lead to improvements in both water quality and habitat for native, riparian dependent species.

Wine Institute appreciates the opportunity to provide comments as you consider the adoption of the proposed General Order and PEIR for large scale restoration projects. Should you have any questions or need additional information please contact me by email (ncremers@wineinstitute.org).

Sincerely,



Noelle G. Cremers
Director, Environmental and Regulatory Affairs

CC: Karen Ross, Secretary, California Department of Food and Agriculture