State Water Resources Control Board

WATER QUALITY ORDER WQ 2023-0073-DWQ CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION

Effective Date: Upon Deputy Director Signature
Expiration Date: Five Years from Effective Date

Project: Mojave National Preserve Road Repairs (Project)
Project Type: Roads and Highways

Program Type: Fill/Excavation
Identifiers:
- **WDID No:** SB23032IN
- **USACE No:** SPL-2022-00226-KL (NWP 14 non-notifying)
- **Place ID:** 888500
- **Reg. Meas. ID:** 452786

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I. Summary

This Clean Water Act (CWA) section 401 Water Quality Certification (Order) is issued at the request of the Federal Highway Administration (hereinafter Permittee) for the Project. This Order is for the purpose described in application and supplemental information submitted by the Permittee. The application was received on May 23, 2023. The application was deemed complete on July 5, 2023.

II. Findings

A. This Order is adopted pursuant to section 401 of the CWA and the California Porter-Cologne Water Quality Control Act (Wat. Code § 13000, et seq.). Notwithstanding any determinations made by the Corps or other federal agency, dischargers must comply with the entirety of this Order because the Order also serves as waste discharge requirements in accordance with State Water Board Water Quality General Order No. 2003-0017-DWQ. Discharges to waters of the state are prohibited except if expressly authorized. (Wat. Code, § 13264.)

B. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the CWA. The Permittee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.

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

D. This Order does not provide coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ and Order WQ 2022-0057-DWQ; NPDES No. CAS000002) (Construction General Permit).

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

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

III. Project Purpose

The Project is designed to improve road conditions along three main access routes in the Mojave National Preserve for the benefit and safety of visitors. The Project includes drainage improvements to stabilize and protect the roads at stream crossings by reducing erosion and the potential for road failure during major storm events.

IV. Project Description

The Permittee, in coordination with the U.S. National Park Service is proposing storm repairs along approximately two miles of Kelbaker Road, Black Canyon Road, and Essex Road in San Bernardino County, California. These repairs are planned to start in the Summer/Fall 2023 and continue for four to six months to completion.

The proposed repairs consist of 33 acres of road embankments, stabilization, low water crossing re-enforcement, and culvert replacements. Proposed activities involve the removal of debris from road sections and streams, and the replacement of road fill and drainage structures in the original footprint of the road. Project impacts to waters of the state are proposed to total 0.054 acre of temporary impact and 0.037 acre of permanent impact.

V. Project Location

Address: Mojave National Preserve

County: San Bernardino

Assessor’s Parcel Number(s): National Park Service owned lands

Nearest City: Barstow, California

Township, Range, Section: Multiple Sections in Townships 8, 10, 11, 13 North and

Ranges 8, 10, 15, 16 East

Latitude and Longitude:

Kelbaker Road: North end: 35.2075, -115.8736 and South end: 35.2000, -115.8723

Black Canyon Road: 34.9350, -115.4138

Essex Road: North end: 34.8207, -115.3529; South end: 34.8199, -115.3500

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

VI. Project Impact and Receiving Waters Information

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

It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring discharges to meet maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

Project receiving waters and impact information can be found in Attachment B. Table 1 of Attachment B shows the receiving waters and beneficial uses of waters of the state impacted by the Project. Table 2 of Attachment B shows individual impact locations and quantities.

VII. Description of Direct Impacts to Waters of the State

The direct impacts to waters of the state result from road embankment repairs, road stabilization, low water crossing re-enforcement, culvert replacements, and stream channel shift away from the roads associated with the Project. Most Project-related impacts are temporary, except for the addition of non-grout riprap for post-construction stream stabilization that are permanent. No direct impacts are expected to degrade the ecological condition of waters of the state. Total Project fill/excavation quantities for all impacts are summarized in Table(s) 1 and 2.

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

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Stream Channel	0.054	N/A	287

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

Aquatic Resources Type	Acres	Cubic Yards	Linear Feet
Stream Channel	0.037	300	90

VIII. Description of Indirect Impacts to Waters of the State

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

IX. Avoidance and Mitigation

The Permittee will minimize and mitigate direct and indirect impacts to waters of the state by adhering to the BMPs and avoidance and minimization measures (AMMs) listed in the application documents. These BMPs and AMMs include, but are not limited to:

- Conducting road improvements within the existing roadway prism;
- Utilizing appropriate sediment and erosion controls BMPs (such as, fiber logs or other BMPs at the downslope edge of the work area) to avoid impacts to waters and water quality due to sediment loads from erosion;
- Removing all waste and construction materials immediately from the work area;
- Developing and implementing a spill containment and clean-up plan in the event of a hazardous material spill;
- Conducting plant salvage and restoration in addition to reseeding of disturbed areas to re-establish native vegetation due to plant disturbance from equipment operation;
- Washing construction equipment before any equipment is used onsite to avoid movement of nonnative/invasive plant species; and
- Halting construction when water is present or anticipated.

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

The Project qualified as tier 2 and the Project is the least environmentally practicable alternative (State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, section IV.A.1.h). Other than a no-action-alternative, no other build-alternatives are feasible or practicable.

X. Compensatory Mitigation

No compensatory mitigation is required for permanent impacts because the impacts result from the addition of the minimum non-grout riprap necessary for stabilization of the stream channel following construction. The riprap is not expected to significantly alter the natural structure and function of the channel.

XI. Conditions

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

These conditions are generally required to comply with the state's Anti-Degradation Policy (State Board Resolution No. 68-16), which requires that any "activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the state will be maintained." All Basin Plans incorporate the state's Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR Part 131.12 (a)(1)), which requires "existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." According to U.S. Environmental Protection Agency (EPA), dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with U.S. EPA's section 404(b)(1) Guidelines. The State Water Board adopted a modified version of U.S. EPA's section 404(b)(1) Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines).

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

A. Impacts to Waters of the State

Impacts to waters of the state shall not exceed quantities shown in Table(s) 1 and 2.

This condition protects water quality by ensuring that the impacts to waters are not greater than what is proposed in the application. Larger impacts lead to a

greater potential for adverse impacts on water quality. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

B. Reporting and Notification Requirements

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment C, including specifications for photo and map documentation during the Project. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in Attachment C, which must be signed by the Permittee or an authorized representative.

1. Project Reporting

a. Monthly Reporting:

During active construction, the Permittee must submit a Monthly Report to the State Water Board. Monthly reports shall be submitted by 5:00 PM on the final weekday of the month in the month following the reporting period (i.e., a monthly report for August 2023 would be submitted by 5:00 PM on Friday Sep 29th, 2023). Monthly reporting shall continue until the State Water Board issues a Notice of Project Complete Letter to the Permittee.

b. Annual Reporting:

The Permittee shall submit an Annual Report each year by the anniversary of the effective date of this Order. Annual reporting shall continue until the State Water Board issues a Notice of Project Complete Letter to the Permittee.

These conditions are necessary to confirm that the Order requirements are sufficient to protect beneficial uses and water quality objectives. (Wat. Code, §§ 13383, 13267.)

2. Project Status Notifications

a. Commencement of Construction:

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

This condition protects water quality by ensuring that the Permittee is implementing the Project within the proposed work windows. If the Project

is not implemented within the proposed and approved work windows, then adverse impacts on water quality and beneficial uses could occur. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

b. Request for Notice of Project Complete Letter:

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

This condition protects water quality by ensuring that the Permittee has implemented the Project as proposed and approved, that temporary impact sites have been restored, and the Project area is stable. If the Project is not implemented as approved in this Order, then adverse impacts on water quality and beneficial uses could occur. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

3. Conditional Notifications and Reports:

The following notifications and reports are required as appropriate.

a. Accidental Discharges of Hazardous Materials[2]

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Water Code, Section 13271):

i. As soon as (A) Permittee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be

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

provided without substantially impeding cleanup or other emergency measures then:

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

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

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

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

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

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

b. Violation of Compliance with Water Quality Standards:

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

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

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

c. In-Water Work and Diversions:

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

This condition protects water quality by alerting the State Water Board when in water work and/or stream diversions will be taking place and requiring the monitoring and reporting requirements to be approved. These conditions are authorized by Water Code sections 13267 and 13383.

d. Modifications to Project

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

This condition protects water quality and beneficial uses by ensuring the Project is implemented as approved in this Order. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

e. Transfer of Property Ownership:

This Order is not transferable in its entirety or in part to any person or organization except after notice to the State Water Board in accordance with the following terms:

i. The Permittee must notify the State Water Board of any change in ownership or interest in ownership of the Project area by submitting a Transfer of Property Ownership Report. The Permittee and purchaser must sign and date the notification and provide such notification to the State Water Board at least ten days prior to the transfer of ownership.

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

This condition protects water quality and beneficial uses by ensuring that the Project is implemented as approved in this Order. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

f. Transfer of Long-Term BMP Maintenance:

If maintenance responsibility for post-construction BMPs is legally transferred, the Permittee must submit to the State Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer or designer specifications. The Permittee must provide such notification to the State Water Board with a Transfer of Long-Term BMP Maintenance Report at least ten days prior to the transfer of BMP maintenance responsibility.

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

C. Water Quality Monitoring

1. General

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

This condition protects water quality by requiring the Permittee to visually monitor for obvious signs of water quality degradation. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

2. Accidental Discharges/Noncompliance

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

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

3. Post-Construction

Visually inspect the Project site during restoration monitoring to ensure excessive erosion, stream channel instability (headcuts, knickpoints, channel incision, bank erosion, etc.), or other water quality pollution is not occurring in or downstream of the Project site. At least one post construction inspection must occur after a significant rainfall event, defined as 0.5 inch of rainfall or more in a 48-hour period, to verify channel stability. If water quality pollution is occurring, or if stream instability is identified, contact the State Water Board staff member overseeing the Project within three working days. The State Water Board may require the submission of a Violation of Compliance with Water Quality Standards Report. Additional permits may be required to carry out any necessary site remediation.

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

D. General Conditions

1. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330, and California Code of Regulations, Title 23, chapter 28, Article 6 commencing with section 3867.

2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, Title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. This Order is conditioned upon total payment of any fee required under Title 23 of the California Code of Regulations.

Each general condition in this section (XI.D.1-3) is required to be included in all water quality certifications by California Code of Regulations, Title 23, Chapter 28, Section 3860.

E. General Compliance

1. Failure to comply with any condition of this Order shall constitute a violation of the Porter-Cologne Water Quality Control Act and the CWA. The Permittee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385. In the event of any violation or

threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law.

This condition protects water quality by stating that the Permittee may be subject to administrative or civil liabilities pursuant to the Water Code section 13385. These penalties may include requirements to remedy water quality impairments caused by the Project or to pay a third party to remedy such water quality impairments.

2. Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plans by any applicable Regional Water Boards or any applicable State Water Board Basin Plan(s) or policy. The source of any such discharge must be eliminated as soon as practicable.

Conditions related to compliance with water quality objectives and designated beneficial uses are required pursuant to the state's Anti-Degradation Policy (State Board Resolution No. 68- 16), which requires that for any "activity which produces or may produce a waste or increased volume or concentration of waste and which discharges or proposes to discharge to existing high quality waters will be required to meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that (a) a pollution or nuisance will not occur and (b) the highest water quality consistent with maximum benefit to the people of the state will be maintained." All of the Basin Plans incorporate the state's Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR Part 131.12 (a)(1)), which requires "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." According to U.S. EPA, dischargers of dredged or fill material comply with the federal Antidegradation Policy by complying with U.S. EPA's section 404(b)(1) Guidelines. The State Water Boards adopted a modified version of U.S. EPA's section 404(b)(1) Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines).

3. In response to a suspected violation of any condition of this Order, the State Water Board may require the holder of this Order to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. The additional monitoring requirements ensure that permitted discharges and activities comport with any applicable effluent limitations, water quality standards, and/or other appropriate requirement of state law.

This condition protects water quality by requiring that the Permittee provides monitoring reports after a violation or suspected violation of the conditions of this Order. This monitoring would document whether water quality impacts occurred as a result of the violation or suspected violation and allow the State Water Board and Permittee to act to remedy the situation.
(Wat. Code, §§ 13267, 13383.)

4. The Permittee must, at all times, fully comply with engineering plans, specifications, and technical reports submitted to support this Order; and all subsequent submittals required as part of this Order. The conditions within this Order and Attachments supersede conflicting provisions within Permittee submittals. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

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

5. This Order and all of its conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project.

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

6. The Permittee shall ensure the Project obtains coverage under NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ and Order WQ 2022-0057-DWQ; NPDES No. CAS000002), or any reissuance, for discharges comprised of storm water associated with construction activity, including, but not limited to, demolition, clearing, grading, excavation, and other land disturbance activities of one or more acres, or where the Project disturbs less than one acre but are part of a larger common plan of development that in total disturbs one or more acres.

This condition protects water quality by ensuring that if the Project meets the size requirements for the Construction General Permit, the Permittee gets coverage under that permit. (40 CFR § 122.26(a)(9)(B).)

F. Administrative

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

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

2. **Site Access**: The Permittee shall grant State Water Board staff, Regional Water Boards staff, or an authorized representative (including an authorized contractor acting as a State Water Board or Regional Water Boards representative), upon presentation of credentials and other documents as may be required by law, permission to:

   a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.

   b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.

   c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.

   d. Sample or monitor for the purpose of assuring Order compliance.

   Conditions related to site access are necessary to ensure compliance with this Order and are authorized pursuant to Water Code section 13383.

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

   This condition protects water quality by requiring the Permittee to distribute this Order to all entities working on the Project so that they are aware of the Order conditions and can conduct the work accordingly.
   (Wat. Code, § 13263.)

4. A copy of this Order must be available at the Project site(s) during construction for review by site personnel and agencies. All personnel performing work on the Project shall be familiar with the content of this Order and its posted location at the Project site.

This condition protects water quality by requiring that all construction personnel are familiar with the contents of this Order and that the Order must be kept at Project sites for easy access and reference. Being familiar with the Order and having it onsite will allow the personnel to complete work in accordance with the conditions of the Order. (Wat. Code, § 13263.)

G. Construction Conditions

1. Work in Delineated Waters of the State

a. Work in waters of the state must not cause or contribute to an exceedance of water quality objectives in the receiving waters. Work in delineated waters commences at the onset of the regulated activity and continues until the activity is finished and all restoration of the affected work area is complete. Work in waters of the state means any ground disturbing activities in any delineated waters of the state that are permitted under this Order, regardless of the presence or absence of flowing or standing water.

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

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

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

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

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

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

This condition protects water quality by requiring the Permittee to maintain streamflow upstream and downstream of the Project. Stream flow is

important for maintaining beneficial uses and water quality parameters such as dissolved oxygen and temperature.
(Dredge or Fill Procedures, Section IV.B.1.)

2. Site Management

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

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

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

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

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

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

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

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

3. Fugitive Dust

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

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

4. Culvert Construction or Maintenance

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

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

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

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

c. Any replacement culvert or culvert that is to be left in place by a repair or maintenance Project must be placed at a gradient and orientation that will not result in erosional scour at the outlet.

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

d. Replacement of a culvert with a similarly sized culvert is allowable only where there is no visual indication that the existing culvert is undersized. Visual indications of undersized culverts include but are not limited to sediment aggradation upstream of the culvert; evidence of flow over the top of the culvert (e.g., erosional rills in dirt road surfaces or erosion of shoulders adjacent to paved road surfaces), erosion of the fill cell between the culvert and the road surface, scour pools at the culvert outlet, or erosion of creek banks immediately downstream of the culvert.

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

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

e. Replacement culverts must be sized to convey a 100-year flow event with debris, without pressurizing flow passing through the culvert. The 100-year flow event should be modeled under climate change projections, if available.

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

5. Use of Mechanized Equipment

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

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

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

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

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

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

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

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

6. Toxic and Hazardous Materials

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

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

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

d. Activities permitted under this Order shall not discharge waste classified as "hazardous" as defined in California Code of Regulations Title 22, section 66261 and Water Code section 13173. Appropriate BMPs for hazardous substances shall be specified by the Permittee and shall be approved by State Water Board staff prior to use onsite.

BMPs for hazardous substances shall include, at a minimum:

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

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

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

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

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

vi. Hazardous materials, including chemicals, fuels, and lubricating oils, shall not be stored within 100 feet of any delineated waters of the state, and shall be stored in appropriate containers with appropriate secondary containment.

vii. Pumps or other stationary equipment operating within 100 feet of a waterbody or wetland shall utilize appropriate secondary containment systems to prevent spills.

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

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

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

These conditions are required pursuant to the Basin Plans, and the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP), which prohibit the discharge of substances in concentrations toxic to human, plant, animal, or aquatic life. All waters should be free of toxic substances in concentrations that are lethal to or that produce significant alterations in population or community ecology or receiving water biota.

7. Invasive Species and Soil Borne Pathogens

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

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

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

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

8. Roads

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

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

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

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

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

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

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

Unpaved roads are a source of excess sediment delivery to streams throughout California. This condition protects water quality by limiting new

sources of excess sediment and other wastes. (Dredge or Fill Procedures, Section IV.B.1.)

9. Stabilization/Erosion Control

a. Effective erosion and sediment control BMPs shall be used for all disturbed areas to prevent discharges to waters of the state.

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

b. All erosion and sediment control materials shall be onsite and ready for use prior to initiation of ground disturbing activities.

Disturbed areas can discharge excess sediment to waters, which will degrade water quality. If the erosion and sediment control materials are not applied immediately following the ground disturbing activity, preventable erosion and sediment discharges could occur. This condition protects water quality by ensuring that erosion and sediment control materials are on the Project site and ready to be installed as soon as a disturbance takes place. (Dredge or Fill Procedures, Section IV.B.1.)

c. Any additional erosion or sediment control materials needed to stabilize an active worksite shall be installed at least 48 hours before a predicted rain event.

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

d. Sediment control structures shall be maintained for effectiveness at least 48 hours before a rain event and shall be repaired or replaced as needed. Buildup of soil behind silt fences shall be removed and any breaches or undermined areas repaired.

Disturbed areas can discharge excess sediment to waters, which will degrade water quality. Sediment control structures keep excess sediment from leaving the Project site but are prone to failure if not maintained. This condition protects water quality by ensuring that sediment control structures are properly maintained and in working order before rainfall events. (Dredge or Fill Procedures, Section IV.B.1.)

e. Disturbed work areas within waters of the state must be temporarily stabilized to prevent erosion at least 48 hours prior to the predicted commencement of a rainfall event (within work areas or directly upstream from work areas when there is a risk of flash flooding) that is forecast to bring greater than or equal to 0.5 inch of precipitation with a greater than a fifty percent probability of occurrence, as predicted by the National Oceanic and Atmospheric Administration (NOAA) - National Weather Service. If the predicted commencement of such a rainfall event is less than 48 hours after the prediction is issued, temporary stabilization of the disturbed in-water work areas must begin immediately.

Disturbed areas could discharge excess sediment to waters, which will degrade water quality. Disturbed areas within waters are at risk of creating channel instability that will lead to long term erosion, channel incision, sedimentation, floodplain abandonment, water quality degradation, alteration of local groundwater levels, and aquatic habitat degradation. This condition protects water quality by requiring that in-water work areas are stabilized prior to the onset of rainfall events. (Dredge or Fill Procedures, Section IV.B.1.)

H. Mitigation for Temporary Impacts

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

1. The Permittee shall restore all areas of temporary impacts to waters of the state and all Project site upland areas of temporary disturbance which could result in a discharge to waters of the state in accordance with the individual Project specifications which were submitted as part of the compensatory mitigation plan and incorporated herein by reference.

2. The State Water Board may extend the monitoring period beyond requirements in the restoration plan upon a determination by State Water Board Executive Officer or designee that the performance standards have not been met or are not likely to be met within the monitoring period.

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

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

Aquatic Resource Type	Mitigation Type	Units	Est.	Re-est.	Reh.	Enh.	Pres.	Unknown
Stream Channel	Permittee Responsible	Acres	N/A	N/A	0.054	N/A	N/A	N/A
Stream Channel	Permittee Responsible	LF	N/A	N/A	287	N/A	N/A	N/A

The temporary impacts conditions are necessary to ensure that temporary impacts are restored to pre-project conditions in accordance with the approved restoration plan to minimize temporal loss. (Dredge or Fill Procedures section IV.B.4.) Mitigation ensures compliance with Executive Order W-59-93 that requires no net loss of the structure or function of California's wetland resources.

I. Certification Deviation

1. Minor modifications of Project locations or predicted impacts may be necessary as a result of unforeseen field conditions, necessary engineering re-design, construction concerns, or similar reasons. Some of these prospective Project modifications may have impacts on water quality. Some modifications of Project locations or predicted impacts may qualify as Certification Deviations as set forth in Attachment E. For purposes of this Certification, a "Certification Deviation" is a Project locational or impact modification that does not require an immediate amendment of the Order, because the State Water Board has determined that any potential water quality impacts that may result from the change are sufficiently addressed by the Order conditions and the CEQA Findings. After the termination of construction, this Order will be formally amended to reflect all authorized Certification Deviations and any resulting adjustments to the amount of water resource impacts and required compensatory mitigation amounts.

2. A Project modification shall not be granted a Certification Deviation if it would require changes to the Order conditions such that the Project no longer qualifies for a categorical exemption. In this case a supplemental environmental review and different Order will be required.

XII. Public Notice

The State Water Board provided public notice of the application pursuant to California Code of Regulations, Title 23, section 3858 from June 6, 2023 to June 27, 2023. The State Water Board did not receive any comments during the 21-day comment period.

XIII. California Environmental Quality Act (CEQA)

The State Water Board has determined that the Project is exempt from review under CEQA pursuant to California Code of Regulations, Title 14, section 15061.Specifically, the issuance of this Order and the activities described herein meet the exemption criteria under California Code of Regulations, Title 14, section(s) 15301(c) Existing Facilities. Additionally, the State Water Board concludes that no California Code of Regulations, Title 14, section exceptions to the CEQA exemption apply to the activities approved by this Order. The State Water Board will file a Notice of Exemption with the State Clearinghouse within five working days from the issuance of this Order. (Cal. Code of Regs., tit. 14, § 15062.)

XIV. Petitions for Reconsideration

Any person aggrieved by this action may petition the State Water Board to reconsider this Order in accordance with California Code of Regulations, Title 23, section 3867. A petition for reconsideration must be submitted in writing and received within thirty calendar days of the issuance of this Order.

XV. Fees Received

The Permittee is a federal agency seeking certification for a CWA section 404 permit and no fees are required.

XVI. Water Quality Certification

I hereby issue the Order for the Mojave National Preserve Road Repairs, SB23032IN, certifying that as long as all of the conditions listed in this Order are met, any discharge from the referenced Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards). This Order also serves as waste discharge requirements in accordance with State Water Board Water Quality General Order No. 2003-0017-DWQ.

Authorization is contingent on: (a) compliance with the conditions of this Order and the attachments to this Order; and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, and the Regional Water Boards' Water Quality Control Plans.

Karen Mogus Digitally signed by Karen Mogus
Date: 2023.08.30 11:44:16 -07'00'
Water Boards

Date

Karen Mogus
Deputy Director
Division of Water Quality