

State Water Resources Control Board

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER

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Program Type: Restoration

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Project Type: Ecological Aquatic/Stream/Habitat Restoration

Project: 2016 Fish Habitat Restoration Project for 2017 (Project)

Applicant: California Department of Fish and Wildlife

Applicant Contact: Patty Forbes
Watershed Restoration Grant Branch
1416 9th Street, Room 1266
Sacramento, CA
Phone: (916) 327-8842
Email: patty.forbes@wildlife.ca.gov

Applicant's Agent: Karen Carpio
1416 9th Street, Room 1266
Sacramento, CA 95814
Phone: (916) 327-8658
Email: Karen.carpio@wildlife.ca.gov

State Water Board Staff: Brendan Reed
Environmental Scientist
P.O. Box 100
Sacramento, CA 95812-0100
Phone: (916) 341-5462
Email: Brendan.Reed@waterboards.ca.gov

State Water Board Contact Person:

If you have any questions, please call State Water Resources Control Board (State Water Board) Staff listed above or (916) 341-5478 and ask to speak with the Water Quality Certification and Wetlands Unit Program Manager.

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I. Order

This Clean Water Act (CWA) section 401 Water Quality Certification action and Order (Order) and attachments A through F is issued at the request of the California Department of Fish and Wildlife (herein after Permittee) for the Project. This Order is for the purpose described in the application and supplemental information submitted by the Permittee. The application was received on March 31, 2017. The application was deemed complete on May 11, 2017. Prior to receiving a complete application, State Water Board staff issued a notice of incomplete application and the Permittee responded to the request for application information on the following dates (Table 1).

Table 1: Record of Notice(s) of Incomplete Application	
Date of Notice of Incomplete Application	Date all requested information was received.
5/1/2017	5/9/2017

II. Public Notice

The State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from May 11, 2017 to June 1, 2017.

III. Project Purpose

The purpose of the Project is to restore anadromous fisheries habitat in non-tidal reaches of rivers and streams, improve watershed conditions impacting salmonid streams, and improve the survival, growth, migration, and reproduction of anadromous fish.

IV. Project Description

The Permittee allocates grant funds through the Fish Habitat Restoration Project to grantees to restore degraded anadromous fish habitat in coastal streams. Restoration projects must be consistent with procedures found in the Permittee's "California Salmonid Stream Habitat Restoration Manual." The Permittee manages an annual grant cycle initiated in the spring of each year.

The Project supports a variety of projects from sediment reduction to watershed education throughout coastal California. Funded projects must be implemented in two to four years, and most of the habitat restoration activities take place during the dry summer season. The majority of the funding is awarded for habitat restoration projects that improve fish shelter, spawning gravels, and pool habitat. These habitat restoration activities conform to the mandates of the Fish and Game Code and Public Resources Code.

V. Project Location

The Project occurs in various coastal streams in the following counties: Del Norte, Humboldt, Mendocino, Santa Barbara, Santa Cruz, Siskiyou, Sonoma and Ventura County. A map showing the Project locations is found in Attachment A of this Order.

VI. Project Impact and Receiving Waters Information

The Project is located within the jurisdiction of the North Coast, Central Coast, and Los Angeles Regional Water Quality Control Boards (collectively Regional Water Boards).

Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the applicable water quality control plans (Basin Plan) for the regions and other plans and policies which may be accessed online at: http://www.waterboards.ca.gov/plans_policies/. The Basin Plans include water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies.

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

Project impact and receiving waters information can be found in Attachment B. Table 1 of Attachment B shows the receiving waters and beneficial uses of waters of the state impacted by the Project. Individual impact location and quantity is shown in Table 2 of Attachment B.

VII. Description of Direct Impacts to Waters of the State

This Order authorizes direct permanent and temporary impacts to waters of the state associated with the Project to streams and riparian habitat. Project activities that will result in impacts to waters of the state include: (1) installation of large woody debris, log structures, boulder structures, and other structures related to in-stream habitat improvements; (2) removal of fish passage barriers; (3) placement of new non-barrier stream crossings; (4) stabilization of stream banks; (5) decommissioning of roads within waters of the state; (6) and restoration of riparian habitat. Individual project impact locations and quantities are shown in Table 2 of Attachment B.

Total Project fill/excavation quantities for all impacts are summarized in Table 2. Permanent impacts are categorized as those resulting in a physical loss in area and also those degrading ecological condition only.

Table 2: Total Project Fill/Excavation Quantity ¹									
Aquatic Resource Type	Temporary Impact ²			Permanent Impact					
				Physical Loss of Area			Degradation of Ecological Condition Only		
	Acres	CY	LF	Acres	CY	LF	Acres	CY	LF
Riparian Zone	26.07	0	14,846	0.483	0	19,993	0	0	0
Stream Channel	5.039	0	78,541	3.090	0	12,763	0	0	0

VIII. Avoidance and Minimization

Projects receiving certification from the State Water Board that authorize impacts to waters of the state must demonstrate the Project design has first avoided and then minimized impacts to waters of the state to the maximum extent practicable. Adequate avoidance and minimization

¹ Cubic Yards (CY); Linear Feet (LF)

² Includes only temporary direct impacts to waters of the state and does not include upland areas of temporary disturbance which could result in a discharge to waters of the state.

measures to waters of the state are required by the Project Mitigated Negative Declaration (MND). These measures can be found in Attachment G of this Order, the Mitigation Measures, Monitoring and Reporting Program for the 2016 Fish Habitat Restoration Project (MMRP). The minimization measures generally focus on preventing wastes from entering waters of the state by implementing various best management practices.

IX. Compensatory Mitigation

No compensatory mitigation was required for permanent impacts because the Project is a fisheries restoration project that results in a net benefit to water resources.

X. California Environmental Quality Act (CEQA)

On January 25, 2017, the Permittee, as lead agency, adopted an initial study/mitigated negative declaration (IS/MND) (State Clearinghouse (SCH) No. 2016122052) for the Project and filed a Notice of Determination (NOD) at the SCH on January 25, 2017. Pursuant to CEQA, the State Water Board has made Findings of Facts (Findings) which support the issuance of this Order and are included in Attachment C.

XI. 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 30 calendar days of the issuance of this Order.

XII. Fees Received

An application fee of \$ 200.00 was received on March 31, 2017. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3), and was calculated as category D - Ecological Restoration and Enhancement Projects (fee code 85) with the dredge and fill fee calculator.

XIII. Conditions

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 of the Project. In accordance with this Order, the Permittee may proceed with the Project under the following terms and conditions:

A. Authorization

Impacts to waters of the state shall not exceed quantities shown in Table 2.

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 F, 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 F, which must be signed by the Permittee or an authorized representative.

1. Project Reporting

- a. **Annual Reporting:** The Permittee shall submit an Annual Report each year on anniversary of the date of this Order. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the Permittee.

2. Project Status Notifications

- a. **Commencement of Construction:** The Permittee shall submit a Commencement of Construction Report prior to start of initial ground disturbance activities annually. The Commencement of Construction Report shall list the expected start dates for each individual project approved by this order.
- b. **Request for Notice of Completion of Discharges Letter:** The Permittee shall submit a Request for Notice of Completion of Discharges Letter following completion of active Project construction activities. This request shall be submitted to the State Water Board staff within thirty (30) days following completion of all Project construction activities. Upon acceptance of the request, State Water Board staff shall issue a Notice of Completion of Discharges Letter to the Permittee, which will end the active discharge period and associated annual fees.
- c. **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,³ and no further Project activities will occur. This request shall be submitted to State Water Board staff within thirty (30) days following 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.

3. Conditional Notifications and Reports: The following notifications and reports are required as appropriate.

a. Accidental Discharges of Hazardous Materials⁴

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

- i. As soon as (A) Permittee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures then:
- first call – 911 (to notify local response agency)
 - then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911

³ 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.

⁴ "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 & Saf. Code, § 25501.)

- Lastly follow the required OES procedures as set forth in:
http://www.caloes.ca.gov/FireRescueSite/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf
 - ii. Following notification to OES, the Permittee shall notify State Water Board, as soon as practicable (ideally within 24 hours). Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
 - iii. Within five (5) working days of notification to the State Water Board, the Permittee must submit an Accidental Discharge of Hazardous Material Report.
- b. Violation of Compliance with Water Quality Standards:** The Permittee shall notify the State Water Board of any event causing a violation of compliance with water quality standards. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
- i. Examples of noncompliance events include: lack of storm water treatment following a rain event, discharges causing a visible plume in a water of the state, and water contact with uncured concrete.
 - ii. This notification must be followed within three (3) working days by submission of a Violation of Compliance with Water Quality Standards Report.
- c. In-Water Work**
- i. The Permittee shall notify the State Water Board at least forty-eight (48) hours prior to initiating work in water or stream diversions. Notification may be via telephone, e-mail, delivered written notice, or other verifiable means.
 - ii. Within three (3) working days following completion of work in water or stream diversions, an In-Water Work/Diversions Water Quality Monitoring Report must be submitted to State Water Board staff.
- 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. Notification may be made in accordance with conditions in the certification deviation section of this Order.

C. Water Quality Monitoring

1. **General:** If surface water is present, continuous visual surface water monitoring shall be conducted to detect accidental discharge of construction related pollutants (e.g. oil and grease, turbidity plume, or uncured concrete).
2. **Accidental Discharges/Noncompliance:** Upon occurrence of an accidental discharge of hazardous materials or a violation of compliance with a water quality standard, State

Water Board staff may require water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

3. In-Water Work or Diversions:

A Water quality monitoring plan shall be submitted to State Water Board staff 30 (thirty) days prior to commencement of a project that involves in-water work or construction dewatering or diversions. The Water quality monitoring plan shall be in conformance with the applicable Regional Water Quality Control Board's basin plan and provide for monitoring for appropriate parameters.

D. Standard

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. Additionally, the State Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Permittee, if the State Water Board determines that: the Project fails to comply with any of the conditions of this Order; or, when necessary to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.) or federal Clean Water Act section 303 (33 U.S.C. § 1313). For purposes of Clean Water Act section 401(d), the condition constitutes a limitation necessary to assure compliance with water quality standards and appropriate requirements of state law.
2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to subsection 3855(b) of chapter 28, title 23 of the California Code of Regulations, and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations and owed by the Permittee.
4. 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. For purposes of Clean Water Act, section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order.

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 Clean Water Act. The Permittee and/or discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.

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 Board or any applicable State Water Board (collectively Water Boards) water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.
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 Water Boards deem appropriate, provide 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.
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.
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. For purposes of Clean Water Act, section 401(d), this condition constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements of state law.
6. The Permittee shall adhere to all requirements in the Mitigation Measures, Monitoring and Reporting Program for the 2016 Fish Habitat Restoration Project (MMRP) (January 25, 2017) which is incorporated herein by reference and any additional measures as outlined in Attachment C, CEQA Findings of Fact.
7. **Construction General Permit Requirement:** The Permittee shall maintain compliance with conditions described in, and required by, NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ; NPDES No. CAS000002).
8. The Permittee is responsible for ensuring each individual grantee implements their individual projects in accordance with this Order. The Permittee shall notify State Water Board staff of any instances of non-compliance in accordance with Part C of the Report and Notification Requirements found in Attachment E of this Order.

F. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment D of this Order.
2. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species or any act, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C. §§ 1531-1544).

If a "take" will result from any act authorized under this 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.

3. The Permittee shall grant State Water Board staff, Regional Water Board staffs, or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
 - a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.
 - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.
 - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
 - d. Sample or monitor for the purposes of assuring Order compliance.
4. A copy of this Order shall be provided to all individual Grantees, any consultants, contractors, and subcontractors working on individual projects. 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.
5. 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.

G. Construction

1. Appropriate BMPs shall be implemented throughout Project areas as described in this Order. All BMP materials shall be on-site prior to initiation of construction activity and ready for use.
2. Restoration techniques shall be implemented according to the specifications in the *California Salmonid Stream Habitat Restoration Manual* (Fourth Edition, July 2010).
3. All work areas shall be effectively isolated from stream flows using suitable control measures prior to commencement of any in-water work. The diverted stream flow shall not be contaminated by construction activities. Structures for isolating the in-water work area and/or diverting the stream flow (e.g., coffer dam, geo-textile silt curtain) shall be stabilized so that the disturbed areas will not come in contact with the stream flow.
4. In the event of rain, any in-water work area shall be temporarily stabilized before stream flow overtops or overwhelms the diversion structure. The stream bed shall be stabilized so that the disturbed areas will not come in contact with the stream flow.
5. Substances resulting from project activities that could be harmful to aquatic life shall not be discharged to waters of the state, including, but not limited to petroleum lubricants

and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, and cement concrete or asphalt concrete.

6. Vehicles shall not be driven through, or equipment operated in, waters of the state, unless approved in advance by State or Regional Water Board staff. At a minimum, the limits of the worked area must be clearly flagged and spill prevention control equipment must be available in the immediate vicinity of the approved vehicle operation area.
7. Equipment shall not be fueled, maintained, parked or staged within or near any stream, channel, or water body margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions.
8. For projects that require vegetation of riparian areas or re-vegetation of disturbed areas, viable seeds or seedlings of native species from the same watershed, or the greater watershed, shall be used.
9. When a project is complete, any trash, excess material, or other debris must be removed from the work area and disposed of properly.

H. Mitigation for 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 of waters of the state in accordance with the individual project specifications which were submitted with the application received on March 31, 2017 and incorporated herein by reference.
2. The State Water Board may extend the monitoring period beyond requirements of the individual project specifications upon a determination by State Water Board Executive Director that the performance standards have not been met or are not likely to be met within the monitoring period.
3. If restoration of temporary impacts to waters of the state is not completed within ninety (90) days of the impacts, compensatory mitigation may be required to offset temporal loss of waters of the state.

Table 4: Required Project Mitigation Quantity for Temporary Impacts⁵

Aquatic Resource Type	Mit. Type ⁶	Units	Method ⁷					
			Est.	Re-est.	Reh.	Enh.	Pres.	Unknown
Riparian Zone	PR	Acres			26.07			
Riparian Zone	PR	LF			14846			
Stream Channel	PR	Acres			5.039			
Stream Channel	PR	LF			78541			

- I. **Ecological Restoration and Enhancement:** The quantity of waters of the state permanently gained by the Project is shown in Table 4.

Table 5: Total Ecological Restoration and Enhancement Quantity⁸

Aquatic Resource Type	Res. ⁹ Type	Units	Method ¹⁰				
			Est.	Re-est.	Reh.	Enh.	Pres.
Stream Channel	PR	Acres	0	536.96	12.43	101.02	4.97

⁵ For Staff use only: Record quantities in CIWQS table side B for mitigation for temporary impacts and for permanent degradation of ecological condition; ecological restoration/enhancement projects.

⁶ Mitigation type for onsite restoration of temporary impacts is Permittee Responsible (PR).

⁷ Methods: establishment (Est.), reestablishment (Re-est.), rehabilitation (Reh.), enhancement (Enh.), preservation (Pres.). Unknown applies to advance credits with an unknown method and or location.

⁸ For Staff use only: Record quantities in CIWQS mitigation/restoration table side B for mitigation for temporary impacts and for permanent degradation of ecological condition; ecological restoration/enhancement projects.

⁹ Restoration (Res.)

¹⁰ Methods: establishment (Est.), re-establishment (Re-est.), rehabilitation (Reh.), enhancement (Enh.), preservation (Pres.).

Table 5: Total Ecological Restoration and Enhancement Quantity⁸

Stream Channel	PR	LF	0	1168476	27080	220315	10824
Riparian Zone	PR	Acres			191	3.98	
Riparian Zone	PR	LF			25920	8765	

J. 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 resources. 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 resource 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 warrants or necessitates changes that are not addressed by the Order conditions or the CEQA environmental document such that the Project impacts are not addressed in the Project's environmental document or the conditions of this Order. In this case a supplemental environmental review and different Order will be required.

XIV. Water Quality Certification

I hereby issue the Order for the 2016 Fish Habitat Restoration Project for 2017, SWRCB File # SB17006IN certifying that as long as all of the conditions listed in this Order are met, any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).

The State Water Board will file a Notice of Determination (NOD) at the SCH within five (5) working days of issuance of this Order. This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Order to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.).

Except insofar as may be modified by any preceding conditions, all Order actions are contingent on: (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this Order and the attachments to this Order; and, (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, the Regional Water Boards' Water Quality Control Plans and Policies.



Michael Lauffer

Acting Executive Director

State Water Resources Control Board



Date

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