STATE WATER RESOURCES CONTROL BOARD
GENERAL 401 WATER QUALITY CERTIFICATION ORDER FOR SMALL HABITAT RESTORATION PROJECTS

This Certification Order (Order) authorizes small habitat restoration projects that qualify for a categorical exemption under Title 14, California Code of Regulations (CCR), Division 6, Chapter 3, *Guidelines for Implementation of the California Environmental Quality Act* (CEQA), Article 19, section 15333, "Small Habitat Restoration Projects." These projects can improve the quality of waters of the state and contribute to the state's wetlands No Net Loss Policy (Executive Order W-59-93).

A. ELIGIBILITY REQUIREMENTS

Eligibility for coverage under this Order is limited to discharges which meet the following criteria:

1. **California Environmental Quality Act.** The project shall be eligible for categorical exemptions under Title 14, California Code of Regulations, Division 6, Chapter 3, *Guidelines for Implementation of the California Environmental Quality Act* (CEQA), Article 19, section 15333, "Small Habitat Restoration Projects." Examples of small habitat restoration projects may include, but are not limited to:

   a. re-vegetation 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; and

   f. culvert replacement conducted in accordance with published guidelines of the California Department of Fish and Game (DFG) or National Oceanic & Atmospheric Administration (NOAA) Fisheries, the primary purpose of which is to improve habitat or reduce sedimentation.

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

3. **Pre-Project Authorization.** This Order authorizes discharges only if the State Water Resources Control Board (State Water Board) and the appropriate

Regional Water Quality Control Board (Regional Water Board) have received a Notice of Intent (NOI) and if a Notice of Exclusion (NOE) has not been issued by a Regional Water Board for the project.

4. **Compensatory Mitigation Projects.** The project shall not be a compensatory mitigation project.

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.

6. **Project**. The construction period shall not exceed five years.

B. APPLICATION REQUIREMENTS

1 **Pre-Discharge Notification Requirements**. At least 30 days prior to the proposed discharge, the applicant shall provide the State Water Board and appropriate Regional Water Board(s) a NOI and Monitoring Plan as described below:

2. **Notice of Intent**.
   a. Each applicant shall complete and submit a NOI form, indicating the intent to discharge in compliance with the terms and conditions of this Order, to the State Water Board and the appropriate Regional Water Board(s). A NOI form for this Order may be obtained from State and Regional Water Board offices or downloaded at: http://www.waterboards.ca.gov/cwa401/generalorders.html. Completed NOI forms should be mailed to:

      Program Manager
      Certification and Wetlands Program
      Division of Water Quality
      State Water Resources Control Board
      1001 I Street, 15th Floor
      Sacramento CA 95814

      Program Manager
      Certification and Wetlands Program
      (Address of appropriate Regional Water Board; see:
      http://www.waterboards.ca.gov/regions.html)

   b. Regional Water Board Approval. The Regional Water Board may, at its discretion, issue a Notice of Applicability (NOA) to the applicant, indicating that the discharge may proceed under this Order; or a NOE, indicating that the discharge will require project-specific review for certification. If the Regional Water Board does not issue a NOA or NOE to the applicant within 30 days of receipt of the NOI, the applicant may proceed with the discharge.

c. The NOI must be signed by the applicant or the applicant's authorized agent (if an agent is submitting the NOI). The NOI must include a statement that the submitted information is complete and accurate. The applicant shall submit an adequate map[1] with project location(s) marked. Pre-project photographs shall also be included with a descriptive title, date taken, photographic site, and photographic orientation.

3. **Fee**. A check in the amount of sixty dollars ($60) specified in CCR Title 23, section 2200, payable to the appropriate Regional Water Board, shall be enclosed with the copy of the NOI sent to the Regional Water Board.

4. **Monitoring Plan**. The applicant shall provide the appropriate Regional Water Board a copy of a Monitoring Plan with the NOI specified in section B.2 of this Order. The purpose of the required monitoring is to evaluate the success or failure of the project. The level of detail of the Monitoring Plan and associated reporting shall be commensurate with the scope and size of the restoration project. At a minimum, the Monitoring Plan shall document:

   a. function(s) of the impacted water resources;

   b. project purpose, goal(s), and performance standards;

   c. measurable performance standards appropriate to each goal

   d. monitoring parameters and protocols to determine whether performance standards have been met;

   e. the timeframe and responsible party for determining attainment of performance standards;

   f. the appropriate monitoring schedule;

   g. the appropriate reporting schedule, at least annually, for the period stated as needed to determine achievement of performance standards.

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[1] Clearly indicate existing habitat on a map in <u>one of the following formats</u> (listed in order of preference):

a. GIS shapefile (NAD83/WGS84 datum; UTM Zone 10 projection). The shapefile must depict the boundaries of the project site(s) and the boundaries of all habitats, using the habitat list on this form. Features and boundaries should be accurate to within 10 meters.

b. GIS shapefile in any datum and projection. Datum and projection must be specified. The shapefile must depict the boundaries of the project site(s) and the boundaries of all habitats, using the habitat list on this form.

c. Digital map produced on geo-rectified on-line aerial photographic image via web applications such as Google Earth. Map must show the boundaries of the project site(s) and the boundaries of all habitats, using the habitat list on this form.

d. Other electronic format (CAD or illustration format) that provides a context for location (inclusion of landmarks, known structures, geographic coordinates, USGS DRG or DOQQ).

e. Project outline(s) carefully marked on paper USGS 7.5 minute topographic map(s) or DOQQ printout(s). Map must show the boundaries of the project site(s) and the boundaries of all habitats.

5. **Monitoring Report.** The applicant shall implement the monitoring program documented in the Monitoring Plan and shall provide Monitoring Reports at least annually to the appropriate Regional Water Board(s) as provided in the Monitoring Plan, documenting status of achievement of performance standards and project goals. Each Monitoring Report shall include:

   a. a summary of findings;

   b. identification and discussion of problems with achieving performance standards;

   c. proposed corrective measures, to be approved by the Regional Water Board;

   d. monitoring data.

6. **Notice of Completion.** The applicant shall simultaneously provide the State and appropriate Regional Water Board a Notice of Completion (NOC) no later than 30 days after project completion. The NOC shall be mailed to the addresses provided in section B.2 of this Order and shall demonstrate that the project has been carried out in accordance with the project's description as provided in the applicant's NOC. Included with the NOC shall be a map[2] of the project location(s), including final boundaries of the restoration area(s) and post-project photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation.

C. SPECIAL CONDITIONS

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

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

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[2] Clearly indicate existing habitat on a map in <u>one of the following formats</u> (listed in order of preference):

a. GIS shapefile (NAD83/WGS84 datum; UTM Zone 10 projection). The shapefile must depict the boundaries of the project site(s) and the boundaries of all habitats, using the habitat list on this form. Features and boundaries should be accurate to within 10 meters.

b. GIS shapefile in any datum and projection. Datum and projection must be specified. The shapefile must depict the boundaries of the project site(s) and the boundaries of all habitats, using the habitat list on this form.

c. Digital map produced on geo-rectified on-line aerial photographic image via web applications such as Google Earth. Map must show the boundaries of the project site(s) and the boundaries of all habitats, using the habitat list on this form.

d. Other electronic format (CAD or illustration format) that provides a context for location (inclusion of landmarks, known structures, geographic coordinates, USGS DRG or DOQQ).

e. Project outline(s) carefully marked on paper USGS 7.5 minute topographic map(s) or DOQQ printout(s). Map must show the boundaries of the project site(s) and boundaries of all habitats.

pertinent certification application was filed pursuant to subsection 3855(b) of Chapter 28, CCR 23, and the 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 payment of any fee required under Chapter 28, CCR 23, and owed by the applicant.

D. STANDARD CONDITIONS

1 **Other Permits.** This Order does not relieve the project applicant from the responsibility to obtain other necessary local, State, and federal permits, nor does this Order prevent the imposition of additional standards, requirements, or conditions by any other regulatory agency.

2. **Liability.** This Order does not convey any property rights or exclusive privileges. The requirements prescribed herein do not authorize the commission of any act causing injury to persons or property, do not protect the permittee from liability under federal, State, or local laws, and do not create a vested right to continue to discharge waste.

3. **Cumulative Impact.** The project will not result in impacts that are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

4. **Endangered, Threatened, Candidate, Rare, Sensitive, or Special Status Species.** The project will not result in a taking, either directly or through habitat modification, of any plants or animals identified as endangered, threatened, candidate, rare, sensitive, or special status species in local or regional plans, policies, or regulations; or by DFG, the U.S. Fish and Wildlife Service, or the National Marine Fisheries Service, unless the take is authorized by those agencies.

5. **Toxic Substances.** The project will not discharge substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses.

6. **Hazardous Substances.** The project will not discharge waste classified as "hazardous" as defined in Title 22 CCR section 66261 and California Water Code section 13173.

7. **Water Diversion and Use**. This Order does not authorize any new or modified diversion or impoundment of water, unless such diversion or impoundment is solely for the purpose of temporary dewatering for construction of the restoration project. Any permanent diversion or impoundment for beneficial use of water must have a State Water Board water rights permit.

8. **Non-Severability.** If any of the conditions of this Order are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.

9. **Historical Sites.** This Order does not authorize any activity adversely impacting a significant historical or archeological resource; directly or indirectly destroying a unique paleontological resource or site or unique geologic feature; disturbing any human remains; or eliminating important examples of the major periods of California history or prehistory, unless the activity is authorized by the appropriate historical resources agencies.

10. **California Ocean Plan.** The project shall not cause a violation of any applicable water quality objectives, including impairment of designated beneficial uses of receiving waters of the state, as adopted in the State Water Board California Ocean Plan.

11. **Water Quality Control Plan (Basin Plan).** The project shall not cause a violation of any applicable water quality objectives, including impairment of designated beneficial uses of receiving waters of the state, as adopted in the appropriate Regional Water Board(s) Basin Plan(s).

12. **Porter-Cologne Water Quality Control Act.** The project shall comply with all requirements of California's *Porter-Cologne Water Quality Control Act*.

13. **Enforcement.** 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 law. For purposes of Clean Water Act (CWA) section 401(d), the applicability of any State law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to ensure compliance with the water quality standards and other pertinent requirements incorporated into this Order.

    a. If the applicant fails or refuses to furnish technical or monitoring reports, as required under this Order, or falsifies any information provided in the monitoring reports, the applicant is subject to civil liability for each day in which the violation occurs. All reports, notices, or other documents required by this Order or requested by the California Water Board shall be signed by the applicant or a duly authorized representative of the project.

    b. In response to a suspected violation of any condition of this Order, the California Water Boards may require the applicant to furnish, under penalty of perjury, any technical or monitoring reports the California Water Boards deem appropriate, provided that the burden, including cost of the reports, shall be in reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

c. The applicant shall allow the staff(s) of the California Water Boards, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the project premises for inspection, including taking photographs and securing copies of project-related records, for the purpose of assuring compliance with this Order and determining the ecological success of the project.

WATER QUALITY CERTIFICATION:

I hereby issue an Order certifying that the discharge from small habitat restoration and enhancement projects permitted under this Order 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), and with other applicable requirements of state law. The discharge from these projects is also regulated under the State Water Board Order No. 2003 - 0017 - DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Order. This General WDR Order can be accessed or downloaded from the State Water Board's 401 Program Web site at: http://www.waterboards.ca.gov/cwa401/docs/wdr401regulated_projects.pdf.

All certification actions are contingent on (a) compliance with the conditions specified in this Order, (b) the discharge being limited and all proposed mitigation being completed in compliance with the applicant's project description, and (c) compliance with all requirements of the appropriate Regional Water Board's Basin Plan.

3-29-07

Dorothy Rice
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cc: See next page.

cc: (continuation page)

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