

**Black Oak Ranch Water Conservation Project Notice of Applicability:
Enclosure B:
Additional Information for Conformity with 40 CFR § 121.7(d) for
Order WQ 2022-0048-DWQ Conditions**

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Additional Information to Conform with 40 CFR § 121.7(d)

The information set forth in the State Water Resources Control Board (State Water Board) *General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements, Order No. WQ-2022-0048-DWQ* for Restoration Projects Statewide ([Restoration General Order or Order](#)), which is included as Enclosure A of this Notice of Applicability (NOA), is sufficient to comply with Title 40 Code of Federal Regulations (CFR) section 121.7. This Enclosure B provides additional information regarding the conditions set forth in Order WQ 2022-0048-DWQ, to conform to the recommendation in 40 CFR section 121.7(d)(3).

Notwithstanding any determinations by the United States Army Corps of Engineers or other federal agency made pursuant to 40 CFR section 121.9, the project proponent, Black Oak Ranch Partnership, must comply with the entirety of the NOA enrolling the Black Oak Ranch Water Conservation Project (Project) in the Restoration General Order, which sets forth waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act.

The following information is generally applicable to the conditions set forth in the Restoration General Order. Waste discharge requirements shall implement any relevant water quality control plans that have been adopted and shall take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of section 13261. (Wat. Code, § 13263(a).) In addition, California Code of Regulations, title 23,¹ Chapter 28 sets forth regulations pertaining to water quality certifications that must be implemented. Section 3859 requires the implementation of applicable water quality standards and other appropriate requirements. These conditions are also generally required to comply with 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 Regional Water Quality Control Board water quality control plans (Basin Plans) incorporate the state's Anti-Degradation Policy by reference. The state Anti-Degradation Policy incorporates the federal Antidegradation Policy (40 CFR § 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 the United States Environmental Protection Agency (USEPA), dischargers

¹ Unless as otherwise noted, all citations are to title 23 of California Code of Regulations.

**Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)**

of dredged or fill material comply with the federal Antidegradation Policy by complying with USEPA's section 404(b)(1) Guidelines. The State Water Board adopted a modified version of USEPA's section 404(b)(1) Guidelines in the Dredge or Fill Procedures (State Supplemental Guidelines) in its *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* (Dredge or Fill Procedures). These conditions are necessary to comply with the review and approval requirements set forth in the Dredge or Fill Procedures, section B.1.

The organization and statements below correspond with the conditions set forth in section XIII of the Restoration General Order. Restoration General Order sections I through XII and XIV are not "conditions" as used in 40 CFR section 121.7.

XIII. Order WQ 2022-0048-DWQ (Enclosure A) Conditions

A. Request for Authorization

Authorization under the Restoration General Order is granted through an NOA based on the application submitted. This condition is necessary because the State Water Board and Regional Water Quality Control Boards (collectively Water Boards) are authorized to issue a certification as required under the Federal Water Pollution Control Act (Wat. Code, § 13160) and this condition is consistent with regulations regarding water quality certifications (Cal. Code of Regs., tit. 23, § 3855). A pre-application meeting request is required pursuant to 40 CFR section 121.4. A pre-application meeting request was received on 01/27/2023, and held on 04/07/2023.

B. Reporting and Notification Requirements

These reporting and notification conditions are necessary to confirm that the general protection measures required under the Restoration General 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. Authorization under the Restoration General Order is granted based on the application and supporting information submitted. This condition is necessary to ensure that any modifications to the Project do not materially change the character of the discharge from the one that formed the basis for issuance of the NOA. These monitoring and reporting conditions are authorized because the Water Boards have the authority to investigate the quality of any waters of the state within their jurisdiction under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The anticipated costs are minimal as the reporting obligations typically require only visual monitoring and notification reporting.

C. Water Quality Monitoring

The water quality monitoring conditions are consistent with the Dredge or Fill Procedures, section IV.A.2.c. Water quality monitoring plans are required for any in-

**Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)**

water work, including temporary dewatering or diversions. These conditions are required to assure that: (1) Project activities shall not adversely affect the beneficial uses of the receiving water or cause a condition of nuisance; (2) Project activities shall comply with all applicable water quality objectives; and (3) treatment and control of the discharges from Project activities shall be implemented to assure that pollution and nuisance will not occur, and the highest water quality is maintained. A water quality monitoring plan is necessary to conform to water quality standards for oil and grease, dissolved oxygen, pH, turbidity, and temperature. The Basin Plans contain provisions related to all these constituents. These conditions are authorized under Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The anticipated costs are minimal as the sampling requirements are typically either visual or only require a grab sample every four (4) hours.

D. Standard Conditions

The standard conditions are necessary to ensure that this Project will comply with water quality requirements. Water quality requirements include state regulatory requirements for point source discharges into waters of the United States. California Code of Regulations, title 23, Chapter 28 sets forth regulations pertaining to water quality certification for point source discharges to waters of the United States. These conditions were included to comply with section 3860, which sets forth conditions that must be included in all water quality certifications. In addition, the State Water Board has separate authority under the California Water Code to investigate and take enforcement action, if necessary, to prevent any unauthorized or threatened unauthorized diversions of water.

E. General Compliance

1. “Enrollment and authorization of restoration projects under this Order are for the discharges of waste associated with only the restoration action...”

This condition is necessary to ensure that any Project activities authorized under the Restoration General Order will comply with water quality standards because the NOA only authorizes activities explicitly described therein. (Wat. Code, § 13264.) Additional activities may have impacts on water quality that need to be separately analyzed and authorized.

Authorization under the Restoration General Order is granted through an NOA based on the request for authorization and supporting information submitted. The project proponent is required to detail the scope of project impacts in a complete application pursuant to California Code of Regulations, title 23, section 3856, subdivision (h). Pursuant to Water Code section 13260, subdivision (c), each person discharging waste, or proposing to discharge waste shall file a report of waste discharge relative to any

**Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)**

material change or proposed change in the character, location, or volume of the discharge. Pursuant to Water Code section 13264, subdivision (a), the project proponent is prohibited from initiating the discharge of new wastes, or making material changes to the character, volume, and timing of waste discharges authorized herein without filing a report required by Water Code section 13260 or its equivalent for certification actions under California Code of Regulations, title 23, section 3856.

A request for authorization under the Restoration General Order is required to identify other licenses, permits, and agreements in the application. In the event a project proponent needs authorization from the state or federal authorities, California Code of Regulations, title 23, section 3856, subdivision (e), requires that the project proponent provide copies of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.” This condition helps ensure the integrity of the certification process and its focus on ensuring that Project activities meet water quality standards and other appropriate requirements of state law.

2. “Any plan developed as a condition of this Order requires review and approval...”

This condition is necessary because the Water Boards are authorized to issue a certification as required under the Federal Water Pollution Control Act. (Wat. Code, § 13160.) Any Project activity that is not specifically authorized in the Restoration General Order is prohibited (Wat. Code, § 13264.)

3. “This Order shall not be construed as replacement or substitution for any necessary federal, state and local approvals...”

This condition is necessary to protect water quality because it makes it clear that additional authorizations may be required and deters violations or threatened violations of the Restoration General Order conditions. (Wat. Code, §§ 13350, 13385.)

4. “In response to a suspected violation of any condition of this Order...”

This condition protects water quality by requiring that the project proponent provide monitoring reports after a violation or suspected violation of the conditions of the Restoration General Order. This monitoring would document whether or not water quality impacts occurred as a result of the violation or suspected violation and allow the Water Boards and project proponent to act to remedy the situation. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

**Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)**

- 5. “The project proponent must, at all times, fully comply with engineering plans, specifications, and technical reports submitted...”**

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

- 6. “This Order and all of its conditions contained herein continue to have full force and effect...”**

This condition protects water quality by ensuring that the Restoration General Order and all of its conditions that protect water quality remain in place if federal licenses or permits are revoked or expire. Enrollment in the Restoration General Order serves as waste discharge requirements under the Porter-Cologne Water Quality Act. (Wat. Code, § 13263.)

- 7. “Project proponents shall submit a Sacred Lands File & Native American Contacts List Request to the...”**

This condition is necessary to ensure compliance with water quality requirements because it satisfies the requirements to consult with California Native American tribes that are traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Res. Code, § 21080.3.1.) (See also California Governor’s Executive Order G-10-22.) The State Water Board Tribal Consultation Policy (June 2019) ensures collaboration and input from all California Native American Tribes and helps the Water Boards advance decisions and policies that better protect California’s water resources.

- 8. Historical Sites**

This condition protects water quality by ensuring that the authorized activity is implemented as proposed and approved. (Wat. Code, § 13264.) This condition is required in order to comply with section 101(c) of the National Historic Preservation Act of 1966 (54 U.S.C. § 300101 et seq.) as amended. The regulations adopted under the act are set forth in Part 61 (commencing with section 61.1) of Title 36 of the Code of Federal Regulations. California Code of Regulations, title 14, section 15064.5 defines “historical resources” and details steps that should be taken in the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery.

- 9. Construction General Permit Requirement**

This condition is necessary to ensure compliance with water quality requirements because dischargers who are required to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities (Construction General

**Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)**

Permit; Order No. 2009-0009-DWQ or 2022-0057-DWQ; NPDES No. CAS00002, as amended or any subsequently issued permit) must obtain separate authorization. (33 U.S.C. § 1342.) For ground disturbing activities that do not require enrollment in the Construction General Permit, the condition requires the implementation of appropriate erosion and sediment control measures. (Wat. Code, § 13263.)

10. Aquatic Herbicide General Permit Requirement

This condition is necessary to ensure compliance with water quality requirements because dischargers who are required to obtain coverage under the NPDES General Permit for Residual Aquatic Pesticide Discharges to Waters of The United States from Algae and Aquatic Weed Control Applications (Order No. 2013-0002-DWQ; General Permit No. CAG990005, or any subsequently issued permit) must obtain separate authorization. (33 U.S.C. § 1342.)

11. Cumulative Impacts

This condition is necessary to ensure compliance with water quality requirements because Water Code section 13263 requires consideration of other waste discharges.

F. Prohibitions

These conditions are necessary to prevent violation of state discharge prohibitions and protect water quality objectives. Basin Plans prohibit the discharge of construction materials and byproducts from being discharged into waters of the state. (Wat. Code, §§ 13146, 13247, 13263.)

These conditions also reserve the approving Water Board's authority to add to or modify conditions of the Restoration General Order in the NOA to ensure that project activities meet water quality objectives and protect beneficial uses. (See Wat. Code, § 13160.)

Destabilization of the channel or bed of the receiving water can contribute to significant degradation of the waters of the state; therefore, it is necessary to implement actions to limit or eliminate such discharges in order to protect water quality and associated beneficial uses.

Additionally, these conditions are required pursuant to the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California*, which prohibits the discharge of substances in concentrations toxic to human, plant, animal, or aquatic life. Toxic compounds can impair the beneficial uses of cold freshwater habitat, estuarine habitat, marine habitat, preservation of rare and endangered species, fish migration, fish spawning, warm freshwater habitat, and wildlife habitat. Conditions related to toxic and hazardous materials are necessary to ensure Project activities comply with any water quality objectives adopted or approved under sections 13170 or 13245 of the Water Code. Additionally, the conditions related to

Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)

hazardous discharges protect water quality by ensuring hazardous materials are not discharged to waters of the state. (Dredge or Fill Procedures, section IV.B.1.)

G. Specific Compliance

1. Programmatic Sideboards

This condition is necessary to implement relevant water quality control plans, protect beneficial uses, comply with the water quality objectives, and prevent nuisance. (Wat. Code, § 13263.) This condition also ensures the authorized project is designed, planned, and implemented in a manner consistent with the techniques and minimization measures presented in the Restoration General Order, Attachment A, section A.5. Project site-specific conditions may require different approaches to ensure compliance with applicable water quality standards and other appropriate requirements (33 USC § 1341; Cal. Code of Regs., tit. 23, § 3859, subd. (a)) and may result in impacts to water quality that require additional environmental review. (Cal. Code of Regs., tit. 14, §§ 15062-15063.) Water Code section 13383 authorizes the Water Boards to establish monitoring, inspection, entry, reporting, and other recordkeeping requirements (e.g., general protection measures listed in Attachment A), as authorized by Water Code section 13160, for any person who discharges, or proposes to discharge, to navigable waters.

2. Pre-Application Consultation

This condition satisfies the 40 CFR §121.4 requirement to request a pre-filing meeting with the certifying authority at least thirty (30) days prior to submitting a certification request.

3. Exclusions and Prohibited Activities

This condition is necessary to comply with water quality requirements because the identified excluded activities may require additional conditions to protect beneficial uses and prevent nuisance. (Wat. Code, § 13263.) For instance, erosion and sedimentation can contribute to significant degradation of the waters of the state; therefore, it is necessary to implement actions to limit or eliminate such discharges to protect water quality and associated beneficial uses. The exclusions and prohibited activities listed in the Restoration General Order section G.3 could result in erosion and sedimentation that could increase turbidity. Project activities affected by erosion and increased sediment loads directly impact water quality and associated beneficial uses.

This condition also helps to ensure that an applicant for a federal license or permit that involves a discharge to navigable waters understands that, except as specified in the Restoration General Order, the Order does not excuse the project proponent from obtaining any other Water Board approvals required for the activity.

**Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)**

4. Monitoring Plan

This condition is necessary to comply with water quality requirements because it confirms that the general protection measures required under the Restoration General Order are sufficient to protect beneficial uses and water quality objectives. (Wat. Code, §§ 13267, 13383.)

H. Administrative

1. “Signatory requirements for all document submittals...”

Signatory requirements are required pursuant to Water Code section 13267, which requires any person discharging waste that could affect the quality of waters of the state 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 CFR section 122.22.

2. “Data and/or reports shall be submitted...”

This condition relates to submittal of data and reports that are authorized under the Water Boards’ authority to investigate the quality of any waters of the state within their jurisdiction under Water Code sections 13383 and 13267. Monitoring, reporting, and assessment actions, and the information developed through such actions, must be readable, shared, and coordinated with other appropriate entities, and accessible to ensure that Project activities comply with water quality requirements. Water Code section 13167 requires the Water Boards to ensure that monitoring data and assessment information are available in a single location and that the information is presented in a manner easily understandable by the public. To fulfill this legislative mandate, this condition requires electronic data submittal in a compatible format with existing system specifications. Compliance with this condition enhances the accessibility of data and transparency of regulatory actions. This allows regulatory agencies and the public to better assess compliance and understand water quality trends or data anomalies by compiling data and making it readily available.

3. “This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species...”

Project activities associated with construction activities have the potential to interfere with native aquatic species, which depend heavily on aquatic food or live in riparian or wetland habitats, and adversely impact habitat use. Implementation of this condition will avoid impacts to water quality and the beneficial uses related to aquatic biological resources and wildlife habitat. Water Code section 13160, subdivision (b)(1), allows the State Water Board to issue a certification when there is “reasonable assurance that an activity of any person subject to the jurisdiction of the state board will comply with applicable requirements” of state and federal law. In accordance with the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) and federal Endangered

**Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)**

Species Act (16 U.S.C. § 1531 et seq.), this condition does not authorize any act which results in the taking of a threatened, endangered, or candidate species.

4. “The project proponent shall grant Water Board staff or an authorized representative...”

This condition protects water quality by allowing the Water Boards, or a representative, to investigate site conditions to ensure that the authorized activity is compliant with the Restoration General Order. This condition is authorized pursuant to the Water Boards’ authority to investigate the quality of any waters of the state within its region under Water Code sections 13267 and 13383.

5. “A copy of this Order must be available at the project site(s)...”

This condition requires site personnel and any agent of the project proponent to be familiar with the content of the Restoration General Order and availability of the document at each project site. This condition is necessary to ensure that all activities will comply with applicable water quality standards and other appropriate requirements (33 USC section 1341; California Code of Regulations, title 23, section 3859, subdivision (a)), which cannot be adhered to if the project proponent’s agents are unaware of applicable requirements. This condition is required to ensure that any authorized Project activity will comply with the terms and conditions of the Order, which requires compliance with all of the water quality objectives and beneficial uses adopted or approved. (Dredge of Fill Procedures, section IV.B.1.)

6. “Lake and Streambed Alteration Agreement...”

This condition is required pursuant to California Code of Regulations, title 23, section 3856 subdivision (e), which requires that as part of an application for water quality certification, copies be provided to the Water Boards of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.”

I. Restoration and Monitoring of Impacts

Conditions in this section are related to restoration and/or mitigation of temporary and permanent impacts. These conditions are necessary to ensure compliance with state and federal anti-degradation policies and are consistent with section IV.B.1.a of the Dredge or Fill Procedures, which requires that the Water Boards will approve a project only after it has been determined that a sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for adverse impacts that cannot be practicably avoided or minimized. (See also California Code of Regulations, section 3856, subdivision (h) [requiring submittal of proposed mitigation and description

Black Oak Ranch Water Conservation Project Notice of Applicability
Enclosure B: Additional Information for
Conformity with 40 CFR § 121.7(d)

of steps taken to avoid, minimize, or compensate].) These conditions are also consistent with the Dredge or Fill Procedures, which requires "in all cases where temporary impacts are proposed, a draft restoration plan that outlines design, implementation, assessment, and maintenance for restoring areas of temporary impacts to pre-project conditions." (Dredge or Fill Procedures section IV. A.2(d) & B.4.) Mitigation is also necessary to ensure compliance with Executive Order W-59-93 that requires no net loss of the structure or function of California's wetland resources.

Furthermore, impacts that are not restored within a reasonable amount of time could contribute to long-term degradation of water quality. The longer the lag time between impact and restoration, the more opportunity there is for water quality degradation. This condition protects water quality by ensuring that restoration is initiated in a reasonable amount of time after impacts have occurred. (Dredge or Fill Procedures, sections IV.A.2.d, IV.B.4-5.) Technical reporting and monitoring requirements under this condition are consistent with the Water Boards' authority to investigate the quality of any waters of the state and require necessary reporting and monitoring pursuant to Water Code sections 13267 and 13383.