

ATTACHMENT F
Supplemental Order Findings
Rural Roads General Order
DRAFT Order Number R1-2024-0002

This attachment contains supplemental Order findings pertaining to 1) the legal and regulatory framework and basis of the Rural Roads General Order, and 2) tribal consultations and outreach and engagement with the public and disadvantaged communities during development of the Order.

I. Legal and Regulatory Framework Findings

A. Clean Water Act

1. Numerous streams in the North Coast Region are listed as impaired for sediment and temperature pursuant to Clean Water Act section 303(d). The Clean Water Act requires states to address impaired waters by developing a total maximum daily load (TMDL) or by implementing water quality programs that result in the attainment of water quality standards.
2. TMDLs have been developed for most of the sediment and temperature-impaired waters in the North Coast Region. While the actual load allocations and targets may vary from one sediment or temperature TMDL to another, all address the basic issues of reducing and preventing excess sediment inputs or decreasing water temperature by protecting and restoring natural shade, respectively.

B. Porter-Cologne Water Quality Control Act

1. The Porter-Cologne Water Quality Control Act, also known as Division 7 of the California Water Code¹ or simply Porter-Cologne, is California's comprehensive water quality control statute, which implements portions of the Clean Water Act. Under Porter-Cologne, water quality objectives are established to ensure the reasonable protection of beneficial uses and the prevention of nuisance, in consideration of various factors including past, present, and probable future beneficial uses of water².
2. Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional water board a Report of Waste Discharge (ROWD) containing such information and data as may be required by the Regional Water Board. This Order establishes Waste Discharge Requirements for activities involving

¹ Water Code, section 13000 et seq.

² Water Code, section 13241.

construction, reconstruction and maintenance and associated discharges described in findings 5 through 7 and includes monitoring requirements to verify the efficacy of the requirements. This Order also includes a General 401 Water Quality Certification for those project activities that may affect federally jurisdictional waters that necessitate a Clean Water Act Section 404 or other federal permit from the U.S. Army Corps of Engineers (ACOE).

3. The State Water Board or a regional water quality control board may prescribe general waste discharge requirements for a category of discharges if the State Water Board or that regional water board finds or determines that all of the following criteria apply to the discharges in that category:
 - i. The discharges are produced by the same or similar operations;
 - ii. The discharges involve the same or similar types of waste;
 - iii. The discharges require the same or similar treatment standards; and
 - iv. The discharges are more appropriately regulated under general discharge requirements than individual discharge requirements.
4. The Regional Water Board believes it is appropriate to regulate discharges from road and watercourse crossing construction and reconstruction activities that implement all applicable BMPs for the protection and improvement of the beneficial uses of water under a general order rather than individual discharge requirements because this Order addresses the same or similar discharges of waste from the same or similar operations and proposes the same or similar treatment methods and management practices. By regulating these discharges and activities under a general order, it simplifies and streamlines the regulatory process and allows Regional Water Board staff to focus its limited resources on working with dischargers within the North Coast Region to protect water quality.
5. Pursuant to Water Code section 13260, this Order, and any enrollment under this Order: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits which may be required by other federal, state, or local governmental agencies; and 5) does not preclude the Regional Water Board from administering enforcement remedies pursuant to the Water Code.
6. This Order, including enrollments under this Order, does not create a vested right; discharges of waste are privileges, not rights, as provided for in Water Code section 13263, subdivision (g).
7. This Order and its attachments may be modified, revoked, reissued, or terminated. If unforeseen circumstances resulting from the Order have the effect of unreasonably constraining rural road activities.

C. Water Quality Control Plan for the North Coast Region

1. The Water Quality Control Plan for the North Coast Region [Basin Plan](https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan_documents/) (https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan_documents/) contains the regulations adopted by the Regional Water Board to control the discharge of waste and other controllable factors affecting the quality of waters of the state³ within the boundaries of the North Coast Region. The Basin Plan, as amended periodically, establishes:
 - a. beneficial uses of water within the region;
 - b. water quality objectives necessary to protect those beneficial uses;
 - c. prohibitions, policies, and action plans to achieve water quality objectives;
 - d. monitoring to ensure attainment of water quality standards; and
 - e. statewide plans and policies.

2. The existing and potential beneficial uses of waters in the North Coast Region include:
 - a. Municipal and Domestic Supply (MUN)
 - b. Agricultural Supply (AGR)
 - c. Industrial Service Supply (IND)
 - d. Industrial Process Supply (PRO)
 - e. Groundwater Recharge (GWR)
 - f. Freshwater Replenishment (FRSH)
 - g. Navigation (NAV)
 - h. Hydropower Generation (POW)
 - i. Water Contact Recreation (REC-1)
 - j. Non-Contact Water Recreation (REC-2)
 - k. Commercial and Sport Fishing (COMM)
 - l. Cold Freshwater Habitat (COLD)
 - m. Warm Freshwater Habitat (WARM)
 - n. Wildlife Habitat (WILD)
 - o. Preservation of Areas of Special Biological Significance (ASBS)
 - p. Preservation of Areas of Special Rare, Threatened, or Endangered Species (RARE)
 - q. Marine Habitat (MAR)
 - r. Migration of Aquatic Organisms (MIGR)
 - s. Spawning, Reproduction, and/or Early Development (SPWN)
 - t. Shellfish Harvesting (SHELL)
 - u. Estuarine Habitat (EST)
 - v. Aquaculture (AQUA)
 - w. Native American Culture (CUL)

³ Porter-Cologne defines “waters of the state” to mean any surface water or groundwater, including saline waters, within the boundaries of the state.

- x. Flood Peak Attenuation/Flood Water Storage (FLD)
 - y. Wetland Habitat (WET)
 - z. Water Quality Enhancement (WQE)
 - aa. Subsistence Fishing (FISH)
 - bb. Inland Saline Water Habitat (SAL)
3. Compliance with the conditions in the Order will protect the beneficial uses listed above and promote attainment of water quality objectives.
 4. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and U.S. EPA, where required.
 5. The Regional Water Board has reviewed the contents of the Order, the supporting Mitigated Negative Declaration, written public comments and testimony provided after notice and hearing, and hereby finds that the adoption of the Order is consistent with the Basin Plan and is in the public interest.

D. Policy for Implementation and Enforcement of Nonpoint Source Pollution Control Program

1. In 2004, the State Water Board adopted the *Policy for Implementation and Enforcement of Nonpoint Source Pollution Control Program*⁴ (Nonpoint Source Policy). The Nonpoint Source Policy requires nonpoint source discharges of waste to be regulated by waste discharge requirements, waivers of waste discharge requirements, or Basin Plan prohibitions to ensure compliance with regional water board water quality control plans.
2. This Order meets the requirements of the five key elements under the Nonpoint Source Policy:
 - a. **Key Element 1:** The Order explicitly states the purpose in Finding 1: “This Rural Roads General Order (hereafter referred to as the “Order”) is intended to ensure that rural road and watercourse crossing construction and reconstruction activities implement all applicable Best Management Practices (BMPs) designed to minimize road related sediment discharge.”
 - b. **Key Element 2:** The Order requires implementation of all applicable Best Management Practices referenced in Finding 5 of the Order on all permitted projects. Implementation of these best management practices have been shown to in the FPRs are expected to ensure compliance with Basin Plan requirements

⁴ [The Nonpoint Source Policy:](https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_i)

(https://www.waterboards.ca.gov/water_issues/programs/nps/docs/plans_policies/nps_i_epolicy.pdf)

and reduce the likelihood that forest management projects pose a significant threat to water quality and are included as enforceable requirements of the Order by reference. Additionally, required monitoring inspections are intended to verify proper implementation of these practices.

- c. **Key Element 3:** Water quality requirements must be met during project implementation; thus, a specific time schedule is not applicable.
- d. **Key Element 4:** Section IV of the Order includes a monitoring and reporting component that requires project proponents to conduct post-completion on-site evaluations to ensure BMPs and compensatory mitigation were implemented as designed (while still providing a mechanism to allow flexibility to make changes during implementation as conditions warrant), are functioning properly and are self-sustaining, or whether additional work is needed. The monitoring and reporting requirement provides sufficient feedback mechanisms to determine that applicable requirements are met and inform whether additional or different management practices or other actions are required.
- e. **Key Element 5:** Failure to comply with any of the provisions of this Order can result in rescission or denial of coverage for the project. Additionally, unauthorized discharge of waste to waters of the state can result in enforcement under Water Code sections 13350, 13264, and other applicable law.

E. Statement of Policy with Respect to Maintaining High Quality of Waters in California

1. In 1968, the State Water Board adopted⁵ the *Statement of Policy with Respect to Maintaining High Quality of Waters in California*, Resolution No. 68-16 (Antidegradation Policy)⁶. The Antidegradation Policy requires whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality must be maintained. The Antidegradation Policy only allows change in existing high-quality water if it has been demonstrated to the Regional Water Board that the change is consistent with maximum benefit to the people of the state, will not unreasonably affect present and anticipated beneficial uses of such water, and will not result in water quality less than

⁵ Section 131.12 of the U.S. EPA's Water Quality Standards regulations includes the "federal antidegradation policy" which emphasizes protection of instream beneficial uses, especially protection of aquatic organisms, and required each state's water quality standards to include a policy consistent with the federal antidegradation policy. The State Antidegradation Policy is deemed to incorporate the Federal Antidegradation Policy where the federal policy applies under federal law. (State Water Board Order WQ 86-17.)

⁶ [The Antidegradation Policy:](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf)

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/1968/rs68_016.pdf)

that prescribed in the policies. The Antidegradation Policy further requires that discharges comply with waste discharge requirements that will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality, consistent with the maximum benefit to the people of the state, will be maintained.

2. High quality waters are those surface waters or areas of groundwater that have a baseline water quality better than required by water quality control plans and policies. This determination is made on a waterbody-by-waterbody and constituent-by-constituent basis. In the context of diffuse discharges regulated by a general order, the State Water Board provided the following guidance on determinations of whether a discharge impacts high quality waters:

When assessing baseline water quality for a general order, we find a general review and analysis of readily available data is sufficient. . . .Regional water boards should not delay the implementation of a regulatory program in order to conduct a comprehensive baseline assessment and analysis—especially where, as here, the general order imposes essentially the same iterative approach for management practices and other requirements regardless of whether or not the receiving water is high quality⁷.

3. The Order is consistent with the Antidegradation Policy because implementing the conditions of the Order will result in a net benefit to water quality. The Order contains requirements that project proponents implement best management practices and on-the-ground prescriptions for projects to provide riparian and shade protections and enhancements, address controllable sediment discharge sources, and promote beneficial aquatic habitat restoration projects ensure that road and watercourse crossing construction and reconstruction. Attachment A of the Order includes general mitigation measures designed to prevent or minimize environmental impacts from incidental short term increases in erosion and sediment delivery and/or alterations to riparian systems resulting from project activities. The best management practices and mitigation measures required by the Order, constitute the best practicable treatment or control measures necessary to prevent or minimize impacts to water quality.
4. This Order requires that discharges of waste from rural road projects shall not cause surface water to be degraded, exceed water quality objectives, unreasonably affect beneficial uses of water, or cause a condition of pollution or nuisance. The attached

⁷ [In the Matter of Review of Waste Discharge Requirements General Order No. R5-2012-0116 for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group, SWRCB Order No 2018-0002 \(2018\):](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2018/wqo2018_0002_with_data_fig1_2_appendix_a.pdf)

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2018/wqo2018_0002_with_data_fig1_2_appendix_a.pdf)

Monitoring and Reporting Program requires surface water monitoring to evaluate whether the physical, chemical, and biological conditions of a waterbody are supporting beneficial uses and land use activities are sufficiently protective of water quality. Robust and sustained water quality monitoring programs can also provide insights into watershed impairments and whether a waterbody is suitable for listing or delisting under Section 303(d) of the Clean Water Act. The effectiveness of management measures will be evaluated through required monitoring and reporting. Management measures and monitoring may be modified as data are assessed and reported and whenever site evaluations show that measures need to be improved to meet water quality standards.

F. California Wetlands Conservation Policy

1. In 1993, California Governor Pete Wilson signed the California Wetlands Conservation Policy, Executive Order W-59-53⁸. The goals of the California Wetlands Conservation Policy are to achieve a long-term increase of wetlands acreage, function, and values in California. Per design, conservation practices implemented through the Order are expected to be implemented in a manner consistent with the California Wetlands Conservation Policy goals. Applicable projects implemented through the Order are expected to result in a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values as a result of project implementation.

G. Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters in the North Coast Region

1. In 2004, as part of its efforts to control sediment waste discharges and restore sediment impaired water bodies, the Regional Water Board adopted the *Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region*, Resolution R1-2004-0087 (Sediment TMDL Implementation Policy)⁹. The Sediment TMDL Implementation Policy states that Regional Water Board staff shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Sediment TMDL Implementation Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.

⁸[The California Wetlands Conservation Policy](https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp2008/executive_order_w59_93.pdf):

(https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wrapp2008/executive_order_w59_93.pdf)

⁹ Information about the [Sediment TMDL Implementation Policy](https://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/sediment_tmdl_implementation/) can be found at the following web address:

(https://www.waterboards.ca.gov/northcoast/water_issues/programs/tmdls/sediment_tmdl_implementation/)

2. The Sediment TMDL Implementation Policy directed staff to develop: 1) the Work Plan, which describes how and when permitting and enforcement tools are to be used; 2) the Guidance Document on Sediment Waste Discharge Control; 3) the Sediment TMDL Implementation Monitoring Strategy; and 4) the Desired Conditions Report. This Order implements the Sediment TMDL Implementation Policy directives by requiring that road and watercourse crossing construction and reconstruction projects incorporate all necessary BMPs to prevent or minimize sediment discharge.
3. The goals and requirements of the Sediment TMDL Implementation Policy apply region-wide, regardless of whether a project is located in a 303(d) listed watershed or not.

H. Policy for the Implementation of the Water Quality Objective for Temperature

1. In 2014, the Regional Water Board adopted the *Policy for the Implementation of the Water Quality Objective for Temperature (Temperature Policy)*¹⁰, Resolution R1-2014-0006. The Temperature Policy directs the Regional Water Board and its staff to develop and implement permits that prevent, minimize, and mitigate temperature alterations associated with activities that have the potential to reduce riparian shading of waterbodies, increase sediment delivery, alter stream channel geometry, and reduce instream flows or sources of cold water and cold water refugia.
2. Page 28 of the Staff Report¹¹ for the Temperature Policy contains the following passage:

Short-term reduction of effective shade associated with fuels reduction projects in riparian areas may be appropriate when the long-term benefits are considered. In such cases, the impacts of vegetation thinning are weighed against the long-term benefits of a riparian ecosystem that is resilient against fire impacts. Similarly, the short-term reduction of shade associated with thinning projects designed to increase the growth rate of retained trees or replace suppressed trees with vigorous saplings may represent an acceptable tradeoff if the project results in increased shade levels in a shorter timeframe. Likewise, a short-term reduction of effective shade associated with efforts to increase deciduous hardwood species in a riparian zone may be appropriate where it can be demonstrated that natural primary productivity levels are suppressed due to a lack of nutrients, leading to a reduced capacity to

¹⁰ Information about the [Temperature Policy](https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/temperature_amendment/) can be found at the following web address: (https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/temperature_amendment/)

¹¹ [The Temperature Policy Staff Report](https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/140516_temp/140327_Temp_Policy_Staff_Report_ADOPTED.pdf):

(https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/140516_temp/140327_Temp_Policy_Staff_Report_ADOPTED.pdf)

support beneficial uses, or actions proposed to improve conifer site occupancy in forest stands currently dominated by evergreen hardwoods.

In each of the situations described above, the Regional Water Board considers the short-term impacts of the proposed action in light of the site-specific conditions in the affected area. Factors taken into consideration include existing water temperatures relative to biological thresholds, the level of solar radiation increase associated with the project, likely temperature impacts associated with the project, the current capacity for support of beneficial uses, condition of riparian vegetation in adjacent reaches, and the expected amount of time for necessary for riparian recovery.

3. This Order implements the Temperature Policy directives by requiring Dischargers to protect and maintain designated riparian zones and retain as much understory brush and as many trees as feasible, emphasizing shade producing and bank stabilizing vegetation. Disturbance of riparian vegetation must be avoided or minimized. When removed pursuant to the provisions of the work, riparian vegetation shall be cut off no lower than ground level to promote rapid re-growth (Attachment A, General Mitigation Measures).

I. Policy in Support of Restoration in the North Coast Region

1. In 2015, the Regional Water Board adopted the *Policy in Support of Restoration in the North Coast Region* (Restoration Policy)¹². The Restoration Policy describes in detail 1) the importance of restoration projects for the protection, enhancement, and recovery of beneficial uses, 2) the obstacles that slow or preclude restoration actions, 3) the legal and procedural requirements for permitting restoration projects, 4) the ongoing Regional Water Board effort to provide support towards the implementation of restoration projects, and 5) direction to staff to continue to support restoration in the future.
2. This Order supports the goals of the Restoration Policy by promoting the implementation of beneficial aquatic habitat restoration projects, providing regulatory coverage for these activities, and encouraging implementation of these through development of Sediment Source Treatment Plans to address controllable sediment discharge sources.
3. This Order promotes the goals of the Restoration Policy through its stated support for the U.S. Forest Service’s Watershed Conditions Framework, through which national forests develop priority watershed-based strategies to address sources of pollution and conduct aquatic habitat restoration activities.

¹² Information about the [Regional Water Board’s Restoration Program and Policy](https://www.waterboards.ca.gov/northcoast/water_issues/programs/Restoration/) can be found at the following web address:
(https://www.waterboards.ca.gov/northcoast/water_issues/programs/Restoration/)

J. California Environmental Quality Act

1. The Regional Water Board, acting as the lead agency under the California Environmental Quality Act¹³ (CEQA), adopted a Mitigated Negative Declaration (SCH No. XXXXXXXX) as part of the development of this Order. Additionally, the following categorical exemptions are also applicable: California Code of Regulations title 14, section 15301 (existing facilities); section 15304 (minor alterations to land); section 15307 (actions by regulatory agencies for protection of natural resources); and section 15308 (actions by regulatory agencies for protection of the environment). Mitigation measures necessary to reduce or eliminate significant impacts on the environment and monitoring and reporting are incorporated as conditions in this Order.
2. The Order may authorize projects that temporarily exceed water quality objectives and/or result in temporary impacts. However, the net outcome of the Order requirements (e.g., implementation of best management practices, controllable sediment discharge source treatments, riparian/shade protections, etc.) are designed to avoid, minimize, or mitigate for any potential environmental impacts.

II. Tribal Consultations and Community Outreach and Engagement

A. Tribal Consultations

1. On October 4, 2023, 107 tribal consultation invitation letters pursuant to Assembly Bill 52 and Executive Order B-10-11 were issued to California Native American Tribes in the North Coast Region (Tribes). The purpose of the consultation invitation letters was to notify Tribes of the development of the Rural Roads General Order and supporting Mitigated Negative Declaration. No tribes elected to consult with the Regional Water Board.

B. Community Outreach and Engagement

1. Water Code section 189.73 requires the Water Boards to conduct equitable, culturally relevant outreach when considering proposed discharges of waste that may have disproportionate impacts on water quality in disadvantaged or tribal communities. Water Code section 13149.2 requires the Water Boards to make findings on anticipated water quality impacts in disadvantaged or tribal communities as a result of a permitted activity or facility, any environmental justice concerns within a Water Board's authority that are raised by interested persons regarding those water quality impacts, and available measures within the Water Board's authority to address those water quality impacts when adopting water quality control plans; policies for water quality control; regional or statewide waste discharge

¹³ Public Resources Code, sections 21000-21777.

requirements or waivers; or certain individual waste discharge requirements or waivers.

2. The Rural Roads General Order authorizes activities that have the potential to discharge waste to waters of the state, and as such, Regional Water Board staff conducted actions consistent with Water Code sections 189.73 and 13149.2 requirements as part of the development of the Order. All activities undertaken pursuant to the Order must comply with applicable best management practices (BMPs) for water quality protection identified in the NOI, which are designed to minimize potential water quality impacts at a given project location and in downstream receiving waterbodies. In some circumstances, however, activities associated with a rural road project could cause a significant discharge of waste, such as a landslide or hazardous materials spill, which may have the potential to result in a disproportionate impact to a disadvantaged community or tribal community.
3. Regional Water Board staff conducted several actions to provide meaningful outreach to disadvantaged communities and tribal governments that could be affected because of the adoption and implementation of this Order, including the following:
 - a. Conducted outreach to 107 Tribes in the North Coast Region to provide an opportunity to conduct government-to-government consultations regarding the scope and purpose of the Rural Roads General Order and its supporting CEQA analysis.
 - b. Consistent with Water Code section 189.7, the Regional Water Board conducted outreach to potentially affected disadvantaged and Tribal communities and other interested persons through widespread circulation of the draft Order and notice of the opportunity to comment and participate at its public hearing.
 - c. Held a public hearing in April 2024, including an opportunity for member of the public to provide written and oral statements to the Regional Water Board as its members consider adoption of the Order.