ORDER FOR CLEAN WATER ACT SECTION 401 GENERAL WATER QUALITY CERTIFICATION FOR SMALL HABITAT RESTORATION PROJECTS FILE # SB09016GN

This Certification Order (2012 Order) authorizes small habitat restoration projects that qualify for a categorical exemption under, California Code of Regulations title 14, section 15333, "Small Habitat Restoration Projects." These projects are intended to improve the quality of waters of the state and contribute to the state's No Net Loss Policy (Executive Order W-59-93).

This 2012 Order is an interim reissuance of the expired Small Habitat Restoration Order (effective August 10, 2007- August 10, 2012; 2007 Order) until an updated Order prescribing Waste Discharge Requirements (WDRs) containing new program provisions may be considered by the State Water Resources Control Board (State Water Board). If the new WDRs are adopted by the State Water Board, this 2012 Order will expire. It is anticipated that current enrollees will be automatically enrolled under the new WDRs for Small Habitat Restoration Projects.

The following procedure clarifies the status of Notices of Intent (NOIs) received just prior to the expiration of the 2007 Order. NOIs submitted to the State Water Board or a Regional Water Quality Control Board (Regional Water Board) 30 days or less from the expiration date of the 2007 Order (i.e., from July 12, 2012 to August 10, 2012) and not enrolled under the 2007 Order, shall be automatically re-instated under this 2012 Order. The number of days between the receipt of the NOI and the expiration date (August 10, 2012) shall be deducted from the 30-day review period under this 2012 Order. The 30-day review period will restart one working day after the 2012 Order is signed by the Executive Director.

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 a categorical exemption under California Code of Regulations title 14, section 15333, "Small Habitat Restoration Projects." Examples of small habitat

restoration projects may include, but are not limited to:

a. Revegetation 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.

f. Culvert replacement conducted in accordance with published guidelines of the California Department of Fish and Game (DFG) or National Oceanic & Atmospheric Administration 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 a cumulative total of 500 linear feet of stream bank or coastline.

3. **Pre-Project Authorization** - This Order authorizes discharges only if the State Water Board and/or appropriate Regional Water Board have received an NOI and if a Notice of Exclusion (NOE) has not been issued by a California 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/or appropriate Regional Water Board(s) a NOI with a 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

appropriate Regional Water Board. In the event that the project is located in more than one region, the NOI, Attachment B, shall be sent to the State Board and affected Regional Water Boards. Mail completed NOI forms to:

For projects in one region, send to:
Program Manager
Certification and Wetlands Program
(Address of appropriate Regional Water Board; see:
http://www.waterboards.ca.gov/waterboards_map.shtml

For projects in more than one region, send to:
Program Manager
Certification and Wetlands Program
Division of Water Quality
State Water Resources Control Board
1001 I Street, 15th Floor
Sacramento, CA 95814

b. The State or Regional Water Board may, at its discretion, issue a Notice of Applicability (NOA) to the applicant, indicating that the project activities are authorized under this Order. If project activities do not qualify for coverage under this Order, an NOE may be issued by State or Regional Water Board staff. Project activities not qualified for coverage under this Order may require an application for an individual Water Quality Certification. If the State or 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** - The State Water Board fee schedule for General Orders is located at http://www.waterboards.ca.gov/water_issues/programs/cwa401/. A check in the appropriate amount as specified in California Code of Regulations title 23, section 2200, payable to the State or Regional Water Board, shall be enclosed

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[1] Clearly indicate existing habitat on a map in one of the following formats (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.

with the copy of the NOI. The check shall be payable to the same Water Board to which the NOI is submitted.

4. **Monitoring Plan** - The applicant shall provide the State or 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, and goal(s).

   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.

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 State or appropriate Regional Water Board. The Monitoring Report shall document status 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 Water Board 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. STANDARD CONDITIONS

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the Water Code and article 6 (commencing with section 3867) of chapter 28, title 23 of the California Code of Regulations.

2. This Certification action 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 the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. This Certification is conditioned upon total payment of any fee required under chapter 28, title 23 of the California Code of Regulations and owed by the applicant.

D. SPECIAL 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.

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[2] Clearly indicate existing habitat on a map in one of the following formats (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.

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 California Code of Regulations title 22, section 66261 and 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. **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.

9. **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.

10. **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 water quality control plan(s).

11. **Porter-Cologne Water Quality Control Act** - The project shall comply with all requirements of the Porter-Cologne Water Quality Control Act (Wat.Code, § 13000 et.seq.)

12. **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 State or Regional Water Boards 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 State or Regional Water Boards may require the applicant to furnish, under penalty of perjury, any technical or monitoring reports the State or Regional 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 State or Regional 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.

CEQA FINDINGS:

The issuance of this Certification and the activities described herein meet the exemption criteria under Californian Code of Regulations title 14, section 15333 (Small Habitat Restoration Projects).

Additionally, State Water Board staff concludes that no exceptions apply to the activities approved by this Certification. The State Water Board will file a Notice of Exemption in accordance with the California Code of Regulations title 14, section 15062 after issuance of this Order.

STATE WATER BOARD CONTACT PERSON:

If you have any questions, please contact State Water Board Environmental Scientist Catherine Woody at (916) 341-5785 CWoody@waterboards.ca.gov or by mail at:

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

WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that as long as all of the conditions listed in this Certification action 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). This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ, which authorizes this Certification 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 Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Project Information Sheet (Attachment B and C), and (b) compliance with all applicable requirements of statewide water quality control plans and policies, and the Regional Water Boards Basin Plans.

Thomas Howard

Thomas Howard
Executive Director

Date 9/6/12

Attachments (2): A. Signatory Requirements
B. Notice of Intent

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