



State Water Resources Control Board

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION ORDER NO. WQ 2021-0057-DWQ AND NOTICE OF APPLICABILITY FOR ENROLLMENT UNDER STATE WATER BOARD GENERAL ORDER FOR THE CORPS' NATIONWIDE PERMITS (ORDER NO. [WQ] 2020-0039-EXEC)

Effective Date: November 22, 2021

Program Type: Fill/Excavation

Project Type: Oil and Gas

Project: LS-62 Pipeline Exposure at Merced River Project
Regulatory Measure ID: 443459
WDID: SB21018IN

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For further assistance, please call State Water Resources Control Board (State Water Board) Staff listed above or (916) 341-5478 and ask to speak with the Wetlands Permitting and Enforcement II Unit Supervisor.

E. JOAQUIN ESQUIVEL, CHAIR | EILEEN SOBECK, EXECUTIVE DIRECTOR

I. Summary

This document serves as a Notice of Applicability (NOA) for enrollment under the State Water Board General Order for the Nationwide Permits (Order No. [WQ] 2020-0039-EXEC; SWRCB ID SB20031GN; hereafter referred to as the General Order) at the request of SFPP, LP, a subsidiary of Kinder Morgan (Applicant). The General Order can be accessed at [the Clean Water Act Section 401 - Certification and Wetlands Program, General Orders webpage](https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.html#yr_2020) (https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.html#yr_2020). On October 26, 2021, the State Water Board received a complete Notice of Intent (NOI) requesting authorization for the Applicant's LS-62 Pipeline Exposure at Merced River Project (Project). After reviewing the NOI, the State Water Board has determined that the Project meets General Order requirements for Nationwide Permit 12: Oil or Natural Gas Pipeline Activities.

This order also serves as an individual Clean Water Act Section 401 certification of the Project that will be authorized by the Corps' Nationwide Permit 12.

II. Project Description

As described in the Project NOI and supplemental information (hereafter referred to as the Application), which is incorporated herein by reference, the purpose of the Project is to remove a section of an exposed idle oil pipeline from the Merced River. The pipeline will be removed via dewatering and excavation.

III. Project Location

The Project is located approximately 90 feet northeast of California State Route 99's northbound crossing of the Merced River, in Livingston, Merced County, California. The Project coordinates are 37°23'58" N, 120°44'32" W.

IV. Receiving Waters Information

The Project is located within the jurisdiction of the Central Valley Regional Water Quality Control Board, Fresno Office. Receiving waters and groundwater potentially impacted by this Project are listed in Table 1. These waters are regulated in accordance with the applicable water quality control plan (Basin Plan) for the region and other plans and policies of the California Water Boards, which may be accessed online at [the State Water Boards' Plans and Policies webpage](http://www.waterboards.ca.gov/plans_policies/) (http://www.waterboards.ca.gov/plans_policies/).

Table 1: Receiving Water Information

Impact Site ID	Waterbody Name	Impacted Aquatic Resource Type	Water Board Hydrologic Units	Receiving Waters	Receiving Waters Beneficial Uses	303(d) Listing Pollutants
WUS-01	Merced River	Wetlands	535.80	Merced HA	MUN, AGR, PROC, IND, POW, REC-1, REC-2, WARM, COLD, MIGR, SPWN, WILD	Chlorpyrifos, Group A Pesticides, Mercury, Water Temperature, Toxicity
OWUS-01	Merced River	Stream Channel	535.80	Merced HA	MUN, AGR, PROC, IND, POW, REC-1, REC-2, WARM, COLD, MIGR, SPWN, WILD	Chlorpyrifos, Group A Pesticides, Mercury, Water Temperature, Toxicity

V. Direct Impacts to Waters of the State

Total Project fill/excavation quantities for all impacts are summarized in Tables 2 and 3.

Table 2: Total Project Fill/Excavation Quantity to Wetlands

Temporary Impact ¹	Permanent Impact - Physical Loss of Area	Permanent Impact - Degradation of Ecological Condition Only
0.10 acres	0 acres	0 acres

¹ Includes only temporary direct impacts to waters of the state and does not include upland areas of temporary disturbance which could result in a discharge to waters of the state. Temporary impacts, by definition, are restored to pre-project conditions and therefore do not include a physical loss of area or degradation of ecological condition.

Table 3: Total Project Fill/Excavation Quantity to Stream Channels

Temporary Impact ²	Permanent Impact - Physical Loss of Area	Permanent Impact - Degradation of Ecological Condition Only
0.02 acres 0.10 linear feet	0 acres 0 linear feet	0 acres 0 linear feet

VI. Description of Indirect Impacts to Waters of the State

The State Water Board recognizes the potential for indirect impacts to waters of the state associated with the Project. Potential indirect adverse effects include but are not limited to: increased sediment loading to streams from riparian and/or upland areas used for access or staging areas, possibility of introducing invasive species into the Project areas, and changing timing of runoff delivery to streams in the Project area. The Project, as designed, will not have significant indirect impacts to waters of the state.

VII. Conditions

A. Scope of Authorization

- i. The Project may proceed only as described in the Application submitted to the State Water Board by the Applicant and in accordance with the conditions in State Water Board General Order No. [WQ] 2020-0039-EXEC and this NOA. This Certification and coverage under the General Order is no longer valid if the Project (as described) is modified. A copy of the General Order and its attachments can be found on the State Water Resources Control Board's [General Order Website](https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.html#yr_2020) (https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.html#yr_2020).

B. Standard Conditions (These conditions are also set forth in State Water Board General Order No. [WQ] 2020-0039-EXEC, in Section VI.A.1-A.3.)

- i. Every 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 this Chapter.
- ii. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an

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amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- iii. Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

C. Avoidance and Minimization

In order to avoid and minimize impacts to waters of the state and their designated beneficial uses, the Applicant will follow the avoidance and minimization measures as proposed in their Application. Each avoidance and minimization measure demonstrates that a sequence of actions has been taken to first avoid, then to minimize, and lastly compensate for loss of or significant adverse impacts to beneficial uses of waters of the state that cannot be practicably avoided or minimized.

D. Mitigation for Temporary Impacts

- i. All temporarily affected areas will be restored to pre-construction contours and conditions upon completion of construction activities in compliance with the General Order and according to the restoration plan submitted by the Applicant in the Application.

VIII. California Environmental Quality Act (CEQA)

The State Water Board has determined that the Project is exempt from review under the California Environmental Quality Act (CEQA) pursuant to California Code of Regulations, title 14, section 15301. Additionally, the State Water Board finds that no exceptions to the exemptions apply to the activities approved by this NOA.

IX. Certification Fees

A fee payment of \$2066 was received by the State Water Board on October 26, 2021. The fee amount was determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as category A - Fill and Excavation Discharges (fee code 84).

X. Public Notice

The State Water Board provided public notice of the Application pursuant to California Code of Regulations, title 23, section 3858 from May 28, 2021 to June 17, 2021. The State Water Board did not receive any comments during the comment period.

XI. Reporting and Notification Requirements

Notices and reporting shall be provided to the State Water Board according to section VI.E, "Application for Coverage and Termination," of the General Order.

The Applicant shall submit Report Types 2 and 3, as described in Attachment B, "Report and Notification Requirements," of the General Order. The Applicant must also submit Report Types 4 through 9 if the Project encounters the conditions described in these Report Types. The Applicant must submit all reports and information required under this Certification according to the Report Submittal Instructions found in Attachment B, "Report and Notification Requirements," of the General Order.

XII. Water Quality Certification

I hereby issue this Notice of Applicability for the LS-62 Pipeline Exposure at Merced River Project, certifying that as long as all of the conditions listed in the General Order are met, any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards).

As a water quality certification and enrollment under State Water Board General Order No. [WQ] 2020-0039-EXEC, this Certification and Notice of Applicability serve as waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (Wat. Code, § 13000 et seq.). State Water Board Order No. [WQ] 2020-0039-EXEC serves as waste discharge requirements in accordance with State Water Board Water Quality General Order No. 2003-0017-DWQ. The State Water Board will file a Notice of Exemption (NOE) at the State Clearinghouse within five (5) working days of issuance of this NOA.

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

Date

Karen Mogus

 Digitally signed by Karen Mogus
Date: 2021.11.22 12:53:10 -08'00'

Karen Mogus, Deputy Director
Division of Water Quality