



State Water Resources Control Board

July 19, 2023

Michael Morris, Program Manager
Merced Irrigation District
744 W. 20th St
Merced, CA 95340

Sent via email: mmorris@mercedid.org

NOTICE OF APPLICABILITY, CLEAN WATER ACT SECTION 401 GENERAL WATER QUALITY CERTIFICATION FOR MERCED IRRIGATION DISTRICT'S MERCED RIVER AGRICULTURAL DIVERSION AND FISH HABITAT ENHANCEMENT PROJECT, MERCED COUNTY, CALIFORNIA

Dear Mr. Morris:

On April 24, 2023, the State Water Resources Control Board (State Water Board) received Merced Irrigation District's (MID's) Notice of Intent (NOI) to enroll the Merced River Agricultural Diversion and Fish Habitat Enhancement Project (Project) under the [**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, attached)¹. Implementation of the Project will require a permit from the United States Army Corps of Engineers (USACE) pursuant to Section 404 of the Clean Water Act. MID is seeking authorization under USACE's Regional General Permit (RGP) No. 16 – Anadromous Salmonid Fisheries Restoration.

State Water Board staff has reviewed MID's NOI and find the Project meets the requirements of and is hereby enrolled under the Restoration General Order. MID may proceed with the Project in accordance with the requirements contained in this Notice of Applicability (NOA) and the Restoration General Order following any additional federal and/or state approvals such as USACE authorization under RGP No. 16.

MID is responsible for complying with this NOA and all applicable Restoration General Order requirements. Failure to comply with this NOA and the Restoration General Order constitutes a violation of the California Water Code and may result in enforcement action or termination of enrollment under the Restoration General Order.

PROJECT DESCRIPTION

The Project is located on the Lower Merced River (LMR) approximately one mile east of Snelling in Merced County. The overall objective of the Project is to improve and

¹ https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo2022-0048-dwq.pdf

enhance the screening of agricultural water diversions to protect native fish populations in the Merced River and increase water diversion efficiency and reliability in the LMR. Project activities will occur on three of seven agricultural diversions in the two uppermost reaches of the LMR. Project activities are anticipated to commence in the summer of 2023 (within two weeks of receipt of all necessary approvals) and take place over a two- or three-year period. The Project is located on private and Merced County land.

Three diversions (Cuneo, Cowell 1, and Cowell 2) will be modified and redesigned to address issues with improperly functioning fish screens, as well as poor diversion placement and configurations. The existing Project screens are not located on the LMR channel and the current diversion configurations require frequent maintenance and in-channel construction of temporary sediment berms that help direct flow into the diversions. The Project aims to: (1) increase the quantity and quality of salmonid spawning, incubation, and rearing habitats; (2) increase salmonid survival and reduce entrainment; and (3) improve water diversion efficiency and reliability along the LMR below the Crocker-Huffman Diversion Dam. Project construction is limited to relocating diversion entrances, replacing fish screens, and improving in- and off-channel habitat. Habitat improvements include salmonid spawning gravel augmentation, spawning riffle construction, and predator holding habitat reduction. A detailed Project description can be found in NOI Attachment 2: Project Description, see Enclosure C.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

MID is the lead agency for the Project for the purpose of compliance with the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) and CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.). MID completed the Project's Initial Study and Mitigated Negative Declaration and filed it with the Office of Planning and Research State Clearinghouse on January 31, 2022. The State Water Board will file a Notice of Determination with the Office of Planning and Research within five working days of issuance of this certification. (Cal. Code Regs., tit. 14, § 15096, subd. (i).)

CONSTRUCTION GENERAL PERMIT

Coverage under the *National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit)² is required for discharges of pollutants associated with construction activities that disturb one or more acres of soil or activities that disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres. Construction activities subject to the Construction General Permit include clearing, grading, and disturbances to the ground, such as stockpiling or excavation, but do not include regular maintenance activities performed to restore the original line, grade, or capacity of a facility. Coverage is required pursuant to Clean Water Act sections 301 and 402 which prohibit certain discharges of stormwater

² Water Quality Order No. 2009-0009-DWQ NPDES No. CAS000002, as amended by Order No. 2010-0014-DWQ, Order No. 2012-0006-DWQ, Order No. 2022-0057-DWQ, and any amendments thereto. Available online at: https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction/general_permit_reissuance.html

containing pollutants except in compliance with an NPDES permit. (33 U.S.C. §§ 1311, 1342(p); 40 C.F.R. pts. 122, 123, and 124.)

APPLICATION FEE RECEIVED

An application fee of \$1,000 was received electronically on May 24, 2023. The 2022-2023 Application Fee for a Category A: *Fill and Excavation*³ Discharges is \$2,734, with an additional Project Fee based on the discharge area. For this Project the discharge area of 1.763 acres amounts to an additional Project Fee of \$40,150.16. Accordingly, the total fee associated with this NOA is \$42,884.16. This NOA is conditioned on total payment of any fee required under California Code of Regulations, title 23, division 3, chapter 28. MID will be invoiced for the remaining sum of \$41,884.16. Annual fees of \$2,297 will apply if implementation of the Project, including any required monitoring or reporting, exceeds 12 months from this NOA.

AUTHORIZED IMPACTS

Excavation and fill activities authorized by this NOA are limited to 0.473 acres (3,318 cubic yards) of temporary impacts⁴ to a streambed and 1.29 acres (20,553 cubic yards) of permanent impacts⁵ to a stream channel.

PROJECT SPECIFIC AVOIDANCE AND MINIMIZATION MEASURES

MID shall implement the Avoidance and Minimization and Best Management Practices listed in Attachment 4 of its April 24, 2023 NOI, see Enclosure D.

REQUIREMENTS

MID shall comply with all applicable conditions of the Restoration General Order, including but not limited to the following:

- Pursuant to section IX of the Restoration General Order, MID shall minimize impacts to waters of the state to the greatest extent possible. To comply with the requirements of this NOA, MID shall at a minimum implement water resource-related mitigation measures listed in Appendix B of the Project's Final Initial Study and Mitigated Negative Declaration and Attachment 4, Section 8 of the Project NOI, Enclosure D.
- Pursuant to section XIII of the Restoration General Order, MID shall implement the Project in conformance with the information provided in the April 24, 2023 NOI and subsequent amendments thereto. Any proposed changes to the Project

³ "Excavation" refers to removing sediment or soil in shallow waters or under no flow conditions, typically for purposes other than navigation. Examples include, but are not limited to, trenching for utility lines; other earthwork preliminary to discharge; removing sediment to increase channel capacity; and other flood control and drainage maintenance activities (e.g., debris removal, vegetation management and removal, detention basin maintenance and erosion control of slopes along open channels and other drainage facilities). (Cal. Code Regs., tit. 23, § 2200.)

⁴ Temporary disturbances would result from the construction of temporary gravel berms and water diversion activities.

⁵ Permanent loss would result from impacts in wetland areas associated with irrigation pipe installation and topographic modification via excavation, grading, and fill.

design described in the NOI must be submitted to and approved by the Deputy Director for the Division of Water Rights (Deputy Director) prior to implementation.

- Pursuant to section XIII.B.1.a of the Restoration General Order, MID shall submit a Commencement of Construction Notice to the Deputy Director at least seven (7) days prior to the start of initial ground disturbance activities.
- Pursuant to section XIII.B.1.c of the Restoration General Order, MID shall submit a Request for Notice of Project Complete Letter to the Deputy Director within 30 days following completion of all Project activities including post-construction monitoring of restoration sites. Failure to notify the State Water Board of Project completion may result in continued billing of annual fees until a Notice of Project Complete Letter is issued. Upon approval of the request, the State Water Board will issue a Notice of Project Complete Letter to the Project proponent.
- Pursuant to section XIII.D.4 of the Restoration General Order, nothing in this Order shall be construed as State Water Board approval of the validity of any water rights, including pre-1914 claims. 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. Prior to diverting water from the relocated points of diversion, MID shall obtain any needed water right permit or license modification approvals from the State Water Board's Division of Water Rights.
- Pursuant to section XIII.E.9 of the Restoration General Order, MID shall obtain coverage under and comply with the Construction General Permit and any amendments thereto.

If you have questions about this NOA, please contact Bryan Muro by email to: Bryan.Muro@waterboards.ca.gov.

Sincerely,



Eileen Sobeck
Executive Director

Enclosures:

- Enclosure A: General Order for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide, Order No. WQ 2022-0048-DWQ
- Enclosure B: Additional Information for Compliance with 40 CFR § 121.7 for Order WQ 2022-0048-DWQ Conditions
- Enclosure C: NOI Attachment 2: Project Description
- Enclosure D: NOI Attachment 4 Section 8: Avoidance and Minimization Measures
- Enclosure E: Final Initial Study/Proposed Mitigated Negative Declaration
Appendix B: Mitigation, Monitoring and Reporting Program

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