

State Water Resources Control Board

WATER QUALITY ORDER WQ 2023-0060-DWQ CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND NOTICE OF APPLICABILITY FOR ENROLLMENT UNDER STATE WATER RESOURCES CONTROL BOARD ORDER FOR RESTORATION PROJECTS STATEWIDE (ORDER WQ 2022-0048-DWQ)

Effective Date: Upon Deputy Director Signature
Expiration Date: Five Years from Effective Date
Program Type: Restoration
Project Type(s): Establishment, Restoration, and Enhancement of Stream and Riparian Habitat and Upslope Watershed Sites

Project: Kern Plateau Meadows Restoration Project
Regulatory Measure ID: **453113**
WDID No: **SB23028IN**

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Attachment A: Project Maps

Attachment B: Receiving Waters Information

Attachment C: General Protection Measures

Attachment D: Order WQ 2022-0048-DWQ

Attachment E: Additional Information for Compliance with 40 CFR § 121.7 for Order WQ 2022-0048-DWQ Conditions

I. Summary

This Notice of Applicability (NOA) for enrollment under the State Water Board Order for restoration projects statewide (Order WQ 2022-0048-DWQ; hereafter referred to as the Order) and Clean Water Act Section 401 water quality certification is issued at the request of Trout Unlimited (Permittee). The Order is included as Attachment D and can be accessed at the State Water Board’s Certification and Wetlands Program General Orders web page

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo2022-0048-dwq.pdf). On April 12, 2023, the State Water Board received a complete Notice of Intent requesting authorization for the Permittee’s Kern Plateau Meadows Restoration Project (Project). The Permittee submitted a certification request as defined by 40 CFR section 121.5 concurrently to the State Water Board and the U.S. Army Corps of Engineers (Corps) on April 12, 2023. After reviewing the Notice of Intent, the State Water Board has determined that the Project meets requirements for enrollment under the Order.

II. Project Description

As described in the Notice of Intent and supplemental information (hereafter referred to as the Application), which is incorporated herein by reference, the purpose of the Project is to restore 13 degraded headwater stream-meadow complexes utilizing low-tech process-based restoration (LTPBR) techniques as defined by Wheaton et al. 2019.

A. Project Size

The acreage and linear feet, if applicable, of aquatic and upland areas comprising the Project are shown in Table 1. The size includes access, staging, and work areas.

Table 1: Project Size

Program Areas	Acres	Linear Feet
Aquatic	580.51	90,460
Upland	Approximately 19.49	N/A
Total	Approximately 600	90,460

B. Project Locations

This Project includes 13 meadow sites located on the Kern Plateau region of the Inyo National Forest in the Mount Whitney Ranger District, Inyo and Tulare Counties, California. Nine meadow sites (excluding Kingfisher Stringer, Round

Mountain Stringer, Snake Creek, and Soda Creek Meadows) are located within the designated Golden Trout Wilderness Area. Ten meadow sites (Mulkey, Strawberry, Brown, Shaeffer, Fat Cow, Kingfisher Stringer, Round Mountain Stringer, Snake Creek, Soda Creek, and Casa Vieja) are in tributary headwaters to the Kern/South Fork of the Kern River. The three remaining meadow sites (Horseshoe-Round, Poison, and Dutch) are in tributary headwaters of the Owens River. A map showing the individual project locations is found in Attachment A of this NOA.

III. Receiving Waters Information

The individual Project sites are located within the jurisdictions of the Central Valley Regional Water Quality Control Board and the Lahontan Regional Water Quality Control Board (collectively Regional Water Boards). Receiving waters and groundwater potentially impacted by this Project are listed in Attachment B. These waters are regulated in accordance with the applicable water quality control plan (Basin Plan) for the regions and other plans and policies of the California Water Boards, which may be accessed at the [State Water Board's Plans and Policies web page](http://www.waterboards.ca.gov/plans_policies/) (http://www.waterboards.ca.gov/plans_policies/).

IV. Direct Impacts and Benefits to Waters of the State

Total Program fill/excavation quantities for all direct impacts and benefits to waters of the state are summarized in Tables 2 and 3. 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. No temporary impacts are anticipated, since the Project is 100% hand-built (using hand tools), and there are no defined staging areas. Permanent impacts that are categorized as those resulting in a physical loss in area and those degrading ecological condition will ultimately be part of the benefited acres. Benefits to waters of the state include aquatic and/or riparian resources that are established, enhanced, and/or restored.

Table 2: Total Temporary and Permanent Project Impacts to Waters of the State

Aquatic Resources Type	Temp. Impact Acres	Temp. Impact Cubic Yards	Temp. Impact Linear Feet	Perm. Impact Acres	Perm. Impact Cubic Yards	Perm. Impact Linear Feet
Streambed/Stream bank	0.00	0.00	0.00	1.15	2835.10	6538.70

Table 3: Total Program Benefits to Waters of the State

Aquatic Resources Type	Benefit Acres	Benefit Linear Feet
Wetland	148.14	N/A
Streambed/ Stream bank	20.35	90,460
Total:	168.49	90,460

V. 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 aquatic resources from access areas, introduction of invasive species into the Project area, and alteration of runoff delivery to aquatic resources in the Project area. The Project, as designed, will not have significant indirect impacts to waters of the state.

VI. Conditions

The State Water Board has independently reviewed the record of the Project to analyze impacts to water quality and designated beneficial uses within the watersheds associated with each individual site. The Project may proceed only in accordance with the following conditions.

- A.** The Project may proceed only as described above in Sections II through IV and as described in the application submitted to the State Water Board by the Permittee, in accordance with the conditions in State Water Board Order WQ 2022-0048-DWQ (Attachment D) and in accordance with the General Protection Measures listed in Attachment C.

For 40 CFR § 121.7(d), this condition is necessary because authorization is based on the application information submitted. This condition protects water quality by ensuring that the authorized activity is implemented as proposed and approved. Water Code section 13264 prohibits any discharge that is not specifically authorized in an order. Attachment E includes additional information regarding why the conditions set forth in State Water Board Order WQ 2022-0048-DWQ (Attachment D) are necessary to assure that any discharge under this Certification will comply with water quality requirements.

B. Compensatory Mitigation

1. No compensatory mitigation is required for permanent impacts because the Project provides restoration that includes an overall net increase in functions and/or services for the aquatic resources type proposed to be impacted.

C. Reporting and Notification Requirements

As set forth in Order (Attachment D) Section XIII.B, the NOA may specify a deadline for the annual report. An Annual Report shall be submitted to the State Water Board each year on January 15 until a Notice of Project Complete Letter is requested by and issued to the Permittee for the Project.

For 40 CFR § 121.7(d), reporting and notification requirements are necessary to confirm that the requirements set by this certification are satisfied, and that the requirements are sufficient to protect beneficial uses and water quality objectives. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383.

D. Water Quality Monitoring

1. In-Water Work or Diversions

For in-water work or stream diversions, a dewatering plan and water quality monitoring plan shall be submitted to State Water Board staff for approval at least 30) days in advance of commencement of project activity. Water quality monitoring shall be conducted in accordance with the approved plan.

The water quality monitoring plan shall include, at a minimum, the Table 4 sampling parameters. If water quality sampling shows an exceedance of water quality objectives, notify the State Water Board in accordance with Order (Attachment D) Section XIII.B.3.b.

Table 4: Sample Type and Frequency Requirements

Parameter	Unit of Measurement	Type of Sample	Minimum Frequency
Oil and Grease	N/A	Visual	Continuous
Dissolved Oxygen	mg/L and % saturation	Grab	Every 4 Hours
pH	Standard Units	Grab	Every 4 hours
Turbidity	NTU	Grab	Every 4 hours
Temperature	°F (or as °C)	Grab	Every 4 hours

For 40 CFR § 121.7(d), water quality is protected by requiring the Permittee to develop a water quality monitoring plan to be implemented when installing diversions and performing in-water work. If the monitoring finds any degradation of water quality, the cause can be determined, and remediation can be required as necessary. Monitoring and reporting requirements are authorized by Water Code sections 13267 and 13383. The burden of preparing these reports,

including costs, are reasonable to the need and benefits of obtaining the reports. The reports confirm that the general protection measures required under this NOA are sufficient to protect beneficial uses and water quality objectives.

VII. California Environmental Quality Act (CEQA)

On August 16, 2022, the State Water Board adopted Order WQ 2022-0048-DWQ and certified the consolidated final Program Environmental Impact Report (PEIR; State Clearinghouse (SCH) No. 2019100230) for restoration projects statewide. The consolidated final PEIR is available at:

https://www.waterboards.ca.gov/water_issues/programs/cwa401/generalorders.html.

The State Water Board reviewed and considered the PEIR as required by CEQA Guidelines sections 15168 subsection (c)(1) and (2) and concluded that the Project is within the overall scope of the program EIR, the activities will not result in environmental effects that were not examined in the program EIR, and none of the conditions described in CEQA Guidelines section 15162 calling for the preparation of a subsequent EIR have occurred. The State Water Board hereby incorporates the mitigation monitoring and reporting program (MMRP). The State Water Board will file a Notice of Determination for this project consistent with CEQA Guidelines sections 15094(b) and 15096(i).

VIII. Public Notice

The State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 from May 3, 2023, to May 31, 2023. The State Water Board received one comment in support of the Project during the comment period. A second comment letter asked about further introduction of native wildlife to the Project area and the Permittee explained to the commenter that scientific studies will be conducted to evaluate the benefits of introducing native wildlife to the Project area.

IX. Fees Received

An application fee of \$729.00 is required before any impacts to waters may occur. 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 D - Ecological Restoration and Enhancement (Fee Code 85) with the dredge and fill fee calculator. Annual fees will be assessed in accordance with section 2200(a)(4).

Water Quality Certification

I hereby issue this Notice of Applicability and water quality certification for the Kern Plateau Meadows Restoration Project, SB23028IN, certifying that as long as all of the conditions listed in State Water Board Order WQ 2022-0048-DWQ 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).

Enrollment under State Water Board Order WQ 2022-0048-DWQ serves as waste discharge requirements pursuant California Water Code section 13263.

The State Water Board will file a Notice of Determination (NOD) at the SCH within 5 working days of issuance of this Notice of Applicability and certification.

Except insofar as may be modified by any preceding conditions, all Project actions are contingent on: (a) compliance with the conditions of this Notice of Applicability and the State Water Board Order WQ 2022-0048-DWQ and the attachments to both; and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies, and the Regional Boards' Water Quality Control Plans.

 Digitally signed by Karen Mogus
Date: 2023.07.25 07:54:10
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Date

Karen Mogus, Deputy Director
Division of Water Quality