State Water Resources Control Board

WATER QUALITY ORDER NO. 2023-0068-DWQ WASTE DISCHARGE REQUIREMENTS AND CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION

Effective Date: Effective date of Regional General Permit 23
Expires: Five years from Effective Date

Project: Middle-mile Broadband Network Initiative
Project Type: Utilities

Program Type: Fill/Excavation

Identifiers:
- **WDID No:** SB23010GN
- **USACE No:** SPL-2022-00120
- **Place ID:** 875888
- **Reg. Meas. ID:** 451362

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I. Summary

This Order covers discharges of dredged or fill material for activities associated with the installation of a statewide middle-mile fiber optic network along approximately 10,000 miles of the State Highway System. The Middle-mile Broadband Network (MMBN) initiative (Project) would be constructed through the installation of fiber optic conduits and vaults to pull and splice fiber optic cable. The conduit would primarily be installed underground using trenching and trenchless methods parallel to and primarily within the California Department of Transportation (Caltrans) right-of-way.

This Order for Waste Discharge Requirements and Clean Water Act section 401 Water Quality Certification (Order), which includes Attachments A through G, provides Clean Water Act Section 401 Water Quality Certification for projects that require authorization from the United States (U.S.) Army Corps of Engineers (Corps) under Regional General Permit (RGP) 23 for Project activities involving the discharge of dredged or fill material into waters of the state, including water of the U.S., wetlands, and/or work in or affecting navigable waters of the U.S. This Order is for the purpose described in the public notice issued by the Corps on February 9, 2023. The State Water Board received a certification request for RGP 23 from the Corps on February 16, 2023.

II. Findings

A. This Order is adopted pursuant to section 401 of the Clean Water Act and the California Porter-Cologne Water Quality Control Act (Wat. Code § 13000, et seq.). Notwithstanding any determinations made by the Corps or other federal agency pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this Order because the Order also serves as waste discharge requirements. Discharges to waters of the state are prohibited except when in accordance with Water Code section 13264.

B. 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 and federal law, including the Porter-Cologne Water Quality Control Act and the Clean Water Act.

C. In response to a suspected violation of any condition of this Order, the State Water Board may require a discharger with authorization under this Order to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

D. This Order and all conditions contained herein continue to have full force and effect regardless of the expiration or revocation of any license or permit issued for the Project.

E. This Order does not provide coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities

(Order No. 2009-0009-DWQ and Order WQ 2022-0057-DWQ; NPDES No. CAS000002) (Construction General Permit).

F. This Order does not authorize any act which results in the taking of a threatened, endangered or candidate species, which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & Wildlife Code, sections 2050-2097) or the federal Endangered Species Act (16 U.S.C. sections 1531-1544). If a "take" will result from any act authorized under this Order, the discharger must obtain authorization for the take prior to any construction or operation of the portion of the project that may result in a take. The discharger is responsible for meeting all requirements of the applicable endangered species act for the project authorized under this Order.

G. This Order includes monitoring and reporting requirements pursuant to Water Code sections 13383 and 13267. The burden of preparing these reports, including costs, are reasonable to the need and benefits of obtaining the reports. The reports are intended to ensure that the best management practices (BMPs) required under this Order are sufficient to protect beneficial uses and water quality objectives. The reports related to accidental discharges also ensure that corrective actions that are necessary to prevent and minimize the impact of the discharge can be taken as soon as possible. The anticipated costs are minimal as the reporting obligations require only visual monitoring and notification reporting.

H. Consistent with Water Code section 189.7, the State Water Board conducted outreach to disadvantaged and tribal communities.

I. Pursuant to Water Code section 13149.2, the State Water Board makes the following findings regarding anticipated water quality impacts and environmental justice concerns within the Board's authority in disadvantaged or tribal communities resulting from the issuance of this Order:

1. Based on readily available information, the State Water Board anticipates that the issuance of this Order will result in limited water quality impacts and environmental justice concerns within the scope of the Board's authority. This Order authorizes work near and within waters of the state located along, or within 30-feet of, the right-of-way of any public road or highway. The activities covered by this Order are limited to installation of a statewide middle-mile fiber optic network. Most impacts will be temporary and last for less than one year. The temporary impacts will generally be related to site access and staging areas. For example, there could be temporary impacts to water quality where a staging area is adjacent to a water or when a project is located in waters (e.g., open trenching) and the area must be dewatered for installation of telecommunication lines. The types of wastes associated with temporary impacts are largely the same as the wastes associated with construction: sediment and oil and grease. Permanent impacts, with a permanent loss of a portion or all of a water, are also authorized under this Order. Activities that convert a

waterbody to dry land, raise the bottom elevation of a waterbody, or change the use of a waterbody may be considered permanent impacts. Individual projects authorized under this Order shall not result in greater than 0.5 acre of permanent adverse impacts to a waterbody. The cumulative permanent impact to waters of the state (for the entire Project) is projected to be less than 10.0 acres.

2. This Order contains water quality management measures in addition to the requirements of RGP 23 to ensure that the authorized activity does not result in more than minimal degradation of water quality. The State Water Board identified several conditions within the scope of its authority to address the permitted activity impacts. Those conditions are set forth in Section X of this order. Even work within waters for a short duration can impact water quality in disadvantaged and tribal communities. For example, stream channel access may be temporarily blocked during telecommunication line installation. To reduce impacts, this Order requires the discharger to restore impact sites as soon as possible after work occurs. Additionally, a sequence of actions much be taken before any impacts to waters may occur: impacts must be avoided (moved away from waters), minimized (through implementation of BMPs and design alternatives) and mitigated (with a beneficial water quality project). Before any work is authorized under this Order, State Water Board staff will review site-specific information to confirm that this sequence of actions has been taken. Implementation of these measures will ensure that impacts will be minimal. For permanent impacts, compensatory mitigation is required. Generally, mitigation should be provided within the impacted watershed. Compensatory mitigation shall provide a ratio (i.e., the ratio of mitigation to impact) commensurate with factors such as distance between the impact site and mitigation site; uncertainty associated with the successful creation of a mitigation site; temporal loss; and whether the mitigation is in-kind or out-of-kind from the impacted aquatic resource(s). Mitigation must comply with the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (2019).

III. Summary of Regional General Permit 23

The Corps Los Angeles, Sacramento, and San Francisco Districts (Districts) developed RGP 23 authorizing activities involving the discharge of dredged or fill material into waters of the U.S., including wetlands, and/or work in or affecting navigable waters of the U.S. for State of California MMBN fiber optic infrastructure initiative.

The Project provides an open access, state-owned, high-capacity fiber network that would carry large amounts of data at higher speeds over longer distances between local networks. It would connect to a last-mile broadband infrastructure that would provide homes and businesses with local networks. Last-mile infrastructure relies on

middle-mile to provide service to residents, large and small-businesses, schools, government offices, public safety agencies, and libraries. An open-access middle-mile network will provide the backbone for last-mile providers to serve residences and reduce costs of providing service for businesses and anchor institutions. The Project aligns with California Senate Bill (SB) 156 goals of providing reliable and affordable internet access to all Californians.

Per RGP 23, dischargers, such as Caltrans, will perform environmental reviews, compliance, and project construction for the placement of the MMBN infrastructure along key corridors of the State Highway System.

IV. Project Location

An individual project authorized by the State Water Board under this Order may occur anywhere 1) an area is identified by the Public Utilities Commission as a component of the statewide open-access MMBN pursuant to Section 11549.54 of the Government Code, and 2) along, or within 30-feet of, the right-of-way of any public road or highway except as restricted herein. The nine California Regional Water Quality Control Boards (Regional Water Boards) are the: North Coast Regional Water Board, San Francisco Bay Regional Water Board, Central Coast Regional Water Board, Los Angeles Regional Water Board, Central Valley Regional Water Board, Lahontan Regional Water Board, Colorado River Regional Water Board, Santa Ana Regional Water Board and San Diego Regional Water Board. The jurisdictional boundaries of each board can be found on the State Water Board's map website (https://www.waterboards.ca.gov/waterboards_map.html). Attachment A provides an overview Statewide Network Map for the MMBN initiative showing the 10,000 miles of proposed build.

V. Project Impact and Receiving Waters Information

Surface waters and groundwater potentially impacted by this Project are protected in accordance with applicable water quality control plans (Basin Plans) and policies. Statewide and regional Basin Plans and policies may be accessed at the State Water Resources Control Board's Plans and Policies website (http://www.waterboards.ca.gov/plans_policies/). Basin Plans and policies, issued in accordance with Water Code sections 13140, 13240, and 13170, include water quality standards, which consist of existing and potential beneficial uses of waters of the state, water quality objectives to protect those uses, and the state and federal antidegradation policies.

It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring discharges not to exceed maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

Dischargers will identify the receiving waters and beneficial uses of waters of the state to be impacted by a proposed individual project, as listed in the applicable

regional Basin Plan. This information is required in the Notice of Intent (NOI; Attachment B), which must be completed by a discharger to apply for authorization under this Order.

VI. Description of Direct Impacts to Waters of the State

This Order authorizes the following activities associated with the Project that may result in temporary impacts to waters of the state or may result in a permanent loss of waters of the state, including:

A. Telecommunication Lines and Associated Infrastructure: The installation or improvement of telecommunication lines through activities such as plowing, trenching, horizontal directional drilling (HDD), and jack and boring, as well as the installation or improvement of telecommunication lines to existing bridges, causeways, culverts, or overhead utilities, and installation or improvement of associated infrastructure, such as vaults and utility poles.

B. Temporary and Permanent Access: The construction, maintenance, or improvement of temporary and permanent access areas, such as maintenance vehicle pullouts, access roads, staging, storage, parking, and laydown areas, including pads, roads, bridges, culverts, and wetland protection matting and structures or work in waters associated with the installation of temporary structures, such as scaffolding, pilings, and footings for bridges, docks, and piers and the operation of temporary construction equipment, as necessary to complete the activity, such as barges, tractors, and boats.

C. Dewatering Structures: The installation of temporary dewatering structures, such as cofferdams, bladder dams, diversion tunnels/pipes, and sheet piles.

D. Survey Activities: Survey activities including exploratory geotechnical type bore holes and exploratory trenching.

E. Drilling Fluid Returns Remediation: Temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the state through sub-soil fissures or fractures that might occur during HDD activities.

F. Marker Installation: The installation of posts to mark the location of telecommunication lines associated with the Project.

The discharger shall describe all proposed project activities, including those potentially offsite and/or adjacent to waters of the state, which could result in impacts to waters of the state in the NOI (Attachment B) that must be completed and reviewed by the State Water Board for authorization under this Order.

VII. 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. Indirect impacts may include, but are not limited to, sediment-laden stormwater runoff from bare surfaces exposed by installation activities, and spills of chemicals (fuels, lubricants, HDD fractures, etc.) used in the

fiber optic installation process. Impacts to waters of the state and their designated beneficial uses could potentially result from Project activities that are within or adjacent to work areas. These potential indirect impacts are expected to be short term, and the expected severity of these impacts are adequately reduced through adherence to this Order and the BMPs described in Caltrans Construction Site BMPs Manual (May 2017), which is incorporated by reference.

VIII. Avoidance and Mitigation

Projects that receive State Water Board authorization under this Order must demonstrate that impacts to waters of the state are first avoided, then minimized, to the greatest extent practicable. The discharger will describe project design steps taken to first avoid, and then minimize, impacts to waters of the state to the maximum extent practicable in the NOI (Attachment B).

IX. Compensatory Mitigation

Any discharger implementing a project authorized under this Order is required to provide compensatory mitigation to compensate for permanent, temporary, direct and/or indirect impacts as described in sections X.H. and X.I.

X. Conditions

Compliance with conditions of this Order provides reasonable assurance that projects authorized under this Order will comply with state and federally approved water quality requirements. The State Water Board will review any project proposed for authorization under this Order to analyze impacts to water quality and designated beneficial uses within the applicable watershed(s). If the eligibility requirements set forth in this Order are not met, the State Water Board will not authorize the proposed project under this Order and instead require the discharger to apply for an individual authorization or authorization under another order. In accordance with this Order, a Permittee may proceed with an authorized project under the following terms and conditions:

A. Authorization

RGP 23 provides terms of authorization that are incorporated herein by reference.

As set forth in RGP 23 general condition #14, Section 401 Clean Water Act water quality certification must be obtained or waived for any proposed discharge associated with authorization under RGP 23.

B. Reporting and Notification Requirements

The following section details the reporting and notification types and timing of submittals. Requirements for the content of these reporting and notification types are detailed in Attachment C, including specifications for photo and map documentation during the Project. Written reports and notifications must be submitted using the Reporting and Notification Cover Sheet located in

Attachment C, which must be signed by the Permittee or an authorized representative.

1. **Request for Authorization:** The Permittee shall submit a complete NOI (using the NOI form in Attachment B) for authorization under this Order to the State Water Board at least 60 days before any project activity. The NOI must provide all information requested in NOI Attachment B, including all proposed project impacts to waters of the state and project design steps taken to first avoid, and then minimize, impacts to waters of the state to the maximum extent practicable, a delineation of waters of the state within impact sites, and an application fee in the amount required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3).
2. The State Water Board shall determine whether the activity is eligible for Order coverage. If the eligibility requirements set forth in this Order are not met, the State Water Board will not authorize the proposed project under this Order and instead require the discharger to apply for an individual authorization or authorization under another order. The Permittee may choose to apply for an individual water quality authorization.
3. **Project Reporting**
    a. **Monthly Reporting:** The Permittee must submit a Monthly Report to the State Water Board by the 15th of the following month after construction activities begin. Monthly reporting shall continue until the State Water Board issues a Notice of Project Complete Letter to the Permittee (Attachment D).
    b. **Annual Reporting:** The Permittee shall submit an Annual Report each year by the last day of February for the previous calendar year. Annual reporting shall continue until the State Water Board issues a Notice of Project Complete Letter to the Permittee (Attachment D).
4. **Project Status Notifications**
    c. **Commencement of Construction:** The Permittee shall submit a Commencement of Construction Report at least 7 days prior to start of initial ground disturbance activities, including the corresponding Waste Discharge Identification Number (WDID#) issued under the NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ or Order WQ 2022-0057-DWQ; NPDES No. CAS000002) if applicable.
    d. **Request for Notice of Project Complete Form:** The Permittee shall submit a Request for Notice of Project Complete Form (Attachment D) to the State Water Board when construction and/or any post-construction monitoring is complete, mitigation performance criteria have been achieved, and no further Project activities will occur. This request shall be submitted to State Water Board staff within 30 days following completion of all Project activities. Upon approval of the request, the State Water Board staff shall issue a Notice of Project Complete Letter (written notice,

email, or other verifiable means) to the Permittee which will end associated annual fees. Completion of post-construction monitoring shall be determined by State Water Board staff and shall be contingent on successful attainment of restoration and mitigation performance criteria.

5. **Conditional Notifications and Reports:** The following notifications and reports are required as appropriate.

   a. **Accidental Discharges of Hazardous Materials[1]:** Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Water Code, Section 13271):

      i. As soon as (A) Permittee has knowledge of the discharge or noncompliance, (B) notification is possible, and (C) notification can be provided without substantially impeding cleanup or other emergency measures then:

         - First call – 911 (to notify local response agency)
         - Then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
         - Lastly, follow the required OES procedures as set forth in the California Hazardous Materials Spill/Release Notification Guidance Cal OES-Spill Booklet Feb 2014 FINAL BW Acc (https://www.caloes.ca.gov/wp-content/uploads/Fire-Rescue/Documents/CalOES-Spill_Booklet_Feb2014_FINAL_BW_Acc.pdf)

      ii. Following notification to OES, the Permittee shall notify State Water Board, as soon as practicable (ideally within 24 hours). Notification may be delivered written notice, email, or other verifiable means.

      iii. Within 5 working days of notification to the State Water Board, the Enrollee must submit an Accidental Discharge of Hazardous Material Report. State Water Board staff may require additional water quality monitoring based on the discharge constituents and/or related water quality objectives and beneficial uses.

[1] "Hazardous material" means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment. "Hazardous materials" include, but are not limited to, hazardous substances, hazardous waste, and any material that a handler or the administering agency has a reasonable basis for believing that it would be injurious to the health and safety of persons or harmful to the environment if released into the workplace or the environment. (Health & Safety Code, Section 25501.)

b. Violation of Water Quality Standards

i. The Permittee shall notify the State Water Board of any event causing a violation of water quality standards. Notification may be delivered via written notice, email, or other verifiable means. Examples of noncompliance events include lack of stormwater treatment following a rain event, discharges causing a visible plume in a water of the state, and water contact with uncured concrete.

ii. This notification must be followed within 3 working days by submission of a Violation of Water Quality Standards Report.

c. In-Water Work and Diversions

i. The Permittee shall notify the State Water Board at least 48 hours prior to initiating work in water or installation of stream diversions. Notification may be delivered via written notice, email, or other verifiable means.

ii. Within 7 working days following completion of work in water or stream diversions, an In-Water Work/Diversions Water Quality Monitoring Report must be submitted to State Water Board staff.

d. Modifications to Project

The Permittee shall give advance notice to State Water Board staff if project implementation as described in the NOI is altered in any way or by the imposition of subsequent permit conditions by any local, state or federal regulatory authority by submitting a Modifications to Project Report. Project modifications that would prevent compliance with this Order are prohibited.

C. Water Quality Monitoring

1. General

If surface water is present, continuous visual monitoring shall be conducted during active construction to detect accidental discharge of construction related pollutants (e.g., oil and grease, turbidity plume, or uncured concrete).

2. In-Water Work or Diversions

i. For projects involving planned work in water or installation of stream diversions, a water quality monitoring plan shall be submitted to State Water Board staff for approval at least 30 days in advance of any discharge to the affected water body. Water quality monitoring shall be conducted in accordance with the approved plan and demonstrate compliance with water quality objectives (section X.C.2.iv.).

ii. The Permittee shall notify the State Water Board at least 48 hours prior to initiating work in water or stream diversions. Notification may be delivered via written notice, email, or other verifiable means.

iii. Within 3 working days following completion of work in water or stream diversions, an In-Water Work/Diversions Water Quality Monitoring Report must be submitted to State Water Board staff.

iv. Water diversion activities must not result in the degradation of beneficial uses or exceedances of water quality objectives of any of the receiving waters. Any temporary dam or other constructed obstruction must only be built from materials which will cause little or no siltation (e.g., clean gravel). Normal flows must be restored to the affected water immediately upon completion of work at that location. Monitoring reports shall be submitted to the State Water Board as part of the monthly reporting (section X.B.3.a.) or within an alternative timeframe agreed to by State Water Board staff via verifiable means (i.e., in the Notice of Applicability (NOA) or email).

3. Post-Construction

For activities that result in exposed soil in or on the banks of waters and that have not received a Notice of Project Complete Letter, the Permittee will visually inspect the project site between October 1 and April 30 or as required in the approved restoration plan following each rain event that results in 0.5 inch of rainfall or more within a 48 hour period, until the Permittee demonstrates that applicable erosion control BMPs are properly installed and the site is stabilized to prevent future erosion. The Permittee must demonstrate that excessive erosion, stream instability, and other water quality pollution is not occurring in or downstream of the project site. If water quality pollution is occurring, contact the State Water Board staff member overseeing the project within 3 working days. The State Water Board may require the submission of a Violation of Water Quality Standards Report. Additional permits may be required to carry out any necessary site remediation.

D. Standard Conditions

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

2. This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and 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 that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. Individual projects authorized under this Order are conditioned upon total payment of any fee required under title 23 of the California Code of Regulations.

E. General Compliance

1. Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plans by any applicable Regional Water Board or any applicable Water Boards' plan or policy. The source of any such discharge must be eliminated as soon as practicable.
2. Each individual project must conform to the engineering plans, specifications, and technical reports submitted with the application materials. Water Code section 13264 prohibits any discharge that is not specifically authorized in this Order.

F. Administrative

1. Signatory requirements for all document submittals required by this Order are presented in Attachment E of this Order.
2. **Site Access:** The Permittee shall grant State Water Board staff, Regional Water Board staff or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
   a. Enter upon any project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted, or where records are kept.
   b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order.
   c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order.
   d. Sample or monitor for the purposes of assuring Order compliance.
3. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors. A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on an individual project. Copies of this Order and the project's NOA shall remain at the individual project site for the duration of the project. All personnel performing work on the project shall be familiar with the content of this Order and the project's NOA and its posted location at the project site.
4. **Lake and Streambed Alteration Agreement:** If issued, the Permittee shall submit a signed copy of the California Department of Fish and Wildlife's Lake

and Streambed Alteration Agreement (LSAA) to the State Water Board prior to any discharge to waters of the state that requires an LSAA.

G. Construction Conditions

1. All materials and supplies necessary for implementing these construction conditions must be onsite and ready for use at the start of the construction activity and must remain in supply and ready for implementation throughout the construction process. All non-structural BMP materials (e.g., training documents, compliance tracking procedures) must be ready for use at the start of construction.

2. Construction material, debris, rubbish, spoils, soil, silt, sawdust, rubbish, steel, welding slag, welding rods, waste material, waste containers, other organic or earthen material, or any other substances which could be detrimental to water quality or hazardous to aquatic life that is discharged as a result of Project related activities shall be prevented from entering waters of the state. Spoils from excavations shall not be stored in waters of the state unless such storage is approved in the NOA for an individual project (e.g., temporary storage of spoils in a dry area will be considered by State Water Board when proposed in the NOI).

3. Environmentally sensitive areas and environmentally restricted areas, including any avoided waters of the state, must be clearly identified in the field for exclusion prior to the start of construction. Such identification must be properly maintained until construction is completed and the soils have been stabilized. Equipment, materials, or any other substances or activities that may impact waters of the state outside of the limits of Project disturbance are prohibited.

4. **Access Routes:** The number of access routes, number and size of staging areas, and the total area of the activity must be limited to the minimum necessary to achieve the Project goal(s). Routes and work area boundaries must be clearly demarcated on maps submitted as part of the NOI and onsite during construction.

5. Bridges, culverts, dip crossings, or other structures must be installed so that water and in-stream sediment flow is not impeded. Project design practices and materials which appropriately minimize impacts to waters must be used in areas where access roads intersect waters of the state.

6. Temporary materials placed in any water of the state must be removed as soon as construction is completed at that location unless storage is approved in the NOA for an individual project (e.g., temporary storage of spoils in a dry area will be considered by State Water Board when proposed in the NOI), and all temporary roads must be removed or re-contoured and restored according to approved re-vegetation and restoration plans.

7. A method of containment must be used below any bridge, trestle, boardwalk, and/or other stream crossing structure to prevent any debris or spills from falling into the waters of the state when attaching telecommunication lines to existing structures. Containment must be maintained and kept clean for the duration of Project activities onsite.

8. Vegetation trimming and/or removal shall be limited to the minimum necessary to complete the installation of MMBN telecommunication lines. This Order does not authorize vegetation management or removal as standalone activities.

9. Unless authorized for restoration, material excavated to prepare a site for placement of the permitted fill material must be properly disposed of in an upland area. The disposal site must be located at a sufficient distance away from flowing or standing water such that the excavated material does not erode or move in any way into any water of the state. The disposal area shall be identified in the project NOI.

10. **Topsoil:** For any excavation, including utility line trenches, the top 6 to 12 inches of topsoil shall be removed and stockpiled separately during construction. Following installation, the topsoil shall be replaced and seeded with native vegetation or restored according to approved re-vegetation and restoration plans.

11. Any structure, including but not limited to, culverts, pipes, piers, and coffer dams, placed within a stream where fish (as defined in Fish and Game Code section 45) exist or may exist, must be designated, constructed, and maintained such that it does not constitute a barrier to upstream or downstream movement of aquatic life, or cause an avoidance reaction by fish due to impedance of their upstream or downstream movement. This includes, but is not limited to, maintaining the supply of water and maintaining flows at an appropriate depth, temperature, and velocity to facilitate upstream and downstream fish migration. If any structure results in a long-term reduction in fish movement, the Permittee shall be responsible for restoration of conditions as necessary (as determined by the State Water Board) to secure passage of fish across the structure.

12. **Dust Abatement:** Dust abatement chemicals added to water can be hazardous to wildlife and, if allowed to enter streams, detrimental to water quality. Therefore, dust abatement activities shall be conducted so that sediment or dust abatement chemicals are not discharged into waters of the state. Dust abatement products or additives that are known to be detrimental to water quality or wildlife shall not be used, unless specific management needs are documented, and product-specific application plans are approved by State Water Board staff.

13. **Use of Mechanized Equipment:** Activities permitted under this Order shall be conducted in a manner that minimizes ground disturbance, soil compaction, rutting and other mechanical impacts. Equipment shall be operated and maintained in a manner that reduces the risk of spills or the accidental exposure of fuels or hazardous materials to water bodies or wetlands.

14. **Piers or Piles:** Piers or piles placed in the stream channel to support a linear transportation structure over a creek channel must be aligned parallel with the direction of flow to prevent erosive eddies.

15. **Culvert Construction or Maintenance**

    a. Cured in Place Pipe (CIPP) is prohibited in the absence of formulation specific toxicity data that establishes that it will not cause detrimental physiological responses to human, plant, animal, or aquatic life, or cause discharges to waters of the state that do not comply with water quality objectives or goals.

    b. Replacement of culverts acting as grade control structures is not authorized under this Order. A vertical gap between the outlet of the culvert and the immediate downstream invert of the stream channel indicates that the culvert likely functions as a grade control structure.

    c. A Permittee proposing to replace culverts when attaching MMBN telecommunication lines must design and implement a fluvial geomorphically appropriate channel stabilization project to prevent any existing scour or headcutting from migrating upstream. Repairs may include, but are not limited to, fill of scour holes with appropriately sized rock riprap or the construction of rock weirs with appropriately sized rock that are keyed well into the channel banks to minimize the risk of flanking.

    d. The replaced or maintained culvert shall be in alignment with the stream channel upstream and downstream of the culvert.

    e. Any replacement culvert or culvert that is to be left in place upon attachment of telecommunication lines must be placed at a gradient and orientation that will not result in erosional scour at the outlet.

    f. Replacement of a culvert with a similarly sized culvert is allowable only where there is no visual indication that the existing culvert is undersized. Visual indications of undersized culverts include but are not limited to sediment aggradation upstream of the culvert; evidence of flow over the top of the culvert (e.g., erosional rills in dirt road surfaces or erosion of shoulders adjacent to paved road surfaces), erosion of the fill cell between the culvert and the road surface, scour pools at the culvert outlet, or erosion of creek banks immediately downstream of the culvert.

g. Culverts with solid bottoms (e.g., cylindrical culverts or box culverts) may be replaced with arch culverts or free-span bridges if the existing culvert is not acting as a grade control structure.

h. The culvert must not be located in a meander bend of the stream channel.

i. Replacement culverts must be sized to convey a 100-year flow event with debris, without pressurizing flow passing through the culvert. The 100-year flow event should be modeled under climate change projections, if available.

j. Culvert inlets shall have low plug potential (debris barriers or deflectors are installed where needed, as long as they will not create a barrier to passage in fish bearing creeks).

16. Toxic and Hazardous Materials

a. Activities permitted under this Order shall not discharge toxic substances in concentrations that produce detrimental physiological responses to human, plant, animal, or aquatic life.

b. Discharge of unset cement, concrete, grout, slurry, damaged concrete spoils, concrete dust, or water that has contacted uncured concrete or cement, or related washout to surface waters, ground waters, or land is prohibited. If concrete washout is necessary at the site, washout containment shall be used to prevent any discharge. Wastewater may only be disposed by delivery to a sanitary wastewater collection system/facility (with authorization from the facility's owner or operator) or a properly licensed disposal or reuse facility.

c. Appropriate BMPs must be implemented throughout Project activities to prevent and control potential leaks/spills/drainage of potentially hazardous materials such as: non-petroleum hydraulic fluid; epoxies; paints and other protective coating materials; cement concrete or asphalt concrete; and washings and cuttings thereof.

d. Activities permitted under this Order shall not discharge waste classified as "hazardous" as defined in California Code of Regulations title 22, section 66261 and Water Code section 13173. Appropriate BMPs for hazardous substances shall be specified by the Permittee and shall be approved by State Water Board staff prior to project discharges. These BMPs shall include, at a minimum:

i. All personnel handling fuels and other hazardous materials shall be properly trained.

ii. Adequate spill prevention and cleanup equipment and materials shall be present on site at all times during project implementation.

iii. All mechanized equipment shall be maintained in good operating order and inspected on a regular basis.

iv. All onsite fuel trucks or fuel containers shall be stored in an area where risk of contamination of water bodies by leaks or spills is minimized.

v. All equipment shall be fueled, maintained, and/or parked overnight in an upland area at least 100 feet from any delineated waters of the state.

vi. Hazardous materials, including chemicals, fuels, and lubricating oils, shall not be stored within 100 feet of any delineated waters of the state, and shall be stored in appropriate containers with appropriate secondary containment.

vii. Pumps or other stationary equipment operating within 100 feet of a waterbody or wetland shall utilize appropriate secondary containment systems to prevent spills.

viii. Any spills or leaks of hazardous materials, chemicals, fuels, lubricants or any other potential pollutants shall be promptly and completely treated using appropriate materials and equipment.

ix. Spill containment supplies shall be on site in all work areas in sufficient quantities to allow immediate remediation of fuel, oil, hydraulic fluid or similar leaks and spills.

x. Staging area for equipment and vehicle fueling and storage shall be designated at least 100 feet away from waters of the state, in a location where accidental discharges of fluids or fuels cannot flow into waters of the state. Whenever not feasible, as when staging is from barges, secondary containment around fuels and other fluids, such as lubricants and secondary fuels, shall be implemented.

e. Projects that create new or affect existing wetland areas shall be designed to include features or management measures to reduce the production of methylmercury in the wetland, including minimizing the wetting and drying of soils by keeping wetlands flooded. In addition, sediment control measures shall be implemented to reduce the transport of total mercury or methylmercury out of the wetland.

17. Work in Delineated Waters of the State

a. Work in waters of the state must not cause or contribute to an exceedance of water quality objectives in the receiving waters. Work in delineated waters commences at the onset of the regulated activity and continues until the activity is finished and all restoration of the affected work area is complete. The term “work” means any activities in any delineated waters of the state that are permitted under this Order, regardless of the presence or absence of flowing or standing water.

b. Temporary diversions or impoundments of water, cofferdams, or similar structures installed for the purpose of temporary dewatering work areas shall be performed as authorized in the project NOA, which shall include appropriate monitoring for water quality upstream and downstream of diversion structures as required in the Water Quality Monitoring section of this Order (section X.B.2.).

c. All surface waters, including ponded waters, shall be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to waters of the state.

d. Equipment must not be operated in standing or flowing waters of the state without site specific approval via the NOA or verifiable means (e.g., mail or email) from State Water Board staff and unless implementing the following conditions:

i. All construction activities must be effectively isolated from water flows to the greatest extent possible. This may be accomplished by working in the dry season or dewatering the work area in the wet season. When work in standing or flowing water is required, structures for isolating the in-water work area and/or diverting the water flow must not be contaminated by construction activities. All open flow temporary diversion channels must be lined with filter fabric or other appropriate liner material to prevent erosion. Structures used to isolate the in-water work area and/or diverting the water (e.g., coffer dam, geotextile silt curtain) must not be removed until all disturbed areas are stabilized.

ii. All temporary dewatering methods shall be designed to have the minimum necessary impacts to waters of the state. All dewatering methods shall be installed such that natural flow is maintained upstream and downstream of the diversion area.

iii. Cofferdams and water barrier construction must be adequate to prevent seepage into or from the work area to the greatest extent feasible.

iv. Flow diversions must be conducted in a manner that prevents pollution and/or siltation and in a manner that restores pre-project flows (except for variation in flows due to seasonality, upstream diversions, etc.) upon completion of the activity. Diverted flows must be of sufficient quality and quantity, and of appropriate temperature, to support existing fish and other aquatic life both above and below the diversion. Diversions must be designed, installed, and maintained to reduce erosion. Pre-project flows must be restored to the affected surface water body upon completion of work at that location.

e. If groundwater dewatering is required for the project, the Permittee shall consult with the designated State Water Board staff to determine if additional permits are required.

18. **Directional Drilling:** Because HDD activities and similar drilling operations may affect water quality, the following conditions shall apply to all drilling operations under waters of the state:

    a. The discharge of bentonite, drilling muds, lubricants, or any drilling compounds into waters of the state is prohibited. A draft HDD or drilling plan shall be prepared and submitted to the State Water Board for review at least 30 days before drilling activities under waters of the state.

    b. Release of bentonite, drilling muds, lubricants, or any drilling compounds through fractures in the streambed or bank substrate during drilling is referred to as a "frack-out." Because of the potential for frack-outs to occur, the HDD drilling plan shall include a frack-out response plan. The frack-out response plan shall specify all measures to be initiated if frack-outs should occur during HDD operations.

    c. For all HDD and other drilling sites, a means of containment (e.g., damming, fluming) or screen capable of capturing all the potential discharge shall be described in the HDD drilling plan. The downstream end of any such containment structure shall be capable of containing all bentonite or other drilling muds or debris that may be released during boring or drilling. Any drilling mud, spoils, etc. must be completely removed from the streambed prior to removal of the containment structures (e.g., dam, flume, and screen).

    d. An environmental monitor shall provide monitoring for compliance with the HDD or drilling plan throughout drilling operations under waters of the state.

    e. Any HDD or other drilling operation shall be designed and directed in such a way as to minimize the risk of discharging spoils or other materials, including the frack-out release of drilling lubricants through fractures in the streambed or bank substrates, to waters of the state. In substrates where frack-outs are likely to occur, HDD contractors shall employ all reasonable means and methods available to minimize potential for frack-out.

    f. All drilling muds or compounds will be contained and properly disposed of after drilling activities are completed.

    g. If bore pits are excavated to support drilling operations, spoils shall be stored a minimum of 25 feet from the top of the bank of streams or wetland/riparian boundary, where feasible; if site specific conditions warrant storing spoils less than 25 feet from the top of the bank of streams or wetland/riparian boundary this request must be provided in the HDD or drilling plan submitted to the State Water Board prior to any drilling activities with potential impacts to waters of the state. Spoils shall be

stored behind a sediment barrier and covered with plastic or otherwise stabilized (e.g., tackifiers, mulch, or detention).

H. Restoration and Mitigation for Temporary Impact

1. The Permittee shall restore all areas of temporary impacts to waters of the state and all project site upland areas of temporary disturbance which could result in a discharge to waters of the state, as described in a restoration plan approved by the State Water Board. The restoration plan shall be submitted to State Water Board staff for review and approval prior to initiating temporary impacts. Temporary impacts to waters of the state are not authorized and shall not occur until a restoration plan has been approved by State Water Board staff.

The restoration plan shall provide the following: a schedule; plans for grading of disturbed areas to pre-project contours; a planting palette with plant species native to the project area; seed collection location; invasive species management; performance standards; success criteria; timeframe for monitoring and reporting; and maintenance requirements (e.g., watering, weeding, and replanting).

2. In cases where implementation actions in the restoration plan cannot be reasonably conducted within one year of impacts to waters of the state, or where the adverse temporary impacts result in temporary loss of aquatic resource function(s), the Permittee may be required to provide compensatory mitigation to offset temporal loss of waters of the state. Examples of additional mitigation include, but are not limited to, enhancement activities such as increasing the presence of native species and reducing dominance of non-native/invasive species, native willow staking, planting of native riparian vegetation, and trash removal.

3. The State Water Board may extend the monitoring period beyond requirements of the restoration plan upon a determination by State Water Board staff that the performance standards have not been met or are not likely to be met within the monitoring period.

I. Compensatory Mitigation for Permanent Impacts

1. The Permittee shall provide compensatory mitigation to offset permanent impacts to waters of the state. Generally, compensatory mitigation shall take place within the same watershed as the impact site, but the State Water Board may approve compensatory mitigation in a different watershed or programmatic mitigation across one or multiple watersheds. Mitigation that occurs outside of the impacted watershed may require additional mitigation. The Permittee shall provide the following:

a. A draft compensatory mitigation plan at a level of detail sufficient to accurately evaluate whether compensatory mitigation offsets the adverse impacts attributed to the project considering the overall size and scope of impact.

b. Compensatory mitigation shall be proposed by the Permittee in the NOI. State Water Board staff will review the proposal and determine final compensatory mitigation requirements, which will then be outlined in the NOA for individual projects. The amount of mitigation (i.e., the ratio of mitigation to impact) shall be commensurate with the amount of impact, type of resource impact, location and type of proposed mitigation, and timing of mitigation actions. Mitigation can be achieved through permittee responsible actions or credits from mitigation banks, advanced mitigation, and in-lieu fee programs. Mitigation is required to ensure compliance with Executive Order W-59-93 that requires no net loss of the structure or function of California's wetland resources.[2] Mitigation must also comply with the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (2019). Mitigation should be in kind as much as is feasible. If mitigation is out-of-kind, the amount of mitigation shall be increased as determined by State Water Board staff and included in the NOA. When mitigation is constructed, enhanced, or preserved offsite, the amount of mitigation should be increased to account for the distance between the impact site and the mitigation site. The amount of mitigation should also account for the uncertainty associated with the successful creation of a mitigation site. The State Water Board will require a higher overall mitigation ratio where necessary to ensure replacement of lost aquatic resource functions and for permittee responsible mitigation conducted concurrently with impacts, subject to approval by the State Water Board.

c. Subject to approval by the State Water Board, mitigation may be satisfied using any of the following compensatory mitigation methods: restoration, enhancement, and/or establishment.

d. No discharge of dredged or fill material to waters of the state shall occur prior to State Water Board approval of a final mitigation plan covering an impacted site. The mitigation plan may be provided in advance of the identification of specific projects subject to State Water Board approval.

2. If compensatory mitigation is achieved through purchase of mitigation credits, a copy of the fully executed agreement for the purchase of mitigation credits shall be provided to the State Water Board prior to the initiation of in-water work. The Permittee shall retain responsibility for providing the compensatory mitigation and long-term management until State Water Board staff has received documentation of the credit purchase and the transfer agreement between the Permittee and the seller of credits.

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[2] Includes 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 permanent degradation of ecological condition.

XI. Public Notice

The State Water Board provided public notice of the application and draft order pursuant to California Code of Regulations, title 23, section 3861 from May 30, 2023, to July 14, 2023. The State Water Board did not receive any comments during the comment period. In addition, the State Water Board noticed the draft Order in accordance with Water Code section 13167.5 beginning on July 14, 2023, and ending on August 12, 2023. The State Water Board received one question during the comment period regarding Project map availability, which was answered without further comment.

XII. California Environmental Quality Act

The State Water Board has determined that the issuance of this Order and the activities described herein are exempt by statute pursuant to Public Resources Code section 21080.51.

The State Water Board will file a Notice of Exemption with the State Clearinghouse within 5 working days from the issuance of this Order. (California Code of Regulations., Title 14, section 15062.)

XIII. Petitions for Reconsideration

Any person aggrieved by this action may petition the State Water Board to reconsider this Order in accordance with California Code of Regulations, title 23, section 3867. A petition for reconsideration must be submitted in writing and received within 30 calendar days of the issuance of this Order. Any petition related to the issuance of a Notice of Exclusion or Notice of Applicability may be filed in accordance with Water Code section 13330.

XIV. Fees

The application fee amount is determined as required by California Code of Regulations, title 23, sections 3833(b)(3) and 2200(a)(3). A fee calculator can be found online at:
https://www.waterboards.ca.gov/water_issues/programs/cwa401/#fees.

The calculator is useful for estimation of fees, but dischargers must confirm the correct fee amount through consultation with the State Water Board prior to submitting payment. Appropriate fees will be determined by the current fee regulations at the time of NOI submittal for an individual project. Note that fees are periodically adjusted.

XV. Activities Denied

Clean Water Act section 401 water quality certification for the following activities authorized under RGP 23 are denied, and not included in the scope of this Order:

A. Associated Infrastructure: The installation or improvement of associated infrastructure, such as hubs, substations, and foundations that impact waters of the state.

B. CEQA Exemption: Projects that do not qualify for the CEQA statutory exemption, as discussed in section XII. of this Order. Specifically, projects beyond the scope of the statutory exemption include:

1. Projects not identified by the Public Utilities Commission as a component of the statewide open-access MMBN pursuant to Section 11549.54 of the Government Code.
2. Projects involving construction activities located beyond 30-feet from the right-of-way of an existing public road or highway.
3. Projects involving installation of utility poles beyond an existing utility pole right-of-way.

Clean Water Act section 401 certification action on projects authorized by these denied activities will be considered on an individual, project-specific basis, and instead require the discharger to apply for an individual certification or certification under another applicable general certification.

XVI. Conclusion

I hereby issue these waste discharge requirements and water quality certification for the Middle-mile Broadband Network initiative, SB23010GN, certifying that as long as all of the conditions listed in this 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). This Order is also adopted pursuant to California Water Code section 13263 as waste discharge requirements pursuant to the Porter-Cologne Water Quality Control Act (California Water Code, §13000 et seq.). The State Water Board has considered the factors in section 13241 in establishing the requirements in this Order. The ability to discharge waste is a privilege, not a right, and adoption of this Order shall not be construed as creating a vested right to continue discharging waste (California Water Code, §13263, subd. (g).) Notwithstanding any determinations by any federal agency made pursuant to 40 C.F.R. section 121.9, dischargers must comply with the entirety of this Order because the Order also serves as waste discharge requirements.

Authorization is contingent on: (a) discharges being limited and all requirements, including proposed mitigation, being completed in strict compliance with the conditions of this Order and the attachments to this 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.

Karen Mogus Digitally signed by Karen Mogus
Date: 2023.08.14 10:29:26 -07'00'

Date

Karen Mogus
Deputy Director
Division of Water Quality