

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT
NUMBER 63 FOR
REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS**

Project Name: Repair and Protection Activities in Emergency Situations

Permit Number: Regional General Permit (RGP) No. 63 (File No. SPL-2018-00038-CLH)

Issuing Office: Los Angeles District

Issuance Date: November 16, 2023

Permittee: Public agencies, business, or private parties (i.e., the public in general)

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: This permit authorizes discharges of dredged or fill material into Waters of the United States, including wetlands, and/or work or structures in Navigable Waters of the United States for necessary repair and protection measures associated with an emergency situation. An "emergency situation" is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services (i.e., a situation that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately).

Project Location: Within those parts of the State of California subject to regulatory review by this office, including the coastal slopes of San Luis Obispo County, all of Santa Barbara County except for the Carrizo Plain, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, Imperial and Inyo counties, Mono County to the Conway Summit above Mono Lake, the southern slopes of the Tehachapi Mountains in Kern County, and all of the State of Arizona. In the event of future modifications to District boundaries, this permit would also apply in any areas so revised.

General conditions of this RGP:

1. Time Period Covered: This RGP shall expire on **November 16, 2028**. Authorized activities which have commenced or are under contract to commence prior to this date shall remain authorized provided work within waters of the U.S. is completed within 60 days following expiration of this RGP.

2. Notification/Communication:

a. Timing: The applicant must notify the District Engineer (DE) as early as possible and shall not begin the activity until notified by the DE that the activity may proceed under this RGP with any site-specific special conditions imposed by the District or Division Engineer. The Corps recognizes there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed from the DE. It is not the intention of this office to imply that one allows such threat to life or property result in actual loss. If one proceeds without such notice from the DE, one must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means.

b. Contents of Notification: The notification should be in writing and include the following information:

- (1) The name, address, e-mail address and telephone number of the applicant and the designated point of contact and their address, e-mail address and telephone number;
- (2) The location of the proposed project, including the identification of the waterbody(ies) (this should include a copy of a U.S. Geologic Survey [USGS] topographic map, electronic map images, annotated photographs, Thomas Guide map, or hand-drawn location map with suitable landmarks; the map should have sufficient detail to clearly indicate the location and extent of the project, as well as detailed directions to the site);
- (3) A brief, but clear, description of the imminent threat to life or property and the proposed project's purpose and need;
- (4) A description of methods anticipated to be used to rectify the situation ("field engineering" is not an adequate description. It is presumed if one mobilizes material and a particular piece of equipment to a site, then one probably has a fairly well-defined intention for that material and equipment. Photographs, visual renderings of the project, plans, drawings or sketches showing the area to be impacted, cross sections showing details of construction, if appropriate, and a short narrative describing how the work is to be completed should be provided as a minimum); and
- (5) A brief description of the project area's existing conditions and anticipated environmental impacts resulting from the proposed work (amount of dredge or fill material, acreage of disturbance, removal of significant vegetation, loss of habitat, etc.).

c. Form of Notification: The standard Application for Department of the Army Permit (Form ENG 4345), available from the District's website at https://www.publications.usace.army.mil/Portals/76/Users/182/86/2486/Eng_Form_4345_2022Sep.pdf?ver=CWi_Kf45_g1YW0wPQ5xWLA%3d%3d may be used as the

notification and must include all of the information required in General Condition 2.b. Items (1)-(5) above. A letter, facsimile transmission or electronic mail may also be used. In certain situations where there is an imminent threat to life or property and the applicant is unable to make direct contact with this office, a message shall be left on voice mail or an e-mail message shall be sent.

d. Agency Coordination: Upon receipt of a notification, the DE will immediately provide (i.e., by facsimile transmission, overnight mail, electronic mail or other expeditious manner) a copy to the offices of the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the Monterey Bay National Marine Sanctuary, the California Department of Fish and Wildlife (CDFW), the California State Water Resources Control Board (SWRCB), the Arizona Department of Environmental Quality (ADEQ), the Arizona Game and Fish Department, the Navajo Nation, the Hopi Tribe, the Hualapai Tribe, the White Mountain Apache Tribe; the Big Pine Paiute Tribe of Owens Valley, the Bishop Paiute Tribe, and the Twenty-Nine Palms Band of Mission Indians (collectively, "Tribes"), the California Regional Water Quality Control Boards (RWQCB), the California Coastal Commission (CCC), and the State and Tribal Historic Preservation Offices of California or Arizona (SHPO/THPO), as appropriate. These agencies will be requested to provide a response to the Corps Regulatory Branch Project Manager as expeditiously as possible by telephone, facsimile transmission (fax) or e-mail, indicating whether they intend to provide substantive, site-specific comments regarding the proposed project. If notified that comments will be provided by an agency or tribal representative, the DE will allow them to provide their comments in a short timeframe determined by the DE on a case-by-case basis to not likely result in loss of life or property before making a decision on the proposed project. The DE will fully consider any comments received within the specified timeframe concerning the proposed activity's compliance with the conditions of the agency's authority, the need to impose terms and conditions to avoid and minimize adverse effects on aquatic resources, and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The DE will indicate the results of that consideration in the administrative record associated with the notification and will provide an informal response to the commenting agency by electronic mail, facsimile transmission or other means.

e. Mitigation: Discharges of dredged or fill material into Waters of the United States must be avoided or minimized to the maximum extent practicable at the project site.

Compensation for unavoidable discharge of fill materials may require appropriate mitigation measures. Factors that the DE will consider when determining the suitability of appropriate and practicable mitigation will include, but are not limited to:

- (1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc;
- (2) The permanence of the project's impacts on the resource; and
- (3) The potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, or enhancing similar functions and values; or using bioremediation techniques in conjunction with other methods to offset project impacts. To the extent appropriate, applicants should consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds or in-lieu fees to organizations such as State, county or other governmental or non-governmental natural resource management organizations, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

f. District Engineer's Decision: In reviewing the notification for the proposed activity, the DE will determine whether the activity would likely result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.e. above.) the applicant has included in the proposal in determining whether the net adverse environmental effects for the proposed work are minimal. If the DE determines the activity complies with the terms and conditions of this RGP and the adverse effects are minimal, this office will notify the applicant and include any situation-specific conditions deemed necessary.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan also. However, the DE may approve the mitigation proposal after the work is approved and project work has commenced.

If the DE determines the adverse effects of the proposed work are more than minimal, the DE will notify the applicant either:

- (1) That the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit or other general permit, or
- (2) That the project is authorized under this RGP subject to the applicant submitting a mitigation proposal that would reduce the adverse effects to the minimal level.

3. Authorized Work: Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction only results in very minor additional impact to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment. Moderate upgrading would be considered if the applicant wishes to use bioremediation or other environmentally sensitive solutions. The

RGP may NOT be used to upgrade an existing structure to current standards when that activity would result in additional adverse effects on aquatic resources, except in very limited circumstances. Such upgrade projects shall be considered separate activities for which other forms of authorization will be required.

Work not described in permit application documentation but deemed necessary after a field assessment is not authorized unless coordinated with the Regulatory project manager and acknowledged by appropriate means (i.e., e-mail or facsimile transmission, memo to the record, etc.). These coordinated permit modifications must also be described in sufficient detail in the post-project report (see RGP 63 General Condition 26).

4. **Start Work Date:** Any projects authorized under this RGP must be initiated within fourteen (14) days of receiving authorization to proceed. If the project start time can be delayed for more than two weeks, the imminent threat of impending loss may have diminished in magnitude, as well as immediacy, and generally would not meet the definition of an “emergency.” However, there may be limited circumstances where, after notice to and input by the agencies, logistical considerations necessitate an extension beyond 14 days. Further, this RGP cannot be used to authorize long-planned-for projects, nor shall it be used for projects that are likely to have been known to the applicant but for which an application was not submitted in a timely manner. That is, the Corps and other agencies are not obligated to authorize work for a self-described emergency situation unless we agree that the situation qualifies as an emergency as defined on page 1.

5. **Access to Site:** You must allow representatives from this office and other agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.

6. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. **Water Quality Certification:** Within Los Angeles District, water quality certifications pursuant to Section 401 of the Clean Water Act are administered by the California State Water Resources Control Board (SWRCB) and the Arizona Department of Environmental Quality (ADEQ) for non-tribal land, the U.S. Environmental Protection Agency for tribal lands of Tribes not treated as States, and seven Native American Tribes that are treated as States for Section 401 water quality certification. Permittees working on tribal land in Los Angeles District must receive individual Section 401 water quality certification from one of the seven Tribes identified on page 3 as appropriate.

ARIZONA

The ADEQ issued its certification on September 1, 2023. No additional conditions were added which is different from past years. AZDEQ previously stated that the Corps’ terms and conditions of RGP 63 met their concerns and requested that the past certification be taken off the website.

CALIFORNIA

The SWRCB issued its conditional certification (Water Quality Order No. 2018-0029) on October 18, 2023. As with previous reissuances of the RGP, conditions within issued Section 401 certifications are included within the body of the RGP to facilitate dissemination of information to permittees regarding water quality certifications for work authorized under RGP 63. The SWRCB's water quality conditions are adopted within this permit as RGP 63 General Conditions.

A. General Conditions

- 1.** Emergency repairs and construction must commence within fourteen (14) calendar days of receiving a Notice of Applicability (NOA) from the Water Boards unless an extension is granted by the Corps and agreed to, in writing, by the appropriate Regional Water Board.
- 2.** Authorized work in waters shall be completed within 180 days of the enrollment date. If it is anticipated that work will not be completed prior to the expiration of enrollment, the Enrollee shall request an extension at least thirty (30) days prior to the expiration date. The request shall include justification for the extension.
- 3.** All repairs and construction shall be kept to the minimum necessary to alleviate the immediate emergency and limited to in-kind replacement or refurbishment of on-site features. Minor upgrades, even if deferred maintenance contributed to the emergency situation, may be authorized in the NOA if the Enrollee uses bioengineered, biotechnical, or other environmentally sensitive solutions. For upgrades resulting from deferred maintenance, the Enrollee may be required to submit a plan prior to termination of coverage describing future or long-term actions and authorizations to prevent repeated future emergencies at the project site.
- 4.** Permanent restoration work other than that performed as an associated part of the emergency operations, including any minor upgrades, shall not be performed without prior approval and authorization by the Water Board. Temporary or permanent work that includes hardscape may be required to be removed after the emergency circumstances have passed if alternative ecologically appropriate solutions are deemed feasible by the Water Board.
- 5.** 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 State Water Board water quality control plan or policy. The source of any such discharge must be eliminated as soon as practicable.
- 6.** The Enrollee must, at all times, fully comply with engineering plans, specifications, and technical reports submitted with the NOI and all subsequent submittals required as part of this Order. The conditions within this Order and Attachments supersede conflicting provisions within Enrollee submittals.

B. Administrative Conditions

- 1.** Signatory requirements for all document submittals required by this Order are

presented in Attachment C of this Order.

2. The Enrollee shall grant 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 the 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 purpose of assuring Order compliance.

3. A copy of this Order and the subsequent NOA must be available at the project site(s) for the duration of the project.

4. A copy of this Order and the subsequent NOA shall be provided to any consultants, contractors, and subcontractors working on the project. All personnel performing work on the project shall be familiar with the content of this Order and be aware of where a copy is available at the project site. The Enrollee shall be responsible for work conducted by its consultants, contractors, and any subcontractors.

C. Construction Conditions

1. At all times, appropriate types and sufficient quantities of materials shall be maintained on site to contain and clean up any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the state. Construction personnel must know how to use appropriate containment and clean up materials.

2. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment must not result in a discharge to any waters of the state and shall be located outside of waters of the state in areas where accidental spills will not enter or affect such waters.

3. If construction related materials reach surface waters, appropriate spill response procedures must be initiated as soon as the incident is discovered. In addition, Water Board staff at the appropriate Regional Board must be notified via email and telephone within twenty-four (24) hours of occurrence.

4. Construction materials and debris from all construction work areas shall be removed from the site and disposed of properly following completion of individual projects enrolled under this Order.

5. 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.

6. Effective best management practices (BMPs) must be implemented to control erosion and runoff from areas associated with the emergency project, this includes access roads.

D. Mitigation Conditions

1. A sequence of actions must be taken to first avoid and then to minimize adverse impacts to aquatic resources. Compensatory mitigation may be required to offset any remaining unavoidable adverse impacts to aquatic resources. Enrollees may be required to submit a compensatory mitigation plan describing how the mitigation will offset permanent adverse impacts. If the Enrollee is required to provide compensatory mitigation, the compensatory mitigation requirements shall be set forth in the NOA. For projects that require compensatory mitigation, the Enrollee shall submit a compensatory mitigation plan for Water Board staff approval within forty-five (45) days of completion of construction. The mitigation plan will identify the mitigation type (e.g., habitat establishment, rehabilitation), location, acreage, design, and implementation schedule. The mitigation plan shall be implemented prior to termination of coverage.

2. Factors that the Water Board staff will consider when determining the suitability of appropriate and practicable mitigation will include, but are not limited to: (1) the approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention and flood storage; (2) the permanence of the project's impacts on the resource; and (3) the potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.

3. Compensatory mitigation may be required for temporary impacts that result in temporal loss of aquatic resource functions.

E. Restoration of Temporary Impacts

1. Enrollees must restore temporary impacts to pre-project conditions as soon as practicable. Enrollees may be required to submit a restoration plan to describe actions to restore areas of temporary impacts to pre-project conditions.

2. For projects that require a restoration plan, the Enrollee shall submit a restoration plan for Water Board staff approval in writing within forty-five (45) days of completion of construction that outlines design, implementation, assessment, and maintenance for restoring areas of temporary impact to pre-project conditions. The level of detail in the restoration plan shall be sufficient to accurately evaluate whether the restoration

addresses the adverse temporary impacts attributed to the project. The restoration plan shall be implemented prior to termination of coverage.

F. 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). Additional water quality monitoring (e.g., pH, dissolved oxygen), or inspections may be required during or post-construction, such as a daily log with photos during in-water work, revegetation monitoring, and sedimentation and erosion monitoring. Requirements for additional monitoring, sampling, or inspections shall be set forth in the NOA.

2. Accidental Discharges/Noncompliance: Upon occurrence of an accidental discharge of hazardous materials or a violation of a water quality standard, Water Board staff may require additional water quality monitoring based on the discharged pollutant and related water quality objectives and beneficial uses.

G. 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 Attachments B, D, and E, 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 B, which must be signed by the Enrollee or an authorized representative.

1. Notice of Intent and Fee Requirements

- a. Except as set forth in section G.1.b below, the prospective Enrollee must notify the appropriate Regional Water Board and the State Water Board¹ as early as possible, and no less than forty-eight (48) hours prior to initiating the emergency project.

Notification may be via telephone, e-mail, written notice, or other verifiable means. A staff directory that includes contact information for State and Regional Program Managers is found at the State Water Board's Dredge or Fill Program Staff Directory(https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/wqc_staffdir.pdf). A map of Regional Board boundaries is included in Attachment A and an interactive version is on the State Water Board's Regional Board Map website(https://www.waterboards.ca.gov/waterboards_map.html).

Electronic Submittal:

- i Send an email to SB-401Application@waterboards.ca.gov, and the appropriate “Region Program Manager” from the staff directory linked above.
- ii Include “Attention – Emergency RGP 63 Notice of Intent” in the subject line.

b. If forty-eight (48) hour prior notice to the appropriate Regional Water Board and the State Water Board is not possible, then the Enrollee must notify the appropriate Regional Water Board and the State Water Board within one (1) business day of initiation of the emergency project.

c. In all cases, if not included as part of the initial notification to the Water Boards, the Enrollee must submit all the information in the Notice of Intent (NOI) form provided in Attachment D within three (3) business days of the notification.

d. The Enrollee must provide the appropriate fee to the Regional Water Board in accordance with California Code of Regulations, title 23, section 2200 with the NOI documents or the project may be ineligible for enrollment in this Order. Note that fees are adjusted annually. Enrollees should confirm the correct fee amount prior to submitting payment.

e. Once the appropriate Regional Water Board receives a complete NOI and the correct fee from the Enrollee, the Regional Water Board will transmit a NOA to the Enrollee verifying enrollment in this Order.

2. Project Status Notifications

a. The Enrollee must provide the appropriate Regional Water Board and State Water Board copies of all correspondence and reports that are submitted to the Corps to satisfy the requirements of RGP 63.

A completed Notice of Completion (NOC) form provided in Attachment E must be submitted to the appropriate Regional Water Board and State Water Board within forty-five (45) calendar days of completion of any actions conducted under this Order.

3. Conditional Notifications and Reports: Instructions for submitting reports and conditional notifications are in Attachment B of this Order. a.

Annual or Monthly Reporting: If required by the NOA, the Enrollee shall submit an Annual Report each year on the anniversary of the date that the individual project is authorized under this Order, unless another date is specified in the NOA. Monthly reporting may also be required. Reporting shall continue until a Notice of Project Complete Letter is issued to the Enrollee.

b. Accidental Discharges of Hazardous Materials:

Following an accidental discharge of a reportable quantity of a hazardous material, sewage, or an unknown material, the following applies (Wat. Code, § 13271):

- i. As soon as (A) Enrollee 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:

- a. First call – 911 (to notify local response agency)
- b. Then call – Office of Emergency Services (OES) State Warning Center at: (800) 852-7550 or (916) 845-8911
- c. Lastly, follow the required OES procedures as set forth in the Office of Emergency Services' Accidental Discharge Notification Web Page (<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 Enrollee shall notify the Water Board, as soon as practicable (ideally within 24 hours). Notification may be delivered via written notice, email, or other verifiable means.

III. Within five (5) business days of notification to the Water Board, the Enrollee must submit an Accidental Discharge of Hazardous Material Report.

c. Modifications to Project

The Enrollee shall provide advance notice to Water Board staff if project implementation as authorized in the NOA 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 as described in Attachment B. Project modifications shall not be performed without prior approval and authorization by the Water Board.

4. Violation of Water Quality Standards: The Enrollee shall notify the appropriate Regional Water Board of any event causing a violation of water quality standards. Notification may be via telephone, email, written notice, or other verifiable means.

Examples of noncompliance events include: lack of storm water treatment following a rain event, discharges causing a visible plume in a water of the state, and water contact with uncured concrete.

This notification must be followed within three (3) business days by submission of a Violation of Water Quality Standards Report.

5. Transfer of Property Ownership: Authorization under this Order is not transferable in its entirety or in part to any person or organization except after notice to the appropriate Regional Water Board in accordance with the following term: a.

a. The Enrollee must notify the Water Board of any change in ownership or interest in ownership of the project area by submitting a Transfer of Property Ownership Report. The Enrollee and purchaser must sign and date the notification and provide such

notification to the Water Board at least 10 days prior to the transfer of ownership. The purchaser must also

6. Transfer of Long-Term BMP Maintenance: If maintenance responsibility for post-construction BMPs is legally transferred, the Enrollee must submit to the appropriate Regional Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer or designer specifications. The Enrollee must provide such notification to the Water Board with a Transfer of Long-Term BMP Maintenance Report at least ten (10) days prior to the transfer of BMP maintenance responsibility.

H. 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. Enrollment under this Order is conditioned upon total payment of any fee required under title 23 of the California Code of Regulations.

END OF SWRCB SECTION 401 WATER QUALITY CERTIFICATION CONDITIONS

EPA

The EPA issued its conditional certification (U.S. EPA File No. 2023-505) on October 25, 2023. Conditions within the issued Section 401 certification are included within the body of the RGP to facilitate dissemination of information to permittees regarding water quality certifications for work authorized under RGP 63. The EPA's water quality conditions are adopted within this permit as RGP 63 General Conditions.

EPA Conditions for Certification

For lands of exclusive federal jurisdiction in relevant respects and on behalf of the tribes without TAS for section 401, EPA has determined that any discharge from the proposed project will comply with water quality requirements, as defined at 40 CFR 121.1(n), subject to the following conditions pursuant to section 401(d):

Condition 1 – Unauthorized Discharges and Spills: The project proponent shall:

- Not allow debris, trash, silt, sand, cement, concrete, oil or petroleum, organic

materials, or other construction debris or wastes to enter into waters of the U.S., and shall not store these materials within 50 feet of where it may enter into waters of the U.S.

- Clean all equipment of excess dirt and debris in a decontamination area away from the project site prior to arriving on site. Project proponent shall inspect all equipment daily and prior to entering any waters of the U.S., for oil, gas, diesel, antifreeze, hydraulic fluid, and other petroleum leaks. Project proponent shall promptly repair all equipment detected with leaks or move the equipment offsite within 24 hours of leak detection.
- Place and secure containment booms and/or absorbent material onsite prior to beginning work. In the case of spills, project proponent shall immediately employ containment booms and/or absorbent materials to prevent discharges from reaching waters of the U.S.

If spills or unauthorized discharges occur during the project, the project proponent shall notify EPA Region 9 at R9cwa401@epa.gov within 6 hours of discovery. As part of the notice, the project proponent shall provide photographs and a written plan for remedying the spill or unauthorized discharge. For emergencies or after hours, call the EPA emergency spill response at 1-800-424-8802.

Condition 2 – Dewatering Plan: If a proposed structure or fill in waters of the U.S. requires dewatering activities, a project proponent seeking authorization under this RGP shall ensure the project meets all the requirements included in a dewatering plan that identifies how these requirements will be incorporated into the project.² Within 3 business days of receiving authorization from the Corps to proceed, the project proponent shall submit to EPA Region 9 at R9cwa401@epa.gov the dewatering plan. Dewatering requirements to be included in the dewatering plan – the project proponent shall:

- Within 6 hours of discovery, notify EPA Region 9 at R9cwa401@epa.gov of any erosion, sedimentation, scour, or unauthorized discharges that occur throughout the duration of the project because of the dewatering activities. As part of the notice, the project proponent shall provide photographs and a written plan for remedying the unauthorized discharge, and the adaptive management efforts undertaken to prevent further unauthorized discharges due to the dewatering activities.³
- Document and photograph the pre- and post-construction conditions of the waters of the U.S., including vegetation percent cover and species present, contours, and presence of any fish or amphibians in the areas impacted by the dewatering activities.
- Discharge the water from dewatering activities within the project area (as defined in the RGP 63 application).
- Ensure that the dewatering activities do not add any pollutants (e.g., debris, trash, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes) to the water that will be discharged back into waters of the U.S.

The project proponent shall remove all trash and debris from the water prior to discharging back into waters of the U.S.

The project proponent shall not discharge into waters of the U.S. any water from dewatering activities that has an odor, oily sheen, discoloration (other than from sediment), or foam on the surface.

- Monitor and inspect dewatering activities regularly. The plan shall describe the monitoring and inspection protocols, which shall occur, at a minimum, 1) if the daily precipitation forecast is greater than 70%, 2) if there is precipitation happening on site, and 3) within 24 hours after a precipitation event. The project proponent shall proactively modify and repair all dewatering measures that are not performing as intended (i.e., as necessary to ensure compliance with the other requirements listed in this condition).

Condition 3 – Dewatering Activities Final Report: If a proposed structure or fill in waters of the U.S. requires dewatering activities, a project proponent seeking authorization under this RGP shall, within 2 weeks of project completion, submit a final report to EPA Region 9 at R9cwa401@epa.gov. In the final report, the project proponent shall:

- Document the methods used for dewatering.
- Identify the total acreage and linear feet of waters of the U.S. impacted by the structure and/or fill used for dewatering.
- Identify the time the work area was dewatered.
- Describe all monitoring conducted during dewatering, including any deviations from the monitoring and inspection described in the dewatering plan (see Condition 2).
- Confirm that all temporary structures and/or fill have been removed.
- Include the documentation and photographs of the pre- and post-construction conditions of the waters of the U.S., including vegetation percent cover and species present, contours, and presence of any fish or amphibians in the areas impacted by the dewatering activities.
- Document how the site was returned to pre-construction conditions after completion of work. o If the site has not been returned to pre-construction conditions at the time of submittal, the report shall also include descriptions of restoration success criteria, monitoring methods, and the timeline for returning the site to pre-construction conditions.
- Describe any and all remediation and adaptive management measures that were implemented to address erosion, sedimentation, or scour, or unauthorized discharges within waters of the U.S. throughout the duration of the project due to the dewatering activities.

The following tribes have treatment as a state (TAS) and are NOT covered by this certification. These tribes issue their own water quality certifications. For all other tribes within the Los Angeles Army Corps District EPA is the certifying authority. Project proponents intending to use this certification should contact EPA Region 9 to ensure the list of tribes with TAS has not changed since issuance of this certification.

California

Bishop Paiute Tribe

Big Pine Paiute Tribe of the Owens Valley

Twenty-Nine Palms Band of Mission Indians

Arizona

Hopi Tribe

Hualapai Indian Tribe

Navajo Nation

White Mountain Apache Tribe

END OF EPA SECTION 401 WATER QUALITY CERTIFICATION CONDITIONS

8. Coastal Zone Management: For those projects affecting uses or resources of the coastal zone, the Federal Coastal Zone Management Act (CZMA) requires that the Permittee obtain concurrence from the California Coastal Commission that the project is consistent with the State's certified Coastal Management Program. For activities within the coastal zone that require a coastal development permit from the commission, the Permittees should contact the Commission office to request an emergency permit, and no additional federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local coastal program, the Permittee should contact the appropriate local government. Because a coastal permit issued by a local agency does not satisfy the federal consistency requirements of the CZMA, the Permittee should also contact Larry Simon, Federal Consistency Coordinator for the Commission, at 415-904-5400 to determine the appropriate emergency procedures. For activities within the coastal zone that require a coastal development permit from the Commission, the Permittees should contact the Commission office to request an emergency permit, and no additional federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local coastal program, the Permittee should contact the appropriate local government. Because a coastal permit issued by a local agency does not satisfy the federal consistency requirements of the CZMA, the Permittee should also contact Cassidy Teufel (Cassidy.Teufel@coastal.ca.gov) Federal Consistency Coordinator for the Commission Federal Consistency Coordinator for the Commission, to determine the appropriate emergency procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or resources, or for any activity conducted by a federal agency, the Permittee should also contact the office of federal consistency to determine the appropriate emergency procedures.

9. Endangered Species: No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat as identified under the Federal Endangered Species Act (ESA). Authorization of an activity by the RGP does NOT authorize the "take" of a listed threatened or endangered species, as defined under the Federal ESA. The U.S. Fish and Wildlife Service and/or National Marine Fisheries Service may provide project-specific recommendations to avoid or minimize potential take of listed species or adverse modification of designated critical habitat. The Corps would determine which recommendations would be incorporated into the emergency authorization. Information on the location of listed or proposed threatened or

endangered species and their designated or proposed critical habitat can be obtained directly from the FWS or NMFS or from their websites at:

USFWS – <http://www.fws.gov/endangered>

NMFS – <http://www.nmfs.noaa.gov/pr/species/>

10. Historic Properties: Impacts to historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources are impacted because of actions authorized under this RGP, the permittee shall provide a full report of the action and the impacts incurred by the resource to this office within 45 days after completion of the action. The Corps, the State and Tribal Historic Preservation Officers, and/or the Advisory Council for Historic Preservation will then jointly make a determination as to appropriate procedures and/or mitigation to be addressed. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, you must immediately notify the Corps Regulatory Division who will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

11. Regional and Case-by-Case Conditions: The activity must comply with any regional conditions added by the Division Engineer (see CFR Part 330.4(e)) and with any case-specific conditions added by the District Engineer.

12. Erosion and Siltation Controls: Every effort must be made to ensure any material dredged or excavated from Waters of the United States is not likely to be washed back into any Waters of the United States. When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or straw bales or other means designed to minimize turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.

13. Equipment: When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance, such as use of wide-treaded equipment or floatation devices.

14. Suitable Material: No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act).

15. Wild and Scenic Rivers: No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while that river is in an official study status, unless the appropriate Federal agency with direct management responsibility for that river has determined in writing that the proposed activity would not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., FWS, National Park Service, USDA Forest Service, Bureau of Land Management). Currently the only designated Wild and Scenic River systems in the Los Angeles District are the main stem of Sespe Creek from its confluence with Rock Creek and Howard Creek downstream to where it leaves Section 26, T5N, R20W; the Sisquoc River from its origin to the Los Padres National Forest boundary in California; and the Verde River from the section line between Sections 26 and 27, T13N, R5E, Gila-Salt River meridian to the confluence of Red Creek with the Verde River within Section 34, T9 1/2N, R6E.

16. Aquatic Life Movements: No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Culverts placed in streams must be installed to maintain low flow conditions.

17. Shellfish Production: No discharge of dredged or fill material may occur in areas of concentrated natural or commercial shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by the Corps' Nationwide Permit (NWP) 4.

18. Spawning Areas: Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

19. Waterfowl Breeding Areas: Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

20. Navigation: No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. The permittee shall agree that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expenses to the United States. No claim shall be made against the United States on account of any such removal or alteration.

21. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

22. Obstruction of High Flows: To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing river plain unless the primary purpose of the fill is to impound waters.

23. Adverse Effects from Impoundments: If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

24. Proper Maintenance: Any structure or fill authorized by this RGP shall be maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to private or public property. In such situations, corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective action, or appropriate mitigation as determined through coordination with you and the appropriate Federal and State agencies. Temporary levees constructed to control flows shall not be maintained beyond the current storm season (i.e., maintenance of temporary levees is not authorized after the storm season in which the need arose).

25. Removal of Temporary Fills: Temporary fills shall be removed in their entirety and the affected areas returned to pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such a temporary fill is considered likely to naturally re-establish native riparian or wetland vegetation to a level similar to pre-project or pre-event conditions within two years, you will not be required to do so.

26. Reports: You shall provide a concise written report to this office as soon as practicable (within 45 days of completing the project) after completion of any action conducted under this RGP. PROVIDING THIS REPORT IS MANDATORY. This office has additional responsibilities pursuant to consultation with the FWS and NMFS under Section 7 of the ESA. Further, these reports enable us to track the use of this RGP to verify that the minimal effects determination is being met as required by Section 404(e) of the CWA. Failure to provide timely reports following responses to emergencies is non-compliance with the General Conditions of this RGP and would be considered a violation (33 CFR Part 326.4(d)). At a minimum the Report shall include the following: I. The name, address, e-mail address and telephone number of: a. the applicant, and b. the applicant's agent (if appropriate) II. Full description of the activity including: a. description of the emergency and the potential for loss of life or property; b. purpose of the activity; c. final goal of the entire activity; d. location (e.g., latitude/longitude or UTM coordinates; section/township/range on appropriate USGS topo map; electronic map

images; Thomas Guide map; or other source to accurately portray project location); e. size and description of project area (include maps or drawings showing the areal and lineal extent of the project, and pre- and post-construction photographs); f. quantities of materials used; g. information on receiving waterbody impacted including:

(1) name of waterbody

(2) type of receiving waterbody (e.g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland type, etc.)

(3) temporary/permanent adverse impact(s) in acres/cubic yards/linear feet

(4) compensatory mitigation in acres/cubic yards/linear feet

(5) other mitigation steps (to avoid, minimize, compensate); and

h. information on an activity that required permission from the Corps pursuant to 33 U.S.C. 408 because the project altered, temporarily or permanently occupied use of a U.S. Army Corps of Engineers federally authorized civil works project.

i. information on federally listed or proposed endangered species or designated or proposed critical habitat (notification must be provided to FWS and/or NMFS as appropriate) including:

(1) temporary/permanent adverse impacts

(2) compensatory mitigation

(3) other mitigation steps (to avoid, minimize, compensate).

(4) Federal agencies should follow their own procedures for complying with requirements with the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA). The Federal permittee must provide to the district engineer (DE) the appropriate documentation to demonstrate compliance with these requirements. The DE will verify that the appropriate documentation was submitted. If any documentation is not submitted, and additional ESA and/or NHPA consultation may be necessary for the activity the respective federal agency would be responsible for fulfilling its obligation.”

If there are a substantial number of projects and this requirement would consume large quantities of staff resources, the permittee may, as an option, submit a comprehensive report providing all of the information required in the notification condition (Item 2.b.) above. If a project was conducted in an area known to harbor Federally listed or proposed endangered species or designated or proposed critical habitat, a list of measures taken to minimize harm to the species and/or habitat and provide a copy of the report to the FWS and/or the NMFS, as appropriate, must also be included. If mitigation was determined to be appropriate for a specific project or group of projects, a mitigation proposal must be submitted to this office for review and approval. We will forward the report to the appropriate agencies for their review and comment.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation

of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

David J. Castanon
Chief, Regulatory Division

DATE