



REGION 9

SAN FRANCISCO, CA 94105

via email only

U.S. Army Corps of Engineers
Los Angeles District
Attn: David Castanon
60 South California Street, Suite 201
Ventura, California 93001

Subject: Clean Water Act (CWA) Section 401 Certification for the reissuance of Regional General Permit (RGP) 63 for Emergency Repair and Protection Activities (SPL-20187-00038), U.S. EPA File No. 2023-505

Dear Mr. Castanon,

I hereby grant with conditions the water quality certification for the Subject permit, consistent with Section 401 of the Clean Water Act (CWA). On June 6, 2023, the U.S. Environmental Protection Agency (EPA) Region 9 received a request for certification from the U.S. Army Corps of Engineers (Corps), for discharges of dredged and fill material into waters of the U.S., including wetlands, and/or structures or work in, or affecting navigable waters of the U.S., for the purpose of emergency repair and protection activities. EPA reviewed the application and supplemental information and posted a public notice of the proposed project on the EPA Region 9 website from July 7, 2023, through August 7, 2023. No comments were received. Based on the project description, EPA has determined that any discharge from activities authorized by the proposed RGP will comply with water quality requirements, as defined at 40 CFR 121.1(n), subject to the enclosed conditions pursuant to Section 401(d). The enclosed CWA section 401 water quality certification applies to Tribal Lands and lands of exclusive federal jurisdiction in relevant respects where EPA is the certifying authority.

Please provide this certification to any project proponent (or their designated contractor) contacting the Corps with applicable projects that may be authorized under this regional general permit. If a project fails to meet the enclosed conditions, the project proponent must contact EPA Region 9 at R9cwa401@epa.gov for a project-specific certification. This email may be used to submit pre-filing meeting requests, requests for certification, or for any certification-related questions.

In accordance with the Notification Procedures in RGP 63, upon receipt of notification the Corps will provide an electronic copy to EPA Region 9. EPA strongly encourages additional coordination with adjacent and surrounding Tribes of project areas to address cultural and water quality concerns of transboundary impacts.

EPA appreciates our long-standing partnership and coordination in implementing Section 401 of the CWA. Please contact me at (415) 972-3337 or torres.tomas@epa.gov should you have any questions, or your staff may contact our Wetlands Section Manager, Sahrye Cohen at (415) 972-3523 or cohen.sahrye@epa.gov.

Sincerely,

Tomás Torres
Director, Water Division

Enclosure

**Enclosure U.S. Environmental Protection Agency Region 9’s Clean Water Act Section 401 Certification
of the U.S. Army Corps of Engineers Regional General Permit (RGP) 63 for Emergency Repair and
Protection Activities**

This Clean Water Act (CWA) Section 401 water quality certification (WQC) applies to any potential point source discharges from projects authorized under Regional General Permit 63 (SPL-2018-00038) into waters of the U.S. that occur within Tribal Lands for which the tribe does not have Treatment as a State (TAS) and lands of exclusive federal jurisdiction in relevant respects in the States of California and Arizona where the U.S. Environmental Protection Agency (EPA) is the certifying authority (see Appendix 1).¹

Section 401(a)(1) of the CWA requires applicants for Federal permits and licenses that may result in discharges into waters of the U.S., to obtain certification that any such discharges will comply with applicable provisions of the CWA including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has the authority to give such certification, EPA is the certifying authority.

Scope of Authorized Activities:

This certification covers permanent or temporary work or structures in navigable waters of the U.S., and/or the permanent or temporary discharge of dredged and/or fill material into waters of the U.S., including wetlands, for repair or protection activities authorized under RGP 63. Typical activities authorized under this RGP include but are not limited to bank stabilization; restoration of damaged areas; temporary fills for staging, access, and dewatering; and repair, replacement, or rehabilitation of existing structures and/or fills (i.e., roads, bridges, utility pipelines and flood control structures, including attendant features, irrigation pumps or intakes, and other existing structures located in waters of the U.S.).

Authorized projects and activities must be completed in accordance with the project description provided in the application and any supplemental information submitted to and authorized by the Corps. Material changes to the project or activity described in the application as well as any activity not authorized by the Corps are not covered by this certification. The project proponent is responsible for obtaining and complying with all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

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):

¹ Please contact EPA Region 9 with questions regarding the jurisdictions where this certification decision applies. R9cwa401@epa.gov. This certification applies to RGP-63 and is applicable where EPA is the certifying authority within those parts of the State of California subject to regulatory review by the Los Angeles District of the U.S. Army Corps of Engineers, 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.

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.

Why the condition is necessary to assure that any discharge will comply with water quality requirements: The condition is necessary to prevent the unauthorized release of pollutants into waters of the U.S. This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. The condition allows for containment and clean-up of potential spills before entering waters of the U.S. This condition also helps protect the water quality and native biology of the impacted waters of the U.S. by preventing the spread of invasive or nuisance species.

Citation: 40 CFR 230.10(d); 40 CFR 230.74(a); 40 CFR 230.74(b)

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

² See Section 7.1.2 of the Caltrans Construction Site Best Management Practices Manual for more information about standard dewatering best management practices (BMPs) that the project proponent may incorporate into their plans. <https://dot.ca.gov/programs/construction/storm-water-and-water-pollution-control/manuals-and-handbooks>.

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).

Why the condition is necessary to assure that any discharge will comply with water quality requirements: General conditions included in the RGP do not address dewatering activities.

Dewatering activities can often be a point source for pollutants entering waters of the U.S. This condition is necessary to ensure that the authorized activity does not result in more than minimal degradation to water quality and the aquatic environment because the project proponent will complete pre-planning, monitoring, maintenance, reporting and adaptive management to achieve site restoration.

Citation: 40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.74

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.

³ See below regarding the final report described in Condition 3 – the project proponent shall document all adaptive management efforts to address erosion, sedimentation, scour, or unauthorized discharges within waters of the U.S. due to the dewatering activities.

- 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.
 - 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.

Why the condition is necessary to assure that any discharge will comply with water quality requirements:

General conditions included in the RGP do not address dewatering activities. Dewatering activities can often be a point source for pollutants entering waters of the U.S. This condition is necessary to ensure that the authorized activity does not result in more than minimal degradation to water quality and the aquatic environment because under Condition 2 the project proponent will complete pre-planning, monitoring, maintenance, reporting, and adaptive management to achieve site restoration – and under this condition (Condition 3), the project proponent will be responsible for providing a final report with the details of their dewatering activities and all actions taken to prevent, limit, and address water quality issues caused by the dewatering activities.

Citation: 40 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.74

Appendix 1

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