



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

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DEC 03 2014

SPK EXECUTIVE OFFICE

Colonel Michael J. Farrell
District Engineer, Sacramento District
U.S. Army Corps of Engineers
1325 J. Street, Room 1350
Sacramento, California 95814

NOV 24 2014

Subject: Clean Water Act (CWA) Section 401 Conditional Water Quality Certification for Regional General Permit (RGP) for Emergency Actions

Dear Colonel Farrell:

Thank you for the opportunity to review Public Notices regarding the subject RGP for Emergency Actions, formerly called RGP 60. The U.S. Environmental Protection Agency, Region 9 (EPA) has responsibility under CWA Section 401 to evaluate and certify water quality protections for federal permits or licenses issued for work on most tribal lands in the Sacramento District.¹ Consistent with the EPA *Policy on Consultation and Coordination with Indian Tribes*,² we contacted affected tribes on September 9, 2014, and have not received any requests for consultation. This letter provides our certification of the Emergency Action RGP, subject to the attached conditions, for the duration of the RGPs' approval period.

We support the use of the RGP for Emergency Actions for actions that meet the strict definition of an emergency as set forth in the permit, and EPA has worked with the Corps to strengthen the conditions and requirements to prevent its use in non-emergencies. This RGP may not be used for deferred maintenance activities or for improving structures with a low probability of failure, and we recommend continued scrutiny of each proposal to ensure it qualifies for expedited permitting.

With the attached general conditions, EPA hereby certifies that the use of this RGP will not degrade water quality and will help ensure no more than minimal adverse impacts on the aquatic environment on tribal lands, both individually and cumulatively. Please ensure your staff continue to provide timely notification to EPA so we are able to comment on proposed activities if necessary. Generally, no further formal approval or response from EPA will be necessary to proceed if the notification demonstrates consistency with the conditions of the RGP and the applicable water quality certification. Projects qualifying for use of this RGP unable to meet the enclosed conditions, are not eligible for coverage under this programmatic certification and applicants must contact EPA to apply for individual 401 certification.

¹This certification does not apply in the territories of the ten tribes in Region 9 that have been approved as Section 401 certifying authorities with "treatment as state": Navajo Nation, Hualapai Tribe, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, and White Mountain Apache Tribe. In limited circumstances, some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

² <http://www.epa.gov/tribal/consultation/consult-policy.htm>

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Please contact me at (415) 972-3483 with any questions, or have your staff contact Leana Rosetti at (415) 972-3070 or rosetti.leana@epa.gov.

Sincerely,



Jason Brush
Supervisor
Wetlands Office

Cc: Jason Gipson, Sacramento District, Nevada-Utah Branch
Nancy Haley, Sacramento District, CA North Branch
Kate Dadey, Sacramento District, CA South Branch
Bill Orme, State Water Resources Control Board
Jean Stone, Nevada Department of Environmental Protection

U.S. EPA's Water Quality Certification Conditions for use of the Regional General Permit for Emergency Action on Tribal Lands within the Sacramento District of the U.S. Army Corps of Engineers

- a. At all times, appropriate types and sufficient quantities of materials shall be maintained on site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States.
- b. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment must not result in a discharge to any waters of the U.S., and shall be located outside of waters of the U.S. in areas where accidental spills are not likely to enter or affect such waters.
- c. If construction related materials reach surface waters, appropriate spill response procedures must be initiated as soon as the incident is discovered. USEPA shall be notified promptly after the occurrence.
- d. Construction materials and debris from all construction work areas shall be removed following completion of construction.
- e. Water diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel, which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.
- f. All necessary BMPs to control erosion and runoff from areas associated with the authorized activities shall be implemented. All areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the U.S. shall be restored to pre-disturbance conditions. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.
- g. The revegetation palette for project sites must include appropriate native species only. California project sites must not include any plants listed on the California Invasive Plant Council Invasive Plan Inventory, which can be found online at <http://www.cal-ipc.org/paf/>
- h. A copy of this certification shall be provided to all contractors and subcontractors.