



Regional General Permit [#]

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

REGIONAL GENERAL PERMIT FOR BRCP COVERED ACTIVITIES

EFFECTIVE:

EXPIRES: (5 years from effective date)

The U.S. Army Corps of Engineers, Sacramento District (District), hereby issues Regional General Permit (RGP) X for activities covered by the Butte Regional Conservation Plan (BRCP) that result in the discharge of dredged or fill material into waters of the U.S.

ISSUING OFFICE: U.S. Army Corps of Engineers, Sacramento District

ACTION ID: SPK-2011-00467

AUTHORITIES: Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States.

LOCATION: The BRCP's Plan Area encompasses approximately 564,219 acres of public and private lands (Figure 1-1 of the BRCP). The Plan Area includes the western lowlands and foothills of Butte County bounded on the west by Tehama, Glenn, and Colusa counties; bounded on the south by Sutter and Yuba counties; bounded on the north by Tehama County; and primarily bounded on the east by high elevation oak woodland natural communities.

ACTIVITIES COVERED: This RGP applies only to BRCP Covered Activities, as set forth in Sections 2.2 through 2.5 of the BRCP (also see *Definitions* section). Any question as to whether a proposed activity is considered a Covered Activity under the BRCP shall be subject to confirmation by the BRCP Implementing Entity and Permittees (see *Definitions*). The final determination on whether a proposed project qualifies for authorization under this RGP will be made by the District.

For the purposes of this RGP, maintenance activities include the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, provided the structure or fill is not to be put to uses differing from those specified or contemplated for in the original permit or the most recently authorized modification, and provided the maintenance activity does not qualify for the Clean Water Act Section 404(f) exemption for maintenance. Minor deviations in the configuration of the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. The Corps retains the authority to identify activities that meet the exemption criteria identified by Section 404(f).

Covered Activities under this RGP include temporary and/or permanent discharges of dredged or fill material into waters of the U.S. for:

1. **Residential, Commercial, Public, and Industrial Facilities:** construction, expansion, and maintenance of residential, commercial, public, or industrial facilities (as described in Section 2.2.1.1 of the BRCP).
2. **Recreation Facilities:** construction, expansion, and maintenance of recreation facility development projects (as described in Sections 2.2.1.2 and 2.2.2.1 of the BRCP).
3. **Transportation Facilities:** construction, expansion, and maintenance of transportation facility development projects (as described in Sections 2.2.1.3 and 2.2.2.2 of the BRCP).
4. **Pipeline Facilities:** construction, expansion, and maintenance of pipeline facility development projects (as described in Sections 2.2.1.4 and 2.2.2.3 of the BRCP) including all activities associated with accessing, surveying, excavating, trenching, and constructing underground pipeline infrastructure; backfilling and compaction and any windrowing or storage of overburden material; and restoration of the construction site.
5. **Utility Service Facilities:** construction, expansion, and maintenance of utility services facility projects (as described in Sections 2.2.1.5 and 2.2.2.4 of the BRCP) including activities associated with construction and installation of electrical utilities, telecommunication lines, and natural gas transmission lines.
6. **Waste Management Facilities:** construction, expansion, and maintenance of waste management facility projects (as described in Sections 2.2.1.6, 2.2.2.5, 2.3.1.1, and 2.3.2.1 of the BRCP).
7. **Wastewater Management Facilities:** construction, expansion, and maintenance of wastewater management facility projects (as described in Sections 2.2.1.6, 2.2.2.5, 2.3.1.1, and 2.3.2.1 of the BRCP). With the exception of culverts placed in small intermittent drainages along roads within the project footprint of new facilities, activities associated with the construction of waste and wastewater management facility projects shall not include development of in-water structures.
8. **Flood Control and Stormwater Management Facilities:** construction, expansion, and maintenance of flood control and stormwater management facility projects (as described in Sections 2.2.1.7 and 2.2.2.6 of the BRCP). Covered activities associated with the construction of flood control and stormwater management facility projects shall not include development of in-water structures in natural channels.
9. **Aquatic Habitat Restoration, Establishment, and Enhancement Activities:** construction, expansion, and maintenance of aquatic resource habitat areas consistent with the Conservation Measures identified in Chapter 5 of the BRCP. This includes activities in waters of the U.S. associated with the restoration, enhancement, and establishment of non-tidal streams and non-tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

In accordance with 33 CFR 322.2(f)(1), this RGP authorizes activities that are substantially similar in nature and would result in minimal individual and cumulative impacts on the aquatic environment, when conducted under the terms and conditions of this permit.

TERMS:

1. **Activity completion:** Activities authorized by the District under this RGP are valid until the expiration date of the RGP. Pursuant to term #9, below, activities authorized under the RGP that are under construction or under contract for construction in reliance upon this authorization will remain authorized provided the activity is completed within 12 months of the date of the RGP's expiration, modification or revocation, unless the District exercises its discretionary authority to modify, suspend, or revoke the authorization of a specific project in accordance with 33 CFR 325.7(a).
2. **After-the-fact authorizations:** This RGP may not be used to authorize activities that resulted in the discharge of dredged or fill material into waters of the U.S. without Department of the Army authorization.
3. **Applying for RGP authorization:** Prior to commencing a proposed activity, applicants seeking authorization under this RGP shall notify the District in accordance with RGP general condition number 14 (Notification). If the District determines that an activity is not eligible under the RGP, the assigned project manager will notify the applicant in writing within thirty (30) calendar days and provide instructions on the procedures to seek authorization under a standard permit, letter of permission or Nationwide permit. If the District determines that a proposed activity is eligible for coverage under the RGP, the assigned project manager will notify the applicant within 45 calendar days of receipt of a complete application. If the District determines the impacts of the proposed activity are more than minimal, the District will notify the applicant that the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit. For maintenance activities, applicants must provide proof of previous authorizations either by including the previously issued permit, or a statement that the fill was authorized by 33 CFR 330.3.
4. **Bed and Bank Stabilization:** Bank stabilization activities are limited to: a) using the minimum amount of material needed for erosion protection; b) no more than 500 feet in length along the bank, unless the District waived this requirement by making a written determination concluding the discharge will result in minimal adverse effects; and c) no more than an average of 1 cubic yard of material per running foot placed along the bank below the plane of the ordinary high water mark, unless the District waives this requirement by making a written determination concluding that the discharge will result in minimal adverse effects.
5. **Compliance with BRCP Conditions:** Activities to be authorized under this RGP must be BRCP Covered Activities and must fully comply with the BRCP. Applicants must receive written concurrence from BCAG that the proposed project is eligible for coverage under the BRCP. Compliance with the BRCP requires applicants to implement the appropriate avoidance and minimization measures outlined in Chapter 6 of the BRCP. Prospective permittees must submit information showing compliance with the appropriate measures identified in the BRCP with the notification required in General Condition 21.
6. **Discretionary Authority:** The District has the discretion to suspend, modify, or revoke authorizations under this RGP. This discretionary authority may be used by the District to further condition or restrict the applicability of the RGP for cases in which it has concerns associated with the Clean Water Act Section 404(b)(1) Guidelines, or regarding any factor of the public interest. Should the District determine that a proposed activity may have more than minimal individual or cumulative adverse impacts to aquatic resources or otherwise be contrary to the public interest, the District will modify the authorization to reduce or eliminate those adverse effects, or notify the applicant that the proposed

activity is not authorized by the RGP and provide instructions on how to apply for authorization under another permit. The District may restore authorization under the RGP at any time it determines the reason for asserting discretionary authority has been resolved or satisfied by a condition, project modification, or new information. The District may also use its discretionary authority to modify, suspend, or revoke the RGP at any time.

7. Impact Thresholds for losses of Waters of the U.S.: Impacts to waters of the U.S. shall be avoided and minimized to the maximum extent practicable. The loss of waters of the U.S. (including wetlands) resulting from individual project impacts under this RGP may not exceed 1.5 acres or a total of 300 linear feet of perennial, intermittent, or ephemeral streams, unless the District waives the linear foot requirement by making a written determination concluding the discharge will result in minimal adverse effects. The total loss of waters of the U.S. authorized under this RGP may not exceed 80 acres (including a maximum loss of 15 acres of vernal pools) within the Plan Area. Loss is defined in the *Definitions* section below. Additional restrictions are listed in the General and Activity-Specific Conditions, below.

8. Single and complete project: The project must be a single and complete project (see *Definition* section).

9. Special conditions: The District may add special conditions to an authorization to ensure the activity complies with the terms and conditions of the RGP, and adverse impacts are individually and cumulatively minimal.

GENERAL CONDITIONS:

1. Aquatic Life Movements:

- a. For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed;
- b. Crossings shall be designed to ensure that no more than minor impacts would occur to fish and wildlife passage or expected high flows, following the criteria described under General Condition 1(a). Culverted crossings that do not utilize a bottomless arch culvert with a natural stream bed may be authorized for waters that do not contain suitable habitat for Federally-listed fish species, if it can be demonstrated and is specifically determined by the Corps, that such crossing will result in no more than minor impacts to fish and wildlife passage or expected high flows;
- c. No construction activities shall occur within standing or flowing waters. For ephemeral or intermittent streams, this may be accomplished through construction during the dry season. In perennial streams, this may be accomplished through dewatering of the work area. Any proposed dewatering plans must be approved, in writing, by the Corps prior to commencing construction activities; and
- d. All bank stabilization activities associated with a crossing shall comply with General Condition 2.

- e. In no case shall stream crossings result in a reduction in the pre-construction bankfull width or depth of perennial or intermittent streams or negatively alter the flood control capacity of perennial streams.

2. **Bed and Bank Stabilization:** All bank stabilization activities shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g. rip-rap) and native vegetation or bioengineered design techniques, unless specifically determined to be impracticable by the Corps. For projects that would involve hard armoring or the placement of any non-vegetated or non-bioengineered technique below the ordinary high water mark of waters of the U.S., the PCN must include information on why the sole use of vegetated techniques is not practicable.

3. **Best Management Practices:** The permittee shall implement and maintain Best Management Practices (BMPs) during and following construction and in project design to protect water quality and minimize impacts of stormwater runoff to on-site and off-site aquatic resources. BMPs shall be appropriately located in, or adjacent to, waters of the U.S. (e.g., silt curtains). The applicant shall employ the following BMPs, if determined practicable by the District, in designing and constructing the project:

- a. Preservation of natural resource features on the project site (e.g., floodplains, wetlands, streams, and other drainageways, grasslands, woodlands, and native soils).
- b. Preservation of natural water infiltration and storage characteristics of the site.
- c. Minimization of new impervious surfaces in project design (impervious surfaces may be minimized through practices such as reducing road widths and clustering developments designed around open space).
- d. Structural measures that provide water quality and quantity control.
- e. Structural measures that provide only quantity control and conveyance.
- f. Low impact development (LID) BMPs.

Examples of structural BMPs include: vegetated natural buffers, grassed swales, infiltration trenches, level spreaders, and channel grade controls. Examples of construction BMPs include: matting and filter fencing, or other barrier methods to intercept/capture sediment. All BMPs shall be in place prior to initiation of any construction activities in waters of the U.S. and shall remain and be maintained until construction activities are completed and all on-site soils are stabilized. The permittee shall submit a description and photo-documentation of the BMPs utilized to the District within 5-days of commencing of construction activities in waters of the U.S. This documentation may be submitted electronically to cespk-regulatory-info@usace.army.mil or the assigned project manager.

4. **Compensatory Mitigation:** Compensatory mitigation for impacts to waters of the U.S. must be accomplished at a minimum of a 1:1 ratio. Mitigation proposals shall be consistent with the U.S. Army Corps of Engineers regulations at 33 CFR Part 332 and any District guidance.

- a. If the RGP verification includes permittee-responsible compensatory mitigation, the permittee shall develop and submit to the District for review and approval, a conceptual

mitigation and monitoring plan for all permittee responsible mitigation prior to commencement of construction activities within waters of the U.S. The plan shall include the mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, presented in the format consistent with the South Pacific Division's Final Regional Compensatory Mitigation and Monitoring Guidelines, dated January 12, 2015, and any subsequent amendments to the Guidelines and in compliance with the requirements of 33 CFR 332.

- b. The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the RGP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the District. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencing construction of the authorized activity under this RGP.

5. Compliance Inspections: The permittee must allow representatives from the District to inspect the authorized activity (and any avoidance or mitigation areas, if applicable) at any time deemed necessary to ensure that the activity is being, or has been, accomplished in accordance with the terms and conditions of the permit. The District will notify the permittee in advance of an inspection.

6. Construction Start Date: For all activities in which notification is required, the permittee shall notify the appropriate district office of the start date for the authorized work within 10 days prior to initiating construction activities.

7. Equipment: Heavy equipment working in wetlands shall be placed on mats, or other measures such as low-ground pressure equipment, to minimize soil disturbance. Information regarding methods to minimize soil disturbance shall be submitted with the pre-construction notification.

8. Federal Agency Compliance with Section 7 of the ESA, the Magnuson-Stevens Fishery Conservation and Management Act, and Section 106 of the NHPA: For activities in which the District designates another Federal agency as the lead for compliance with Section 7 of the ESA of 1973 as amended, pursuant to 50 CFR Part 402.07, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), pursuant to 50 CFR 600.920(b) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, pursuant to 36 CFR 800.2(a)(2), the lead Federal agency shall provide all relevant documentation to the District demonstrating any previous consultation efforts, as it pertains to the District Regulatory permit area (for Section 7 and EFH compliance) and the District Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the District does not designate another Federal agency as the lead for ESA, EFH, and/or NHPA, the District will initiate consultation for compliance, as appropriate.

9. Fills within 100-Year Floodplains: The activity shall comply with applicable FEMA-approved state or local floodplain management requirements.

10. Historic Properties: No activity is authorized under the RGP if the activity may affect historic properties listed, or eligible for listing, in the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act (NHPA), as amended, have been satisfied. Applicants must notify the District if the activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on, the National

Register of Historic Places, including previously unidentified historic properties. The District will consult with the State Historic Preservation Officer (SHPO), as appropriate, following the policy and procedural standards of 33 CFR Part 325 Appendix C.

11. Limits of Disturbance: The permittee shall clearly identify the limits of disturbance in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencing construction activities within waters of the U.S. The permittee shall maintain such identification properly until construction is completed and the soils have been stabilized. The permittee is prohibited from any activity (e.g. equipment usage or materials storage) that may impact waters of the U.S. outside of the permit limits (as shown on the permit drawings).

12. Management of Water Flows: The pre-construction course, condition, capacity, and location of open waters shall be maintained to the maximum extent practicable, unless determined impracticable by the Corps. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration project). The District Engineer will determine the need for appropriate and practicable compensatory mitigation necessary to ensure that adverse effects on the aquatic environment are minimal. If compensatory mitigation is determined necessary, mitigation proposals are required to be prepared in accordance with 33 CFR Part 332.

13. Migratory Bird Breeding Areas: Activities in waters of the U.S. that serve as breeding areas for migratory birds shall be avoided to the maximum extent practicable.

14. Notification: The prospective permittee shall provide written notification (i.e., a complete application and associated documentation) for a proposed activity to be authorized under the RGP prior to commencing the activity. The prospective permittee shall submit a pre-construction notification package for all covered activities.

15. Permit Transfer: If the permittee sells the property associated with this permit, the permittee must obtain the signature and mailing address of the new owner on the permit verification letter, and forward a copy to the District to validate the transfer.

16. Permanent Protections. All preserved, created, restored or enhanced waters of the U.S. and adjacent buffers on the project site shall be preserved and permanently protected through a deed restriction, conservation easement, or other appropriate real estate or legal instrument, consistent with the requirements of the BRCP as approved by the District. A recorded copy of the real estate instrument must be provided to the District prior to proceeding with any activity otherwise authorized by this RGP. Permittees shall place all avoided waters of the U.S. and any upland buffers into a separate preserve parcel prior to discharging dredged or fill material into waters of the U.S. If the District determines that it is impracticable to require permanent preservation of the avoided waters, additional mitigation may be required in order to compensate for indirect impacts to waters of the U.S.

Fencing and Signage. Preserved areas on the project site must be fenced and signed as sensitive areas to discourage human disturbance

17. Post-construction reporting: The permittee shall submit a letter report to the District within 30 days of project completion. Permittees shall return a signed Compliance Certification to the District within 30 days after completion of the authorized work. The report will contain the following:

- a. The District file number.
- b. As-built drawings of the work conducted on the project site and any on-site and/or off-site compensatory mitigation, preservation, and/or avoidance area(s). The as-builts shall include a plan-view drawing of the location of the authorized work footprint (as shown on the permit drawings), with an overlay of the work as constructed in the same scale as the permit drawings. The drawing shall show all areas of ground disturbance, wetland impacts, structures, and the boundaries of any on-site and/or off-site mitigation or avoidance areas. Please note that any deviations from the work as authorized, which result in additional impacts to waters of the U.S., must be coordinated with the appropriate Corps office prior to impacts.
- c. Numbered and dated pre- and post-construction color photographs of the work conducted within a representative sample of the impacted waters of the U.S., and within all avoided waters of the U.S. on and immediately adjacent to the proposed project area. The compass angle and position of all photographs shall be similar to the pre-construction color photographs required in Procedure 2, and shall be identified on the plan-view drawing(s) required in Procedure 2(a)(viii).
- d. A signed compliance certification form.

18. Removal of Temporary Fills and Restoration of Affected Areas: For all activities resulting in temporary fill within waters of the U.S., the permittee shall:

- a. Ensure that the PCN include a description of the proposed temporary fill, including the type and amount of material to be placed, the area proposed to be impacted, and the proposed plan for restoration of the temporary fill area to pre-project contours and conditions, including a plan for the re-vegetation of the temporary fill area, if necessary. In addition, the PCN shall include the reason(s) why avoidance of temporary impacts in waters of the U.S. is not practicable.
- b. In addition, for all activities resulting in temporary fill within waters of the U.S., the permittee shall:
 - i. Utilize material consisting of clean and washed gravel. For temporary fills within waters of the U.S. supporting anadromous fisheries, spawning quality gravel shall be used, where practicable, as determined by the Corps, after consultation with appropriate Federal and state fish and wildlife agencies;
 - ii. Place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing ground elevation of the waters temporarily filled during construction; and
 - iii. All temporary fills shall be removed within 30 days following completion of construction activities, unless determined impracticable by the Corps. In

addition, unless determined impracticable by the Corps, all temporary fills must be removed within 180 days following the placement of the temporary fill.

19. Residential, Commercial, Public, or Industrial Facilities.

- a. The channelization or relocation of intermittent or perennial drainages is not authorized except when, as determined by the Corps, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.
- b. The permittee shall establish and maintain upland vegetated buffers in perpetuity, unless specifically determined to be impracticable by the Corps, next to all preserved open waters, streams, and wetlands including created, restored, enhanced, or preserved waters of the U.S. Except in unusual circumstances, as determined by the Corps, vegetated buffers shall be at least 50 feet in width.

20. Sediment Removal: The removal of sediment shall be limited to the minimum necessary to restore the waterway in the vicinity of a structure to the approximate dimensions that existed when the structure was built, but shall not extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

21. Stream Setbacks. Consistent with the requirements of Avoidance and Minimization Measure 6 of the BRCP, permittees shall establish a minimum of 100-foot buffer from the top of bank along both sides of all natural perennial stream corridors. See the BRCP for detailed stream setback requirements for perennial streams. In addition, permittees shall establish a minimum of 50-foot buffers along both sides of all natural intermittent stream corridors. Waters of the U.S. shall not be filled in order to meet the buffer requirements.

22. Suitable Fill: No discharge of dredged or fill material shall consist of unsuitable material and material discharged shall be free from toxic pollutants in toxic amounts (section 307 of the Clean Water Act). Fill material shall be clean and free of contaminants and noxious plants. Fresh cement or concrete is not allowed in waters unless it is placed in sealed forms. Unsuitable fill material includes vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires, concrete with exposed rebar.

23. Threatened and Endangered Species: No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA).

24. Tribal Rights: No activity or its operation shall impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

25. Unanticipated Cultural Resources Discoveries. If the permittee discovers any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, he or she shall immediately cease all work in waters of the U.S. and notify the District of what has been found.

The District 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.

26. Utility Service/Pipeline Facilities: All utility/pipelines lines shall be constructed in accordance with the following:

- a. Directional drilling, clear span, or other techniques that do not contact the waterbody shall be used if the waterbody contains perennial or intermittent flows, unless determined impracticable by the District.
- b. Permittees shall ensure the construction of utility lines does not result in draining any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by the Corps) to seal the trench. For utility line trenches, during construction, the permittee shall remove and stockpile, separately, the top 6-12 inches of topsoil. Following installation of the utility line(s), the permittee shall replace the stockpiled topsoil on top and seed the area with native vegetation.
- c. The construction area, including unprotected slopes and stream banks, shall be stabilized (e.g., blanketed and seeded) immediately upon completion of the utility line construction in any segment of the project. In no case shall soil stabilization be delayed until the entire utility line is completed.
- d. Temporarily disturbed construction areas must be restored to pre-construction conditions, including grading to original contours and revegetating (with native vegetation or other appropriate vegetation approved by the District) immediately upon completion of the project. A restoration plan, which includes a contour topographic map, shall be submitted with notification.

27. Water Supply Intakes: No discharge of dredged or fill material shall occur in the proximity of a public water supply intake, except where the discharge is for the repair or improvement of the intake structure(s), and/or adjacent bank stabilization. The prospective permittee shall submit the location of any known water supply intakes within 100 feet of the proposed project site with the notification required in General Condition 14.

28. Water Quality Certification: Section 401 Water Quality Certification (WQC) is required for activities to be authorized by this RGP. The District may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal impacts, individually or cumulatively. The permittee shall comply with the terms and conditions of any individual or programmatic WQC received from the State Water Resources Control Board or Regional Water Quality Control Board.

PROCEDURES:

1. A prospective permittee may choose to request a pre-application meeting with the District and other resource agencies. To request a pre-application meeting, please contact the District office listed in the "Contacts" section of this document. The application form may be obtained from the Sacramento District's website:

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/ObtainPermit.aspx>.

To process the application/notification, the form and supporting documents must be completed, signed, and submitted to 1325 J Street, Room 1350, Sacramento, California 95814.

2. Prospective permittees shall submit a pre-construction notification (PCN) consisting of a written request for verification under this RGP. The PCN shall contain the following information in order to be considered complete:

- a. For all RGP covered activities, prospective permittees shall submit all of the following:
 - i. A letter or a completed Department of the Army Permit Application (DA 4345) signed by the applicant, requesting authorization under the RGP, identifying the Activity Category(s), a description of the proposed activity, the location of the activity(s) (with latitude and longitude), and the area (in acres, and/or linear feet as applicable) of waters of the U.S., including wetlands, to be impacted;
 - ii. For each general and applicable activity-specific condition of this RGP, a brief narrative describing how the activity would comply with the condition (or a description of why the condition is impracticable), or a statement that the condition does not apply or that it is impracticable with a rationale.
 - iii. For each applicable avoidance and minimization measure identified in Chapter 6 of the BRCP, a brief narrative describing how the activity would comply with each measure. Specifically, the narrative should describe how the proposed construction activity is in compliance with Avoidance and Minimization Measures associated with an aquatic resource as specified in Table 4-7 of the BRCP.
 - iv. Written concurrence from BCAG that the proposed project is eligible for coverage under the BRCP.
 - v. A written statement explaining how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable.
 - vi. For covered activities that would result in a loss of waters of the U.S. greater than ½ acre prospective permittees shall submit: draft information, in report form, concerning on-site practicable alternatives and the relative environmental impacts of those alternatives as compared to the environmental impacts of the proposed activity, in accordance with 33 CFR 325.1 (e) and 323.6 (a). The information must address compliance with the Environmental Protection Agency's 404(b)(1) Guidelines at 40 CFR part 230. The information shall also include reasons why the perspective permittee believes it is not practicable to meet the requirements of Procedure 2(a)(iv).
 - vii. A written statement identifying the amount, type, and location of proposed compensatory mitigation to offset unavoidable losses of waters of the U.S. If compensatory mitigation is not being proposed, a narrative must be provided explaining why compensatory mitigation should not be required or is not otherwise practicable.

- viii. Drawings, including plan and cross-section views, clearly depicting the location, size, and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. All drawings must be consistent with *the Final Map and Drawing Standards for the South Pacific Division Regulatory Program* (dated August 6, 2012), including any applicable updates to these standards.

The drawings shall include grading contours and existing and proposed structures, such as buildings, roadways, stormwater management facilities, utilities, construction access areas and water conveyance structures. The drawings shall also show buffer areas, open space designations, locations of BMPs, deed restricted areas, and restoration areas, if required.

- ix. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart vii of this Regional Condition.
 - x. A delineation of waters of the U.S., including wetlands, for the project site. On-site wetlands must be delineated using the Corps Wetlands Delineation Manual (1987) and Arid West Region Regional Supplement (2008), or most recent manual(s) in effect at the time of the proposal. The delineation shall also include information on wetlands and waters, as defined in the BRCP, that are/may not be waters of the U.S.
 - xi. A cultural resource survey report for the project site, including all staging, access, and construction areas. The report must be prepared in accordance with the Sacramento District's Guidelines for Compliance with Section 106 of the NHPA (dated February 25, 2011, or more recent guidance (if applicable) at the time a PCN is submitted.
3. For any activity that would require a waiver of the terms of the RGP, the pre-construction notification must a description of why the proposed activity would result in no more than minimal adverse environmental effects.
 - a. Any request to waive the 500 linear foot limitation for bank stabilization activities must include the following:
 - i. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the adjacent areas (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information;

U.S. Army Corps of Engineers, Sacramento District

1325 J Street, Room 1480, Sacramento, CA 95814-2922

<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/index.html>

- ii. An analysis of the proposed impacts to the waterbody, in accordance with Procedure 2(a);
 - iii. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and
 - iv. A compensatory mitigation plan describing how the unavoidable losses are proposed to be offset, in accordance with 33 CFR 332.
4. Within 30-days following receipt of the PCN form, the District will notify the prospective permittee via letter or email if:
- a. The project may qualify for authorization under this RGP;
 - b. The PCN is complete; and
 - c. If consultation under Section 7 of the ESA, Section 305(b)(4)(B) of the Magnuson-Stevens Act, and/or Section 106 of the NHPA is required.

If the PCN is not complete, the notification will specifically identify the additional information required to be submitted.

5. Within 30-days following receipt of a complete PCN form, the District will initiate any required consultations under Section 7 of the ESA, Section 305(b)(4)(B) of the Magnuson-Stevens Act, and/or Section 106 of the NHPA.
6. Within 30-days following completion of required consultations under Section 7 of the ESA, the Magnuson-Stevens Act, and/or Section 106 of the NHPA, or, if consultation is not required, within 45-days following receipt of a complete PCN, this office will notify the permittee via letter if the project is authorized under this RGP, subject to the terms and conditions of the individual verification.
5. No work may proceed under the authority of this RGP until the permittee has been notified, in writing, by the District that the activity is authorized.

DEFINITIONS:

Activity is any discharge of dredged or fill material in to waters of the U.S. under Section 404 of CWA.

Activity categories are descriptions of BRCP Covered Activities listed in this RGP for purposes of assigning activity-specific conditions.

Activity-specific conditions are RGP conditions that would apply to specified Activity categories defined in this RGP.

Applicant is the individual, organization, or company requesting authorization under the RGP.

Authorization is written verification by the Corps that an activity qualifies for, and may proceed under, the RGP provided all terms and conditions of the RGP are followed.

BCAG is the Butte County Association of Governments and is the BRCP Implementing Entity.

BRCP is the Butte Regional Conservation Plan dated XX. The United States Fish and Wildlife Service (“USFWS”), under incidental take permit xxx, and the California Department of Fish and Wildlife (“CDFW”), under incidental take permit XX, have approved the BRCP and have authorized the “BRCP Permittees” to take certain species of plants and wildlife listed under the ESA and/or covered under the state of California’s Natural Community Conservation Planning Act (NCCPA) while carrying out or approving certain development and other “covered activities.” Take is defined under federal and state laws.

BRCP Covered Activity means an activity or project within one of the categories of activities set forth in Section 2.3 of the BRCP that has been approved by a BRCP Permittee for coverage under the BRCP.

BRCP Permittee is any of the following eleven local agencies that have approved the BRCP and have been authorized by USFWS, NMFS, and CDFW to take certain species, as take is defined respectively under federal and state law. These are: County of Butte (County), City of Oroville, City of Chico, City of Biggs, City of Gridley, BCAG, California Department of Transportation (Caltrans), Western Canal Water District (WCWD), Biggs-West Gridley Water District, Butte Water District, and Richvale Irrigation District.

Best Management Practices (BMPs) are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation is the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved (see 33 CFR 332.2).

Complete application is all required notification materials that must be submitted by the applicant to the Corps, as listed under subsection 2(a) of *Procedures*. If all materials are not submitted, the application is considered incomplete and will not be processed under the RGP.

Direct impacts are impacts that are caused by the activity and occur at the same time and place.

Emergency refers to the guidance provided in 33 CFR 325.2(e)(4): “...a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. This RGP does not cover any activities in waters of the U.S. conducted in emergency situations.

Enhancement means the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation) means the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

General conditions are RGP conditions that would apply to all activities authorized by this RGP.

Historic properties are as defined in 36 CFR Part 800.16(l). It means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

Impact is the direct and indirect loss of waters of the U.S., including wetlands, which results from implementation of a proposed activity. See also "loss of waters" definition.

Implementing Entity is the entity responsible for implementing the BRCP. The Butte County Association of Governments (BCAG) is the BRCP Implementing Entity.

Independent Utility is a test to determine what constitutes a single and complete non-linear project in the Corps' regulatory program. A project is considered to have independent utility if it would be constructed absent the other projects in the project area. Portions of a multi-phase project that depend on other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect impacts are impacts that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the U.S. refers to Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for this RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section

404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Mitigation bank is a site where aquatic resources (e.g., wetlands, streams) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits.

Notification is the submission of required information by the applicant to the Corps for a complete application.

Perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Permittee is an entity that has received authorization to conduct activities in waters of the U.S. under this RGP.

Permittee-responsible mitigation refers to a type of compensatory mitigation as defined in 33 CFR Part 332.2, entailing aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Plan Area is the area shown in Figure 1-1 of the BRCP. It is the area analyzed by the BRCP and covered by the USFWS and CDFG incidental take permits issued pursuant to the BRCP.

Preservation means the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Project site is the land, including waters of the U.S. and uplands, utilized for a single and complete project. The project site includes the land cleared, graded, and/or filled to construct the single and complete project, including any buildings, utilities, stormwater management facilities, roads, yards, and other attendant features. Temporary construction areas (e.g., access and staging) are included. The project site also includes any other land and attendant features that are used in conjunction with the single and complete project, such as open space, roads, and utilities.

Re-establishment means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the

purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: reestablishment and rehabilitation.

Single and complete linear project is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

Special conditions are conditions added by the Corps for projects on a case-by case basis to ensure an activity has minimal impacts on aquatic resources and complies with the RGP. The Corps' authority to require special conditions is provided in 33 CFR Part 325.4(a).

Terms and conditions are the parameters, including thresholds, limitations, and requirements, for completing an activity under the RGP. Special conditions may also be added by the Corps on individual authorizations to ensure an activity has minimal individual and cumulative impacts.

Utility line is any pipeline used to transport a gaseous, liquid, liquefiable or slurry substance for any purpose, and any cable, line or wire used to transmit electrical energy, telephone, radio signals, television signals or data communication. This definition does not include pipes or ditches which serve to drain a water of the United States, such as drainage tile; however, it does apply to pipes conveying drainage from one area to another.

Waters of the U.S. are as defined in 33 CFR Part 328.3(a). For purposes of wetlands regulated under Section 404 of the Clean Water Act under this RGP, the identification and delineation of wetlands must be in accordance with the most recent guidance and wetland delineation manual and manual supplement issued by the Corps.

Definitions found at 33 CFR Parts 320-323, 325-329, and 331-332 and 40 CFR Part 230 are also applicable to this RGP and are incorporated by reference herein.

FURTHER INFORMATION:

1. Congressional Authorities: Permittees have been authorized to undertake the activity described above pursuant to: Section 404 of the Clean Water Act (33 U.S.C. 1344)
2. Limits of this authorization:
 - a. The District has authority to determine if an activity complies with the terms and conditions of the RGP.

- b. This permit does not obviate the need to obtain other federal, state, or local authorizations required by law.
 - c. This permit does not grant any property rights or exclusive privileges.
 - d. This permit does not authorize any injury to the property or rights of others.
 - e. This permit does not authorize interference with any existing or proposed federal projects.
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 the District that issuance of this permit is not contrary to the public interest was made in reliance on the information the permittee has provided.
5. Reevaluation of Permit Decision: The District 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. The permittee fails to comply with the terms and conditions of this permit.
 - b. The information provided by the permittee in support of a permit application proves to have been false, incomplete, or inaccurate (see 4 above).
 - c. Significant new information surfaces which the District 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 a permittee comply with the terms and conditions of a permit and for the initiation of legal action where appropriate. Permittees will be required to pay for any corrective measures ordered by the District, and if a permittee fails to comply with such directive, the District may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

6. Extensions. The permit duration, as described above, 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 District will normally give favorable consideration to a request for an extension of this time limit.

Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the District, such as a Nationwide Permit, Letter of Permission, or Standard Permit. The District will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The

District may include additional special conditions to a specific verification under this permit to ensure the activity has minimal impact.

PERMIT DURATION: This RGP is valid for five (5) years from the date of issuance, and will expire on XXXXX. At least sixty (60) calendar days prior to the expiration date of this RGP, the Corps will issue a public notice, with an opportunity for public comment, describing the reasons for reissuing the RGP, reissuing the RGP with modifications, or not reissuing the RGP for another five years. The Corps may extend the RGP for six months beyond the expiration date if it is unable to reissue the RGP due to unresolved issues. If the Corps has not reissued or extended the RGP by the expiration date, the RGP will no longer be valid. This RGP may also be modified, suspended, or revoked by the Corps at any time deemed necessary. In such instance, the Corps will issue a public notice concerning the action. Activities under this permit must be verified in writing by the District. Verifications are valid until the permit expires.

CONTACTS AND ADDITIONAL INFORMATION:

Krystal Bell, Senior Project Manager
US Army Corps of Engineers, Sacramento District
1325 J Street, Room 1350
Email: Krystal.L.Bell@usace.army.mil
Phone: 916-557-7745

ATTACHMENTS: 401 Water Quality Certification, Maps, Illustrations, etc.

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

Michael S. Jewell
Chief, Regulatory Division

Date