

# SACRAMENTO DISTRICT REGIONAL GENERAL PERMIT 8 FOR EMERGENCY REPAIR AND PROTECTION ACTIVITIES

## Regulatory Program Workshop

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# EMERGENCY PERMITTING

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## Programmatic General Permit 10 (PGP10)-Minimal Impact Activities in Conjunction with UT Stream Alteration Program

- PGP10 is null and void for emergency activities, due to the required **20 day review and comment period**.
- PGP 10 does not authorize **after the fact permitting** or **unauthorized activities**.
- Utah Division of Water Rights and USACE **do not** share the same definition of an **emergency**.
- Failure to receive authorization from USACE could result in an unauthorized activity.
- USACE will evaluate the proposed emergency projects to verify if the project falls under a non-notifying Nationwide Permit or a 404(f) Exemption.



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# DEFINITION OF AN EMERGENCY



## Regulatory Program Definition [33 CFR 325.2(e)(4)]

An “emergency” is 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.*

**The situation must meet the Regulatory Program definition of “emergency” to qualify for RGP 8**



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## General Overview

- ▶ Authorized under Section 10 of the Rivers and Harbors Act of 1899 (RHA) for structures or work in or affecting navigable WOUS and Section 404 of the Clean Water Act (CWA) for the discharge of dredged or fill material in WOUS.
- ▶ Applicable within the SPK's boundaries of California, Nevada, and Utah.
- ▶ Repair, replacement, or rehabilitation of existing structures or fills.
- ▶ Typical activities: **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 WOUS).



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## Overview (See RGP 8 for Complete Description)

- ▶ Activity shall be the minimum necessary to alleviate the immediate emergency unless approved by the Corps.
- ▶ Allows for minor deviations in the structure or fill area, including upgrades are authorized due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards.
- ▶ Bank stabilization must be done with **nature-based stabilization techniques – unless waived by the Corps.**
- ▶ Bank stabilization must not **exceed 1,000 feet – unless waived by the Corps.**

\*as defined in Section F of the January 13, 2021, Federal Register Notice for *Reissuance and Modification of Nationwide Permits Final Rule* (86 FR 2744).





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## General Overview (See RGP 8 for Complete Description)

- ▶ Work in WOUS begins after receiving Corps email notification that project is authorized under RGP 8.
- ▶ If immediate action is required, the Corps may informally authorize the activities under the RGP, and subsequently complete agency coordination and formal authorization.
- ▶ Must start work within fourteen (14) calendar days of receiving authorization. Applicant has 180 calendar days from start of construction to complete the work.
- ▶ Allow representatives from this office to inspect project.



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## General Overview (See RGP 8 for Complete Description)

- ▶ Project must not impair reserved tribal rights, including reserved water rights, treaty fishing, and hunting rights.
- ▶ Must comply with all applicable Federal Laws, such as the Federal Endangered Species Act and National Historic Preservation Act.
- ▶ Must comply with applicable FEMA-approved state or local floodplain management requirements.



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## General Overview (See RGP 8 for Complete Description)

- ▶ Must use suitable materials – no trash, debris, car bodies, or asphalt.
- ▶ Prior to work in the National Wild and Scenic River System (or in a "study river") must receive authorization from the federal agency, such as Bureau of Land Management and National Park Service for Utah.
- ▶ An activity that requires Section 408 permission **is not** authorized by this RGP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project.
  - National Levee Database: <https://levees.sec.usace.army.mil/#/>.
  - Section 408 Permissions: <https://www.spk.usace.army.mil/408permissions/>





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## General Overview (See RGP 8 for Complete Description)

- ▶ For RGP activities on non-tribal lands in Utah, the Utah Division of Water Quality authorized/issued a Section 401 Water Quality Certification with conditions for any project determined by the USACE to be covered under the RGP 8 Permit.
- ▶ Where no state agency or tribe has authority to give Section 401 certification, the U.S. Environmental Protection Agency (EPA) is the certifying authority. EPA is granting the certification request for the activities authorized under the Corp's RGP 8 for all tribal lands within Utah, except for the Navajo Nation. If the project disturbs one acre or more in total within the tribal boundaries, an EPA Construction General Permit is required. Please see EPA Region 8 webpage for additional stormwater permitting information:  
<http://www2.epa.gov/region8/stormwater>.



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## General Overview (See RGP 8 for Complete Description)

- ▶ **Permit Transfer:** If the property associated with this permit is sold, you shall transfer the verification to the new owner by submitting a letter to this office to validate the transfer.



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## Notification Procedures – Applicant Responsibilities

- ▶ Applicant contacts the Corps in writing or by email as soon as possible:  
[SPKRegulatoryMailbox@usace.army.mil](mailto:SPKRegulatoryMailbox@usace.army.mil).
- ▶ May be a letter containing required information or can use standard individual permit application form ENG 4345: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Obtain-a-Permit/>.
- ▶ Notification shall be submitted electronically.
- ▶ Notification shall contain all information for each single and complete linear or non-linear project.\*

\*as defined in Section F of the January 13, 2021, Federal Register Notice for *Reissuance and Modification of Nationwide Permits Final Rule* (86 FR 2744).



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## Notification Procedures – Applicant Responsibilities

- ▶ Must include the information identified in the RGP 8 Notification Procedures.
  - Name, address, telephone number, email address of applicant and/or designated agent and contractors.
  - Location, coordinates, maps of WOUS, project extent, and impacts.
  - Detailed descriptions of project, nature of emergency, rationale for why it's an emergency.
  - Plan-view and cross-sectional drawings with approximate existing and proposed contours, showing the project area and approximate acreage and/or linear feet of potential disturbance to waters relative to the ordinary high-water mark, high tide line and/or limit of wetlands
  - Other construction details, including type and quantity of materials and equipment proposed to be used and approximate amount of time required to complete the work.
  - Measures proposed to avoid and minimize impacts to the aquatic environment.
  - Compensatory mitigation plan or rationale explaining why one is not proposed.
  - Information on Federally-listed threatened or endangered species, critical habitat, Essential Fish Habitat and/or historic properties, potential or listed, that may be affected by the action.
  
- ▷ **Refer to RGP 8 for complete list of required information:**  
<https://www.spk.usace.army.mil/Portals/12/documents/regulatory/gp/RGP-08/2023/2023.08.09-RGP8%202023-199700652.pdf>



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## Notification Procedures – Corps Responsibilities

- ▶ **Within one (1) business day following receipt of the Notification, the Corps will notify the applicant:**
  - Acknowledge Notification has been received.
  - Provide contact information for the assigned Regulatory Project Manager.
  - If the project appears to be eligible under RGP 8, and, if not, instructions on how to apply for applicable permit (NWP, other Regional/Programmatic General Permit, LOP, or Standard Permit).
  - If the Notification is complete; if not, what is needed.
  - An estimated time frame for completion of review of the proposed action, usually 48 hours.



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## Notification Procedures – Corps Responsibilities

- ▶ **Within one (1) business day following receipt of a complete Notification, Corps will forward the Notification package to the following agencies, as well as appropriate federally recognized Native American tribes, as applicable:**
  - **California**: U.S. Environmental Protection Agency (USEPA) Region 9, USFWS and/or NMFS, California Department of Fish and Wildlife, California State Historic Preservation Officer (SHPO), California State Water Resources Control Board, and Regional Water Quality Control Board.
  - **Nevada**: USEPA Region 9, USFWS, Nevada Department of Wildlife, Nevada Division of Environmental Protection (NDEP), Nevada Division of Emergency Management, Nevada Division of State Lands (DSL), and the Nevada SHPO.
  - **Utah**: USEPA Region 8, USFWS, State of Utah Department of Environmental Quality (UDWQ), Utah Division of Water Resources, Utah Division of Wildlife Resources, and the Utah SHPO.





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## Notification Procedures – Corps Responsibilities

### – Agency Notification:

- Request substantive, project-specific comments from the agencies.
- Corps will set a suspense date for comments, usually 24-48 hours.
- Conduct follow-up telephone call to each agency after notification is sent.
- Corps will fully consider comments to ensure the net adverse environment effects of the proposed activity are no more than minimal.
- Corps may request a response to the comments from the applicant.



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## Notification Procedures – Corps Responsibilities

### **Internal Coordination:**

- Conduct internal coordination to determine whether the proposed action also requires permission from the Corps pursuant to 33 USC 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project. If it is determined that the activity requires Section 408 permission(s).
  
- **Upon completion of agency and internal coordinations, Corps will notify you by email if the project is authorized under this RGP, usually within 48 hours of submittal.**



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## Applicant Responsibility - Post-project reporting

- **General Condition 27** - Provide a report within 30 days following completion of construction activities in WOUS, or within 30 days following restoration of temporary fill areas as required by General Condition 25. The report shall include the following:
  - A. A complete description of the work completed for each single and complete project, including any deviations from the activities in WOUS authorized by this RGP, and the reason(s) for the deviations;
  - B. Drawings of the authorized work conducted for each single and complete project, and any on-site and/or off-site permittee responsible compensatory mitigation. The drawings shall include a plan-view drawing of the location of the authorized work (as shown on the permit drawings), with an overlay of the work as constructed in the same scale as the permit drawings, and a cross section view drawing where appropriate (e.g., linear transportation activities, utility line trench activities, bank stabilization activities), of the work as constructed. The plan-view drawing(s) shall show all areas of ground disturbance, wetland impacts, structures, and the boundaries of any onsite and/or off-site mitigation and/or avoidance areas. Please note that any substantial deviations from the work as authorized, which result in additional impacts to WOUS requiring authorization, must be coordinated with the appropriate office prior to impacts;



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## Applicant Responsibility - Post-project reporting

### – General Condition 27 - Post-project reporting:

- C. Numbered and dated pre-and post-construction color photographs of (1) the work conducted within a representative sample of the permanently filled WOUS, (2) all of the partially filled WOUS, and (3) all avoided WOUS on and immediately adjacent to the project area. The compass angle and position of all photographs shall be identified on the plan-view drawing(s) required in subpart (a) of this Regional Condition;
- D. Information to show construction of each authorized single and complete project was conducted in accordance with all General Conditions and Special Conditions placed on the RGP verification;
- E. A description and photo-documentation of all BMPs, and construction limit markers, required to be installed by General Conditions 14 and 15; and
- F. A description and photo-documentation of all temporary fill area(s) restored to pre-project contours and conditions required by General Condition 25. For temporary fill areas within WOUS that have not been restored to pre-project contours or conditions, a description and photo-documentation of the temporary fill within WOUS, including information on why restoration has not been completed.

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Questions?

