



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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JUN 22 2010

Ref: 8WP-AAP

Lisa Gibson, Project Manager
US Army Corps of Engineers Sacramento District
1325 J Street
Sacramento, California 95814

Re: Clean Water Act Section 401 Certification for Regional General Permit 8, Emergency
Related Activities Tribal Waters in Utah, EPA Region 8 Tribes, SPK-1999-00652

Dear Ms. Gibson:

The Environmental Protection Agency (EPA) Region 8 has received a request from the U.S. Army Corps of Engineers Corps (Corps) for a Clean Water Act (CWA) Section 401 water quality certification (certification) for tribal waters of the United States within the State of Utah regarding the Corps' CWA Section 404 Regional General Permit (RGP) 8. The purpose of the RGP 8 is to provide immediate permitting for emergency-related activities to protect people and property. EPA has reviewed the Public Notice for the RGP proposed permit, conditions, and proposed change to current conditions. The EPA has considered CWA Section 304(a) criteria and known tribal concerns in reviewing the potential impacts of the proposed permit. CWA Section 401 certification is granted for the above referenced permit with the enclosed conditions.

The Corps is proposing significant changes for the new RGP. The existing RGP 8 is limited to repair/rehabilitation of previously authorized, currently serviceable, structures or fills in emergency situations. The proposed RGP will now authorize permanent work, temporary work, or structures in navigable waters of the U.S., and permanent or temporary discharge of dredged/fill material into waters of the U.S. for repair or protection activities in emergency situations. Additionally, restoration of areas damaged by discrete events were generally not authorized by the existing RGP 8, unless it resulted in the repair or rehabilitation of previously authorized, currently serviceable, structures or fills. The proposed RGP 8 would allow for the restoration of areas damaged by discrete events, subject to specific terms to ensure the effects would be no more than minimal.

The authorized activities will now include but are not limited to: flood control actions; water storage structural failures; wastewater treatment systems failures; substance spills or pipeline breaks; discharge of fill related to wildfire firefighting; emergency repair, construction and reconstruction of new and existing roads; temporary levee construction; levee repair; breach closures; bridge embankment repair;



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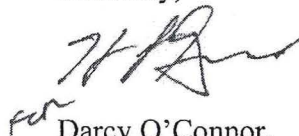
protection and/or repair of utility structures; emergency placement of suitable rock and/or dirt fill for bank stabilization; and construction of temporary drainage ditches to facilitate the removal of flood water, sheetwater, or excess water.

This letter and certification should be provided to applicants for this RPG, as documentation of EPA certification for permitted projects on waters within Indian country in Utah. Indian country includes lands within the exterior boundaries of the Washakie Reservation (Northwestern Band of the Shoshone Nation), reservation lands of the Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes), the Skull Valley Indian Reservation, and the Uintah & Ouray Reservation; land held in trust by the United States for an Indian tribe; and other areas that are "Indian country" within the meaning of 18 U.S.C. Section 1151.

This certification does not permit changes to water quality, impacts to aquatic life, or the loss of any current or potential uses. This authorization does not relieve applicants or contractors of any liability for damages to aquatic life, habitat, or other beneficial uses that may result from permitted projects. It does not exempt applicants or contractors from any other federal, state, tribal, or local laws or regulations, nor does it provide exemption from legal action by private citizens or governments for damage to property that the activities permitted under this general permit may cause.

If you have any questions, please contact Toney Ott at 303-312-6909, or ott.toney@epa.gov.

Sincerely,



Darcy O'Connor,
Assistant Regional Administrator
Office of Water Protection

Enclosure

cc:

Jason Walker, Chairman, Northwestern Band of the Shoshone Nation
Tami Slayton, Environmental Director, Paiute Indian Tribe of Utah
Candace Bear, Chair, Skull Valley Band of Goshute Indians
Bart Powaukee, Water Quality Coordinator, Ute Tribe
Colin Larrick, Water Quality Program Manager, Ute Mountain Ute
Joe Morgan, EPA Region 9, Wetland Program

Enclosure

CWA Section 401 Water Quality Certification for RGP SPK-1999-00652

CWA Section 401 Water Quality Certification for RGP SPK-1999-00652 for emergency related activities is granted, for locations in Indian country in Utah that are not covered by an approved treatment in a similar manner as a state application, with the following conditions:

- 1) The Project applicant or agent shall provide copies of all information and application material submitted to the Corps of Engineers to the appropriate tribal contact. The permit applicant or agent must notify the tribal environmental staff of the project and provide them with the most current detailed information. Current contact information for Region 8 affiliated tribes:

Northwestern Band of the Shoshone Nation

Jason Walker, Chairman
505 Pershing Avenue
Pocatello, Idaho 83201
208-478-5712, x19
jwalker@nwbsoshone.com

Paiute Indian Tribe of Utah

Tami Slayton, Environmental Director
440 North Paiute Drive
Cedar City, Utah 84721-6181
435-586-1112, x102
tslayton@utahpaiutes.org

Skull Valley Band of Goshute Indians

Candace Bear, Chair
P.O. Box 448
Grantsville, Utah 84029
435-882-4532
cbsvgoshute@gmail.com

Ute Tribe

Bart Powaukee, Water Quality Coordinator
P.O. Box 70
Fort Duchesne, Utah 84026-0190
435-725-4821
bartp@utetribe.com

Ute Mountain Ute Tribe

Colin Larrick, Water Quality Program Manager
520 Sunset Blvd.
Towaoc, Colorado 81334
970-564-5437
clarrick@utemountain.org

- 2) Project proponent/contractor must have a copy of the EPA CWA 401 certification conditions on site.
- 3) This certification does not authorize any unconfined discharge of liquid cement in waters of the U.S. Clean materials must be used for all construction and fill activities.
- 4) Best management practices to minimize sediment should be planned and implemented during construction. If visual monitoring indicates that sediment and/or turbidity is increasing due to the project disturbance, additional best management practices shall be considered and implemented.
- 5) Staging should be located well away from surface waters. Locate fueling, lubrication, maintenance, storage and staging of vehicle and equipment activities away from surface waters and stormwater inlets or conveyances; provide secondary containment and cover where appropriate; and have spill kits readily available for emergencies.
- 6) Limit clearing of riparian or wetland vegetation to the absolute minimum necessary. Restoration of all disturbed areas should begin immediately after the emergency situation is secure. Seeds and plantings should be native and locally sourced materials, if possible. Invasive species and species with invasive characteristics should not be seeded or planted. The project site should be monitored until the restoration is determined to be fully restored and stable. An aquatic resource professional should evaluate the completed restoration and provide a final report to the Tribal Water Quality Program.
- 7) All existing water uses will be fully maintained and protected to the maximum extent possible. This certification does not authorize permanent adverse impacts to aquatic resources and mitigation for impacts may be required for any permanent losses of waters. Water diversions must not result in loss of beneficial uses or an exceedance of water quality criteria. Normal flows must be restored as soon as possible.
- 8) Permanent work may not contribute to loss of uses, potential uses of the waters, or exceedance of water quality criteria to downstream aquatic resources. Any work done on the site considered to be permanent, or permitted by future permits shall be reported to Region 8 and the Tribal environmental contact and referenced as work initially permitted under this emergency RGP.
- 9) All temporary construction, dredge and excavation material, debris, and temporary fill must be removed from waters of the U.S. as soon as possible and properly disposed of on land so it cannot enter a waterway or cause water quality degradation after the emergency.
- 10) Any damage to waters and lands that are a part of a CWA Section 404 permitted mitigation site should be restored to the original or pre-event assessed status, whichever is condition is better.
- 11) Repair of lands damaged by a discrete event: Projects greater than ½ acre or requiring restoration waterward of the pre-event ordinary high water mark are denied certification.
- 12) Permanent hard bank stabilization is limited to less than 500 linear feet. Projects in excess of 500

linear feet, or that do not include bioengineering (unless a registered professional engineer identifies non-bioengineered solutions that are the only way to protect an existing structure), or that propose permanent fill in adjacent wetlands, are denied certification.

- 13) Georeferenced photographs shall be taken immediately after the emergency action project site is secured, and after revegetation and restoration of the site is completed. Photographs shall be submitted to the EPA Aquatic Resources Protection and Accountability Unit and the appropriate tribal environmental program immediately after the project site is secured and after restoration is completed. Copy of the post project report shall be submitted to EPA and the Tribal contact. Submittals to EPA may be submitted electronically to Toney Ott at ott.toney@epa.gov or mailed to:

US EPA Region 8
Aquatic Resources Protection and Accountability Unit
1595 Wynkoop Street, 8WP-AAP
Denver, Colorado 80202
Attention: CWA 401 Certification RGP SPK-1999-00652