



August 22, 2023

Ms. Leah Fisher
Regional Permit Specialist, Regulatory Division
U.S. Army Corps of Engineers, Sacramento District
1325 J Street, Room 1350
Sacramento, California 95814

Re: Nevada Division of Environmental Protection Clean Water Act Section 401 Water Quality Certification Determination for Regional General Permit 8 – Emergency Repair and Protection Activities (NV-401-23-026; SPK-1997-00652)

Dear Ms. Fisher:

Enclosed is the Certification determination for Regional General Permit 8 – Emergency Repair and Protection Activities (NV-401-23-026; SPK-1997-00652) proposed by U.S. Army Corps of Engineers. This 401 Water Quality Certification (Certification) determination has been submitted by Nevada Division of Environmental Protection (NDEP), Bureau of Water Quality Planning (BWQP) under the authority of the Clean Water Act Section 401 (40 CFR §121) and Nevada Revised Statutes Section 445A.620.

Regional General Permit 8 authorizes construction in or adjacent to waters of the United States which requires federal approval from the Army Corps of Engineers (Corps). Clean Water Act Section 401 requires state Certification of activities which may result in discharges to waters of the United States, in the state the discharge originates, before a federal permitting agency may issue a license or permit. To receive Certification, the proposed project must comply with State of Nevada regulations and provisions of the Clean Water Act Sections 301, 302, 303, 306, and 307.

This Certification determination contains important conditions developed for this permit, including statements justifying the purpose of a condition and references to applicable federal or State law (40 CFR §121.7(d)). All conditions set forth in this Certification shall be incorporated into the resulting federal permit (40 CFR §121.10). The Corps shall be responsible for enforcing the Certification conditions that are incorporated into the federal permit (40 CFR §121.11(c)). Failure to meet the conditions of this Certification, requirements of any other permit issued by NDEP for this project, or any violation of NAC Chapter 445A or NRS Chapter 445A, may result in enforcement action. This Certification is subject to the acquisition of all necessary local, regional, State, and federal permits and approvals as required by law.

All conditions of the Authorization to Discharge (Working in Waterways permit) issued by the Bureau of Water Pollution Control or any other permits issued by NDEP for the project must be followed pursuant to NRS 445A.475-445A.515 and NAC 445A.228-445A.272.

If you have any questions, please contact me via zcarter@ndep.nv.gov.

Sincerely,



Zachary Carter
Environmental Scientist III
Nonpoint Source Branch
Bureau of Water Quality Planning

cc: Nancy Haley, Nevada Regulatory Section, U.S. Army Corps of Engineers
Samuel Bohannon, Nevada Regulatory Section, U.S. Army Corps of Engineers
Jennifer Carr, Administrator, NDEP
Danilo Dragoni, Deputy Administrator, NDEP
Jason Kuchnicki, Bureau of Water Quality Planning, NDEP
Donette Barreto, Bureau of Water Pollution Control, NDEP



**Nevada Division of Environmental Protection
Clean Water Act Section 401 Water Quality Certification**

The Nevada Division of Environmental Protection submits this 401 Water Quality Certification (Certification) for:

Regional General Permit 8 – Emergency Repair and Protection Activities (NV-401-23-026; SPK-1997-00652) proposed by U.S. Army Corps of Engineers.

This Certification applies to projects authorized to use Regional General Permit 8 within waters of the United States that are subject to the State of Nevada’s jurisdiction. This Certification is formatted as follows:

- A. Proposed Project General Information
- B. General Conditions (including statutory citations)
- C. Special Conditions (including statutory citations)
- D. Condition Statements of Necessity

Nevada Division of Environmental Protection has examined the information furnished by the applicant and certifies that there is reasonable assurance that discharge from the proposed Regional General Permit will comply with water quality requirements (Nevada Revised Statute (NRS) Chapter 445A, Nevada Administrative Code (NAC) Chapter 445A, and Clean Water Act Sections 301, 302, 303, 306, and 307) as proposed, provided that the project proponent complies with all Certification conditions listed in Sections B, C, and D. All Certification conditions contained herein shall be incorporated into the Regional General Permit for the proposed project and are enforceable by the federal permitting agency (40 CFR §121.10). All conditions are justified as required by 40 CFR §121.7(d), with statements justifying why a condition is necessary to assure that the discharge from a proposed project will comply with water quality requirement(s) and citations to appropriate federal and/or State water quality law that authorizes the condition.

A. Proposed Project General Information

Permit Number:	NV-401-23-026; SPK-1997-00652
Permit Name:	Regional General Permit 8 – Emergency Repair and Protection Activities
Permit Proponent:	U.S. Army Corps of Engineers – Sacramento District
Permit Proponent Address:	1325 J Street Sacramento, California 95814-2922
Federal Permit Description:	Regional General Permit 8 subject to Rivers and Harbors Act Section 10 and Clean Water Act Section 404
Pre-Filing Meeting Request Date:	5/24/2023
Certification Request Date:	6/26/2023
Reasonable Period of Time Deadline:	8/26/2023
NDEP Certification Determination:	Certification with Conditions
Date Certification Determination Submitted to Federal Agency:	8/22/2023

<p>Permit Summary:</p>	<p>Regional General Permit (RGP) 8 (Emergency Repair and Protection Activities) authorizes structures or work in or affecting navigable waters of the United States and the discharge of dredged or fill material into waters of the United States, including wetlands, necessary for repair or protection measures associated with an emergency situation. An emergency situation, as determined by the U.S. Army Corps of Engineers, is one 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 Department of the Army permit is not undertaken within a time period less than the normal time to process the request under standard processing procedures. This RGP authorizes 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. 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.). This Certification applies to projects authorized to use RGP 8 within waters of the United States that are subject to the State of Nevada’s jurisdiction and does not apply to projects where a tribe or U.S. Environmental Protection Agency (EPA) is the certifying authority.</p>
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A detailed permit description, including measures to ensure that discharges to waters of the U.S. do not significantly impact water quality, is included in the Certification Request and in additional information attached to the Certification Request.

B. General Conditions

Condition Number	Condition Title	Condition Description and Reference to Federal Law, and/or State, and/or Water Quality Standard
1	Permits and Licenses	All other required federal and State permits or licenses must be obtained prior to construction commencement to ensure compliance with all federal and State regulations (NRS 445A.300 - 445A.730; NAC 445A.228).
2	Pre-Construction Inspection	Prior to initial operation under a federal license or permit which NDEP has issued Certification, NDEP shall be allowed to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other applicable water quality requirements will not be violated (40 CFR §121.11; NRS 445A.655).
3	Water Quality Standards/Beneficial Uses	Any point source discharge associated with the proposed project shall not exceed State water quality standards or impair the beneficial uses of any water of the State. Beneficial uses define the water quality criteria required to protect the uses of a waterbody and exceedances are a violation of State law. No exceedances of water quality standards or impairment of beneficial uses of the waterbody are permitted (NRS 445A.520; NRS445A.720; NAC 445A.118 - 445A.2234).
4	High Quality Waters	Any surface waters of the State whose quality is higher than the applicable water quality standards, as of the date when those standards become effective, must be maintained in their higher quality. No discharges of a pollutant from a point source may be made which will result in lowering the quality of these waters (NRS 445A.565).
5	Waters with Approved TMDLs and 303(d) Listed Waters	If the proposed project would discharge from a point source into a waterbody listed as impaired and on the current 303(d) list or has an approved TMDL, no discharges of a pollutant from a point source may be made which will result in further degradation of these waters without approval by NDEP. For the most current list of approved TMDLs for Nevada, please refer to NDEP’s Water Quality Integrated Report

		<p>(https://ndep.nv.gov/uploads/water-wqm-docs/IR2022FINAL_Report.pdf). Waters listed as impaired or with approved TMDLs are not meeting the requirements for their designated beneficial uses and NDEP requires review to ensure the proposed project will not exceed numeric or narrative water quality criteria for the waterbody and that BMPs for the project adhere to suggested BMPs outlined in applicable TMDLs (NRS 445A.520; NRS 445A.720; NAC 445A.228).</p>
6	Best Management Practices (BMPs)	<p>Work in or adjacent to waters of the State shall be performed in such a way that minimizes point source discharges of pollutants to the receiving waterbody. Best Management Practices to control and mitigate inputs of pollutants must be implemented and functional prior to commencement of work and shall be maintained and modified throughout the duration of work performed to assure that State water quality standards are met. Pollutants are defined as artificially made or induced alterations to the physical, chemical, or biological integrity of the water (NRS 445A.525; NAC 445A.121).</p>
7	Equipment Use	<ul style="list-style-type: none"> a. Equipment used during project implementation must be in proper working condition and free from leaks to prevent discharge of debris, oil, grease, scum, and other floating materials to waters of the State which could have adverse effects on the chemical, physical, or biological function of the waterbody (NAC 445A.121). b. Equipment fueling, staging, maintenance, and repair must be conducted in an upland position where discharge of pollutants, incidental to these activities, do not have the potential to pollute waters of the State (NAC 445A.121). c. Equipment operation shall be conducted in a manner that minimizes impacts to waters of the State (NAC 445A.121).
8	Construction	<p>Except those authorized by this Certification, no pollutants associated with this project shall be discharged from a point source or allowed to remain in a position where a pollutant can be carried to waters of the State by any means. Material permitted to enter waters of the State must be stabilized in position to prevent excessive erosion. Pollutants are defined as artificially made or induced alterations to the physical, chemical, or biological integrity of the water. Pollutants can include, but are not limited to soil, sand, silt, rock, dredge material, chemical waste, biological material, heat, concrete, concrete washings, and discarded equipment (NRS 445A.400; NRS 445A.465).</p>
9	Concrete	<p>Wet and uncured concrete shall not be allowed to enter waters of the State. Impermeable covers must be placed over concrete not poured into forms to prevent degradation of waters of the State through seepage and leaching of uncured concrete (NRS 445A.465).</p>
10	Invasive Species Management	<p>If BMPs incorporate natural materials, such as seeds, mulch, straw bales, or coir logs, they shall be certified as weed free. Certified weed free materials used in BMPs are necessary to prevent the spread of invasive species throughout the State (NRS 555.010; NRS 555.150).</p>
11	Revegetation and Site Restoration	<p>Disturbance of native vegetation shall not exceed the minimum necessary to complete the project. If revegetation is proposed to restore and stabilize areas affected during construction, site-appropriate plant materials shall be used with an emphasis on native and/or adapted perennial vegetation. Site stabilization is necessary to prevent erosion, decrease sediment inputs into waters of the State, and reduce encroachment of invasive species in denuded areas since invasive species are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 445A.305).</p>
12	Post-Construction	<p>Upon completion of the project, all temporary and excess materials and installments used during construction must be removed from the site to prevent pollutants from entering waters of the State by any means and affected areas must be returned to pre-construction elevations and contours. Authorized activities should not contribute to any long-term instability and have only minimal environmental impacts to ensure compliance with water quality regulations in Nevada (NRS 445A.465).</p>

C. Special Conditions

Condition Number	Condition Title	Condition Description and Reference to Federal Law, and/or State Law, and/or Water Quality Standard
13	Pre-Construction Notification	Prior to beginning any activity authorized by this RGP, NDEP must receive notification concurrent with notification provided to U.S. Army Corps of Engineers. Initial contact may be via phone followed by an email which provides contact information of the applicant or agent, project location and description of work needed to rectify emergency. Any modifications to the original 401 notification must be provided to this office prior to implementation. Electronic notification can be provided to NDEP Bureau of Water Quality Planning at NDEP401@ndep.nv.gov. This condition is necessary to ensure compliance of the emergency repair and protection activities with water quality regulations in Nevada prior to project implementation (NRS 445A.720; NRS 445A.530; NRS 445A.525; NAC 445A.121).
14	Post-Construction Reporting	The post-project reporting requirements described in RGP 8 General Condition 27 shall be provided to NDEP Bureau of Water Quality Planning concurrent with the submission of the report to U.S. Army Corps of Engineers. This condition is necessary to ensure compliance of the emergency repair and protection activities with water quality regulations in Nevada upon project completion (NRS 445A.720; NRS 445A.530; NRS 445A.525; NAC 445A.121).

D. Condition Statements of Necessity

The conditions above assure minimal individual and cumulative adverse effects on the aquatic environment and the continued use and enjoyment of Nevada’s water resources for future generations (NRS 445A.720). The State has an obligation to protect the beneficial uses of waterbodies across its jurisdiction through the development of water quality standards and criteria (NRS 445A.530; NAC 445A.118 - 445A.2234). Projects which require a federal license or permit must first receive certification from the state in which the discharge originates, or will originate, to verify that any proposed activity complies with federal, State, and local regulation (40 CFR §121; NRS 445A.620; NRS 445A.720). The conditions above have been developed for the proposed project because these activities have been determined to have an increased potential to pollute waters of the State and steps must be taken to reduce the risks associated with these activities (NRS 445A.525; NRS 445A.565). The State must develop limitations necessary to meet water quality standards, treatment standards, and schedules of compliance established pursuant to the laws of this State and any other federal law or regulation and is required to implement any applicable water quality standard established pursuant to NRS 445A.300 to 445A.730, inclusive, such limitations shall be established and enforced (NRS 445A.530; NAC 445A.118 - 445A.2234).

Pursuant to 40 CFR §121.7(d), narrative statements justifying the conditions listed by number follows below:

1. Water Quality Certification does not negate the requirement for applicants to obtain all other required federal, State, and local permits, licenses, and authorizations prior to construction commencement which ensures compliance with all applicable regulations (NRS 445A.300 - 445A.730; NAC 445A.228).
2. NDEP reserves the right to inspect any activity or facility that requires the use of a federal license or permit prior to initial commencement to ensure that applicable effluent limitations or other applicable water quality requirements will not be violated (40 CFR §121.11; NRS 445A.655).
3. To protect Nevada’s water resources, any point source discharge associated with a project occurring in waters of the State shall not exceed State water quality standards or impair the beneficial uses for the applicable waterbody (NRS 445A.520). Beneficial uses define the water quality criteria required to support the existing uses of a

waterbody and exceedances are a violation of State law. No exceedances of water quality standards or impairment of beneficial uses of the waterbody are permitted (NRS 445A.520; NRS 445A.720; NAC 445A.118 - 445A.2234).

4. To protect the continued attainment of high-quality waterbodies, no discharges of a pollutant from a point source may be made which will result in lowering the quality of these waters. NDEP requires review to ensure the proposed project will not exceed applicable numeric or narrative water quality standards for the waterbody and that BMPs promote the chemical, physical, and biological integrity of these waters (NRS 445A.565; NRS 445A.720; NAC 445A.228).
5. To prevent further degradation of 303(d) listed waterbodies and waterbodies with an approved TMDL, no discharges of a pollutant from a point source may be made which will result in further degradation of these waters. For the most current list of approved TMDLs for Nevada, please refer to NDEP's Water Quality Integrated Report (https://ndep.nv.gov/uploads/water-wqm-docs/IR2022FINAL_Report.pdf). NDEP requires review to ensure the proposed project will not exceed applicable numeric or narrative water quality standards for the waterbody and that BMPs promote the chemical, physical, and biological integrity of these waters (NRS 445A.720; NAC 445A.228).
6. Best Management Practices are effective measures to control and mitigate point source inputs of pollutants into a waterbody. Prior to commencement of any work in waters of the State, BMPs designed for the project must be in place and shall be maintained throughout the duration of the project to ensure no more than minimal effects to the aquatic environment (NRS 445A.525; NAC 445A.121). A list of BMPs recommended by NDEP are available on the BWQP website: <https://ndep.nv.gov/water/rivers-streams-lakes/nonpoint-source-pollution-management-program/best-management-practices-toolbox>.
7. Equipment used in waters of the State must be in proper working condition and free from leaks. Any maintenance, repair, or staging of this equipment must be completed in an upland position to prevent discharge of debris, oil, grease, scum, and other floating materials to waters of the State which could have adverse effects on the aquatic environment (NRS 445A.520; NAC 445A.121.2).
8. Except those authorized by this Certification, no pollutants associated with this project will be discharged from a point source or allowed to remain in a position where a pollutant can be carried to waters of the State by any means and material permitted to enter waters of the State must be stabilized in a way that prevents excessive erosion. Adherence to this condition prevents violations of water quality standards and State law (NRS 445A.400).
9. Wet and uncured concrete negatively impacts the chemical and physical integrity of water if allowed to enter a waterbody and poses a serious hazard to aquatic life. No wet or uncured concrete shall be allowed to enter water of the State by any means, and impermeable covers shall be placed over any wet or uncured concrete to prevent leaching of this pollutant into a waterbody (NRS 445A.465).
10. If BMPs incorporate natural materials, such as seeds, mulch, straw bales, or coir logs, they shall be certified as weed free to prevent the spread of invasive species which are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 555.010; NRS 555.150).
11. Disturbance of native vegetation shall not exceed the minimum necessary to complete the project. If revegetation is proposed to restore and stabilize areas affected during construction, site-appropriate plant materials shall be used with an emphasis on native and/or adapted perennial vegetation. Site stabilization is necessary to prevent erosion, decrease sediment inputs into waters of the State, and reduce encroachment of invasive species in denuded areas since invasive species are associated with modified hydrologic regimes and deleterious impacts to the aquatic environment (NRS 445A.305).
12. Upon completion of the project, all temporary and excess materials and installments used during construction must be removed from the site to prevent pollutants from entering waters of the State by any means and affected

areas must be returned to pre-construction elevations and contours. Authorized activities should not contribute to any long-term instability and have only minimal environmental impacts to ensure compliance with water quality regulations in Nevada (NRS 445A.465).

13. Prior to beginning any activity authorized by this RGP, NDEP must receive notification concurrent with notification provided to U.S. Army Corps of Engineers. Initial contact may be via phone followed by an email which provides contact information of the applicant or agent, project location and description of work needed to rectify emergency. Any modifications to the original 401 notification must be provided to this office prior to implementation. Electronic notification can be provided to NDEP Bureau of Water Quality Planning at NDEP401@ndep.nv.gov. This condition is necessary to ensure compliance of the emergency repair and protection activities with water quality regulations in Nevada prior to project implementation (NRS 445A.720; NRS 445A.530; NRS 445A.525; NAC 445A.121).
14. The post-project reporting requirements described in RGP 8 General Condition 27 shall be provided to NDEP Bureau of Water Quality Planning concurrent with the submission of the report to U.S. Army Corps of Engineers. This condition is necessary to ensure compliance of the emergency repair and protection activities with water quality regulations in Nevada upon project completion (NRS 445A.720; NRS 445A.530; NRS 445A.525; NAC 445A.121).