



# Regional General Permit 9

U.S. ARMY CORPS OF ENGINEERS

BUILDING STRONG®

## MINOR DISCHARGES ASSOCIATED WITH THE SACRAMENTO MUNICIPAL UTILITY DISTRICT'S UPPER AMERICAN RIVER PROJECT

**EFFECTIVE:** July 7, 2020

**EXPIRES:** July 7, 2025

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee (the Sacramento Municipal Utility District). The term "this office" refers to the issuing office.

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The U.S. Army Corps of Engineers, Sacramento District (District), hereby issues Regional General Permit (RGP) 9 for minor discharges of dredged and/or fill material into waters of the U.S. for certain activities conducted by the Sacramento Municipal Utility District (SMUD) as part of the its Upper American River Project (UARP).

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

**ACTION ID:** SPK-2013-01098

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

**LOCATION:** This RGP is applicable to all waters of the U.S. within the UARP Federal Energy Regulatory Commission (FERC) boundary and those areas directly adjacent to the boundary where project activities would occur. The RGP area is located in El Dorado County, California and is shown on the attached *SMUD UARP Overview* drawing dated October 9, 2013, and prepared by SMUD.

**ACTIVITIES COVERED:** The RGP authorizes permanent and temporary discharges of dredged and/or fill material into waters of the U.S., including wetlands, associated with the following activities conducted in the UARP:

1. Constructing, improving and maintaining road crossings;
2. Constructing, maintaining, and improving boat ramps located in project-related reservoirs;
3. Maintaining existing hydroelectricity facilities including, but not limited to, wall leakage repair, gate/trash rack maintenance, minor dredging, and concrete resealing;
4. Constructing, maintaining, and improving trails, campground/recreational facilities, weirs, and other structures and fills; and
5. Maintaining fish and other aquatic wildlife passage by moving or repositioning material within a streambed.

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

**TERMS:**

1. **Thresholds.** The loss of waters of the U.S. (as identified in the *Definitions* section) occurring from the permanent discharge of dredged or fill material into waters of the U.S., are limited to the following:

a. Individual:

(1) Each activity shall result in the loss of no more than 0.5 acres of waters of the U.S., including wetlands; and

(2) Each activity shall result in the loss of no more than 300 linear feet of ephemeral, intermittent, or perennial streams, unless waived by this office.

b. Cumulative:

(1) The cumulative loss of waters of the U.S. shall not exceed 2.0 acres over the term of the RGP.

2. **Temporary Discharges.** This RGP authorizes minor, temporary discharges of dredged or fill material into waters of the U.S. for construction, access and dewatering activities, including the installation of best management practices (BMPs), dewatering structures (i.e. cofferdams), and staging areas, subject to the following:

a. Fill activities associated with temporary access and staging areas shall be sited in areas that do not contain waters of the U.S. to the extent practicable and shall be limited to an area of no more than 0.10 acres of waters of the U.S., including wetlands, unless waived by this office;

b. To the extent practicable, all dewatering activities shall be conducted when the area is naturally dewatered.

c. A horizontal marker (e.g. fabric, certified weed free straw) shall be placed beneath the fill material to delineate the existing ground elevations of the waters temporarily filled during construction; and

d. Fill material in waters of the U.S. shall be removed within 30 days following completion of construction activities and shall remain in place for no more than 180 days following placement.

3. **Maintenance activities.** Maintenance activities include the repair, replacement, or rehabilitation of structures or fills, 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. All maintenance activities are subject to the following:

a. Activities shall be limited to the existing footprint of the structure or fill, unless minor deviations, in the configuration or filled area are necessary due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards. The loss of waters of the U.S. associated with minor deviations shall be limited to 0.01 acre of waters of the U.S. per activity; and

b. Maintenance activities include discharges associated with the removal of accumulated sediments and debris in the vicinity of existing structures, provided it is limited to the minimum necessary to restore the waterway to the approximate dimensions when the structure was built and it does not extend more than 200 feet in any direction from the structure being maintained. All dredged or excavated materials shall be deposited in areas that do not contain waters of the U.S.

4. Road Crossings. All road crossings shall meet the following requirements:

a. To the maximum extent practicable, new crossings shall be designed to maintain fish and wildlife passage and expected high flows. New crossings 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, unless otherwise approved by this office; and

b. Maintenance of existing road crossings shall be designed to ensure there is no reduction in the diameter or width of the existing culvert or bridge.

5. Boat Ramps. The construction of new or extension of existing boat ramps shall meet the following criteria:

a. The boat ramp does not exceed 20 feet in width, unless waived by this office;

b. The base material is crushed stone, gravel, or other suitable material; and

c. Excavation is limited to the area necessary for site preparation and material shall be deposited in areas that do not contain waters of the U.S.

(d) Replacement or repair of boat ramps where this new fill is left in place is considered a permanent fill of waters of the United States.

6. Minor Dredging for sediment removal:

a. Discharges shall be limited to no more than 0.10 acre of water of the U.S.; and

b. Removed material shall be shall be deposited in areas that do not contain waters of the U.S.

#### **GENERAL CONDITIONS:**

1. Pre Construction Notification (PCN). You shall submit a PCN to this office for review and approval, prior to initiation of activities in waters of the U.S. under this RGP in the following circumstances:

a. The proposed activity would result in a loss of greater than 0.10 acre or 300 linear feet of waters of the U.S.;

- b. The proposed temporary access, construction, or staging areas would involve a discharge of dredged and/or fill material into greater than 0.10 acre of waters of the U.S.;
- c. The proposed activity involves the construction of a new road crossing that would not utilize pier- or pile supported spans, or designs that use a bottomless arch culvert with a natural stream bed;
- d. The proposed activity involves the construction of a new boat ramp that would exceed 20 feet in width in waters of the U.S.; and
- e. The proposed activity would affect Federally-listed threatened or endangered species and/or historic or pre-historic cultural resources in which FERC is not the lead Federal agency for compliance with Section 7 of the Endangered Species Act (ESA) and/or Section 106 of the National Historic Preservation Act (NHPA), respectively.

2. Post-Construction Notification: You shall submit a report to this office twice a year for all activities completed under this RGP (both those that require and those that do not require a PCN). The reports shall be submitted by July 1 and December 31 of each year and shall include a signed compliance certification form and attachments containing the following information:

- a. A complete description of each activity completed under the RGP, including the type and amount (in cubic yards) of material and the area (in acres) of dredged and/or fill material discharged into waters of the U.S., at each location;
- b. A description of any temporary access, construction and dewatering activities, including the methods for accomplishing any dewatering, the area of fill material discharged into waters of the U.S., and the methods for restoring all temporary construction areas;
- c. A vicinity map and project boundary map depicting the location of each activity completed under the RGP during the review period. These maps shall be of sufficient detail to clearly identify the exact location (including the coordinates), shall identify the size of the project site in acres, and extent of each activity;
- d. The cumulative loss of waters of the U.S. (in acres) for all activities that have been conducted under the RGP during the review period;
- e. Post-construction plan-view and cross-section view drawings for each activity completed. These drawings shall be to-scale or show the dimensions of the activity;
- f. Pre-construction and post-construction photographs of any site in which greater than 25 cubic yards of fill material was discharged below the ordinary high water mark of waters of the U.S., or within the boundaries of any wetlands. The photographs shall be taken from the same location and shall show both the upstream and downstream portions of the site. Each photograph point shall be clearly depicted on the plan-view drawing;
- g. A description of and photographs depicting any best management practices (BMPs) installed for compliance with General Condition 6, and a description of any measures taken for compliance with General Condition 7; and
- h. Information identifying how each activity complied with the terms and conditions of the RGP.

3. You are responsible for all work authorized herein. To ensure that all on-site personnel, including contractors, are aware of the terms, conditions, and limitations of this authorization, you shall post a copy of the permit authorization and associated drawings at the project site during all phases of construction.
4. You shall clearly identify the project limits in the field with highly visible markers such as construction fencing or silt barriers prior to initiating construction work. Such identification shall be properly maintained until construction is completed.
5. You shall use only clean fill material for any activity authorized under this RGP. The fill material shall be free from items such as trash, debris, automotive parts, asphalt, construction material, concrete block with exposed reinforcement bars, and soils contaminated with any toxic substance, in toxic amounts in accordance with Section 307 of the Clean Water Act.
6. You shall employ best management practices (BMP's) on-site to prevent degradation to on-site and off-site waters of the U.S. Methods shall include the use of appropriate measures to intercept and capture sediment prior to entering waters of the U.S.
7. You shall use and maintain appropriate soil erosion and sediment controls in effective operating condition during construction, and all exposed soil and other fills, must be permanently stabilized at the earliest practicable date. You shall work within waters of the U.S. during periods of no-flow if possible. In cases where it is not possible to conduct work within waters of the U.S. during periods of no-flow, you shall implement alternate measures to ensure that downstream water quality is not negatively impacted during construction.
8. No activities authorized under this RGP may substantially disrupt the necessary life cycle movements of those species of wildlife indigenous to the waterbody, including those species that normally migrate through the area.
9. Activities in waters of the U.S. that serve as breeding areas for migratory birds shall be avoided to the maximum extent practicable.
10. The activities authorized under this RGP must comply with applicable FEMA-approved state or local floodplain management requirements.
11. The pre-construction course, condition, capacity, and location of open waters shall be maintained for each activity authorized under this RGP. The activity must not restrict or impede the passage of normal or high flows.
12. You shall maintain any activity authorized by this RGP in good condition and in conformance with the terms and conditions of this permit. Should you wish to cease to maintain the authorized activity or should you desire to abandon it, you may need to obtain a modification of the RGP authorization, which may require restoration of the area.
13. No activities authorized under this RGP or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

14. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately cease all work in waters of the U.S. and notify this office of what has been found. This office 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.

15. Prior to the initiation of any discharges of dredged and/or fill material into waters of the U.S. associated with any activity under the RGP, you shall obtain a Section 401 Water Quality Certification (WQC) from the Central Valley Regional Water Quality Control Board. You shall comply with all conditions of the Section 401 WQC as a condition of the RGP.

### **PRECONSTRUCTION NOTIFICATION PROCEDURES:**

1. You may choose to request a pre-application meeting with this office and other resource agencies. Additional information regarding pre-application meetings can be found on our website at: <http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/ref/pre-app-CA-04-01-2015.pdf>.

2. You shall submit a PCN in electronic form to our office for all activities identified in General Condition 1. The PCN shall be submitted to the Corps in electronic format (pdf), (either through email if less than 25 MB), posting to a Corps-accessible FTP site, or submittal of a DVD. Email submittal of PCN should be sent to: [SPKRegulatoryMailbox@usace.army.mil](mailto:SPKRegulatoryMailbox@usace.army.mil). The application shall contain the following information:

a. A letter or a completed Department of the Army Permit Application (DA form 4345) signed by the you, requesting authorization under the RGP, including a description of the proposed activity, the location of the activity(s) (with coordinates), and the area (in acres, and/or linear feet as applicable) of waters of the U.S., including wetlands, proposed to be impacted. DA form 4345 may be obtained on our website at:

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

b. 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.

c. For any request to waive any threshold identified in the terms of the RGP, a written description of why you believe that the proposed activity would result in only minor individual and cumulative adverse environmental effects, and why it is not practicable to reduce impacts to waters of the U.S.

d. 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, you shall submit a narrative explaining why compensatory mitigation should not be required or is not otherwise practicable.

e. 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

f. 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 required plan-view drawing(s).

g. A delineation of waters of the U.S., including wetlands, for the project site. On-site wetlands must be delineated using the U.S. Army Corps of Engineers 1987 Wetland Delineation Manual and appropriate regional supplement in effect at the time of the proposal.

h. The cumulative loss of waters of the U.S. (in acres) for all activities that have been conducted under the RGP.

i. Information sufficient to ensure compliance with Section 106 of the National Historic Preservation Act (NHPA). For proposed activities in which FERC is the lead Federal agency for compliance with the NHPA, you shall submit information sufficient for this office to concur with the determination made by FERC. For proposed activities in which FERC is not the lead Federal agency for compliance with the NHPA, you shall either submit: (1) a cultural resource survey report for the site, including all staging, access, and construction areas sufficient for this office initiate consultation for compliance with Section 106 of the National Historic Preservation Act (NHPA); or (2) information sufficient to show that the proposed activity would have no potential to affect historic or prehistoric cultural resources. Any required cultural resource survey report shall 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).

j. Information sufficient to ensure compliance with Section 7 of the ESA. For proposed activities in which FERC is the lead Federal agency for compliance with the ESA, you shall submit information sufficient for this office to concur with the determination made by FERC. For proposed activities in which FERC is not the lead Federal agency for compliance with ESA, you shall submit either: (1) information sufficient to initiate consultation with the U.S. Fish and Wildlife Service for compliance with Section 7 of the ESA; or (2) information on why the proposed project would have no effect on Federally-listed threatened and/or endangered species. Information needed for initiation of consultation under Section 7 of the ESA shall include the following:

(1) A description of the action to be considered;

(2) A description of the specific area that may be affected by the action (generally would include the footprint of the proposed boat dock and associated access and additional access and staging areas) ;

(3) A description of any listed species or critical habitat that may be affected by the action (see above for the potential species that may be affected by boat docks and associated access);

(4) A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative impacts (identify the impacts that would occur to species.

Examples include sound effects from pile driving and shading from docks. Also include minimization measures such as adherence to Conditions 4 and 5, as well as any proposed compensatory mitigation);

(5) Relevant reports including any environmental impact statement, environmental assessment, or biological assessment prepared; and

(6) Any other relevant available information on the action, the listed species, or critical habitat (this may include previous consultations conducted or completed).

3. Within 30-days following receipt of the PCN form, this office will notify you 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 and/or Section 106 of the NHPA is required by this office.

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

4. Within 30-days following receipt of a complete PCN form, this office will initiate any required consultations under Section 7 of the ESA, and/or Section 106 of the NHPA.

5. Within 30-days following completion of required consultations under Section 7 of the ESA 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 you via letter if the project is authorized under this RGP, subject to the terms and conditions of the individual verification.

6. For all activities that require the submittal of a PCN, no work may proceed under the authority of this RGP until you have been notified, in writing, by this office 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.

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.

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).

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.



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

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.

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 U.S. 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 U.S. 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 U.S. 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 U.S. 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 U.S.

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.

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.

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: You 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. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
  - b. This permit does not grant any property rights or exclusive privileges.
  - c. This permit does not authorize any injury to the property or rights of others.
  - d. 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 this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office 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. You fail to comply with the terms and conditions of this permit.
  - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
  - c. Significant new information surfaces which this office 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 you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may

in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you 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 Corps 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 Corps, such as a Nationwide Permit or Letter of Permission. The Corps 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 Corps may include additional special conditions to any verification under this RGP to ensure the activity has no more than minimal individual and cumulative impact.

**PERMIT DURATION:** This RGP is valid for five years from the date of issuance, and will expire on May 16, 2025. The Corps may re-evaluate the terms and conditions of this permit at any time it deems necessary to protect the public interest. This permit may be re-issued, after public notice and documentation of the decision. Some of the activities under this permit must be verified in writing by the Corps. Verifications are valid until the permit expires.

**CONTACTS AND ADDITIONAL INFORMATION:**

Ms. Kathy Norton, Sr. Project Manager  
California South Section, Regulatory Division  
US Army Corps of Engineers, Sacramento District  
1325 J Street, Room 1350  
Sacramento, California 95814-2922  
Email: *Kathy.Norton@usace.army.mil*  
Phone: 916-557-5260

**ATTACHMENTS:** *SMUD UARP Overview* drawing

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



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Michael S. Jewell  
Chief, Regulatory Division

07 JULY 2020

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Date