REGION 9
SAN FRANCISCO, CA 94105

Sent Via Email Only

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Clean Water Act (CWA) Section 401 Certification for Regional General Permit 16 for Aquatic Habitat Restoration and Enhancement Activities (RGP 16) in the Sacramento District of the Army Corps of Engineers (SPN), U.S. EPA File No. 2024-517

Dear Michael S. Jewell:

I am pleased to provide the water quality certification decision consistent with Section 401 of the Clean Water Act (CWA) for Regional General Permit (RGP) 16. On November 20, 2024, the U.S. Environmental Protection Agency (EPA) Region 9 received a request for certification from the Sacramento District of the Army Corps of Engineers, for discharges into waters of the United States associated with RGP 16, which provides an expedited permit process for discharges of dredged or fill material for Aquatic Habitat Restoration and Enhancement Activities.

Section 401 of the Clean Water Act requires applicants for federal licenses or permits that conduct any activity that may result in discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates. Where no state or Tribe has authority to give such certification, the EPA is the certifying authority. 33 U.S.C. 1341(a)(1). As such, the EPA is providing this certification with conditions for discharges within the lands of federally recognized Tribes on Appendix A and for lands of exclusive federal jurisdiction.[1]

[1] An inventory report compiled by the U.S. General Services Administration for federal properties as of 1962 identifies properties located within the San Francisco District of the Army Corps of Engineers that may contain exclusive federal jurisdiction. This document is accessible at https://www.congress.gov/116/meeting/house/110088/documents/HHRG-116-II13-20191017-SD044.pdf. The EPA notes that this inventory report is not all-inclusive, and that the information contained within it has not been recently confirmed and/or updated. Please contact EPA Region 9 at R9cwa401@epa.gov with questions regarding the jurisdictions where this certification decision applies.

The EPA appreciates our long-standing partnership and coordination in implementing Section 401 of the CWA. Please contact me at (415) 972-3337 should you have any questions, or your staff may contact the Wetlands and Oceans Section Manager, Sahrye Cohen at (415) 972-3523 or cohen.sahrye@epa.gov.

Sincerely,

Digitally signed by TOMAS TORRES
Date: 2025.05.19 11:14:51 -07'00'

Tomás Torres
Director, Water Division

Enclosure: The U.S. Environmental Protection Agency Region 9's Clean Water Act Section 401 Certification Decisions for Regional General Permit 16 for Aquatic Habitat Restoration and Enhancement Activities (RGP 16) in the Sacramento District of the Army Corps of Engineers (SPK), U.S. EPA File No. 2024-517

cc: Jason Gipson, USACE Sacramento District

**Appendix A – List of Tribes without Treatment in a Similar Manner as a State for Clean Water Act Section 401 Water Quality Certification within the Sacramento District of the Army Corps of Engineers.**

Alturas Indian Rancheria
Berry Creek Rancheria of Maidu Indians of California
Big Sandy Rancheria of Western Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria
Bridgeport Indian Colony
Buena Vista Rancheria of Me-Wuk Indians of California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria
California Valley Miwok Tribe
Cedarville Rancheria
Chicken Ranch Rancheria of Me-Wuk Indians of California
Cold Springs Rancheria of Mono Indians of California
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria
Enterprise Rancheria of Maidu Indians of California
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Greenville Rancheria
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Habematolel Pomo of Upper Lake
Ione Band of Miwok Indians of California
Jackson Band of Miwuk Indians
Mechoopda Indian Tribe of Chico Rancheria
Middletown Rancheria of Pomo Indians of California
Mooretown Rancheria of Maidu Indians of California
Northfork Rancheria of Mono Indians of California
Paskenta Band of Nomlaki Indians of California
Picayune Rancheria of Chukchansi Indians of California
Pit River Tribe
Redding Rancheria
Robinson Rancheria
Santa Rosa Indian Community of the Santa Rosa Rancheria
Scotts Valley Band of Pomo Indians of California
Shingle Springs Band of Miwok Indians
Susanville Indian Rancheria
Tejon Indian Tribe
Tule River Indian Tribe of the Tule River Reservation
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
United Auburn Indian Community of the Auburn Rancheria of California
Wilton Rancheria
Yocha Dehe Wintun Nation
Washoe Tribe of Nevada & California

Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada
Duckwater Shoshone Tribe of the Duckwater Reservation
Elko Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada
Ely Shoshone Tribe of Nevada
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservations
Las Vegas Paiute Tribe
Lovelock Paiute Tribe of the Lovelock Indian Colony
Moapa Band of Paiute Indians of the Moapa River Indian Reservation
Paiute-Shoshone Tribe of the Fallon Reservation and Colony
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation
Reno-Sparks Indian Colony
South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada
Te-Moak Tribe of Western Shoshone Indians of Nevada
Wells Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada
Winnemucca Indian Colony of Nevada
Yomba Shoshone Tribe of the Yomba Reservation

**ENCLOSURE: The U.S. Environmental Protection Agency Region 9's Clean Water Act Section 401 Certification Decisions for Regional General Permit 16 for Aquatic Habitat Restoration and Enhancement Activities (RGP 16) in the Sacramento District of the Army Corps of Engineers (SPK), U.S. EPA File No. 2024-517**

## Grant of Certification with Conditions for Tribal Lands and Lands of Exclusive Federal Jurisdiction where EPA is the Certifying Authority in the Sacramento District of the Army Corps of Engineers

This grant of certification with conditions applies to the water quality-related impacts from activities subject to the reissuance of RGP 16 referenced above in Tribal Lands and lands of exclusive federal jurisdiction where the EPA Region 9 is the Certifying Authority in the Sacramento of the Army Corps of Engineers. RGP 16 is applicable for discharges into waters of the United States within the Sacramento District of the Army Corps of Engineers. Authorization for projects under RGP 16 will be reviewed and confirmed by the Sacramento District of the Army Corps of Engineers.

**Project Description:**

RGP 16 authorizes certain discharges of dredged or fill material into waters of the United States in California, Nevada, and Utah associated with work performed in accordance with terms and conditions as specified in the permit for construction and maintenance activities associated with aquatic habitat restoration and enhancement. Activities to be authorized include, but are not limited to, fish passage and screening improvements; bioengineered bank stabilization; engineering/designing with nature; nature-based solutions; water conservation; aquatic habitat restoration and enhancement of streams, wetlands, and other waters; and removal of pilings, small dams, flood gates, and other in-water structures. Compensatory mitigation is not required for activities authorized under this RGP since these activities must be restoration or enhancement in nature, resulting in no net loss of aquatic resource functions and services. The conversion of waters from one type to another is authorized as long as there is an overall no net loss of aquatic resource functions and services.

### The EPA's Public Notice Process

On November 22, 2024, EPA Region 9 received a request for certification from the Sacramento District of the Army Corps of Engineers. EPA Region 9 issued a public notice on January 16, 2025, and provided the opportunity for the public to submit comments until February 17, 2025. No comments were received on the public notice.

### General Information

The general information provided in this section does not constitute certification conditions.

- The project proponent is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, or Tribal authorities.
- This certification is based on materials provided in the certification request, including a copy of the RGP.

- Project proponents should ensure that activities that may result in a point source discharge occur during seasonal low flow or no flow periods. If dewatering is necessary, the RGP requires that a dewatering/diversion plan be included in the preconstruction notice (PCN).
- Project proponents should coordinate with Tribal governments regarding the presence of sensitive aquatic wildlife species. The RGP states all work to be conducted in accordance with work windows identified by the U.S. Fish & Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS).
- Copies of this certification should be kept on the job site and readily available for reference.
- Pursuant to CWA section 308(a), the EPA Region 9 is authorized to inspect the authorized activity and any mitigation areas to determine compliance with the terms and conditions of the USACE permit, including those conditions contained in this certification.
- Project proponents should notify the EPA Region 9 and the appropriate Tribal contacts when submitting a pre-construction notification to the USACE for use of this RGP on Tribal lands and, prior to construction, provide the EPA Region 9 and Tribal contacts with the most up-to-date construction timeframe and plans.

The EPA has determined that the activity will comply with the applicable water quality requirements, including, consistent with 40 CFR § 121.1(j), any limitation, standard, or other requirement under sections 301, 302, 303, 306, and 307 of the CWA; any Federal and state or Tribal laws or regulations implementing those sections; and any other water quality-related requirement of state or Tribal law, subject to the following conditions pursuant to CWA section 401(d):

**Condition 1 – Notification to EPA and Tribes**
Project proponents shall provide notice to EPA Region 9 and the appropriate Tribal government at least 30 days prior to commencing work in waters of the United States to provide EPA with the opportunity to review and inspect the activity for the purposes of determining whether any discharge from the proposed project will violate this water quality certification. The project proponent shall include a project monitoring and adaptive management plan in the notice to document that the project results in a net increase in aquatic functions and services. The plan shall include:

- Goals and objectives of the project,
- Specific performance metrics that will be used to evaluate the success of meeting those goals and objectives,
- This section shall include management of disturbed vegetation and a corresponding restoration plan that indicates the project proponent will use appropriate native vegetation in a manner that optimizes plant establishment for the specific site (e.g., stockpiling of existing topsoil that is weed-seed free),
- Monitoring methods or techniques (including timing and duration) used to evaluate the progress towards achieving the desired increase in aquatic functions and services, and

- Adaptive management techniques and reporting processes to be implemented if the project is not meeting net increase performance metrics.

The project proponent shall provide the authorizing USACE District with a copy of the project monitoring and adaptive management plan described above.

Additionally, for any activities on Tribal lands the project proponent shall include a summary of communications with the affected Tribe's water quality staff regarding the project, including any concerns or issues, in its notification to EPA Region 9.

**Condition 2 – Projects or Activities Discharging to Impaired Waters**
Project proponents must request an individual water quality certification consistent with 40 CFR 121.5 from EPA Region 9 for projects or activities that involve a point source discharge into an active channel of a water of the United States identified as a section CWA section 303(d) listed impaired waterbody or waterbody with a total maximum daily load (TMDL) where the discharge may result in further exceedance of a specific parameter (e.g., total suspended solids, dissolved oxygen, temperature). The current CWA section 303(d) list and waterbodies with established TMDLs are available at: https://www.epa.gov/tmdl/impaired-waters-and-tmdls-pacific-southwest-region-9.

**Condition 3: Special Aquatic Resources**
Project proponents shall not allow point source discharges into jurisdictional waters of these special aquatic resources: (1) fens, bogs, or other peatlands; (2) within 100 feet of the point of discharge of a known natural spring source; (3) riffle-pool complexes of streams; (4) water sources above hanging gardens; or (5) vernal pools. Project proponents must request an individual water quality certification consistent with 40 CFR 121.5 from EPA Region 9 for projects or activities expected to have potential point sources discharges into these areas.

A peatland is defined by the U.S. Forest Service as any type of peat covered terrain with an accumulation of at least 20 to 40 centimeters of peat within the upper 80 centimeters of the soil profile. More resources on peatlands and hanging gardens can be found here:
https://www.fws.gov/mountain-prairie/es/fen/FWSRegion6FenPolicy1999.pdf
https://www.fs.fed.us/wildflowers/beauty/California_Fens/what.shtml
https://cnhp.colostate.edu/cnhpblog/2009/08/11/hanging-gardens/
https://springstewardshipinstitute.org/hanging-garden

**Condition 4: Extent of Impacts to Waters of the United States**
Project proponents must request an individual water quality certification consistent with 40 CFR 121.5 from EPA Region 9 for projects or activities that involve greater than 1-acre of impacts to waters of the United States and/or impact greater than 500 linear feet of waters of the United States.

**Condition 5: Spill Prevention and Remediation**
When a project requires a Construction General Permit (CGP)/Stormwater Pollution Prevention Plan (SWPPP), the project proponent shall submit the SWPPP and a copy of the Notice of Intent (NOI) for permit coverage under the EPA CGP to EPA Region 9 (R9cwa401@epa.gov) and the appropriate Tribal representative at least two weeks prior to beginning construction activities.

If spills or unauthorized discharges occur during the project, the project proponent shall notify EPA Region 9 (R9cwa401@epa.gov) within 8 hours from discovery. In the notification to the EPA, the project proponent shall identify the material spilled and approximate volume, and describe the measures being taken to remedying the spill or unauthorized discharge.

For emergency spills, contact the EPA's National Response Center at 1-800-424-8802, the Tribal representative identified in the General Information section of this certification, and the appropriate personnel identified in the project's Stormwater Pollution Prevention Plan (SWPPP).

When a project does not require a CGP/SWPPP, the project proponent shall comply with the following: When operating equipment or otherwise undertaking construction activities in aquatic resources, the project proponent shall:

- Include in the project plan/design drawings the locations of:
  - the project site with all waters, including wetlands, clearly demarcated;
  - staging areas;
  - construction access points; and
  - disturbance limits.
- Clean all equipment prior to the equipment arriving on the project site.
- Have containment booms and/or absorbent material available onsite prior to the commencement of work. In the case of spills, the project proponent shall immediately employ containment booms and/or absorbent material to prevent discharges from reaching waters of the United States.
- Inspect all equipment daily and prior to entering any waters of the United States for oil, gas, diesel, anti-freeze, hydraulic fluid, and other petroleum leaks. If the project proponent detects a leak from any equipment, they shall immediately remove the equipment from waters of the United States; and within 24 hours of detection of a leak, the project proponent shall repair the equipment in a staging area or move it offsite.
- Clean all contaminated areas within 8 hours of spill detection and remove contaminated soil from the site within 24 hours or contain it in enclosed containers until it is removed from the site.

If spills or unauthorized discharges occur during the project, the project proponent shall notify EPA Region 9 (R9cwa401@epa.gov) within 8 hours from discovery. In the notification to the EPA, the project proponent shall identify the material spilled and approximate volume, and describe the measures being taken to remedying the spill or unauthorized discharge. For emergency spills, contact the EPA's National Response Center at 1-800-424-8802 and the appropriate Tribal representative.

**Condition 6: Sediment and Erosion Control**

The project proponent shall:

- Develop and implement an erosion and sediment control plan. The plan shall be in writing and include:
  - The types and locations of erosion and sediment control features that shall be used onsite, including sediment control fences, haybales, heavy mud mats, or other structures. Biodegradable blankets and/or loose-weave mesh shall be used for erosion control matting.
  - Inspection and maintenance protocols. The project proponent shall conduct maintenance on erosion and sediment control measures daily during project implementation and within 12 hours of precipitation events. If any erosion control measures fail (i.e., sediment migrates into waters of the United States), the project proponent shall repair the measures that failed within 24 hours of detection of failure to prevent discharges into waters of the United States.
- Ensure erosion and sediment control measures are in place prior to the onset of construction and maintained in effective operating condition during construction and following construction until vegetation is established based on performance metrics documented in the project monitoring and adaptive management plan.
- Ensure erosion and sediment control measures are removed once vegetation is established ~~to the same percent cover as pre-construction conditions.~~

**Condition 7: Removal of Small Dams/Structures**

For the purpose of this water quality certification, a small water control structure (including dams) is defined as any earth or concrete structure less than 15 feet in heigh and with low hazard potential. This includes structures such as those associated with farm ponds, weirs, check dams, silt retention dams, and earthen reservoirs.

For removal of small water control structures authorized under RGP 16, to ensure that effective implementation measures are employed for the prevention of uncontrolled discharges and water quality violations, the project proponent shall conduct pre-disturbance site assessment and submit project plans to EPA Region 9, the appropriate Tribal government, and the authorizing USACE District. The project plans shall include:

- Methods to analyze, remove, and dispose of any accumulated sediments stored behind the structure;
- Methods to ensure that the channel bed and banks are stabilized to prevent head-cutting and failure after the structure is removed;
- Stabilization methods that will be implemented to minimize secondary impacts to waters resulting from the removal of the structure; and
- Adaptive management and reporting processes if an unauthorized discharge or water quality violation were to occur.

The project proponent shall request an individual water quality certification consistent with 40 CFR 121.5 from EPA Region 9 for any dams constructed for power generation or any water control structure that impounds more than 10 acre-feet of water.

**Attachment**
**Supporting Information for Certification Conditions**

| Numbered Condition | Why the condition is necessary to assure the activity will comply with water quality requirements | Citation that authorizes the condition |
|---|---|---|
| **1. Notification to EPA and tribes** | This condition is necessary to provide EPA with notice and information to allow for an efficient and effective pre-operation inspection to determine if the certified discharge will violate the certification. If the project scope changes during the USACE review prior to initiation of the activity, it is critical that EPA is notified of any changes in the project design, scope, amount, and location of discharges to inform the pre-operation inspection opportunity as provided by 40 CFR 121.11(a). | 40 CFR 121.11(a); 40 CFR 230.72; 40 CFR 230.75 |
| **2. Projects or Activities Discharging to Impaired Waters** | A 303(d) listed waterbody is impaired due to the cumulative effects of discharges of pollutants. The NWPs do not provide necessary activity specific information to determine compliance with specific water quality requirements, such as limits on total suspended solids, temperature, dissolved oxygen, nutrients, or pH for which a specific waterbody could be listed as impaired. Site specific analysis is required to determine whether water quality requirements are met in the active channel of a water of the U.S. identified as a section 303(d) or TMDL listed impaired waterbody. | 33 U.S.C. 1312(d) |
| **3. Special Aquatic Resources** | Aquatic resources of special concern include special aquatic sites and other aquatic resources that are specific waters of the United States that are difficult to replace, are unique, and/or have high ecological function. General permits, including NWPs, are only allowed for those discharges and associated activities that will cause no more than minimal adverse impacts to the aquatic environment. However, point source discharges to the types of aquatic resources of special concern listed above could have more than minimal adverse impacts on an individual or cumulative basis, because the discharge of dredged or fill material would impair and degrade the chemical, physical and biological conditions of these systems. As noted in 40 C.F.R. § | 40 C.F.R. 230.1(d); 40 C.F.R. 230.10(c); 40 C.F.R. 230.21; 40 C.F.R. 230.23; 40 C.F.R. 230.32; 40 C.F.R. Part 230, Subpart E. |

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| | 230.1(d), "[f]rom a national perspective, the degradation or destruction of special aquatic sites, such as filling operations in wetlands, is considered to be among the most severe environmental impacts covered by these Guidelines. The guiding principle should be that degradation or destruction of special sites may represent an irreversible loss of valuable aquatic resources." Discharge of dredged or fill material into these systems can alter water circulation patterns and hydroperiods, which in turn can release nutrients causing shifts in native to non-native species composition; release chemicals that adversely impact biota (plants and animals), increase turbidity levels, reduce light penetration and photosynthesis, and ultimately change the capacity of these systems to support aquatic life uses and other beneficial uses of these special aquatic sites, including impairing their diverse and unique communities of aquatic organisms, including fish, wildlife and the habitats upon which they depend. Thus, this condition is established to ensure a case-by-case review of any actions or activities proposed in these specific aquatic resource site types which are inherently difficult to replace, have high ecological functions and values, and for which degradation cannot be determined to meet water quality requirements on a general permit basis. | |
| **4. Extent of Impacts to Waters of the United States** | This condition is necessary to minimize turbidity and sediment caused by construction activities, which will be exacerbated by larger construction projects. | 40 CFR 230.10(d); 40 CFR 230.21; 40 CFR 230.71 40 CFR 230.72 |
| **5. Spill Prevention and Remediation** | This condition is necessary to ensure water quality is not degraded by oil, grease, gasoline, or other types of fluids used to operate and maintain equipment used to complete the project. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species. | 40 CFR 230.10(c)-(d); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.74 |

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| **6. Sediment and Erosion Control** | This condition is necessary to minimize suspended particulates/turbidity caused by construction activities. This condition helps protect water quality, particularly for the water intake, and the aquatic ecosystem from suspended particulates/turbidity and other pollutants that can significantly affect aquatic ecosystem diversity, productivity and stability as well as infrastructure and water treatment. | 40 CFR 230.10(d); 40 CFR 230.21(a); 40 CFR 230.70; 40 CFR 230.74; 40 CFR 230.72 |
| **7. Removal of Small Dams/ Structures** | This condition is necessary as Regional General Permit 16 does not define what is meant by "small dams". To ensure that the physical, chemical and biological characteristics of waters are not degraded a definition and size constrain has been included as part of the certification conditions. Uncontrolled release of accumulated sediment behind large dams may contribute to degradation of water quality due to increased turbidity and sediment could smother aquatic dependent plants and animals, therefore, removal of dams and other water control structures that not included in the definition provided require an individual certification. | 40 CFR 230.10(d); 40 CFR 230.71; 40 CFR 230.72; 40 CFR 230.75 |