



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Executive Office

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Arnold Schwarzenegger
Governor

MAY 1 2007

Mr. Michael S. Jewell, Chief
Regulatory Branch
U.S. Army Corps of Engineers
1325 J Street, Room 1480
Sacramento, CA 95814-2922

Dear Mr. Jewell:

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION OF NATIONWIDE PERMITS

In your letter of March 14, 2007, you requested that the State Water Resources Control Board (State Water Board) review the newly issued Nationwide Permits (NWP) and determine whether to certify, certify with conditions, or deny Clean Water Act section 401 Water Quality Certification (certification). The State certification decision is required within 60 days according to federal regulations which, in this case, is May 11, 2007.

For this action, the State Water Board is Lead Agency for the purposes of the California Environmental Quality Act (CEQA) and is required to analyze the environmental impacts and make a determination for each NWP. In considering this task and the timeframe allowed, the State Water Board elects to issue certifications for those NWPs covering activities that are categorically exempt from CEQA.

As authorized by the State Water Board, I therefore have issued certifications for 14 of the 49 NWPs on this basis. The enclosed certification identifies those NWPs and the associated conditions. I request that you notify the State Water Board if any of these conditions do not meet your regulations at 33 Code of Federal Regulations Part 325.4. In addition, the U.S. Army Corps of Engineers has the right to petition the State Water Board for review of this certification in accordance with 23 California Code of Regulations section 3867 *et seq.*

California Environmental Protection Agency

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If you would like to discuss these matters further, please contact Valerie Connor, Manager of the Regulatory Section, Division of Water Quality, at (916) 341-5573 (vconnor@waterboards.ca.gov), or Darrin Polhemus, Deputy Director, Division of Water Quality, at (916) 341-5458 (dpolhemus@waterboards.ca.gov).

Sincerely,



Dorothy Rice
Executive Director

Enclosure

cc: Ms. Cindy Tuck
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Mr. Chris Potter
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Mr. Larry Week, Chief
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cc: Mr. Dave Castanon, Chief
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Mr. Wade Eackle
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Mr. David Smith, Chief
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Ms. April Evans, ES Secretary
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cc: Mr. Russ M. Strach
Assistant Regional Administrator
NOAA National Marine Fisheries Service
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Ventura, CA 90802-4213

Regional Water Board Executive Officers

**STATE WATER RESOURCES CONTROL BOARD
GENERAL 401 WATER QUALITY CERTIFICATION ORDER OF
U.S. ARMY CORPS OF ENGINEERS NATIONWIDE PERMITS**

Pursuant to Title 23, Section 3838 of the California Code of Regulations, the Executive Director does hereby make the following Clean Water Act (CWA) Section 401 Water Quality Certification (certification) determination for the U.S. Army Corps of Engineers' (ACOE) Nationwide Permits (NWP) which became effective on March 19, 2007 and will expire on March 18, 2012:

A. Certification:

Commencing on May 11, 2007, 14 NWPs, listed in Table A, are hereby granted certification subject to the Conditions and the Notification Requirements described below. The activities authorized by these 14 NWPs are exempted from the California Environmental Quality Act (CEQA) review since their activities are not expected to result in more than minimal individual or cumulative environmental impacts.

TABLE A – Certified Nationwide Permits

NWP No.	NATIONWIDE PERMIT DESCRIPTION	Decision
1	Aids to Navigation	Certify subject to Conditions 1 to 10
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Certify subject to Conditions 1 to 10
5	Scientific Measurement Devices	Certify subject to Conditions 1 to 10 and Notification Requirements
6	Survey Activities	Certify subject to Conditions 1 to 10 and Notification Requirements
9	Structures in Fleeting and Anchorage Areas	Certify subject to Conditions
10	Mooring Buoys	Certify subject to Conditions
11	Temporary Recreational Structures	Certify subject to Conditions 1 to 10 and Notification Requirements
20	Oil Spill Cleanup	Certify subject to Conditions 1 to 10 and Notification Requirements

TABLE A – Certified Nationwide Permits (Continued)

NWP No.	NATIONWIDE PERMIT DESCRIPTION	Decision
22	Removal of Vessels	Certify subject to Conditions 1 to 10
24	Indian Tribe or State Administered Section 404 Programs	Certify
28	Modification of Existing Marinas	Certify subject to Conditions 1 to 10 and Notification Requirements
32	Completed Enforcement Actions	Certify subject to Conditions 1 to 10 and Notification Requirements
34	Cranberry Production Activities	Certify subject to Conditions 1 to 10 and Notification Requirements
38	Cleanup of Hazardous and Toxic Waste	Certify subject to Conditions 1 to 10 and Notification Requirements

CONDITIONS:

1. **Porter-Cologne Water Quality Control Act:** All permitted activities shall comply with all requirements of California's *Porter-Cologne Water Quality Control Act*.
2. **Non-Severability:** If any conditions are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.
3. **Water Diversion and Use:** Certification is denied for any activity involving a new or modified diversion or impoundment of water, unless the State Water Board has already approved a water rights permit, or such diversion or impoundment is solely for the purpose of drainage or flood control.
4. **Other Federal Permits and Licenses:** Certification is denied for any activity requiring the issuance or renewal of more than one federal permit or license.
5. **Hydroelectric Facilities Requiring a Federal Energy Regulatory Commission (FERC) License:** This certification action is not intended to apply, and shall not be construed to apply, to any discharge from any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license.
6. **Endangered Species Act:** Certification is denied for any project that would result in the taking of any candidate, threatened, or endangered species or the violation of the federal or California Endangered Species Acts.

7. **Hazardous Waste Sites:** Certification is denied for any project located on a site which is included on any list compiled pursuant to section 65962.5 of the Government Code.
8. **Subject to Review:** This certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to §13320 of the California Water Code and Title 23 California Code of Regulations §3867 et seq.
9. **Payment of Fees.** Certification is conditioned upon total payment of any fee required pursuant to Title 23 of the California Code of Regulations and owed by the applicant.
10. **Enforcement:**
 - a) In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state law. For purposes of §401(d) of the CWA, the applicability of any state law authorizing remedies, penalties, process, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
 - b) In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including cost, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the report.
 - c) In response to any violation of the conditions of this certification, the State Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

NOTIFICATION:

Permittees proceeding under the 14 state-certified NWP's are required to provide notification of the proposed activity to the State Water Board and the appropriate Regional Water Quality Control Board (Regional Water Board) as specified in Table A and below.

Notification Requirements:

Not later than 21 days prior to commencing work on the proposed activity, the applicant must submit to the appropriate Regional Water Board and the State Water Board a notification containing at a minimum the information listed below. If a "Notification" is

required as part of ACOE section 404 permit, a copy of the notification to ACOE can be used instead. To avoid project delays, the applicant should submit the notification as early as possible. If the applicant is not notified by the Regional Water Board within 30 days of the postmarked date of the notification, the applicant may assume that the project meets the conditions of certification and may proceed with the project.

A. Contents of Notification:

(a) The name, address, and telephone number of:

- 1) the applicant, and
- 2) the applicant's agent (if an agent is submitting the notification).

(b) A full, technically accurate description, including the purpose and final goal, of the entire activity.

(c) Complete identification of all federal licenses/permits being sought for or applying to the proposed activity, including the:

- 1) federal agency;
- 2) type (e. g., Nationwide Permit Number); and
- 3) file number(s) assigned by the federal agency(ies), if available.

(d) Complete copies of either:

- 1) the application(s) for federal license(s)/permit(s) being sought for the activity, or
- 2) if no federal applications are required, any notification(s) concerning the proposed activity issued by the federal agency(ies), or
- 3) if no federal notification is issued, any correspondence between the applicant and the federal agency(ies) describing or discussing the proposed activity.

If no application, notification, correspondence, or other document must be exchanged between the applicant and federal agency(ies) prior to the start of the activity, the notification to the State Water Board and appropriate Regional Water Board shall include a written statement to this effect.

(e) Copies of any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity. If no final or draft document is available, a list of all remaining agency regulatory approvals being sought shall be included.

(f) If the federal license or permits required for the activity include a FERC license or amendment to a FERC license, a complete copy of a draft application for the FERC license or amendment of the FERC license meeting the requirements of

Subsection 4.38(c)(4) of Title 18 of the Code of Federal Regulations is required.

(g) A copy of any draft or final CEQA document(s), if available, prepared for the activity.

(h) A complete project description, including:

- 1) address (including city and county), assessor's parcel number and, if available, the longitude and latitude of the project site.
- 2) name(s) and hydrologic unit(s) of any receiving water body(ies) that may receive a discharge.
- 3) type(s) of receiving water body(ies) (e. g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, or wetland).
For each water body type reported under Subsection (h)(2) of this Section, the total estimated quantity of waters of the United States and the types of discharge material(s) that may temporarily or permanently impact the waters of the state.
The estimated quantity of waters to be adversely impacted by any discharge shall be reported in acres and, for channels, shorelines, riparian corridors, and other linear habitat, linear feet, except that dredging estimates shall be reported in cubic yards.
- 4) the total estimated quantity (in acres and, where appropriate, linear feet) of waters of the United States, by type (see Subsection (h)(3) of this Section) proposed to be created, restored, enhanced, purchased from a mitigation or conservation bank, set aside for protection, or otherwise identified as compensatory mitigation for any anticipated adverse impacts. If compensatory mitigation is to be provided in some other form, that shall be explained.
- 5) a description of any other steps that have been or will be taken to avoid, minimize, or compensate for loss of or significant adverse impacts to beneficial uses of waters of the state.
- 6) the total size (in acres), length (in feet) where appropriate, type, and description of the entire project area, including areas outside of jurisdictional waters of the United States.
- 7) a brief list/description, including estimated adverse impacts of any projects implemented by the project applicant within the last five years or planned for implementation by the applicant within the next five years that are in any way related to the proposed activity or that may impact the same receiving water body(ies) as the proposed activity. For purpose of this item, the water body extends to a named source or stream segment identified in the relevant Regional Water Quality Control Plan (Basin Plan).

(i) The notification must be signed by the applicant or the applicant's agent (if an agent is submitting the notification). The notification must include a statement that the submitted information is complete and accurate.

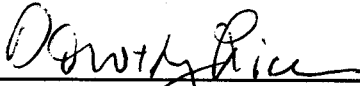
B. Denial:

The remaining 35 NWP's are hereby denied certification without prejudice. These 35 NWP's, listed in Table B, have a wide breadth and scope of activities such that their potential direct, indirect, and cumulative impacts could reasonably invalidate their exemption from CEQA. Denial of certification of these 35 NWP's does not affect the State Water Board's ability to certify these NWP's at a future time. CWA Section 401 certification of projects authorized by these 35 NWP's will be considered on an individual, project-specific basis.

REVISED

TABLE B – Nationwide Permits Denied Certification Without Prejudice

NWP No.	NATIONWIDE PERMIT DESCRIPTION	NWP No.	NATIONWIDE PERMIT DESCRIPTION
2	Structures in Artificial Canals	30	Moist Soil Management for Wildlife
3	Maintenance	31	Maintenance of Existing Flood Control Facilities
7	Outfall Structures and Maintenance	33	Temporary Construction, Access and Dewatering
8	Oil and Gas Structures On the Outer Continental Shelf	35	Maintenance Dredging of Existing Basins
12	Utility Line Activities	36	Boat Ramps
13	Bank Stabilization	37	Emergency Watershed Protection and Rehabilitation
14	Linear Transportation Projects	39	Residential, Commercial, and Institutional Developments
15	U.S. Coast Guard Approved Bridges	40	Agricultural Activities
16	Return Water from Upland Contained Disposal Areas	41	Reshaping Existing Drainage Ditches
17	Hydropower Projects	42	Recreational Facilities
18	Minor Discharges	43	Stormwater Management Facilities
19	Minor Dredging	44	Mining Activities
21	Surface Coal Mining Operations	45	Repair of Uplands Damaged by Discrete Events
23	Approved Categorical Exclusions	46	Discharges in Ditches
25	Structural Discharge	47	Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
26	RESERVED (Not included in this certification)	48	Existing Commercial Shellfish
27	Aquatic Habitat Restoration, Establishment, and Enhancement Activities	49	Coal Remaining Activities
29	Residential Developments	50	Underground Coal Mining Activities



 Dorothy Rice
 Executive Director
 State Water Resources Control Board

May 11, 2007

 Date