



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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Michael S. Jewell
U.S. Army Corps of Engineers, Sacramento District
Chief, Regulatory Division
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Subject: Clean Water Act Section 401 Certification for the Regional General Permit for Wildfire Prevention, Protection, Response, Clean-up, and Recovery in the State of California, U.S. EPA File No. 2022-500

Dear Mr. Jewell,

I am pleased to grant with conditions the water quality certification consistent with Section 401 of the Clean Water Act (CWA) for the subject action (SPN-2022-00208). On November 25th, 2022, the U.S. Environmental Protection Agency Region 9 (EPA) received a request for certification from the U.S. Army Corps of Engineers (Corps) for discharges of dredged and fill material into waters of the U.S. and navigable waters of the United States for the purpose of wildfire protection, prevention, response, clean-up, and recovery in the State of California. EPA reviewed the application and supplemental information and posted a public notice of the proposed project on the EPA Region 9 website from December 15th, 2022, through January 25th, 2023. One response was received. EPA has determined that any discharge from activities authorized by the proposed RGP will comply with water quality requirements, as defined at 40 C.F.R. 121.1(n), subject to the enclosed conditions pursuant to Section 401(d). **Except for the reservation lands of the Federated Indians of Graton Rancheria**, the enclosed CWA section 401 water quality certification applies to Tribal Lands and lands of exclusive federal jurisdiction in the State of California where EPA is the Certifying Authority.^{1,3}

Please provide this certification to anyone contacting the Corps with applicable projects that may be authorized under this regional general permit. If a project fails to meet the enclosed conditions, the applicant must contact EPA Region 9 at R9cwa401@epa.gov for a project-specific certification, to submit pre-filing meeting requests, or for any certification-related questions.

In accordance with the agency coordination requirements of the Regional General Permit for Wildfire Prevention, Protection, Response, Clean-up, and Recovery in the State of California, upon receipt of notification the Corps will provide an electronic copy of the application to EPA Region 9 and the appropriate Tribal authority. EPA strongly encourages additional coordination with adjacent and surrounding Tribes of project areas to address cultural and water quality concerns of transboundary impacts.

¹ Please contact EPA Region 9 with questions regarding the jurisdictions where this certification decision applies. R9cwa401@epa.gov. This certification decision does not apply to reservation lands of the Federated Indians of Graton Rancheria.

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

Sincerely,

Tomás Torres
Director, Water Division

Enclosure

cc: Leah M. Fisher

**Enclosure U.S. Environmental Protection Agency Region 9’s Clean Water Act Section 401
Certification of the U.S. Army Corps of Engineers Regional General Permit (RGP) for Wildfire
Prevention, Protection, Response, Clean-up, and Recovery**

This Clean Water Act (CWA) Section 401 water quality certification (WQC) applies to any potential point source discharges from projects authorized under Regional General Permit (SPN-2022-00208) for Wildfire Prevention, Protection, Response, Clean-up, and Recovery, into waters of the U.S. that occur within Tribal Lands and lands of exclusive federal jurisdiction in the State of California where the U.S. Environmental Protection Agency (EPA) is the certifying authority.²

Section 401(a)(1) of the CWA requires applicants for Federal permits and licenses that may result in discharges into waters of the United States, to obtain certification that any such discharges will comply with applicable provisions of the CWA including Sections 301, 302, 303, 306 and 307. Where no state agency or tribe has the authority to give such certification, EPA is the certifying authority.³

Scope of Authorized Activities:

Under the proposed RGP, the loss of waters of the U.S., including wetlands, shall not exceed 0.5 acre or 300 linear feet of streambed. The linear foot loss of streambed shall be included in the 0.5-acre threshold for loss of waters of the U.S.

Authorized projects and activities must be completed in accordance with the project description provided in the application and any supplemental information submitted to the EPA. Material changes to the project or activity described in the application are not covered by this certification. Therefore, any changes to the project location or changes in the magnitude and nature of the discharge will require a new certification. The project applicant is responsible for obtaining and complying with all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.

Activities Covered under the RGP:

Project activities that may be authorized under the RGP include, but are not limited to: maintenance, improvement, repair, rehabilitation, replacement or removal of any previously authorized structure or fill of utility lines; construction, maintenance, improvement, repair, replacement, or removal of permanent and temporary access; installation, maintenance, repair, or replacement of temporary dewatering structures; management of sediment or debris, including installation of trash racks, debris screens and barriers; mechanical or hydraulic removal of sediment or debris in navigable waters; construction, maintenance, repair, rehabilitation, replacement, or improvement of fire and/or fuel breaks; and repair,

² Please contact EPA Region 9 with questions regarding the jurisdictions where this certification decision applies. R9cwa401@epa.gov. This certification decision does not apply to reservation lands of the Federated Indians of Graton Rancheria.

³ This water quality certification does not apply to activities proceeding in the territories of the 19 tribes in California that have received TAS for CWA Section 401 - Big Pine Paiute Tribe of the Owens Valley; Bishop Paiute Tribe; Cabazon Band of Mission Indians; Chemehuevi Indian Tribe of the Chemehuevi Reservation; Dry Creek Rancheria; Band of Pomo Indians; Hoopa Valley Tribe; Karuk Tribe; Kletsel Dehe Wintun Nation; La Jolla Band of Luiseno Indians; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation; Lone Pine Paiute-Shoshone Tribe; Morongo Band of Mission Indians; Pala Band of Luiseno Mission Indians of the Pala Reservation; Quartz Valley Indian Community of the Quartz Valley Reservation of California; Resighini Rancheria; Rincon Band of Luiseno Mission Indians of the Rincon Reservation; Table Mountain Rancheria of California; Twenty-Nine Palms Band of Mission Indians of California; Yurok Tribe of the Yurok Reservation. In limited circumstances, some lands within tribal boundaries fall outside a tribe’s Section 401 certifying authority and are subject to this certification.

replacement, removal, or restoration rehabilitation of residential, commercial, industrial, and institutional development structures.

The RGP may NOT be used to upgrade an existing structure to current standards when that activity would result in additional adverse effects on aquatic resources, except in very limited circumstances.⁴

Wildfire Activities authorized under this RGP must comply with all permit requirements and conditions including but not limited to soil erosion and sediment controls, suitable materials, inspection authorizations, removal of temporary fills, mitigation, management of water flows and aquatic life movement, as well as the conditions included in this certification. In addition, a copy of the section 401 certification must be kept at the project site at all phases of construction.

EPA Conditions for Certification

For lands of exclusive federal jurisdiction and on behalf of the tribes without TAS for section 401 in the State of California (except for Federated Indians of Graton Rancheria), EPA has determined that any discharge from the proposed project will comply with water quality requirements, as defined at 40 C.F.R 121.1(n), subject to the following conditions pursuant to section 401(d):

Condition 1: Notification to EPA

At least five (5) days prior to commencing work in waters of the U.S., project proponents shall provide notice to EPA Region 9 at R9cwa401@epa.gov, so that EPA can inspect the site. Where the Corps requires a PCN for the applicable RGP, the project proponent shall provide a copy of the PCN to EPA Region 9.

Why the condition is necessary to assure that any discharge will comply with water quality requirements: This condition is necessary to provide EPA Region 9 with notice and information to allow for an efficient and effective inspection to determine if the certified discharge will violate the certification. If the project scope changes during the Corps review prior to initiation of the activity, it is also critical for EPA Region 9 to be provided any changes in the project design, scope, amount, and location of discharges to inform the pre-operation inspection opportunity.

Citation(s) that authorizes this condition: 33 U.S.C. 1341(a)(4); 40 C.F.R 121.11(a)

Condition 2: To prevent, limit and respond to unauthorized discharges, the project proponent shall:

- Not allow debris, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes to enter or be stored within 50 feet of where it may enter waters of the U.S.
- Maintain documentation onsite that all equipment was cleaned of dirt, mud and other materials prior to arriving on the project site. All equipment shall be inspected daily and prior to entering any waters of the U.S., for oil, gas, diesel, antifreeze, hydraulic fluid, and other petroleum leaks. All equipment detected with leaks shall be immediately removed from waters of the U.S.; and within 24 hours of detection of a leak, any equipment shall be repaired in a staging area or moved offsite.

⁴ Please contact USACE Sacramento District for more information about the limited circumstances described here.

- Clean all contaminated areas within 12 hours of spill detection and remove contaminated soil from the site or contain it in enclosed containers. Containers shall not be located closer than 50 feet to a water of the U.S.
- Have containment booms and/or absorbent material available onsite prior to the commencement of work onsite. In the case of spills, containment booms and/or absorbent materials shall be employed immediately to prevent discharges from reaching waters of the U.S.

If spills or unauthorized discharges occur during the project, the project proponent shall notify EPA Region 9 within 6 hours from discovery. As part of the notice, the project proponent shall provide plans for remedying the spill or unauthorized discharge. For non-emergencies during normal business hours, call 415-947-8713. For emergencies or after hours, call (800) 424-9300. The project proponent shall submit photo-documentation and include a description of any spills and remediation efforts in the post-construction report provided to EPA Region 9 (see Condition 6).

Why the condition is necessary to assure that any discharge will comply with water quality requirements: Protection of water quality includes implementation of suitable measures to control site runoff, spillage, waste disposal, and drainage from construction activities and raw material storage as such sources may contribute significant amounts of pollutants into waters of the United States. The use of measures as required under this condition will ensure that the authorized activity does not result in more than minimal degradation to water quality. The condition is necessary to prevent the unauthorized release of pollutants into waters of the United States. 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. The condition minimizes equipment contact with water (and potential for oil, gas, invasive species, etc. contamination) and allows for clean-up of potential spills before entering waters. This condition also helps protect the water quality and native biology of the impacted waters by preventing the spread of invasive or nuisance species.

Citation: 40 C.F.R 230.10(d); 40 C.F.R 230.74(a); 40 C.F.R 230.74(b)

Condition 3: The project proponent shall request a project-specific CWA section 401 certification from EPA Region 9 for any activities resulting in a point source discharge in the following types of jurisdictional aquatic resources of special concern⁵: bogs, fens, and other peatlands; natural springs; vernal pools; alkali wetlands; riffle-pool complexes of streams; marine or estuarine mudflats; salt marshes; and wet meadows. This certification does not cover activities that may result in a point source discharge into jurisdictional aquatic resources of special concern.

Why the condition is necessary to assure that any discharge will comply with water quality requirements: 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 necessary to ensure a case-by-case review of any actions or activities proposed in these specific aquatic resource site types which are inherently

⁵ These resources may be identified using [USGS topographic maps](#), the [U.S. Fish and Wildlife Service National Wetland Inventory](#), or other [aquatic resource identification documentation](#) including wetland delineations.

difficult to replace, have high ecological functions and values, and for which potential degradation cannot be determined to meet water quality requirements on a general permit basis.

Citation: 40 C.F.R 230.1(d); 40 C.F.R 230.10(a)(3); 40 C.F.R 230.10(d); 40 C.F.R 230.75(c)

Condition 4: The project proponent shall execute a Soil Erosion and Sediment Control Plan during the life of the permit authorization. The Plan shall, at a minimum, include:

- Photo-documentation of the site characteristics prior to any work onsite, as noted in the post-construction report requirements. See also Condition 6.
 - In the photographs, the project proponent shall indicate the ordinary high water mark in relation to the current water level, and identify/demarcate the planned work area in relation to both vegetation removal and vegetation protection areas.
- Narrative description of the pre-construction water quality-related site characteristics, including measurements for turbidity, water level, streamflow, pre-construction erosion rate and vegetation percent cover as well as pre-construction site contours surveys.
- Narrative description of work timelines, including efforts to ensure that work is completed in the dry, such as timing work at low water so as to effectively work in the dry.
- Photo-documentation and narrative descriptions (types and locations) of all temporary soil erosion and sediment control measures to be used during construction (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw bales, etc.). The project proponent shall not remove temporary sediment and erosion controls until 1) in-water construction has been completed for in water measures, 2) site contours are returned to their pre-construction or permanent configuration, and 3) disturbed areas reach 70% of pre-construction perennial vegetative cover.
- Inspection/monitoring and maintenance schedules for each temporary soil erosion and sediment control measure.
 - Precipitation forecasts shall be used when scheduling work activities within ephemeral waters. The project proponent shall monitor the 72-hour forecast from the National Weather Service at <http://www.nws.noaa.gov>. Unless there is an emergency need, if there is a forecast of more than 80% chance of rain, or at the onset of unanticipated precipitation that could result in high channel flows, the project proponent shall:
 - Cease all project activities within the waters of the U.S.
 - Remove all equipment from waters of the U.S.
 - At a minimum, the project proponent shall assess the effectiveness of the soil erosion and sediment control measures within 24 hours of precipitation events; if any of the measures are not effectively preventing sediment migration into the water of the United States, the project proponent shall conduct maintenance or implement adaptive management (e.g., changes in location or installation of additional measures) to prevent future discharges.
 - Reporting: if sediment migration occurs, in the post-construction report (see Condition 6), the project proponent shall document the incident and include a description and photos of the maintenance measures and the adaptive management response taken for remediation and prevention of future sediment migration.
- Identification of onsite storage and equipment staging locations. At a minimum:
 - The project proponent shall not place or store spoil piles within delineated wetlands; spoil piles shall be at least 50 feet away from a waterbody or wetland. The project proponent shall place spoil piles on landscaping fabric or some other material to separate the spoil material and prevent spoil material from migrating into waters of the U.S. Wetland topsoil and vegetation shall be stored separate from other spoils and reused in restoration efforts.

- The project proponent shall not allow debris, silt, sand, cement, concrete, oil or petroleum, organic material, or other construction-related materials or wastes to enter into or be stored within 50 feet of where it may enter into waters of the U.S. The project proponent shall plan for storage and disposal of all trash and construction debris found onsite during active construction and ensure that no trash or construction debris enter into any waterbodies.
- Narrative description of site contour restoration and revegetation efforts to be completed once construction is complete, including the reuse of wetland topsoil and vegetation from disturbed areas, provided it is free from contaminants and non-native species.
 - For projects in riparian areas that include temporary access, bank stabilization with temporary tree removal, or temporary fuel or fire breaks, the project proponent shall include riparian tree revegetation measures based on pre-disturbance conditions.
 - The project proponent shall maintain a 100-foot buffer from the centerline of the stream channel. The project proponent shall replant saplings in place of any trees removed from the 100-ft buffer area.
 - The project proponent shall replant native species saplings immediately after construction.
 - The project proponent shall replace native vegetation in all disturbed areas immediately after construction.
 - As noted above, in the photographs included in the plan, the project proponent shall identify all disturbed areas to be replanted after construction, as well as the areas demarcated for non-disturbance/vegetation protection.
 - The project proponent shall conduct monitoring and adapt site restoration efforts to ensure that the site contours are stabilized, and vegetation percent cover in the disturbed areas meets or exceeds the pre-construction site characteristics.
 - Reporting: in the post-construction operations report (see Condition 6), the project proponent shall include discussion and photo-documentation of the effectiveness of all site restoration measures employed.

Why the condition is necessary to assure that any discharge will comply with water quality requirements: This measure is included to ensure that work activities minimize potential adverse impacts of the discharge on water quality and the aquatic ecosystem. Heavy equipment working in wet soils and soil disturbance when water is present significantly increases turbidity and sediment transport and the potential for more severe erosion. Recontouring and the use of appropriate native vegetation is necessary to ensure the activity incorporates appropriate measures to that will minimize potential adverse impacts of the discharge on water quality and the aquatic ecosystem and maintain flows and connectivity of the aquatic system. Native vegetation can be effective erosion control measures are when installed properly under the right conditions. Excessive removals of vegetation can also leave banks more susceptible to erosion and ultimately lead to increased sediment delivery to waters of the U.S. These activities can impact riparian habitats by 1) silting over fish spawning habitats; 2) filling in pools creating shallower, wider, and warmer streams, and increasing downstream flooding; 4) creating unstable stream channels; 5) losing riparian habitat and function; and 6) increasing stream temperatures.

Maintaining a 100-foot riparian buffer zone is an established riparian management recommendation to protect water quality in streams and limit the impacts described above.^{6,7}

Citation: 40 C.F.R 230.10(d); 40 C.F.R 230.73; 40 C.F.R 230.74; 40 C.F.R 230.75

Condition 5: If a proposed structure or fill in waters of the United States requires dewatering activities, prior to performing any in-water activities, a project proponent seeking authorization under this RGP shall submit a dewatering plan to EPA Region 9 for concurrence. If a project proponent does not receive a response from EPA Region 9 within 3 business days of submission of the plan, the project proponent may proceed with dewatering activities per the dewatering plan. If EPA identifies a missing component(s) of the dewatering plan within 3 business days of submission, the project proponent may not proceed until all components outlined below have been provided to EPA Region 9. Unless the activity has an approved dewatering plan, the project proponent shall conduct work when there is no water present in the stream channel.

The Dewatering Plan shall include descriptions of the following:

- Method for pre-disturbance assessment/measurement (including photo-documentation) and post-construction restoration of the pre-construction contours and site conditions of the waters of the U.S. affected by the structure or fill.
- In the dewatering plan, the project proponent shall describe the restoration success criteria based on the pre-construction assessment and anticipated timeline for achieving the site restoration.
- Reporting to EPA (including photo-documentation) and adaptive management processes if any of the dewatering methods cause erosion or if unauthorized discharges occur before the site restoration activity has met the restoration success criteria identified in the plan.
 - EPA Region 9 requires reporting of unauthorized discharges or water quality violations within 24 hours
- Methods for dewatering.
- Equipment that would be used to conduct the dewatering.
- Timing, including length of time the area is to be dewatered.
- Area (acres) and length (linear feet) in waters of the U.S. of the structure and/or fill used for the dewatering.
- Method for removal of the temporary structures and/or fill.
- Frequency and methods for monitoring and maintenance of dewatering measures to ensure unauthorized discharges do not occur before the site restoration is complete.
- At a minimum, all dewatering measures should be assessed within 24 hours after a rain event and any ineffective measures shall be repaired or modified as required to protect water quality.

⁶ Broadmeadow, S. and Nisbet, T.R. 2004. The effects of riparian forest management on the freshwater environment: a literature review of best management practice. *Hydrology and Earth System Sciences*, 8(3), 286-305.

⁷ Wenger, S. 1999. A review of the scientific literature of riparian buffer width, extent and vegetation. Institute of Ecology, University of Georgia. Athens, GA

- Reporting and adaptive management processes if any of the dewatering methods cause erosion or if unauthorized discharges occur before the site restoration is complete.
 - EPA Region 9 requires reporting of unauthorized discharges or water quality violations within 24 hours

Why the condition is necessary to assure that any discharge will comply with water quality requirements: General conditions included in the RGP do not address dewatering activities.

Dewatering activities can often be a point source for pollutants entering waters of the United States. This condition is necessary to ensure that the authorized activity does not result in more than minimal degradation to water quality and the aquatic environment because the project proponent will complete pre-planning, monitoring, maintenance, reporting and adaptive management to achieve site restoration.

Citation: 40 C.F.R 230.10(d); 40 C.F.R 230.70; 40 C.F.R 230.71; 40 C.F.R 230.74

Condition 6: Post-Construction Report. The project proponent shall provide a copy of a post-construction report to EPA Region 9 at R9cwa401@epa.gov, for activities that require PCN, documenting all completed activities authorized by this RGP, within 45-days of completing work and/or the discharge of dredged material. In line with the details identified in the RGP condition, the project proponent shall also submit the following details in the post-construction report:

- Color photographs (including map of photo points) taken at the project site before and after construction for those aspects directly associated with permanent impacts to waters of the U.S. such that the extent of authorized fills can be verified (e.g., before and after photographs should have the same field of view and include the date the picture was taken).
 - The project proponent shall also provide photographs of any spills and remediation efforts (see condition 2), and unauthorized discharges and remediation efforts (see conditions 4 and 5).
- A description and list of all minor deviations between the work as authorized by this RGP and the work as constructed. Clearly indicate on an as built, or similar plan view drawing, the location of any deviations that occurred. One copy of "as built" drawings of the completed work in waters of the U.S.
 - The project proponent shall also provide descriptions of all adaptive management efforts to ensure the ongoing success of sediment and erosion control measures, spill prevention and remediation efforts, and revegetation and recontouring measures throughout the life of the permit authorization.
 - The project proponent shall provide feedback regarding ineffective measures to demonstrate a better understanding of water quality requirements.

Why the condition is necessary to assure that any discharge will comply with water quality requirements:

Post-construction reporting ensures that all works of the project are in compliance and have been completed with practices to establish erosion and sediment control, restoration, and spill prevention and remediation. Reporting submissions can also identify any deficiencies or changes during the monitoring period that are necessary to comply with water quality requirements.

Citation: 40 C.F.R 230.10(b)-(d); 40 C.F.R 230.70; 40 C.F.R 230.72; 40 C.F.R 230.74