



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

NOV 25 2014

Colonel John Morrow  
District Engineer, San Francisco District  
U.S. Army Corps of Engineers  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, California 94103

Subject: Clean Water Act (CWA) Section 401 Conditional Water Quality Certification for Regional General Permit (RGP) 5 for Emergency Actions

Dear Colonel Morrow:

Thank you for the opportunity to review Public Notice 28218S regarding the subject RGP for Emergency Actions. The U.S. Environmental Protection Agency, Region 9 (EPA) has responsibility under CWA Section 401 to evaluate and certify water quality protections for federal permits or licenses issued for work on most tribal lands in the San Francisco District.<sup>1</sup> Consistent with the EPA *Policy on Consultation and Coordination with Indian Tribes*,<sup>2</sup> we contacted affected tribes on September 18, 2014, and have not received any requests for consultation. This letter provides our certification of the Emergency Action RGP, subject to the attached conditions, for the duration of the RGPs' approval period.

We support the use of RGP 5 for Emergency Actions for actions that meet the strict definition of an emergency as set forth in the permit, and EPA has worked with the Corps to strengthen the conditions and requirements to prevent its use in non-emergencies. This RGP may not be used for deferred maintenance activities or for improving structures with a low probability of failure, and we recommend continued scrutiny of each proposal to ensure it qualifies for expedited permitting.

With the attached general conditions, EPA hereby certifies that the use of this RGP will not degrade water quality and will help ensure no more than minimal adverse impacts on the aquatic environment on tribal lands, both individually and cumulatively. Please ensure your staff continue to provide timely notification to EPA so we are able to comment on proposed activities if necessary. Generally, no further formal approval or response from EPA will be necessary to proceed if the notification demonstrates consistency with the conditions of the RGP and the applicable water quality certification. Projects qualifying for use of this RGP unable to meet the enclosed conditions, are not eligible for coverage under this programmatic certification and applicants must contact EPA to apply for individual 401 certification.

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<sup>1</sup> This certification does not apply in the territories of the ten tribes in Region 9 that have been approved as Section 401 certifying authorities with "treatment as state": Navajo Nation, Hualapai Tribe, Paiute-Shoshone of the Bishop Community, Big Pine Paiute-Shoshone Tribe, Twenty-Nine Palms Band of Mission Indians, Hoopa Valley Tribe, Hopi Tribe, Pyramid Lake Paiute Tribe, Dry Creek Rancheria of Pomo Indians, and White Mountain Apache Tribe. In limited circumstances, some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification.

<sup>2</sup> <http://www.epa.gov/tribal/consultation/consult-policy.htm>

Thank you for your ongoing partnership in implementing the regulatory programs of the CWA. Please contact me at (415) 972-3483 with any questions, or have your staff contact Melissa Scianni at (415) 972-3821 or [scianni.melissa@epa.gov](mailto:scianni.melissa@epa.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Brush". The signature is fluid and cursive, with the first name "Jason" and last name "Brush" clearly distinguishable.

Jason Brush  
Supervisor  
Wetlands Office

Cc: Bill Orme, State Water Resources Control Board

**U.S. EPA's Water Quality Certification Conditions for use of Regional General Permit 5 on Tribal Lands within the San Francisco District of the U.S. Army Corps of Engineers**

- a. At all times, appropriate types and sufficient quantities of materials shall be maintained on site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States.
- b. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment must not result in a discharge to any waters of the U.S., and shall be located outside of waters of the U.S. in areas where accidental spills are not likely to enter or affect such waters.
- c. If construction related materials reach surface waters, appropriate spill response procedures must be initiated as soon as the incident is discovered. U.S. EPA shall be notified promptly after the occurrence.
- d. Construction materials and debris from all construction work areas shall be removed following completion of construction.
- e. Water diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel, which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.
- f. All necessary BMPs to control erosion and runoff from areas associated with the authorized activities shall be implemented. All areas of temporary impacts and all other areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the U.S. shall be restored to pre-disturbance conditions. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.
- g. The revegetation palette for project sites must include appropriate native species only. California project sites must not include any plants listed on the California Invasive Plant Council Invasive Plan Inventory, which can be found online at <http://www.cal-ipc.org/paf/>
- h. A copy of this certification shall be provided to all contractors and subcontractors.

