



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
450 Golden Gate Ave., 4th Floor
San Francisco, CA 94102-3406

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

NATIONWIDE PERMITS REISSUANCE AND FINAL REGIONAL CONDITIONS FOR THE STATE OF CALIFORNIA

PUBLIC NOTICE DATE: February 18, 2022

POINT OF CONTACT: Jayme Ohlhaber

TELEPHONE: (415) 503-6834

E-MAIL: Jayme.a.ohlhaber@usace.army.mil

On January 13, 2021, the U.S. Army Corps of Engineers (Corps) published a notice in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWP) and issuance of 4 new NWP. In that final rule, the Corps also reissued the NWP general conditions and definitions. Those 16 NWP and the NWP general conditions and definitions went into effect on March 15, 2021 and will expire on March 14, 2026.

The January 13, 2021, Federal Register notice for these 16 NWP is available for viewing at:
<https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits>

On December 27, 2021, the Corps published a notice in the *Federal Register* (86 FR 73522) announcing the reissuance of the remaining 40 existing NWP and issuance of 1 new NWP. Those 41 NWP will go into effect on **February 25, 2022** and will expire on March 14, 2026.

The December 27, 2021, Federal Register notice for these remaining 41 NWP is available for viewing at:
<https://www.federalregister.gov/documents/2021/12/27/2021-27441/reissuance-and-modification-of-nationwide-permits>

The NWP general conditions and definitions in the January 13, 2021, final rule apply to all 57 NWP. All 57 NWP will expire on March 14, 2026.

The South Pacific Division has approved the 2021 NWP regional conditions for the State of California (enclosure 1). These regional conditions are identical to the regional conditions for the 16 NWP that went into effect on March 15, 2021, except for additional 401 water quality certification conditions applicable to the remaining 41 NWP. The following final 2021 NWP regional conditions for all 57 NWP in the State of California apply to the San Francisco District:

A. Regional Conditions for the State of California:

1. The permittee shall submit a pre-construction notification (PCN), in accordance with General Condition 32, in the following circumstances:

- a. Activities involving new bank stabilization that do not incorporate bioengineering techniques. Bioengineering techniques include using live plants alone or in combination with dead or inorganic materials, including rock, sand, or gravel;
- b. Activities resulting in a discharge of dredged or fill material in waters of the U.S. on Tribal Lands;
- c. Activities involving the permanent channelization, realignment, or relocation of streams; and,
- d. Activities that have the potential to adversely affect Essential Fish Habitat (EFH), as designated by the Pacific Fishery Management Council. The PCN shall include an EFH assessment and analysis of effects of the action on EFH, in accordance with 50 C.F.R. §600.920 (e). For Federal permittees, if a PCN is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with the Magnuson-Stevens Fishery Conservation and Management Act.

6. In the San Francisco District, the use of NWP 29 and 39 is prohibited within the San Francisco Bay diked baylands (see figure 1).

7. In the San Francisco District, the permittee shall submit a pre-construction notification (PCN), in accordance with General Condition 32, for all NWP activities that will take place in waters or wetlands of the U.S. that are within the San Francisco Bay diked baylands (see figure 1).

B. 401 Water Quality Certification (401 WQC) Regional Conditions for California:

1. For NWPs 1, 3(a), 4, 5, 6, 9, 10, 11, 14, 20, 22, 28, 32, 36, and 54, on **non-tribal lands within the State of California**, the permittee shall comply with all terms and conditions of the attached October 12, 2021, 401 WQC granted by the State of California, State Water Resources Control Board.
2. For NWPs 3, 5 – 7, 13, 14, 18 – 20, 23, 25, 27, 31 – 33, 36 – 38, 41, 45, 46 and 59, on **tribal lands within U.S. Environmental Protection Agency (EPA) Region 9¹ boundaries in the State of California**, the permittee shall comply with all terms and conditions of the attached October 12, 2021, 401 WQC granted by the U.S. EPA.

¹ The EPA 401 WQC does not apply to activities proceeding in the territories of the 25 tribes in Region 9 that have been approved as Section 401 certifying authorities – the Navajo Nation, 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, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk, White Mountain Apache Tribe, Table Mountain Rancheria, Resighini Rancheria, La Posta Band of Diegueno Mission Indians. In limited circumstances some lands within tribal boundaries fall outside a tribe's Section 401 certifying authority and are subject to this certification

3. For NWP 43, **on tribal lands within U.S. Environmental Protection Agency (EPA) Region 9² boundaries in the State of California**, the permittee shall comply with all terms and conditions of the attached December 11, 2020, 401 WQC granted by the U.S. EPA.

7. For NWPs 3, 4, 7, 14, 16, 18, 19, 23, 25, 31, 33, 34, 41, 45, 46, and 49, on the **Dry Creek Rancheria Band of Pomo Indians within the San Francisco District boundaries in the State of California**, the permittee shall comply with all terms and conditions of the attached December 15, 2020, 401 WQC granted by the Dry Creek Rancheria Band of Pomo Indians.

Section 401 Water Quality Certifications

The following responses were received from the certifying authorities in the San Francisco District:

- U.S. Environmental Protection Agency (USEPA), Region 9: On December 11, 2020, the USEPA, Region 9 conditionally granted certification for NWP 43, and denied certification for NWPs 12, 29, 39, 40, 42, 44, 51, 57, and 58, and expressly waived certification for NWPs 4, 15, 16, 17, 21, 22, 30, 34, 48, 49, 50, 52, 53, and 54 for activities on applicable tribal lands within USEPA's Region 9 boundaries in the State of California.
- U.S. Environmental Protection Agency (USEPA), Region 9: October 12, 2021, the USEPA, Region 9 conditionally granted certification for NWPs 3, 5, 6, 7, 13, 14, 18, 19, 20, 23, 25, 27, 31, 32, 33, 36, 37, 38, 41, 45, 46, and 59 for activities on applicable tribal lands within USEPA's Region 9 boundaries in the State of California.
- California State Water Resources Control Board (SWRQB): On October 12, 2021, the SWRCB conditionally granted certification for NWPs 1, 3a, 4, 5, 6, 9, 10, 11, 14, 20, 22, 28, 32, 36, and 54, and denied certification for NWPs 2, 3b, 3c, 7, 8, 13, 15, 16, 17, 18, 19, 23, 24, 25, 27, 30, 31, 33, 34, 35, 37, 38, 41, 45, 46, 49, 53, and 59 for activities on non-tribal lands in the State of California.
- The Dry Creek Rancheria Band of Pomo Indians: On December 15, 2020, the Dry Creek Rancheria Band of Pomo Indians conditionally granted certification for NWPs 3, 4, 7, 14, 16, 18, 19, 23, 25, 31, 33, 34, 41, 45, 46, and 49 and denied certification for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 57, and 58 on Dry Creek Rancheria Band of Pomo Indians' area of responsibility within the State of California. Dry Creek Rancheria Band of Pomo Indians did not respond to the certification request for NWPs 48 and 52 within the reasonable period of time. Therefore, individual 401 certification is waived for NWPs 48 and 52 on Dry Creek Rancheria Band of Pomo Indians' area of responsibility within the State of California.

² The EPA 401 WQC does not apply to activities proceeding in the territories of the 23 tribes in Region 9 that have been approved as Section 401 certifying authorities—the 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, Pala Band of Mission Indians, Cortina Band of Wintun Indians, Walker River Paiute Tribe, Yerington Paiute, Duck Valley, Confederated Tribes of the Goshute Reservation, Gila River Indian Community, San Carlos Apache, Morongo Band of Mission Indians, Big Pine Paiute Tribe of the Owen Valley, Rincon Band of Luiseno Indians, Cabazon, Quartz Valley, Karuk 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.

- Hoopa Valley Indian Reservation: On December 14, 2020, the Hoopa Valley Indian Reservation denied certification for all NWPs.
- The Quartz Valley Indian Community: On October 5, 2021, the Quartz Valley Indian Community denied certification for all NWPs.

No responses were received from the Karuk Tribe within the reasonable period of time. Therefore, 401 certification is waived. There is no requirement to obtain individual 401 certification within this certifying authorities' area of responsibility.

Coastal Zone Management Act Consistency Determination

Following publication of the September 15, 2020, proposed rule, the Districts requested that the California Coastal Commission (CCC) and the San Francisco Bay Conservation and Development Commission (BCDC) concur with our consistency determinations pursuant to Section 307(c)(1) of the Coastal Zone Management Act (CZMA). The following responses were received from the CCC and BCDC:

- The CCC responded by letter of November 12, 2020, stating their objection to the Corps' consistency determination and finding that the proposed reissuance of the NWPs is not consistent with Section 30233 of the California Coastal Act (Cal. Pub. Res. Code 30233).
- The BCDC responded by letter of December 18, 2020, providing consistency concurrence subject to the condition that the Corps adopt a regional condition stating that the NWPs will not become effective until BCDC, or a local governmental entity administering a BCDC-approved local protection plan in the Suisun Marsh, has issued a permit authorizing the activity. The Corps declined to accept BCDC's consistency concurrence since it does not advance the goal of the NWP program to streamline the permit process for proposals that have no more than minimal impacts to the environment, 33 U.S.C. 1344(e).

Therefore, applicants will be required to seek individual consistency concurrence from the CCC or BCDC for NWPs that authorize activities within or affecting the coastal zone.

Pre-Construction Notification

In accordance with NWP General Condition 32, the NWP Pre-Construction Notification (PCN) form (ENG Form 6082) should be used for NWP PCNs (enclosure 2). A letter containing the required information may also be used.