



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 5 for Repairs and Protection Activities in Emergency Situations (RGP 5) in the San Francisco District of the Army Corps of Engineers (SPN), U.S. EPA File No. 2024-513

Dear Frances Malamud-Roam,

I am pleased to provide two water quality certification decisions consistent with Section 401 of the Clean Water Act (CWA) for Regional General Permit 5. On September 26, 2024, the U.S. Environmental Protection Agency (EPA) Region 9 received a request for certification from the San Francisco District of the Army Corps of Engineers, for discharges into waters of the United States associated with RGP 5 which provides an expedited permit process for discharges of dredged or fill material for specified emergency repairs.

Section 401 of the Clean Water Act requires applicants for Federal licenses or permits that conduct any activity which may result in any discharge into waters of the United States to obtain a certification or waiver from the certifying authority where the discharge originates or will originate. Where no state or Tribe has authority to give such certification, the U.S. Environmental Protection Agency is the certifying authority. 33 U.S.C. 1341(a)(1). For federally recognized Tribes that do not have authority to provide CWA Section 401 certifications for projects within their federally recognized Tribal lands, the EPA is the certifying authority for RGP 5. Additionally, the EPA is making the certification decision for RGP 5 for lands of exclusive federal jurisdiction in relevant respects.

Enclosed is a CWA section 401 water quality certification with conditions that applies to certain Tribal Lands¹ and lands of exclusive federal jurisdiction² where the EPA is the Certifying Authority. I am also

¹ Please refer to Appendix 1 for the list of Tribes where this certification applies.

² 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

enclosing a denial of CWA section 401 water quality certification that applies to projects where the discharge would originate on the Federated Indians of Graton Rancheria Tribal Lands. Project proponents seeking certification for authorization under this RGP for activities on Federated Indians of Graton Rancheria's lands must request a project-specific certification from EPA Region 9 by emailing R9cwa401@epa.gov.

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 the Wetlands Section Manager, Sahrye Cohen at (415) 972-3523 or cohen.sahrye@epa.gov.

Sincerely,

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 5 For Emergency Repairs (RGP 5) in the San Francisco District of the Army Corps of Engineers (SPN), U.S. EPA File No. 2024-513

cc:

Kendra Spicher, Army Corps of Engineers – San Francisco District

ENCLOSURE: The U.S. Environmental Protection Agency Region 9's Clean Water Act Section 401 Certification Decisions for Regional General Permit 5 Repairs and Protection Activities in Emergency Situations (RGP 5) in the San Francisco District of the Army Corps of Engineers (SPN), U.S. EPA File No. 2024-513

Grant of Certification with Conditions for Tribal Lands and Lands of Exclusive Federal Jurisdiction where EPA is the Certifying Authority in the San Francisco 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 5 referenced above, including the activities' construction and operation, in Tribal Lands³ and lands of exclusive federal jurisdiction where the EPA is the Certifying Authority in the San Francisco of the Army Corps of Engineers. RGP 5 is applicable for discharges into waters of the United States within the San Francisco District of the Army Corps of Engineers. Authorization for projects under RGP 5 will be reviewed and confirmed by the San Francisco District of the Army Corps of Engineers.

Project Description

This general permit authorizes discharges of dredged or fill material into waters of the United States (U.S.), for necessary repair and protection measures associated with an emergency situation. An "emergency situation" is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Projects permitted under RGP 5 must avoid and minimize discharges into waters of the U.S. to the maximum extent practicable. Prior to completing work under RGP 5, applicants shall notify SPN and receive confirmation that the activity can proceed under RGP 5. SPN may not view an action as an emergency if the applicant has known of the deficient condition of the failing structure and has not made reasonable attempts to secure appropriate permits and conduct timely repairs.

The EPA's Public Notice and Tribal Consultation Process

On October 11, 2024, the EPA issued a public notice on the EPA Region 9 website regarding the reissuance of RGP 5 and provided the opportunity for the public to submit comments until November 11, 2024. The EPA did not receive any public comments. EPA Region 9 offered tribal consultation and received one request for consultation.

General Information

The general information provided in this section does not constitute a certification condition(s).

- Project applicants are responsible for obtaining and complying with all other permits, licenses, and certifications that may be required by federal, state, or tribal authorities.
- The San Francisco District of the Army Corps of Engineers project manager and project proponent should provide a copy of the U.S. EPA's water quality certification to all contractors

³ This water quality certification does not apply to activities in the territories of the Tribes that have been approved as Section 401 certifying authorities. Please refer to Appendix 1 for the list of Tribes where this certification applies.

and subcontractors. Copies of this certification should be kept on the job site and readily available for reference.

- This certification is specifically associated with the issuance of RGP 5 and expires when RGP 5 expires. When RGP 5 expires and is reissued by the San Francisco District of the Army Corps of Engineers, the EPA will issue a new certification decision consistent with 33 U.S.C. 1341 and 40 CFR 121.
- Project applicants that cannot meet the conditions of this water quality certification must seek an individual 401 water quality certification from the EPA. Please contact r9cwa401@epa.gov to request a pre-filling meeting pursuant to 40 CFR 121.4.

Conditions

The EPA has determined that the activity will comply with the applicable water quality requirements, including 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

Prior to commencing work in waters of the U.S., project proponents shall provide notice to EPA Region 9 at R9cwa401@epa.gov. The notification shall include a copy of the notification sent to the San Francisco District of the Army Corps of Engineers, and if applicable, the dewatering plan. If a project proponent does not receive a response from EPA Region 9 within 3 business days of sending its notification, the project proponent may proceed with activities consistent with this certification. If the EPA identifies a missing component(s) of the notification within 3 business days of submission, the project proponent may not proceed until all components outlined below have been provided to EPA Region 9. In the event that the District Engineer determines that the agency coordination period is less than 3 business days in accordance with general condition 2(d) of RGP 5, the project proponent may proceed with activities consistent with this certification.

Why the condition is necessary to assure that the activity 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 opportunity to review the project location and confirm the EPA's 401 certification is applicable. Projects that mistakenly utilize the EPA's 401 certification would result in projects lacking the correct 401 certification and could lead to activities that violate the appropriate certifying authority's water quality requirements.

Citation(s) that authorizes this condition: 40 CFR 230.10(b)(1)

Condition 2 – Unauthorized Discharges and Spills: The project proponent shall:

- Not allow debris, trash, silt, sand, cement, concrete, oil or petroleum, organic materials, or other construction debris or wastes to enter into waters of the U.S. and shall not store these materials within 50 feet of where it may enter into 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.; within 24 hours of detection of a leak, any equipment shall be repaired in a staging area or moved offsite.

- Place and secure containment booms and/or absorbent material onsite prior to beginning work. In the case of spills, project proponent shall immediately employ containment booms and/or absorbent materials to prevent discharges from reaching waters of the U.S.
- If spills or unauthorized discharges occur during the project:
 - The project proponent shall report any unauthorized discharges or failures of dewatering equipment within 24 hours of occurrence to r9cwa401@epa.gov. The report shall include photos of the unauthorized discharges and a written description with photos of any adaptive management processes used to address unauthorized discharges. The report shall include photos of the unauthorized discharges and a written description with photos of any adaptive management processes used to address unauthorized discharges.
 - For emergencies or after hours, call the EPA emergency spill response at 1-800-424-8802.
 - The project proponent shall 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.

Why the condition is necessary to assure that the activity will comply with water quality

requirements: The condition is necessary to prevent the unauthorized release of pollutants into waters of the U.S. and 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 also helps protect the water quality and native biology of the impacted waters of the U.S. by preventing the spread of invasive or nuisance species.

Citation: 40 CFR 230.10(d); 40 CFR 230.74(a); 40 CFR 230.74(b)

Condition 3 – Dewatering Plan:

If a proposed structure or fill in waters of the U.S. 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 at r9cwa401@epa.gov. 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 the 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. In the event that the District Engineer determines that the agency coordination period is less than 3 business days in accordance with general condition 2(d) of RGP 5, the project proponent may proceed with activities consistent with this certification.

The Dewatering Plan shall include descriptions of the following:

- To extent practicable, plans for placing and securing containment booms and/or absorbent material onsite prior to beginning work.
- Process for employing containment booms and/or absorbent material in the event of a spill. In the case of spills, the project proponent shall immediately employ containment booms and/or

absorbent materials to prevent discharges from reaching waters of the U.S.

- Method for pre-disturbance assessment/measurement and post-construction restoration of the pre-disturbance construction contours and site conditions of the waters of the U.S. affected by the structure or fill. Assessment methods shall include time stamped photo-documentation of the site pre-disturbance and post-construction restoration.
- The restoration success criteria based on the pre-disturbance assessment and anticipated timeline for achieving the site restoration. Examples of restoration success criteria could include continued existence of pre-disturbance of construction contours and survival of riparian plantings post-construction.
- Methods for dewatering, including but not limited to the 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. Monitoring methods shall include photographs.
 - 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.

Why the condition is necessary to assure that the activity 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 U.S. 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 CFR 230.10(d); 40 CFR 230.70; 40 CFR 230.71; 40 CFR 230.74

Condition 4 - Soil Erosion and Sediment Control Plan:

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

- Time stamped photo-documentation of the site characteristics prior to any work onsite.
 - 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-disturbance water quality-related site characteristics, including measurements for turbidity, water level, streamflow, pre-construction erosion rate and vegetation percent cover as well as pre-disturbance site contours surveys.
- Narrative description of work timelines, including efforts to ensure that work is completed in the dry to the extent practicable, 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 in relatively permanent waters. The project proponent shall monitor the 72-hour forecast from the National Weather Service at <http://www.nws.noaa.gov>. To the extent practicable, 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 integrity 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 U.S., the project proponent shall conduct maintenance or implement adaptive management (e.g., changes in location or installation of additional measures) to prevent future discharges.
 - If sediment migration occurs:
 - The project proponent shall report any sediment migration within 24 hours of occurrence to r9cwa401@epa.gov. The report shall include photos of the sediment migration and erosion and a written description with photos of any adaptive management processes used to address erosion or unauthorized discharges.
- 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 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 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.
- Consistent with the requirements of Condition 5, 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 the activity 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.

Citation: 40 CFR 230.10(d); 40 CFR 230.73; 40 CFR 230.74; 40 CFR 230.75

Condition 5: Post-Activity Report. The project proponent shall provide a copy of the post-activity report required by general condition 26 of RGP 5 to EPA Region 9 at R9cwa401@epa.gov within 45-days of completing work and/or the discharge of dredged material. The project proponent shall also submit the following additional details in the post-construction report:

- A description and list of all minor deviations between the work as authorized by this RGP and the work as constructed. The project proponent shall clearly indicate on an as built, or similar plan view drawing, the location of any deviations that occurred. The project proponent shall include one copy of "as built" drawings of the completed work in waters of the U.S.
- The project proponent shall include discussion and photo-documentation of the effectiveness of all site restoration measures employed and any recontouring measures throughout the life of the permit authorization.

Why the condition is necessary to assure that the activity will comply with water quality requirements: Post-construction reporting ensures that the project is completed with practices to establish erosion and sediment control, restoration, and spill prevention and remediation that ensure compliance with applicable water quality requirements. Reporting submissions can also identify any deficiencies or changes during the monitoring period that are necessary to comply with water quality requirements.

Citation: 40 CFR 230.10(b)-(d); 40 CFR 230.70; 40 CFR 230.72; 40 CFR 230.74

Certification Denial for Federated Indians of Graton Rancheria Tribal Trust and Tribal Reservation Lands

This denial of certification applies to the water quality-related impacts from activities subject to the reissuance of RGP 5 referenced above, including the activities' construction and operation, on the Federated Indians of Graton Rancheria Tribal Trust and Tribal Reservation.

Project Description

This general permit authorizes discharges of dredged or fill material into waters of the United States (U.S.), for necessary repair and protection measures associated with an emergency situation. An "emergency situation" is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Projects permitted under RGP 5 must avoid and minimize discharges into waters of the U.S. to the maximum extent practicable. Prior to completing work under RGP 5, applicants shall notify the Corps and receive confirmation that the activity can proceed under RGP 5. The Corps may not view an action as an emergency if the applicant has known of the deficient condition of the failing structure and has not made reasonable attempts to secure appropriate permits and conduct timely repairs.

The EPA's Public Notice and Tribal Consultation Process

On October 11, 2024, the EPA issued a public notice on the EPA Region 9 website regarding the reissuance of RGP 5 and provided the opportunity for the public to submit comments until November 11, 2024. The EPA did not receive any public comments. EPA Region 9 offered tribal consultation and received one request for consultation.

Certification Denial

The EPA cannot certify that the activities subject to RGP 5 will comply with the applicable water quality requirements on the Federated Indians of Graton Rancheria Tribal Trust and Tribal Reservation, including 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.

In the case of Federated Indians of Graton Rancheria's lands, EPA Region 9 lacks sufficient information on the location of potential discharges and activities associated with RGP 5 to ensure activities will comply with applicable water quality requirements in waters on these tribal lands. Additional project specific information like the project location and permanent and temporary impacts the would be necessary for EPA Region 9 to identify specific water quality requirements and evaluate whether the range of discharges from potential projects will comply with such water quality requirements.

Project-specific information is needed to determine how authorized structures will be properly maintained as specified under general condition 24.⁴ The EPA needs additional information on planning

⁴ RGP 5 general condition 24 states "Any structure or fill authorized by this RGP shall be maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to

and construction practices and the use of corrective actions to ensure that structures or fill will be properly maintained to determine whether additional site-specific conditions are necessary to minimize adverse effects on aquatic ecosystem diversity, productivity, and stability and/or recreational and aesthetic values. 40 CFR 230.75(d), 40 CFR 230.74, and 40 CFR 230.10(c)(3) and (4), respectively.

Therefore, CWA Section 401 water quality certification is denied, and project proponents must request a pre-filling meeting and project-specific water quality certification, consistent with 40 CFR 121.4 and 40 CFR 121.5 to R9cwa401@epa.gov.

private or public property. In such situations corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective action, or appropriate mitigation as determined through coordination with the permittee and the appropriate Federal and State agencies. Temporary levees constructed to control flows shall not be maintained beyond the current storm season (i.e., maintenance of temporary levees is not authorized ENG FORM 1721, Nov 86 10 (33 CFR pt. 325 (Appendix A)) after the storm season in which the need arose)."

Appendix 1

The following tribes do not have treatment as a state (TAS) and are covered by the enclosed certification with conditions. Project proponents intending to use this certification should contact EPA Region 9 at R9cwa401@epa.gov to ensure the list of tribes with TAS has not changed since issuance of this certification.

- Bear River Band of the Rohnerville Rancheria
- Big Lagoon Rancheria
- Blue Lake Rancheria
- Cahto Tribe of the Laytonville Rancheria
- Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
- Cloverdale Rancheria Of Pomo Indians of California
- Coyote Valley Band of Pomo Indians of California
- Elk Valley Rancheria
- Guidiville Rancheria of California
- Hopland Band of Pomo Indians
- Kashia Band of Pomo Indians of the Stewarts Point Rancheria
- Koi Nation of Northern California
- Manchester Band of Pomo Indians of the Manchester Rancheria
- Pinoleville Pomo Nation
- Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California
- Round Valley Indian Tribes of The Round Valley Reservation
- Sherwood Valley Rancheria of Pomo Indians of California
- Tolowa Dee-ni' Nation
- Wiyot Tribe
- Yurok Tribe of the Yurok Reservation

The following tribes have treatment as a state (TAS) and are NOT covered by this certification. These tribes issue their own water quality certifications.

- Dry Creek Rancheria of the Pomo Indians
- Hoopa Valley Tribe
- Karuk Tribe
- Pulikla Tribe of the Yurok People
- Quartz Valley Indian Community