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DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1398

DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT NUMBER 5
FOR
REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS

SPONSOR AND ISSUING OFFICE: U.S. Army Corps of Engineers, San Francisco District

PERMIT NUMBER: Regional General Permit (RGP) No. 5 (Corps File No. 28218S)

PERMITTEES: Public agencies, businesses, and private parties (i.e., the public in general)

NOTE: The term "applicant" and its derivatives, as used in this permit, means any entity seeking authorization from the issuing office for emergency repair work. The term "permittee" refers to an applicant that has received authorization to proceed under this permit. The term "this office" refers to the San Francisco District of the Corps of Engineers, which has jurisdiction over the permitted activity, or the appropriate official of this office acting under the authority of the commanding officer (District Engineer).

After applicants receive written approval that their projects comply with the terms and conditions of RGP 5 from this office, they are authorized to perform work in accordance with the General Conditions and any project-specific conditions indicated below.

PROJECT DESCRIPTION: This permit authorizes discharges of dredged or fill material into Waters of the United States, including wetlands, and/or work or structures in Navigable Waters of the United States 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 (i.e., a situation that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately).

PROJECT LOCATION: Within those parts of the State of California subject to regulatory review by the San Francisco District office, including the following areas (see attached map):

- all of Siskiyou, Trinity, Del Norte, Humboldt, Mendocino, Sonoma, Marin, and Napa Counties,
- the western parts of Solano, Contra Costa, and Alameda Counties that include or drain to Suisun Bay west of Sherman Island (HUC 18050001), San Pablo Bay (HUC 18050002), or San Francisco Bay (HUC 18050004)
- all of San Francisco, San Mateo, Santa Clara, Santa Cruz, Monterey, and San Benito Counties.
- The inland portions of San Luis Obispo County northeast of the crests of the Santa Lucia Range, Garcia Mountain, and the La Panza and Caliente Ranges, including the Salinas River watershed (HUC 18060004 and 18060005) and the Carrizo Plain watershed (HUC 18060003).

GENERAL CONDITIONS OF THIS RGP:

1. Time Period Covered: The time limit for completing work authorized by this RGP ends on August 31, 2014. The RGP may be reauthorized at that time depending on the degree to which users of the RGP (permittees) comply with the RGP's terms and conditions, and in particular, its reporting requirements. Time extensions of this permit will be more favorably considered as compliance with the reporting requirements (See General Condition 26 below) on the part of the permittees increases. (i.e., in order for this RGP to be available in the future, permittees **MUST** provide the information requested regarding authorized projects in a timely manner.)

2. Notification/Communication:

a. Timing: An applicant must notify** the District Engineer (DE) as early as possible and shall not begin the activity until notified by the DE that the activity may proceed under this RGP with any project-specific special conditions imposed by the District or Division Engineer. This office recognizes there may be situations where imminent threats to life or property occur and an applicant has not received a notice to proceed from the DE. It is not the intention of this office to imply that applicants allow such threat to life or property to result in actual loss. If applicants proceed without such notice from the DE, they must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice, or other appropriate means.

- (1) For work in Siskiyou, Trinity, Del Norte, Humboldt, Mendocino, Sonoma, Marin, Napa, and Solano Counties, contact the North Branch Chief at 415-503-6774.
- (2) For work in San Francisco, San Mateo, Contra Costa, Alameda, Santa Clara, Santa Cruz, Monterey, San Benito, and San Luis Obispo Counties, contact the South Branch Chief at 415-503-6773.
- (3) Notification should be sent attn: North/South Branch Chief via fax 415-503-6990 or mail:

U.S. Army Corps of Engineers
San Francisco District
Regulatory Division, CESP-N-R
1455 Market Street
San Francisco, CA 94103-1398

b. Contents of Notification: The notification should be in writing and include the following information:

- (1) The name, address and telephone number of the applicant and any designated point of contact;
- (2) The location of the proposed project in detail, including the identification of any water body affected and its type (ocean, bay, estuary, lake, reservoir, pond, river, stream, riparian area, wetland). This should include a copy of a United States Geologic Survey (USGS) topographic map, Thomas Guide map, or hand-drawn location map with suitable landmarks. The map should have enough detail to clearly indicate the location and extent of the project, as well as detailed directions to the site;
- (3) A brief, but clear, description of the imminent threat to life or property and the proposed project's purpose and need;
- (4) A brief description of methods anticipated to be used to rectify the situation ("Field Engineering" is not an adequate description. It is presumed if one mobilizes material and a particular piece of equipment to a site, then one probably has a fairly well defined intention for that material and equipment. Plans, drawings or sketches showing the area to be impacted; cross sections showing details of construction; and a short narrative describing how the work is to be completed should be provided as a minimum.); and
- (5) A brief description of the existing conditions and anticipated impacts resulting from the proposed work (amount of dredged or fill material, removal of significant vegetation, loss of habitat, etc.).

c. Form of Notification: The standard Application for Department of the Army Permit (Form ENG 4345) available from the District's Website (www.spn.usace.army.mil/regulatory/) may be used as the notification and must include all the information required in General Condition 2.b. Items (1)-(5) above. A letter or fax may also be used. In certain situations where there is an imminent threat to life or property and the applicant is unable to make direct contact with this office, a message shall be left on voice mail or an e-mail message shall be sent. Again those messages should include the information identified in General Condition 2.b. Items (1)-(5) above. Formal written notification should be sent to this office as soon as practicable.

d. Agency Coordination: Upon receipt of a notification, the DE will immediately provide (i.e., by fax, overnight mail or other expeditious manner) a copy to the appropriate offices of the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the National Marine Sanctuaries, the California Department of Fish and Game (CDFG), the California State Water Resources Control Board (SWRCB)**, the Regional Water Quality Control Boards (RWQCB)**, the California Coastal Commission

****Note:** As one of the conditions of the Water Quality Certification for this RGP, the applicant must directly provide both the SWRCB and the appropriate RWQCB a copy of the notification, along with the appropriate processing fee (\$77 as of October 2008, subject to change) to the SWRCB.

(CCC) or the Bay Conservation and Development Commission (BCDC), and the State Historic Preservation Office (SHPO), as appropriate. These agencies will be requested to telephone or facsimile transmit to the DE (c/o the Regulatory Division Project Manager), as expeditiously as possible, a notice indicating whether or not they intend to provide substantive, site-specific comments regarding the proposed project. If notified that comments will be provided by an agency, the DE will allow them to provide their comments in a short timeframe determined by this office on a case-by-case basis to not likely result in loss of life or property before making a decision on the proposed project.

The DE will fully consider any comments from Federal or State agencies, received within the specified timeframe, concerning the proposed activity's compliance with the conditions of their authority and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The DE will indicate the results of that consideration in the administrative record associated with the notification, and will provide an informal response to the commenting agency by electronic mail, fax or other means, but will not provide a formal response to the agency comments.

e. Mitigation: Discharges of dredged or fill material into Waters of the United States must be avoided or minimized to the maximum extent practicable at the project site. Compensation for unavoidable discharge of fill materials may require appropriate mitigation measures. Factors that the DE will consider when determining the acceptability of appropriate and practicable mitigation will include, but are not limited to:

- (1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.;
- (2) The permanence of the project's impacts on the resource; and
- (3) The potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purpose. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, or enhancing similar functions and values; or using bioremediation techniques in conjunction with other methods to offset project impacts. To the extent appropriate, applicants can consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds, "in-lieu" fees to organizations such as The Nature Conservancy, or State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

f. District Engineer's Decision: In reviewing the notification for the proposed activity, the DE will determine whether the activity authorized by this RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.e. above.) the applicant has included in the proposal in determining whether the net adverse environmental effects for the proposed work are minimal. If the DE determines the activity complies with the terms and conditions of this RGP and the adverse effects are minimal, this office will notify the applicant that his project has been authorized including any project-specific conditions deemed necessary.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan also. However, the DE may approve or reject the mitigation proposal after the proposal for the work is approved and project work has commenced.

If the DE determines the adverse effects of the proposed work are more than minimal, the DE will notify the applicant either:

- (1) That the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit or
- (2) That the project is authorized under this RGP subject to the applicant submitting a mitigation proposal that would reduce the adverse effects to the minimal level.

3. Authorized Work: Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction does not result in significantly increased impacts to aquatic resources and

logistical concerns indicate such reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment. Moderate upgrading would be considered if the applicant wishes to use bioremediation or other environmentally sensitive solutions. For example, it may be determined that reconstruction of a bridge crossing or a roadway damaged by flood flows, high wind or wave action is a more appropriate course of action than temporarily shoring up the facility to allow an immediate return of its use. When continued public safety is an issue, such reconstruction will remain a viable option for consideration for authorization under this RGP. 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 unusual and limited circumstances. Such upgrade projects are considered separate activities for which other forms of authorization will be required.

RGP 5 does not authorize work required by property owners as quid pro quo for access through private or public property where such access is contingent upon work conducted by the permittee in waters of the U.S. for the benefit of the property owner. This is absolutely inappropriate and such additional activities are violations of Section 404 of the Clean Water Act unless previously authorized. If a local agency needs to acquire such access from an otherwise uncooperative property owner, existing condemnation procedures should be utilized to acquire the temporary access or permanent easement

4. Start Work Date: Any projects authorized under this RGP must be initiated within seven (7) days of receiving authorization to proceed. Projects that cannot be initiated within this immediate timeframe would generally not meet the definition of an "emergency". If the project start time can be delayed for more than a week, the imminent threat of impending loss is likely to have diminished in magnitude as well as immediacy. On the other hand, the RGP could be used to authorize projects as they become discovered, such as with the receding flows of a river some time after a flood event occurred but which likely was the immediate cause of the damage. Further, this RGP cannot be used to authorize long-planned-for projects, nor shall it be used for projects that are likely to have been known to the applicant but for which an application was not submitted in a timely manner. That is, the applicant's failure to act in a timely manner prior to the storm season will not obligate the Corps or other agencies to authorize work because of an "emergency" situation unless we agree that the situation qualifies as an emergency as defined on Page 1.

5. Access to Site: The permittee must allow representatives from this office and other agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.

6. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. Water Quality Certification:

a. For Permittees on Non-tribal Land: A technically conditioned Water Quality Certification (WQC) was issued for this RGP by the SWRCB on July 9, 2009. Permittees must also comply with the conditions specified in that certification as special conditions of this RGP. A copy of the WQC is attached, and the conditions are summarized below:

Standard Conditions:

- (1) The WQC can be modified or revoked upon proper review.
- (2) The WQC does not apply to any activity involving a hydroelectric facility.
- (3) The WQC applies only after the payment of all required fees.

Eligibility Conditions:

- (1) The WQC is limited to emergency actions that meet the CEQA definition of "emergency".
- (2) Projects must meet one or more of five specified CEQA emergency exemption criteria.
- (3) Projects must meet time frames and minimum scope appropriate to emergencies.

General Discharge Conditions:

- (1) Permitted activities shall not violate any applicable water quality standards.
- (2) SWRCB and RWQCB may impose monitoring requirements.

Administrative Conditions:

- (1) The WQC does not preclude need for other required permits.
- (2) No taking of State endangered, threatened or candidate species without CDFG authorization.
- (3) Non-compliance with these conditions constitutes violation of Clean Water Act and Porter-Cologne Act.

(4) The applicant must pay a processing fee (\$77 as of October 2008, subject to change) to the SWRCB Reporting Conditions:

- (1) Applicant must provide 48-hour notification to the SWRCB and appropriate RWQCB.
- (2) The applicant shall submit copies of the Pre-Construction Notification and Post-Project Construction Reports directly to the SWRCB and the appropriate RWQCB.

b. For Permittees on Tribal Lands: Projects on some tribal lands are certified by the Environmental Protection Agency pursuant to Section 401 of the Clean Water Act. The EPA issued a certification for this RGP by letter dated April 7, 2009, subject to the conditions specified in that certification (attached) and summarized below. Failure to completely comply with these certification conditions may result in the imposition of further case-specific conditions by the EPA, including mitigation and/or restoration.

- (1) The WQC is limited to emergency actions that meet a specific definition of “emergency”.
- (2) Projects must meet one or more of five specified emergency exemption criteria.
- (3) Projects must meet time frames and minimum scope appropriate to emergencies.
- (4) Excluded actions include placing or releasing any pollutant or contaminated material within 100-year floodplain
- (5) EPA shall be notified of the activity at the same time and in the same manner that the Corps of Engineers is notified.
- (6) The permittee must provide EPA copies of all required reports and, within 10 days of the completion of the emergency work, a record of the work done with a full discussion of how that work complied with the above five (5) conditions of this certification.

8. Coastal Zone Management: For those projects affecting uses or resources of the coastal zone, the Federal Coastal Zone Management Act (CZMA) requires that the applicant obtain concurrence from either the CCC or the BCDC that the project is consistent with the State’s certified Coastal Management Program. For activities within the coastal zone that require a coastal development permit from the CCC, the applicant should contact the appropriate CCC office to request an emergency permit, and no additional Federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local government coastal program, the applicant should contact the appropriate local government agency. Since a coastal permit issued by a local government agency does not satisfy the Federal consistency requirements of the CZMA, the applicant should also contact Mark Delaplaine, (415) 904-5289, Federal Consistency Coordinator for the CCC, to determine the appropriate emergency procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or resources, or for any activity conducted by a Federal agency, the applicant should contact Mark Delaplaine, (415) 904-5289, Federal Consistency Coordinator for the CCC to determine the appropriate emergency procedures.

For activities within San Francisco Bay or the Suisun Marsh that require a permit from BCDC, the applicant should contact BCDC to request an emergency permit, and no additional federal consistency review is necessary. For activities within the Suisun Marsh, the applicant should contact the appropriate local government as well as BCDC. For any federal or federally-permitted activity outside the Bay or Marsh, but with the potential to affect coastal uses or resources within the Bay or Marsh, the applicant should contact Robert Batha, Chief of Permits, (415) 352-3612 to determine the appropriate emergency procedure

Due to the limited time constraints often associated with emergency actions, the Corps will not require the applicant to provide proof of review by the CCC or BCDC, if such an action would result in undue harm to life or property. However, the Corps will require the permittee to provide evidence of consistency upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the CCC or BCDC, have received such determinations or waivers.

Disposal of flood-delivered sediments into the marine environment are not authorized under RGP 5 due to potential adverse effects to the habitat and water quality. If such activity is proposed, it shall be addressed through other permitting procedures.

9. Endangered Species: No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat, as identified under the Federal Endangered Species Act (ESA). Similarly, the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) to consult with the NMFS regarding the impacts of a potential project on Essential Fish Habitat (EFH) must be addressed.

Authorization of an activity by this RGP does NOT authorize the “take” of a listed threatened or endangered species, as defined under the Federal ESA or adversely affect EFH defined by the MSFCMA. The applicant shall notify the DE if any listed or proposed species or designated or proposed critical habitat might be affected by or is in the vicinity of the project. The applicant shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and the activity is authorized. In all circumstances, the applicant should, if aware of the potential presence of listed or proposed species or designated or proposed critical habitat, make considerable efforts to contact this office and/or personnel at FWS and/or NMFS. In some cases the FWS and NMFS may be able to make *a priori* determinations that listed species are not present.

Information on the location of listed or proposed threatened or endangered species and their designated or proposed critical habitat can be obtained directly from the FWS or NMFS or from their Websites at:

FWS - <http://www.fws.gov/endangered>

NMFS - http://www.nmfs.noaa.gov/prot_res/overview/es.html

To the extent possible, this office will implement any programmatic biological opinions and incidental take statements that may be available. Any terms and conditions inherent to these documents will become conditions on a particular applicant's authorization under this RGP.

In many cases information on the presence of listed or proposed species at a specific project site may not be available. In such cases the nature of the emergency may prevent an applicant from conducting the surveys necessary to make a reasonable determination. Therefore, the applicant may assume the species is present, if suitable habitat occurs onsite, and request that the emergency provisions of Section 7 of the ESA be implemented.

10. National Marine Sanctuaries: This RGP does not authorize the discharge or deposit of materials or other matter within a National Marine Sanctuary; nor does it authorize discharge or deposit of materials or other matter outside a National Marine Sanctuary that subsequently enters the Sanctuary and injures a Sanctuary resource. The San Francisco District includes Cordell Bank, Gulf of the Farallones, and Monterey Bay National Marine Sanctuaries. The applicant shall notify the DE and seek approval from the appropriate Sanctuary Manager/Superintendent if such a discharge will take place. The applicant shall not begin work until either such approval is obtained or the Sanctuary Manager/Superintendent notifies the applicant and the DE that no such approval is required.

11. Wild and Scenic Rivers: No activity may occur in a component of the National Wild and Scenic River System or in a river officially designated by Congress as a "study river" for possible inclusion in the system while that river is in an official study status; unless the appropriate Federal agency with direct management responsibility for that river has determined in writing that the proposed activity would not adversely effect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., FWS, National Park Service, US Forest Service, Bureau of Land Management). Currently the only designated Wild and Scenic River systems in the San Francisco District are the Eel (including the Van Duzen, Black Butte, and Cold Creek), the Klamath (including the Salmon, the Scott, and Wooley Creek), the Smith (including most major tributaries), the Trinity (including the New), and the Big Sur River.

12. Historic Properties: Impacts to historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources are impacted as a result of actions authorized under this RGP, the permittee shall provide a full report of the action and the impacts incurred by the resource to this office within 45 days after completion of the action. The Corps, the SHPO and/or the Advisory Council for Historic Preservation will then jointly make a determination as to appropriate procedures and/or mitigation to be addressed.

If permittees discover any previously unknown historic or archeological remains while implementing the activities authorized by this RGP, they must immediately notify this office of what they have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

13. Equipment: When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures, such as use of wide-tread tires or floatation devices on equipment, must be taken to minimize soil disturbance.

14. Suitable Material: No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act (CWA).)

15. Erosion and Siltation Controls: Every effort must be made to ensure any material dredged or excavated from Waters of the United States is not likely to be washed back into any Waters of the United States. When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or straw (or hay) bales or other means designed to minimize turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.

16. Aquatic Life Movements: No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Culverts placed in streams must be installed to maintain low flow conditions.

17. Shellfish Production: No discharge of dredged or fill material may occur in areas of concentrated natural or commercial shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by the Corps' Nationwide Permit (NWP) 4.

18. Spawning Areas: Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

19. Waterfowl Breeding Areas: Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

20. Navigation: No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. Permittees understand and agree that, if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, they will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expenses to the United States. No claim shall be made against the United States on account of any such removal or alteration.

21. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

22. Obstruction of High Flows: To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing river plain (unless the primary purpose of the fill is to impound waters).

23. Adverse Effects from Impoundments: If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

24. Proper Maintenance: 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 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 after the storm season in which the need arose).

25. Regional and Project-Specific Conditions: The activity must comply with any regional conditions added by the Division Engineer (See CFR Section 330.4(e).) and with any project-specific conditions added by the District Engineer.

26. Post-Activity Reports: The permittee shall provide a written report to this office** as soon as practicable (within 45 days of completing the project) after completion of any action conducted under this RGP. **PROVIDING THIS REPORT IS MANDATORY!** This office has additional responsibilities pursuant to consultation with the FWS and NMFS under Section 7 of the ESA. Further, these reports enable us to track the use of this RGP to verify that the minimal effects determination is being met as required by Section 404(e) of the CWA. Failure to provide timely reports following responses to emergency situations is non-compliance with the General Conditions of this RGP and would be considered a violation (33 CFR Section 326.4(d)). **Failure to provide these post-activity reports will jeopardize the possibility of renewing this permit when it expires.** At a minimum this post project report shall include the following:

- a. The name, address and telephone number of the permittee and the permittee's agent, if appropriate.
- b. A full description of the activity including:
 - (1) a description of the emergency and the potential for loss of life or property
 - (2) the purpose of the activity and the final goal of the entire activity
 - (3) the location of the activity (e.g., area maps, latitude/longitude, township/range)
 - (4) the size and description of the project area including maps and drawings showing the areal and linear extent of the project
 - (5) the type and quantities of materials used
 - (6) information on receiving water body(ies) impacted including:
 - (a) name(s) of water body(ies)
 - (b) type(s) of water body(ies) (e.g., ocean, bay, estuary, lake, reservoir, pond, river, stream, riparian area, wetland)
 - (c) temporary and permanent adverse impacts in acres, cubic yards and/or linear feet
 - (d) compensatory mitigation provided in acres, cubic yards and/or linear feet
 - (e) other steps taken to avoid, minimize and/or compensate for impacts
 - (7) information on Federally listed or proposed endangered species or designated or proposed critical habitat including:
 - (a) temporary and permanent adverse impacts
 - (b) compensatory mitigation provided
 - (c) other steps taken to avoid, minimize and/or compensate for impacts
 - (8) pre- and post- construction photographs

If there are a substantial number of projects and this requirement would be unreasonably burdensome, the permittee may, as an option, submit a comprehensive report providing all of the information required in the notification condition (Item 2.b.) above. The report shall include a description of the emergency and the potential for loss of life or property, maps to the project location, maps or drawings showing the areal and lineal extent of the project, quantities of material used, and pre- and post-construction photographs. If the project was conducted in an area known to harbor Federally listed or proposed endangered species or designated or proposed critical habitat, the permittee must include a list of measures taken to minimize harm to the species and/or habitat and provide a copy of the report to the FWS and/or the NMFS, as appropriate. If mitigation was determined to be appropriate for a specific project or group of projects, a mitigation proposal must be submitted to this office for review and approval. We will forward the report to the appropriate agencies for their review and comment.

27. Removal of Temporary Fills: Temporary fills shall be removed in their entirety and the affected areas returned to their pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such a temporary fill is considered likely to naturally re-establish native riparian or wetland vegetation to a level similar to pre-project or pre-event conditions within two years, the permittee will not be required to do so.

****Note:** As one of the conditions of the Water Quality Certification for this RGP, the permittee shall directly provide both the SWRCB and the appropriate RWQCB a copy of the Post-Activity Report.

FURTHER INFORMATION:

1. Congressional Authorities: Activities are authorized by this RGP pursuant to:

- (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization:

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the applicant.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The permittee fails to comply with the terms and conditions of this permit.
- b. The information provided by an applicant in support of a permit application proves to have been false, incomplete, or inaccurate. See Item 4 above.
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring a permittee to comply with the terms and conditions of the permit and for the initiation of legal action where appropriate. Permittees will be required to pay for any corrective measures ordered by this office, and if they fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill permittees for the cost.

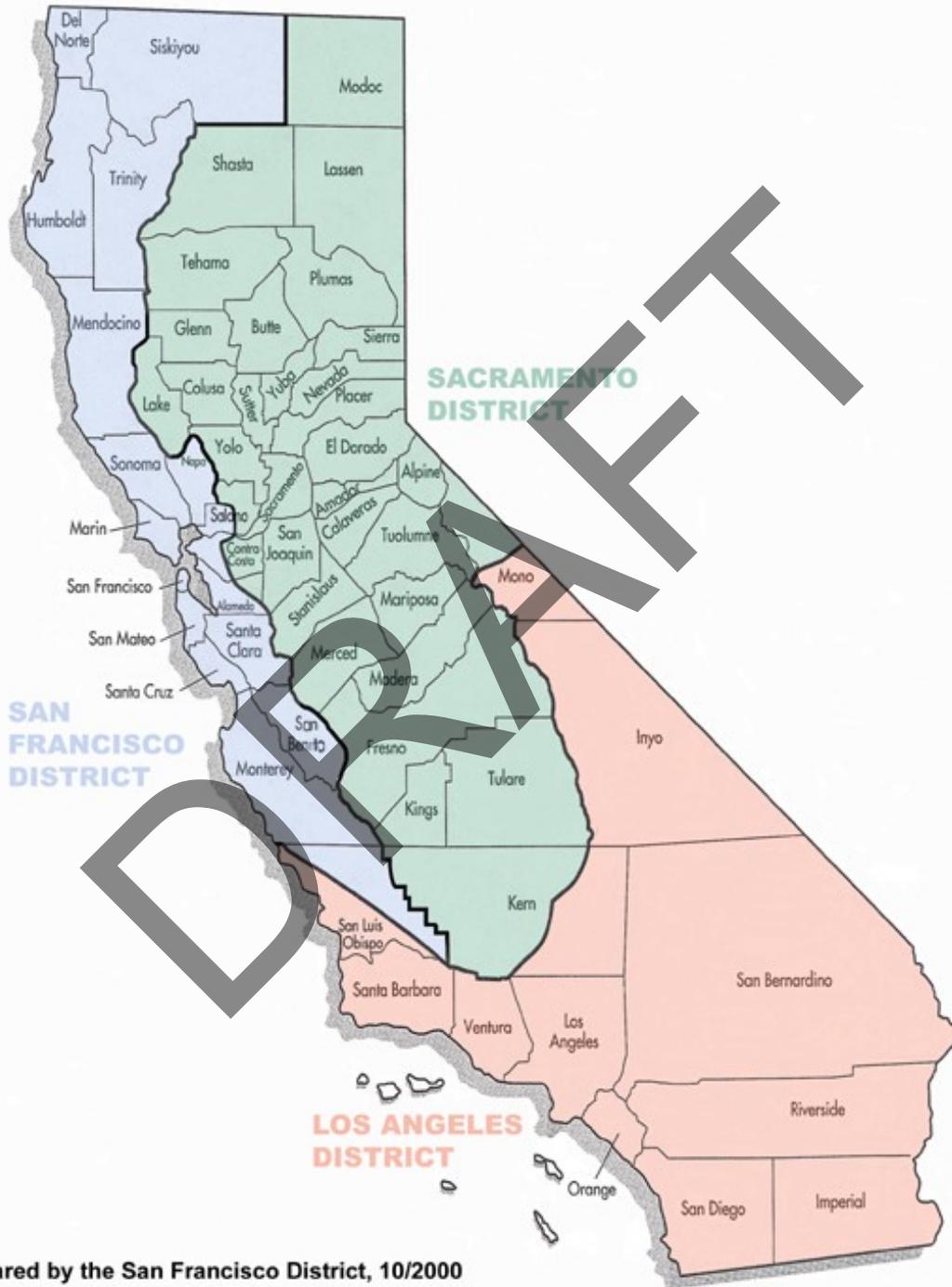
This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Jane M. Kelly
LTC Laurence M. Farrell, District Engineer

8/31/09
Date



**California Map of U.S. Army
Corps of Engineers Regulatory Boundaries**



Technically-Conditioned Water Quality Certification for Regional General Permit Number 5 for Repair and Protection Activities in Emergency Situations on Tribal Lands within the boundaries of the San Francisco District of the U.S. Army Corps of Engineers (Corps File Number 28218S)

1. Emergency definition

This certification is limited to emergency actions that meet the following definition:

A sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movement, as well as such occurrences as riot accident, or sabotage.

“Urgent” projects not meeting the above definition of “emergency” do not qualify for this water quality certification. The applicant must contact the EPA Region 9 Office in San Francisco to apply for an individual water quality certification.

2. Emergency exemption criteria

This certification is limited to projects that satisfy one or more of the following exemption criteria:

- a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by a federal permitting authority.
- b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare.
- c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.
- d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This does not apply to projects undertaken, carried out, or approved by public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.
- e) Seismic work on highways and bridges

3. Scope and Time Frame

This certification is limited **only** to sudden, unexpected emergency situations defined in Conditions 1 and 2 above that (1) have occurred, or (2) have a high probability of occurring in the short-term as a result of recently discovered factors or events not related to known or expected conditions such as deferred maintenance or future weather events. Additionally, the sudden, unexpected emergency situation must have the potential to result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.

Emergency repairs and reconstruction must begin within **seven (7)** calendar days of receiving authorization to proceed and shall be completed within one year of enrollment pursuant to this water quality certification. All repairs and reconstruction shall be kept to the minimum necessary to alleviate the immediate emergency and limited to in-kind replacement or refurbishment of on site features. Minor upgrading may be considered if the applicant uses bioremediation or other environmentally sensitive solutions. Permanent restoration work other than that performed as an associated part of the emergency operations, including any minor upgrades, shall not be performed without prior approval and authorization by EPA.

4. Exclusions

- a) No disposal of construction materials, demolition wastes, wastewater, contaminated well water, or any other pollutant is authorized by this certification.
- b) Construction and/or fill materials placed within the 100-year floodplain must be free of substances that can cause or contribute to the pollution of waters of the United States. The permittee shall take any necessary steps to ensure that contaminated materials are not used for fill within the 100-year floodplain
- c) Pollution from the operation, repair, maintenance, and storage of equipment shall be removed from and properly disposed of outside of the 100-year floodplain.
- d) The permittee shall take necessary steps to minimize channel and bank erosion within waters of the United States both during and after construction.

5. Notification

EPA shall be notified of the activity at the same time and in the same manner, that the Corps of Engineers is notified. A response from EPA is not needed to commence emergency work.

Notification should be sent to the staff responsible for the County where the work is planned and may be submitted via telephone, facsimile, e-mail, delivered written notice or other verifiable means. See attached staff directory. Notification should also be sent to:

David W. Smith, Chief

Wetland Regulatory Office (WTR-8)
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
smith.davidw@epa.gov
(415) 972-3464 phone
(415) 947-3537 fax

6. Final Report

The permittee must provide EPA copies of all correspondence and reports that are submitted to the Corps to satisfy the requirements of RGP 63. Additionally, within ten (10) days of the completion of the emergency work, the permittee shall submit to EPA a record of the work done, and a full discussion of how that work complied with the above five (5) conditions of this certification. Failure to completely comply with the certification conditions may result in the imposition of further case-specific conditions, including mitigation and/or restoration.

DRAFT

**Wetlands Office (WTR-8)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105
(415) 947-3537 fax**

David Smith, Chief
smith.davidw@epa.gov, (415) 972-3464

CWA Section 404 Permit Review

County	Staff	Phone	Email
California			
Contra Costa, Alameda, Santa Cruz, San Mateo, Santa Clara, San Francisco, ,	Melissa Scianni	(415) 972-3821	scianni.melissa@epa.gov
Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Marin, Napa, Sonoma, Lake, Mendocino, Solano	Jason Brush	(415) 972-3483	brush.jason@epa.gov
Glenn, Butte, Colusa, Sierra, Yuba, Sutter, Yolo, Sacramento	Paul Jones	(415) 972-3470	jones.paul@epa.gov
San Joaquin, Stanislaus, Merced, Santa Barbara, Ventura, Los Angeles	Eric Raffini	(415) 972-3544	raffini.eric@epa.gov
Nevada, Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, Mariposa, Madera, Fresno, Tulare, Kings, Kern,	Erin Kleeman (Foresman)	(916) 557-5253	foresman.erin@epa.gov
San Diego, Imperial	Elizabeth Goldman	(415) 972-3398	goldmann.elizabeth@epa.gov
San Benito, Monterey, San Luis Obispo	Rob Leidy	(415) 972-3463	leidy.robert@epa.gov
Mono, Inyo, San Bernardino, Riverside, Orange	Jorine Campopiano	(213) 244-1808	campopiano.jorine@epa.gov
Nevada			
All counties	Elizabeth Goldman	(415) 972-3398	goldmann.elizabeth@epa.gov
Arizona			
Mohave, La Paz, Yuma, Pima, Santa Cruz, Cochise	Elizabeth Goldman	(415) 972-3398	goldmann.elizabeth@epa.gov
Coconino, Yavapai, Maricopa, Pinal, Gila, Navajo, Apache, Greenlee, Graham	Melissa Scianni	(415) 972-3821	scianni.melissa@epa.gov
Hawaii			
All counties	Wendy Wiltse	(808)541-2752	wiltse.wendy@epa.gov
Pacific Islands			
All islands	Rob Leidy	(415) 972-3463	leidy.robert@epa.gov

Dredging and Sediment Management Projects

Area	Name	Phone	Email
Coastal Northern CA (San Mateo Co. to OR border)	Jason Brush	(415) 972-3483	brush.jason@epa.gov
Coastal Southern CA (Mexico Border to Santa Barbara Co.) Pacific Islands	Jorine Campopiano	(213) 244-1808	campopiano.jorine@epa.gov
Pacific Islands	Allan Ota	(415) 972-3476	ota.allan@epa.gov
Coastal Central Ca (Santa Barbara Co. to San Mateo Co.)	Melissa Scianni	(415) 972-3821	scianni.melissa@epa.gov
San Francisco Bay LTMS/Delta LTMS	Brian Ross	(415) 972-3475	ross.brian@epa.gov