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State Water Resources Control Board

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION

Effective Date: November 25, 2013

Reg. Meas. ID:	393587
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SWRCB ID:	SB13006IN

Project: U.S. Army Corps of Engineers Reauthorization of Regional General Permit 63 for Repair and Protection Activities in Emergency Situations (Project)

Applicant: Mr. David Castanon, Chief
U.S. Army Corps of Engineers
Los Angeles District
Regulatory Division
915 Wilshire Blvd.
Los Angeles, CA 90017
Phone: (213) 452-3406
Email: david.j.castanon@usace.army.mil

Applicant Staff: Mr. Bruce Henderson
U.S. Army Corps of Engineers
2151 Alessandro Drive, Suite 110
Ventura, CA 93001
Phone: (805) 585-2145
Email: Bruce.A.Henderson@usace.army.mil

State Water Board Staff: Mr. Brian Dailey
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
Phone: (916) 341-5462
Email: Brian.Dailey@waterboards.ca.gov

State Water Resources Control Board Contact Person

If you have any questions, please contact the State Water Resources Control Board (State Water Board) at (916) 341-5569 and request to speak with the 401 Certification and Wetlands Unit Program Manager.

FELICIA MARCUS, CHAIR | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, Ca 95812-0100 | www.waterboards.ca.gov

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I. Certification Action

This Water Quality Certification (Certification) responds to the request on behalf of the U.S. Army Corps of Engineers for Certification for the Project. The application for Certification was received on September 19, 2013, and was deemed complete on September 27, 2013. The State Water Board provided public notice of the application pursuant to California Code of Regulations, title 23, section 3858 on September 27, 2013, and posted information describing the Project on the State Water Board website. The State Water Board did not receive any comments regarding the Project during the 21-day comment period from September 27, 2013, through October 18, 2013.

This Order serves as certification of the United States Army Corps of Engineers' Regional General Permit 63 (SPL-2013-00609-BAH) under section 401 of the Clean Water Act, and Waste Discharge Requirements under the Porter-Cologne Water Quality Control Act and State Water Board Order 2003-0017-DWQ.

II. Project Purpose

The Los Angeles District of the U.S. Army Corps of Engineers (Corps) proposes to reauthorize Regional General Permit (RGP) 63 to provide an expedited response to public agencies and private parties conducting work in waters of the U.S. for emergency repair and protection measures (collectively referred to as emergency actions) necessary due to sudden, unexpected events that could potentially result in an unacceptable hazard to life or a significant loss of property. Changes to RGP 63 authorized December 22, 2008 include:

- A. Extension of work initiation following authorization from 7 days to 14 days to allow sufficient time to mobilize equipment and personnel in emergency situations.
- B. The requirement that any placement of fill that provides only a temporary solution to the imminent threat, such as a berm to protect a property, is expected to be removed upon completion of the emergency actions.

III. Location

The Project extends throughout the Corps' Los Angeles District, including the coastal drainages of San Luis Obispo County, all of Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, Imperial and Inyo counties, Mono County to the Conway Summit above Mono Lake, and the southern slopes of the Tehachapi Mountains in Kern County. In the event of future modifications to District boundaries, RGP 63 would also apply in any areas so revised. Additional details regarding the Project location are depicted in Attachment C of this Certification.

IV. Regional Water Quality Control Plan Information

Water quality standards and control measures for the Regional Water Quality Control Boards (Regional Water Board) are contained in the Water Quality Control Plan (Basin

Plan) for each region. The Basin Plan designates the beneficial uses for all surface and ground waters within the Regional Water Board's jurisdiction and is the master water quality control planning document. The beneficial uses of water specifically identified in the Basin Plan generally apply to all of its tributaries. The receiving waters and beneficial uses of waters potentially impacted by this Project are located on the appropriate Regional Water Board website. The Basin Plan information may be obtained from the State Water Board's website: <http://www.waterboards.ca.gov/>.

V. Conditions

The State Water Board has independently reviewed the record of the Project to analyze impacts to water quality and designated beneficial uses within the watersheds of the Project. The Project will comply with section X of this Certification, if all actions comply with the following terms and conditions:

A. Standard Conditions

1. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of title 23 of the California Code of Regulations.
2. This Certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent Certification application was filed pursuant to title 23 of the California Code of Regulations subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This Certification is conditioned upon full payment of any fee required under California Code of Regulations, chapter 28, title 23, and owed by the Applicant.

B. General Conditions

1. This Certification is limited to emergency actions that meet the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) definition of an "emergency," which is defined as follows:

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.
(Pub. Resources Code, § 21060.3.)

Emergency actions must meet the above definition of "emergency" and demonstrate an imminent threat to qualify for this Certification. For actions that do not qualify for enrollment under this Certification, the discharger (i.e. the person or entity proposing to conduct actions which may result in a discharge to a water of the state) must

contact either the State Water Board or the applicable Regional Water Board to apply for an individual water quality certification.

2. This Certification is limited to emergency actions that satisfy one or more of the following exemption criteria as defined by the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15269.):
 - 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 the Governor pursuant to the California Emergency Services Act, commencing with section 8550 of the Government Code.
 - 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 highways designated as official State scenic highways, nor any project undertaken, carried out, or approved by a 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 pursuant to section 180.2 of the Streets and Highways Code, section 180 et seq.
3. This Certification is limited only to sudden, unexpected emergency situations defined in General 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. 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 is not undertaken within a time period less than the normal time needed to process an application under standard procedures.
4. Emergency repairs and reconstruction must begin within fourteen (14) calendar days of receiving authorization to proceed and shall be completed within one year of enrollment pursuant to this 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 a discharger uses bioremediation or other environmentally sensitive solutions. Permanent restoration work other than that performed as an associated part of the emergency actions, including any minor upgrades, shall not be performed without prior approval and authorization by the State Water Board or the applicable Regional Water Board.

C. Administrative Conditions**1. Water Quality Standards Maintained**

Permitted actions must not cause a violation of any applicable water quality standards, including impairment of designated beneficial uses for receiving waters as adopted in the Basin Plan by a Regional Water Board or a State Water Board water quality control plan or policy. The Water Boards may impose monitoring requirements at any time in order to ensure that permitted discharges and activities comport with any applicable water quality standards and/or effluent limitations.

2. California Endangered Species Act

Permitted actions shall not result in the taking of any State endangered species, threatened species, or candidate species, or the habitat of such a species unless the activity is authorized by the California Department of Fish and Wildlife pursuant to a permit, memorandum of understanding, or other document or program in accordance with Fish and Game Code sections 2081, 2081.1, or 2086.

3. Project Site Access

Water Boards staff, or an authorized representative, upon presentation of credentials and other documents as may be required by law, shall be granted permission to enter the dischargers' site(s) at reasonable times, to ensure compliance with the terms and conditions of this Certification and/or to determine the impacts the discharge may have on waters of the state.

4. Compliance

Failure to comply with any condition of this Certification shall constitute a violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act. Any activities enrolled pursuant to this Certification previously granted, shall immediately be revoked and any or all discharges shall cease. The Applicant and/or the discharger may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.

D. Best Management Practices (BMPs)

1. 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 and/or state.
2. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment must not result in a discharge to any waters of the state, and shall be located outside of waters of the state in areas where accidental spills are not likely to enter or affect such waters.
3. If construction related materials reach surface waters, appropriate spill response procedures must be initiated as soon as the incident is discovered. In addition, the State Water Board and applicable Regional Water Board staffs shall be notified pursuant to subsection VII (C) of this Certification within twenty-four (24) hours of the occurrence.

4. Construction materials and debris from all construction work areas shall be removed following completion of the emergency actions.
5. 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.
6. All necessary BMPs to control erosion and runoff from areas associated with the emergency actions 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 United States and/or state shall be restored to pre-disturbance conditions. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species.
7. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at: <http://www.cal-ipc.org/ip/inventory/weedlist.php>.

VI. Mitigation

Permitted activities must first avoid and then minimize adverse impacts on aquatic resources to the maximum extent practicable. Any remaining unavoidable adverse impacts to the aquatic resources may be offset by compensatory mitigation requirements in accordance with the conditions of RGP 63.

VII. Emergency Notification and Fee Requirements

- A. The State Water Board and the applicable Regional Water Board must receive notification by the discharger at least 48 hours prior to initiating emergency actions. This notification must be followed within three (3) business days by submission of all of the information in the Emergency Notification Form (**Attachment D**). The Certification fee must be submitted with Attachment D in accordance with California Code of Regulations, title 23, section 2200 (\$145.00 as of October, 2013; this amount is subject to change annually). Failure to promptly pay the correct fee amount may result in an inability to be enrolled pursuant to this Certification.
- B. The Water Boards recognize there may be situations where imminent threats to life or property occur and the discharger has not received a notice to proceed. If immediate, specific actions, as defined in the California Code of Regulations, title 14, section 15269(c), are required by a discharger and prior notice to the State Water Board and the applicable Regional Water Board is not possible, then the discharger must contact the State Water Board and the applicable Regional Water Board within one (1) business day of the emergency action. This notification must be followed within three (3) business days by submission of all of the information in the Emergency Notification Form (**Attachment D**).

- C. Notification may be via telephone, facsimile, e-mail, delivered written notice, or other verifiable means.

A staff directory that includes contact information for the State and Regional Water Boards is found at:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf

For Regional Water Board map boundaries, see:

http://www.waterboards.ca.gov/waterboards_map.shtml

For State Water Board

Phone: (916) 341-5455 (Division of Water Quality)

Fax: (916) 341-5463 (Attention: Manager CWA Section 401 WQC Program)

Email: Stateboard401@waterboards.ca.gov (Subject: RGP 63)

Written notice should be sent to the following addresses:

ATTN: *Manager*

CWA Section 401 WQC Program

Division of Water Quality

State Water Resources Control Board

1001 I St. 15th Floor

Sacramento, CA 95814

ATTN: *Manager*

CWA Section 401 WQC Program

Insert address of appropriate Regional Water Board, obtained from:

http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf

VIII. Final Reporting Requirements

- A. The discharger must provide the State Water Board and the applicable Regional Water Board copies of all correspondence and reports that are submitted to the Corps to satisfy the requirements of RGP 63. In addition, the discharger must fill in and submit the form provided in **Attachment E**. This information must be submitted within 45 calendar days of completion of any emergency actions conducted under RGP 63.
- B. Failure to submit **Attachment E** within 45 calendar days of completion of any emergency actions conducted under this Certification may result in the imposition of administrative and/or civil liability pursuant to Water Code section 13385.
- C. Electronic submission of all reporting requirements is preferred, however the Final Report Form (Attachment E), must be completed and submitted as a pdf with a valid signature.

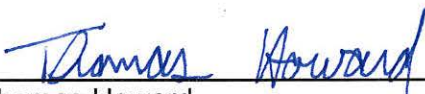
IX. CEQA Findings

State Water Board staff has determined that the Project is exempt from CEQA pursuant to California Code of Regulations, title 14, section 15061, subd. (b). Issuance of this Certification for activities authorized under RGP 63 and this Certification are statutorily exempt from requirements of CEQA pursuant to Public Resources Code section 21080, subsections (b)(2)-(4). The State Water Board will file a Notice of Exemption in accordance with the California Code of Regulations, title 14, section 15062 after issuance of this Certification.

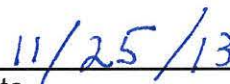
X. Water Quality Certification

I hereby issue the Certification for Regional General Permit No. 63 for Emergency Situations, SB13006IN, certifying that as long as all of the conditions listed in this Certification are met, any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards). This discharge is also regulated pursuant to State Water Board Water Quality Order No. 2003-0017-DWQ which authorizes this Certification to serve as Waste Discharge Requirements pursuant to the Porter-Cologne Water Quality Control Act. (Wat. Code, § 13000 et seq.)

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the conditions of this Certification and the attachments to this Certification, and (b) compliance with all applicable requirements of Statewide Water Quality Control Plans and Policies and the Regional Water Boards' Water Quality Control Plans and Policies.



Thomas Howard
Executive Director
State Water Resources Control Board



Date

- Attachments (5):
- A. Signatory Requirements
 - B. Applicant's Project Description
 - C. RGP 63 Area Map
 - D. Emergency Notification Form
 - E. Final Report Form