



# State Water Resources Control Board

## Executive Office



Linda S. Adams  
Secretary for  
Environmental Protection

Charles R. Hoppin, Chairman  
1001 I Street • Sacramento, California 95814 • (916) 341-5603  
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100  
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Arnold Schwarzenegger  
Governor

TO: Ms. Jane Hicks, Chief  
Regulatory Branch  
San Francisco District  
U.S. Army Corps of Engineers  
1455 Market Street  
San Francisco, CA 94103-1398

FROM:   
Dorothy Rice, Executive Director  
**EXECUTIVE OFFICE**

DATE: JUL 9 2009

SUBJECT: CLEAN WATER ACT (CWA) SECTION 401 WATER QUALITY  
CERTIFICATION FOR REGIONAL GENERAL PERMIT 5 FOR REPAIR  
AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS (RGP  
5) (CORPS FILE NUMBER 28218S)

The San Francisco District of the U.S. Army Corps of Engineers has requested that the State Water Resources Control Board (State Water Board) issue a CWA section 401 Water Quality Certification (Certification) for RGP 5 for "Repair and Protection Activities in Emergency Situations." Consultations regarding this program were conducted with the Regional Water Quality Control Boards, U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers.

Pursuant to Title 23, Section 3838 of the California Code of Regulations, I have made the Certification determination for these projects, as described in the Enclosure. The Certification also includes the following attachments:

- A. Applicants' Project Description
- B. Project Information Sheet
- C. 48-hour Notification Form
- D. Final Report Form

If you require further assistance, please contact Darren Bradford, the staff person most knowledgeable on the subject, at (916) 341-5558 ([dbradford@waterboards.ca.gov](mailto:dbradford@waterboards.ca.gov)). You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 ([borme@waterboards.ca.gov](mailto:borme@waterboards.ca.gov)).

Enclosure

Attachments (4)

cc: (See next page)

*California Environmental Protection Agency*

cc: (Continuation page)

cc: (all w/Enclosure and Attachments)

cc: Mr. Dave Smith, Chief  
Wetlands Regulatory Office  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Mr. Dan Wilson, Habitat Conservation Manager  
Department of Fish and Game  
Region 3 Headquarters  
P.O. Box 47  
Yountville, CA 94599

Mr. Tom Luster  
Environmental Scientist  
California Coastal Commission  
45 Fremont Street, Suite 2000  
San Francisco, CA 94105

Ms. Catherine Kuhlman, Executive Officer  
North Coast Water Board  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403

Mr. Bruce Wolfe, Executive Officer  
San Francisco Bay Water Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Mr. Roger Briggs, Executive Officer  
Central Coast Water Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

bc: Mr. Mark Neely  
North Coast Regional Water Quality Control Board  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403

Ms. Shin-Roei Lee  
San Francisco Bay Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Mr. Dominic Roques  
Central Coast Regional Water Quality Control Board  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401

# ENCLOSURE

## WATER QUALITY CERTIFICATION FOR REGIONAL GENERAL PERMIT 5

- Attachment A. Applicant's Project Description
- Attachment B. Project Information Sheet
- Attachment C. 48-Hour Notification Form
- Attachment D. Final Report Form

# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

## Executive Office

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Arnold Schwarzenegger  
Governor

### ORDER FOR TECHNICALLY-CONDITIONED WATER QUALITY CERTIFICATION REGIONAL GENERAL PERMIT 5 FOR REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS (RGP 5) (CORPS FILE NUMBER 28218S)

**PROJECT:** Regional General Permit 5 (RGP 5) for Repair and Protection Activities in Emergency Situations

**APPLICANT:** Ms. Jane Hicks, Chief  
Regulatory Branch  
San Francisco District  
U.S. Army Corps of Engineers  
1455 Market Street, 16<sup>th</sup> Floor  
San Francisco, CA 94103-1398

This Order responds to your request for Water Quality Certification for the subject project. This certification is intended to streamline the approval process for dredge and fill activities necessary to prevent an emergency.

#### ACTION:

- |   |   |
|---|---|
| <input type="checkbox"/> Order for Standard Certification                           | <input type="checkbox"/> Order for Denial of Certification                |
| <input checked="" type="checkbox"/> Order for Technically Conditioned Certification | <input type="checkbox"/> Order for Waiver of Waste Discharge Requirements |

#### 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 Article 6 (commencing with section 3867) of Chapter 28, Title 23 of the California Code of Regulations.
2. This Certification action is not intended and shall not be construed to apply to 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 Subsection 3855(b) of Chapter 28, Title 23 of the California Code of Regulations, 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 total payment of any fee required under Chapter 28, Title 23 of the California Code of Regulations and owed by the applicant.

*California Environmental Protection Agency*

**ELIGIBILITY CONDITIONS:****1 Emergency Definition**

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.**

[Public Resources Code, § 21060.3 (emphasis added).]

Projects must meet the above definition of "emergency" and demonstrate an imminent threat to qualify for this water quality certification. For non-emergency projects, the applicant must contact either the State Water Resources Control Board (State Water Board) or the applicable Regional Water Quality Control Board (Regional Water Board) (collectively, Water Boards) 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 as defined by the CEQA Guidelines [California Code of Regulations., Title 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. Scope and Time Frame

This Certification is limited **only** to sudden, unexpected emergency situations defined in Eligibility 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 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. There may be limited circumstances in which, after notice to and input by the agencies, logistical considerations necessitate an extension of between 1 and 7 days. 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 the Water Boards.

#### GENERAL DISCHARGE CONDITIONS:

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

#### ADMINISTRATIVE CONDITIONS:

- 1 This Certification does not obviate the need to obtain other permits that may be required by federal, state, or local authorities.
2. Permitted activities 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 Game 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. 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 such certification previously granted shall immediately be revoked, and any or all discharges shall cease. The permittee may then be subject to administrative and/or civil liability pursuant to Water Code section 13385.



4. The prospective permittee must provide to the State Water Board a fee for review and processing of the notice (Attachment C) in accordance with California Code of Regulations, Title 23, section 2200 (\$77 as of October, 2008; this amount is subject to change) within 48 hours of project initiation. Failure to promptly pay the correct fee amount may result in an inability to be enrolled pursuant to this water quality certification.

#### REPORTING CONDITIONS:

- 1 The prospective permittee must notify the State Water Board and the applicable Regional Water Board at least 48 hours prior to initiating the emergency project, if feasible. Feasibility is to be determined by the State Water Board or the applicable Regional Water Board. This notification must be followed within three (3) business days by submission of all of the information in the 48-hour emergency notification form, provided in **Attachment C**.

The Water Boards recognize there may be situations where imminent threats to life or property occur and the applicant 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 an applicant and prior notice to the State Water Board and the applicable Regional Water Board is not possible, then the applicant must contact the State Water Board and the applicable Regional Water Board within one (1) business day of the action. As provided above, this notification must be followed within three (3) business days by submission of all of the information in the 48-hour emergency notification form, provided in **Attachment C**.

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

- A staff directory with contact information for the State and Regional Water Boards is found at:  
[http://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/staffdirectory.pdf](http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf)
- For State Water Board, fax to (916) 341-5584 (Atten: DWQ 401 Unit), or leave a message at (916) 341-5506 (Regulatory Office).
- For Regional Water Board map boundaries, see:  
<http://maps.waterboards.ca.gov/webmap/rbbound.html>

2. The permittee must provide the State Water Board and the applicable Regional Water Board copies of all correspondence and reports that are submitted to the U.S. Army Corps of Engineers to satisfy the requirements of RGP 5. In addition, the permittee must fill in and submit the form provided in **Attachment D**. This information must be sent to the following addresses within 45 calendar days of completion of any action conducted under RGP 5:

Bill Orme, Program Manager  
CWA Section 401 WQC Program  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

*California Environmental Protection Agency*

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CWA Section 401 WQC Program  
 (Address of appropriate Regional Water Board, obtained from:  
[http://www.waterboards.ca.gov/water\\_issues/programs/cwa401/docs/staffdirectory.pdf](http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/staffdirectory.pdf))

Failure to submit **Attachment D** within 45 calendar days of completion of any action conducted under this water quality certification may result in the imposition of administrative and/or civil liability pursuant to Water Code section 13385.

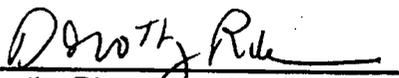
#### WATER QUALITY CERTIFICATION:

I hereby issue an order certifying that as long as all of the conditions listed in this Certification action 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 applicants' project description (Attachment A) and the enclosed Project Information Sheet (Attachment B), and (b) compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan.

If you have any questions, please contact State Water Board Environmental Scientist Darren Bradford at (916) 341-5558 ([dbradford@waterboards.ca.gov](mailto:dbradford@waterboards.ca.gov)). You may also contact Bill Orme, Chief of the 401 Certification and Wetlands Protection Unit, at (916) 341-5464 ([borme@waterboards.ca.gov](mailto:borme@waterboards.ca.gov)).

Sincerely,



Dorothy Rice, Executive Director  
 State Water Resources Control Board

7-09-09

Date

- Attachments:
- A. Applicants' Project Description
  - B. Project Information Sheet
  - C. 48-hour Notification Form
  - D. Final Report Form

*California Environmental Protection Agency*

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

Attachment A

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 Figure 1):

- 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.

**\*\*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 a processing fee to the SWRCB.

**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/](http://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 (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.

**\*\*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.

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 1, 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.

**Additional 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 exemption criteria.
- (3) Projects must meet time frames and minimum scope appropriate to emergencies.
- (4) Applicant must provide 48-hour notification to the SWRCB and appropriate RWQCB.
- (5) Permitted activities shall not violate any applicable water quality standards.
- (6) The WQC does not preclude need for other required permits.
- (7) No taking of State endangered, threatened or candidate species without CDFG authorization.
- (8) Non-compliance with these conditions constitutes violation of Clean Water Act and Porter-Cologne Act.
- (9) The applicant must pay a processing fee (\$77 as of October 2008, subject to change) to the SWRCB
- (10) 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 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 July 1, 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 the CEQA definition of "emergency".
- (2) Projects must meet one or more of five specified CEQA 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](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.

**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 linear 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.

**\*\*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.

**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.

**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.

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Jane Hicks, Regulatory Division Chief  
for LTC Laurence M. Farrell, District Engineer

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Date

Project Information Sheet

Attachment B

1.	Applicant & Agent	U.S. Army Corps of Engineers (USCOE), San Francisco District.
2.	Project Name and Purpose	<p>Reauthorization of Regional General Permit 5 (RGP 5) for Repair and Protection Activities in Emergency Situations</p> <p>RGP 5 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 life or a significant loss of property if corrective action requiring a permit is not undertaken immediately).</p> <p>Since its reauthorization on November 18, 2004, by the Army Corps of Engineers, RGP 5 has been utilized to authorize 25 actions determined to meet the terms and conditions of the permit.</p>
3.	Receiving Water(s); Hydrologic Unit(s); Latitude/Longitude; Water Body Type(s) & Area of Filled/Excavated Waters (Acres); Dredge Volume (CY)	RGP 5 can authorize eligible discharges in all waters within the jurisdiction of the USCOE San Francisco District. Project-specific information will be included in the 48 Hour Notification and post project Final Report forms (Attachments C & D) which will be provided to the appropriate Regional Water Quality Control Board (RWQCB), and State Water Resources Control Board (SWRCB).
4.	Federal Permit	RGP 5
5.	Mitigation Considerations	<p>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:</p> <p>(1) The approximate functions and values of the aquatic resource being impacted, such as</p>

5.	Mitigation Considerations (cont.)	<p>habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.;</p> <p>(2) The permanence of the project's impacts on the resource; and</p> <p>(3) The potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.</p> <p>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.</p>
6.	Optional Additional Information: CEQA Compliance	Water Quality Certification for the activities authorized under RGP 5 is statutorily exempt from the requirements of CEQA pursuant to Public Resources Code sections 21080[b][2]-[4].