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**State Water Resources Control Board**

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**CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION**

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**Effective Date:** April 2, 2014

Reg. Meas. ID:	394568
SWRCB ID:	SB13007GN

**Project:** U.S. Army Corps of Engineers Reauthorization of Regional General Permit No. 41 for Removal of Invasive Plants (Project)

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**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) 341-5455 and request to speak with the Division of Water Quality's 401 Certification Program Manager.

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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 Los Angeles District (Corps) for Certification for Regional General Permit 41 for Removal of Invasive Plants (RGP 41; see Attachment A). The application for Certification, in the form of the Corps' public notice, was received on July 31, 2013, and was deemed complete on August 31, 2013. The State Water Board provided full public noticing pursuant to California Code of Regulations, title 23, section 3858 on December 18, 2013, 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 December 18, 2013 through January 9, 2014.

This Order serves as Certification of the Corps' Regional General Permit 41 (SPL-2003-01094-CLH) under section 401 of the Clean Water Act, and as Waste Discharge Requirements under the Porter-Cologne Water Quality Control Act and State Water Board Order 2003-0017-DWQ.

This Certification does not obviate the need to obtain other permits that may be required by federal, state, or local authorities. The Applicant may proceed with the proposed Project according to the conditions of this Certification and after the Applicant obtains all other necessary permits.

## **II. Project Purpose**

The Los Angeles District of the Corps proposes to reauthorize RGP 41, which authorizes mechanized removal and chemical treatment of invasive, exotic plants (exotics) from waters of the U.S., including wetlands. RGP 41 authorizes treatment of two classes of areas:

- Fully infested stands: Areas containing at least 80 percent relative or canopy cover of exotics.
- Partially infested stands: Areas that contain between 50 percent and 80 percent relative or canopy cover of exotics.

This RGP is not applicable in areas that have less than 50 percent relative or canopy cover of exotics. The reissued RGP 41 is essentially unchanged from the previous RGP except for minor additions to the list of covered invasive plants and minor changes to reporting procedures.

## **III. Location**

The Project extends throughout the portions of the Corps' Los Angeles District in California, 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. Additional map details regarding the Project location are depicted in Attachment B of this Certification.

#### **IV. Regional Water Quality Control Plan Information**

Water quality standards and control measures for California's Water Quality Control Regions are contained in the Water Quality Control Plan (Basin Plan) for each region, and are administered and enforced by the Regional Water Quality Control Boards (Regional Water Board). The Basin Plans designate beneficial uses for all surface and ground waters within the Regions 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 the tributaries of designated water bodies. The receiving waters and beneficial uses of waters potentially impacted by this Project are located on the respective Regional Water Board websites for six affected regions:

- Central Coast Region (Region 3)
- Los Angeles Region (Region 4)
- Lahontan Region (Region 6)
- Colorado River Basin Region (Region 7)
- Santa Ana Region (Region 8)
- San Diego Region (Region 9)

Basin Plan information may be obtained from the State Water Resources Control 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. It is determined that the Project will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act, and with the State and Regional Water Board water quality control plans and policies, if the Applicant complies with the terms and conditions herein.

##### **A. Standard Conditions**

1. This Certification action and Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330, and California Code of Regulations, title 23, chapter 28, article 6 (commencing with section 3867).
2. This Certification action and Order 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 title 23 of the California Code of Regulations and owed by the Applicant.

4. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under state and federal law. For purposes of Clean Water Act, section 401(d), the applicability of any state law authorizing remedies, penalties, processes, or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification Order.

**B. General Conditions**

This Certification is limited to activities related to the removal of infestations of invasive exotic species of plants as described in RGP 41. All conditions of RGP 41 are incorporated by reference into this Certification.

**C. Administrative Conditions**

**1. Water Quality Standards Maintained**

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), or policy by a Regional Water Board or the State Water Board (collectively Water Boards). The State or applicable Regional Water Board may impose monitoring requirements 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 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. Water Quality Order No. 2013-0002-DWQ**

Permitted activities may include application of algaecides and herbicides to invasive plants occurring in waters of the U.S. Any entity that discharges residual algaecides and/or aquatic herbicides and their degradation byproducts to waters of the U.S. from algae and aquatic weed control applications must comply with Water Quality Order No. 2013-0002-DWQ (General Permit No. CAG990005), *Statewide General National Pollutant Discharge Elimination System (NPDES) Permit For Residual Aquatic Pesticide Discharges To Waters Of The United States From Algae And Aquatic Weed Control Applications*. (See: [http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2013/wqo2013\\_0002dwq.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2013/wqo2013_0002dwq.pdf)). Applicants enrolling in, or enrolled in, Water Quality Order 2013-0002-DWQ shall inform the designated contact person for this Certification of the status of that enrollment.

**4. Project Site Access**

Persons or entities authorized to conduct activities pursuant to RGP 41 (Permittee) shall grant Water Boards staff, or an authorized representative, upon

presentation of credentials and other documents as may be required by law, permission to enter the Permittees' site at reasonable times, to ensure compliance with the terms and conditions of this Certification and/or to determine the impacts to waters of the state.

5. The applicant shall provide a copy of the Corps verification letter stating that the proposed project complies with RGP 41 to the State and Regional Water Boards, or provide a statement that no verification letter was received, before commencing work.

**D. Best Management Practices (BMPs)**

1. Invasive plant materials stockpiled at sites known to experience flash flooding outside the flood season of November 15 to April 15 shall be removed within 15 days of the initial creation of the stockpile in order to contain the potential spread of invasive plant material in such flash-flood prone areas. As per RGP 41, stockpiling of invasive plant materials is prohibited during the flood season.
2. The discharge by itself or in combination with other discharges shall not have a significant cumulative effect or degrade water quality or beneficial uses.
3. The discharge shall not directly or indirectly destabilize the channel or bed of receiving water.
4. The discharge shall not include substances in concentrations toxic to human, plant, animal, or aquatic life or that produce detrimental physiological responses.
5. The discharge shall not include waste classified as "hazardous" or "designated" as defined in California Code of Regulations, title 22, section 66261 and California Water Code section 13173.
6. The Permittee must, at all times, maintain appropriate types and sufficient quantities of materials 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.
7. 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.
8. If construction related materials reach surface waters, appropriate spill response procedures must be initiated as soon as the incident is discovered. In addition, the Regional Water Board staff contact identified in this Certification must be notified via email and telephone within twenty-four (24) hours of the occurrence.
9. Materials and debris from all work areas shall be removed following completion of the project.

10. The Permittee must implement all necessary BMPs to control erosion and runoff from areas associated permitted projects. The Permittee must restore 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. Restoration must include grading of disturbed areas to pre-project contours and revegetation with native species. Initial post-project restoration, sufficient to return landforms to appropriate grades, prevent erosion, and provide for revegetation, must be completed within 90 days of the end of project activity. This period may be extended to accommodate proper planting times, with approval from Regional Water Board staff.

## VI. Mitigation

Permitted activities must first avoid and then minimize adverse impacts on aquatic resources to the maximum extent practicable and as directed by the conditions of RGP 41. No permanent impacts to any waters of the state, including waters of the U.S., are permitted under this Certification. All temporary disturbance to waters, associated riparian areas and any areas where the disturbance may indirectly cause impacts to waters, must be stabilized to prevent erosion and encourage regrowth of desirable native plant species. Any native riparian trees that are removed must be replaced in accordance with the conditions of RGP 41. Site restoration should commence immediately upon, and should be completed within 90 days of, the end of the completion of invasive species removal activities.

## VII. Notification and Fee Requirements

- A. Applicants for projects proposed under RGP 41 shall provide a copy of the Corps' required notification package to the State Water Board (see Attachments B and C) and the appropriate Regional Water Board. These copies shall be mailed to:

Program Manager  
401 Certification and Wetlands Unit  
Division of Water Quality  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

Program Manager  
CWA Section 401 Water Quality Certification Program  
*Address of appropriate Regional Water Board (see Attachment C).*

Addresses are also available at  
[http://www.waterboards.ca.gov/waterboards\\_map.shtml](http://www.waterboards.ca.gov/waterboards_map.shtml)

Persons signing the notification documents must meet signatory requirements described in Attachment C.

- B. The Corps response to a notification for RGP 41 may be a “verification letter,” i.e., a letter verifying that the project as proposed complies with the conditions of RGP 41. Work may not commence until (a) a verification letter from the Corps has been received, or (b) until thirty days have passed since the Corps and the affected Regional Water Board received a complete notification package. No work may proceed if either the Corps or the Water Boards declines to authorize the project under RGP 41. Applicants shall provide to the Water Boards a copy of the Corps’ verification letter within 24 hours if received.
- C. The prospective Permittee must provide, with the notification to the Regional Water Board, the fee for review and processing of the notification, in accordance with California Code of Regulations, title 23, section 2200. Fees are subject to change. Current fees may be determined by consulting the Fee Calculator, as posted in the “Resources for Applicants” section of the 401 Program webpage:

[http://www.waterboards.ca.gov/water\\_issues/programs/cwa401/index.shtml#resources](http://www.waterboards.ca.gov/water_issues/programs/cwa401/index.shtml#resources)

- D. Applicable fees should be provided by check made out to the appropriate Regional Water Board and included with the notification. A copy of the fee check (*which should clearly be marked as a copy*) should be included in the notification to the State Water Board. A receipt for the fee check will be provided with the Regional Water Boards’ response to the notification. Note: electronic payment may be available in the future and instructions will be provided to applicants at that time.

### **VIII. Reporting Requirements**

- A. 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 Corps to satisfy the requirements of RGP 41, to the same address as shown in section VII above under notification requirements.

### **IX. CEQA Findings**

An Addendum (Attachment E) to the final Negative Declaration (ND) for RGP 41 has been prepared by the State Water Board. This Addendum identifies minor technical changes and additions to the ND, which do not require the preparation of a subsequent negative declaration. (See Cal. Code Regs. §§ 15162 & 15164, subd. (b).) After review of the original ND, the prior addendum, and other associated environmental documents, it has been determined that the changes to RGP 41 will not have any significant effects on the environment. The Addendum prepared to address the recent changes to RGP 41 sets forth, in detail, those changes and the rationale for its preparation. The ND and the addenda are incorporated by reference into this Certification Order.

### **X. Water Quality Certification**



I hereby issue the Certification for Regional General Permit No. 41 for Removal of Invasive plants, SB13007GN, 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.

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Thomas Howard  
Executive Director  
State Water Resources Control Board

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Date

Attachments (5):

- A. Draft Regional General Permit 41
- B. RGP 41 Area Map
- C. Regional Water Board Mailing Addresses
- D. Signatory Requirements
- E. CEQA Addendum