



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET, 16TH FLOOR
SAN FRANCISCO, CALIFORNIA 94103-1398

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JAN 23 2017

ADMINISTRATION

JAN 18 2017

Regulatory Division

Subject: File Number 2015-00418S

Mr. Michael McCullough
Monterey Regional Water Pollution Control Agency
5 Harris Court #D
Monterey, California 93940

Dear Mr. McCullough:

This correspondence is in reference to your submittal of November 4, 2015, concerning Department of the Army (DA) authorization for the Pure Water Monterey Groundwater Replenishment Project located from the City of Salinas to the City of Seaside, Monterey County, California.

Work within U.S. Army Corps of Engineers' (Corps) jurisdiction will include the construction of two surface water diversion structures that will result in discharge of fill material within the Reclamation Ditch and the Blanco Drain and the installation of the Blanco Drain diversion pipeline beneath the Salinas River. Approximately 100 feet of 18-inch diameter high density polyethylene (HDPE) pipe will be installed using horizontal directional drilling (HDD) technology. Work will require placement of 0.04 acres of fill within waters of the United States. All work shall be completed in accordance with the plans and drawings titled "USACE File ID: 2015-00418S, Pure Water Monterey Groundwater Replenishment, January 5, 2017, Figure 1 to 6" provided as enclosure 1.

Section 404 of the Clean Water Act (CWA) generally regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Section 10 of the Rivers and Harbors Act generally regulates construction of structures and work, including excavation, dredging, and discharges of dredged or fill material, occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States. Navigable waters of the United States generally include all waters subject to the ebb and flow of the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce. A Preliminary Jurisdictional Determination (JD) has been completed for your site. Preliminary JDs are written indications that there may be waters of the U.S. on a parcel or indications of the approximate location(s) of waters of the U.S. on a parcel. Preliminary JDs are advisory in nature and may not be appealed. While this

preliminary jurisdictional determination was conducted pursuant to Regulatory Guidance Letter No. 08-02, *Jurisdictional Determinations*, it may be subject to future revision if new information or a change in field conditions becomes subsequently apparent. The basis for this preliminary jurisdictional determination is fully explained in the enclosed *Preliminary Jurisdictional Determination Form*. You are requested to sign and date this form and return it to this office within two weeks of receipt. Please see the enclosed Preliminary JD map titled, "Preliminary Jurisdictional Determination, Pure Water Monterey Groundwater Replenishment" and dated January 5, 2017 (enclosure 2).

Based on a review of the information in your submittal and the current condition of the site, as verified during a field investigation on date September 28, 2016, the project qualifies for authorization under Department of the Army Nationwide Permits (NWPs) 12 for Utility Line Activities and 13 for Bank Stabilization, 77 Fed. Reg. 10,184 (Feb. 21, 2012) (enclosure 3), pursuant to Section 404 of the CWA of 1972, as amended (33 U.S.C. § 1344 *et seq.*) and Section 10 of the Rivers and Harbors Act (RHA) of 1899, as amended (33 U.S.C. § 403 *et seq.*). The project must be in compliance with the terms of the NWP, the general conditions of the Nationwide Permit Program (http://www.spn.usace.army.mil/Portals/68/docs/regulatory/Nationwide/NWP_Gen_Cond.pdf), and the San Francisco District regional conditions cited on our website (http://www.spn.usace.army.mil/Portals/68/docs/regulatory/Nationwide/Reg_Cond.pdf). You must also be in compliance with any special conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any term or condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps. This NWP authorization does not obviate the need to obtain other State or local approvals required by law.

This verification will remain valid until March 18, 2017, unless the NWP authorization is modified, suspended, or revoked. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 C.F.R. § 330.4(e) and 33 C.F.R. § 330.5 (c) or (d). This verification will remain valid if, during the time period between now and March 18, 2017, the activity complies with any subsequent modification of the NWP authorization. The Chief of Engineers will periodically review NWPs and their conditions and will decide to modify, reissue, or revoke the permits. If a NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. It is incumbent upon you to remain informed of any changes to the NWPs. Changes to the NWPs would be announced by Public Notice posted on our website (<http://www.spn.usace.army.mil/Missions/Regulatory/Public-Notices.aspx>). Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification

of Compliance, enclosure 4, verifying that you have complied with the terms and conditions of the permit.

This authorization will not be effective until you have obtained a Section 401 water quality certification from the Central Coast Regional Water Quality Control Board (RWQCB). If the RWQCB fails to act on a valid request for certification within two months after receipt of a complete application, the Corps will presume a waiver of water quality certification has been obtained. You shall submit a copy of the certification to the Corps prior to the commencement of work.

General Condition 18 stipulates that project authorization under a NWP does not allow for the incidental take of any federally-listed species in the absence of a biological opinion (BO) with incidental take provisions. As the principal federal lead agency for this project, the United States Environmental Protection Agency (EPA) initiated consultation with the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) to address project related impacts to listed species, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*). By letter of December 20, 2016, USFWS issued a BO (08EVEN00-2016-F-0523) (http://www.spn.usace.army.mil/Portals/68/docs/regulatory/BOs/NWP2012/SPN-2015-00418_USFWS_BO.pdf) with an incidental take statement for California red-legged frog (*Rana draytonii*), Monterey spineflower (*Chorizanthe pungens var. pungens*), Monterey gilia (*Gilia tenuiflora ssp. arenaria*), and designated critical habitat for these species. By letter of December 5, 2016 (http://www.spn.usace.army.mil/Portals/68/docs/regulatory/BOs/NWP2012/SPN-2015-00418_NMFS_LOC.pdf), NMFS concurred with the determination that the project was not likely to adversely affect South-Central California Coast steelhead Distinct Population Segment (DPS) (*Oncorhynchus mykiss*) and designated critical habitat for this species.

In order to ensure compliance with this NWP authorization, the following special conditions shall be implemented:

1. To remain exempt from the prohibitions of Section 9 of the Endangered Species Act, the non-discretionary Terms and Conditions for incidental take of federally-listed California red-legged frog (*Rana draytonii*), Monterey spineflower (*Chorizanthe pungens var. pungens*), Monterey gilia (*Gilia tenuiflora ssp. arenaria*), and designated critical habitat for these species shall be fully implemented as stipulated in the Biological Opinion entitled, "Biological Opinion for Pure Water Monterey Groundwater Replenishment Project, Monterey County (pages 1-48) dated December 20, 2016 (http://www.spn.usace.army.mil/Portals/68/docs/regulatory/BOs/NWP2012/SPN-2015-00418_USFWS_BO.pdf). Project authorization under the NWP is conditional upon compliance with the mandatory terms and conditions associated with incidental take.

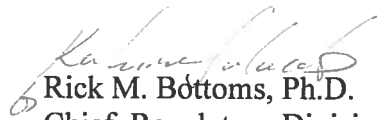
Failure to comply with the terms and conditions for incidental take, where a take of a federally-listed species occurs, would constitute an unauthorized take and non-compliance with the NWP authorization for your project. The USFWS is, however, the authoritative federal agency for determining compliance with the incidental take statement and for initiating appropriate enforcement actions or penalties under the Endangered Species Act.

2. Incidents where any individuals of South-Central California Coast steelhead (DPS) (*Oncorhynchus mykiss*) listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources at (301) 713-1401 and the Regulatory Office of the San Francisco District of the U.S. Army Corps of Engineers at (415) 503-6795. The finder should leave the plant or animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure, or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.
3. The NMFS concurred with the determination that the project was not likely to adversely affect South-Central California Coast steelhead (DPS) (*Oncorhynchus mykiss*) and designated critical habitat for this species. This concurrence was premised, in part, on project work restrictions outlined in the letter of concurrence (http://www.spn.usace.army.mil/Portals/68/docs/regulatory/BOs/NWP2012/SPN-2015-00418_NMFS_LOC.pdf). These work restrictions are incorporated as special conditions to the NWP authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
4. A post construction report shall be submitted 45 days after the conclusion of construction activities. The report shall document construction activities and contain as-built drawings (if different from drawings submitted with application) and include before and after photos.

You may refer any questions on this matter to Janelle Leeson of my Regulatory staff by telephone at (415) 503-6773 or by e-mail at Janelle.D.Leeson@usace.army.mil. All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner, while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>

Sincerely,


Rick M. Bottoms, Ph.D.
Chief, Regulatory Division

Enclosures

Copy Furnished (w/ encls):

Denise Duffy and Associates, Monterey, CA (Attn.: Mr. Matt Johnson)

Copy Furnished (w/ encl 1 only):

CA RWQCB, San Luis Obispo, CA

Copy Furnished (w/o encls):

CA SWRCB, Sacramento, CA