

MEMORANDUM FOR RECORD

SUBJECT: Determination of Compliance with 404(b)(1) Guidelines conditions for the issuance of General permits for Permit Number NWP-2007-1005/1 (Discharges into Vernal Pool Wetlands and other Waters of the United States within the Agate Desert Region of Jackson County, Oregon; RGP-5)

DATE: 7 March 2016

A. The 404(b)(1) Guidelines at 40 CFR 230.7(a) state: "A General permit for a category of activities involving the discharge of dredged or fill material complies with the Guidelines if it meets the applicable restrictions on the discharge in [section] 230.10 and if the permitting authority determines that:

(1) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment;

(2) The activities in such category will have only minimal adverse effects when performed separately; and

(3) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment."

B. Section 230.10 has three main requirements that must be met for all dredged or fill material discharge activities:

(1) No discharge shall be permitted if there is a practicable alternative that would have less impact on the aquatic ecosystem as long as the alternative does not have other significant adverse environmental consequences;

(2) No discharge shall be permitted that: (a) results in violations of state water quality standards, (b) violates toxic effluent standards, (c) jeopardizes the continued existence of species listed under the Endangered Species Act (ESA), or (d) violates the requirement to protect marine sanctuaries; and

(3) No discharge shall be permitted that results in significant degradation of waters of the U.S. Effects contributing to significant degradation include effects on municipal water supplies, special aquatic sites, life stages of aquatic life and other wildlife dependent on aquatic ecosystems, and effects on recreational, aesthetic, and economic values.

An evaluation of the prohibitions listed in 230.10 has been addressed in the Department of the Army Environmental Assessment and Statement of Findings (EA/SOF) prepared for the reauthorization of the subject general permit. The Guidelines at 230.7(b)(1) indicates that a consideration of alternatives as required by 230.10(a) is not directly applicable to General permits; however, the Corps provided a discussion of alternatives considered in the development of this Regional General Permit in section 9 of the EA/SOF.

All activities authorized under RGP-5, resulting in a discharge of dredged or fill material into waters of the United States, must receive project-specific Water Quality Certification from the Oregon Department of Environmental Quality to ensure consistency with applicable provisions

of the Clean Water Act, state water quality standards, and other appropriate requirements of state law. All terms and conditions of the DEQ certification will become terms and conditions of the Department of the Army authorization.

The current RGP-5 complies with the ESA by means of a programmatic biological opinion issued by the U.S. Fish and Wildlife Service (USFWS) January 26, 2011. This opinion originally expired in January 2016; however, because the scope of the activities authorized under RGP-5 has not changed, USFWS reaffirmed (by letter dated 29 December 2015) the analysis and conclusions under the Opinion are still valid.

As part of the project-specific review process, the Corps will also be determining the potential for actions covered by the RGP to have an effect on National Marine Fisheries Service (NMFS) trust species and will consult with NMFS as appropriate.

C. The following is a discussion regarding the activities proposed for authorization under RGP-5 as required by 230.7(a):

(1) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment.

The activities authorized by RGP-5 are sufficiently similar in nature and environmental impact to warrant authorization by a general permit. The terms of RGP-5 will authorize a specific category of activities (i.e., discharges into areas within the Agate Desert region of Jackson County, Oregon) and scope of work (limited to 2 acres) in a specific category of waters (i.e., those vernal pools which are waters of the United States). Within the overall discharge category, a range of activities may be authorized including commercial, residential, or industrial development; installation and maintenance of utility lines; road development and maintenance; and wetland restoration and enhancement. The impact considerations for one specific activity type will likely differ from another. However, the limitation on the scope of activities covered, and the restrictions imposed by the terms and conditions of this RGP will result in the authorization of activities that have similar impacts on the aquatic environment.

If a situation arises in which a specific action requires further review, or is more appropriately reviewed under the individual permit process, provisions of this RGP allows the district engineer to take such action.

(2) The activities in such category will have only minimal adverse effects when performed separately.

The RGP specifies mitigation requirements for all projects authorized under this permit with the greatest amount of mitigation required to offset losses of higher quality wetland resources. The permit also specifies mitigation site suitability criteria and performance standards that must be met unless otherwise agreed to by the Corps in coordination with the Oregon Department of State Lands and USFWS. These mitigation requirements help to bring the adverse effects from a specific project to the minimal threshold.

To further ensure minimal adverse effects, the RGP requires the Corps be notified prior to project implementation through the submittal of a pre-construction notification (PCN). This PCN provides project-specific information that allows the Corps to verify the project is covered by the RGP, to determine if sufficient consideration has been given to avoiding and minimizing impacts to waters, and evaluate proposed mitigation for unavoidable impacts to water of the U.S.

If a situation arises in which a specific action requires further review, or is more appropriately reviewed under the individual permit process, provisions of this RGP allows the district engineer to take such action.

(3) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment.

During a five-year period of January 2002 through December 2006, nine permits were issued with impacts to vernal pool wetlands in Jackson County. A total of 3.45 acres of vernal pool wetlands were impacted with two of the projects affecting 1.56 and 0.94 acres. The remaining seven projects each had less than 0.5 acre of vernal pool impact with five of these projects impacting less than 0.1 acre each of vernal pools. All projects with permanent impacts to waters of the U.S. required compensatory mitigation.

One project with 0.31 acre of impact within the vernal pool area of Jackson County was authorized in 2007, but the frequency of proposed projects in later years declined in large part due to the slow economy. Conversations with the Rogue Valley Council of Governments indicate that the economy seems to be picking up with previously mothballed projects being resurrected. Having the RGP in place for another five year period will provide a consistent means to evaluate qualifying projects within the Agate Desert region and consistent mitigation requirements to compensate for permanent impacts to waters of the U.S.

If a situation arises in which a specific action requires further review, or is more appropriately reviewed under the individual permit process, provisions of the RGP allow the district engineer to take such action.

D. Conclusion: Based on the evaluation of the applicable restrictions on the discharge and the activities proposed for authorization under this General permit, as required by 40 CFR 230.7, the Corps has determined the reauthorization of RGP-5 complies with the 404(b)(1) Guidelines' conditions for the issuance of General permits.