



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

February 26, 2025

Regulatory Division

Subject: File Number SPN-2023-00203

Ms. Frances Knapczyk
Napa County Resource Conservation District
1303 Jefferson Street, Suite 500B
Napa, California 95559
frances@naparcd.org

Dear Ms. Knapczyk:

This correspondence is in reference to your submittal of May 3, 2023 concerning Department of the Army (DA) authorization for the Sulphur Creek Fish Passage Restoration Project located on Sulphur Creek, at 2959, 2929, 2955 White Sulphur Spring Road and 2995 Spring Street, Saint Helena, Napa County, California, Latitude 38.487871°, Longitude -122.481619°.

Work within U.S. Army Corps of Engineers (Corps) jurisdiction will include the use of earth moving equipment (i.e., excavators, bulldozers, scrapers, etc.) to remove the fishway beneath an existing bridge, including the fish ladder, all concrete, and all other associated man-made materials. Work within Corps jurisdiction will also include grading and earthwork to establish a constant 2.5% channel slope through the project reach. The channel upstream of the existing bridge will include a low flow channel approximately 25 feet wide, with an inset floodplain. The channel bed will be layered in engineered streambed material (ESM) following the California Department of Fish and Wildlife's (CDFW) guidance for rock specifications and sizing. The top layer of ESM, referred to as ESM Type 1, will be approximately three feet thick and extend the full length of the project. Underneath the ESM Type 1, beginning at the upper end of the reach and extending downstream for approximately 60 feet, a buried roughened ramp with a slope of 5% consisting of ESM Type 2 will be installed as a bed profile protective feature. The ESM Type 2 will include boulders ranging from two to five feet in diameter. Approximately 250 cubic yards (CY) of bankline rock planted with live willow stakes will be installed along 260 linear feet of the creek bank on the north side of the channel and under both new bridge abutments in the footprint of the bridge to protect the adjacent road embankment and new abutments. Channel boulder clusters and large wood log structures with rootwads will be placed across the floodplain in a scattered pattern integrated with existing large boulders where feasible and partially buried in the engineered streambed material. The large rock in the existing cabled rock weir will be retained in place, but the cables would be cut and removed. The existing rock slope protection (RSP) on the northern bank of the channel downstream of the existing bridge will also remain in place. Work would take place between June 1 and October 31 when the creek is typically dry; however, if the creek is not dry due to higher-than-normal

precipitation, a water diversion consisting of a screened pump, cofferdam, and bypass pipe will be temporarily installed. Work will require excavation of approximately 590 CY of fill, placement of 250 CY riprap for bankline rock and placement of approximately 500 CY of other fill material within 0.17 acres (660 linear feet) of Sulphur Creek. All work shall be completed in accordance with the plans and drawings titled: "USACE File ID SPN-2023-00203, Sulphur Creek Fish Passage Restoration, City of Saint Helena, Napa County" dated January 3, 2024, in 34 sheets, 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 (RHA) 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.

Based on a review of the information in your submittal the project qualifies for authorization under Department of the Army Nationwide Permits (NWP) 13 (Bank Stabilization) and 27 (Aquatic Habitat Restoration, Establishment, and Enhancement Activities) (86 Fed. Reg. 73522, December 11, 2021), 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, and the San Francisco District regional conditions cited on our website (www.spn.usace.army.mil/Missions/Regulatory/Permitting/Nationwide/). 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. Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, enclosure 2, verifying that you have complied with the terms and conditions of the permit.

This verification will remain valid until March 16, 2026, 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 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 16, 2026, 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 (www.spn.usace.army.mil/Missions/Regulatory/Public-Notices.aspx).

You shall comply with all terms and conditions set forth by the “Notice of Applicability for Enrollment of the Sulphur Creek Fish Passage Restoration Project under the Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements for Restoration Projects Statewide (Order No. 2022-0048-DWQ), Napa County,” issued by the San Francisco Bay Regional Water Quality Control Board on December 18, 2023 (enclosure 3). You shall consider such conditions to be an integral part of the NWP authorization for your project.

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 Corps initiated consultation with the 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 email of May 17, 2023, NMFS concurred that the project met the criteria for inclusion in the NOAA Restoration Center’s Programmatic BO titled “Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Program for restoration projects within the NOAA Restoration Center’s Central Coastal California Office jurisdictional Area in California” (BO), dated June 14, 2016 (https://www.spn.usace.army.mil/Portals/68/docs/regulatory/BOs/Prog/NMFS_PBO_NOAA_RC_2016.pdf).

Additionally, by letter of August 8, 2023, cited in enclosure 4, USFWS, concurred with the determination that the project was not likely to adversely affect Northern spotted owl (NSO) (*Strix occidentalis caurina*).

In order to fulfill our tribal trust responsibilities, the Corps consulted with local Native American tribes. Based on recommendations from Middletown Rancheria, a federally recognized tribe, you have agreed to include in your project description the execution of a tribal monitoring agreement prior to ground disturbing activities. You should contact Michael Rivera (mlrivera@middletownrancheria.com, 707-987-3670) at least 30 days prior to commencement of ground disturbing activities for to establish a monitoring agreement.

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 Central California Coast steelhead (*Oncorhynchus mykiss*) shall be fully implemented as stipulated in the Programmatic Biological Opinion titled "Endangered Species Act Section 7(a)(2) Biological Opinion, and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Program for restoration projects within the NOAA Restoration Center's Central Coastal California Office jurisdictional Area in California, dated June 14, 2016 (https://www.spn.usace.army.mil/Portals/68/docs/regulatory/BOs/Prog/NMFS_PBO_NOAA_RC_2016.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 NMFS 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 Central California Coast steelhead 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 USFWS concurred with the determination that the project was not likely to adversely affect Northern spotted owl (NSO) (*Strix occidentalis caurina*). This concurrence was premised, in part, on project work restrictions and the description of the proposed action outlined in enclosure 4. 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. You shall contact Middletown Rancheria no later than 30 days prior to ground disturbance to coordinate establishment of a tribal monitoring agreement.

You may refer any questions on this matter to Kendra Spicher by telephone at 415-503-6832 or by e-mail at kendra.a.spicher@usace.army.mil. All correspondence should be addressed to the Regulatory Division, North Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. The 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: www.sfn.usace.army.mil/Missions/Regulatory.aspx.

Sincerely,

A handwritten signature in black ink that reads "Kendra Spicher". The signature is written in a cursive style with a large, looping "S" for the last name.

Kendra Spicher
Regulatory Project Manager
North Branch

Enclosures

cc:

WRA, Inc., Erik Schmidt, schmidt@wra-ca.com

RWQCB, Erin Fairley, erin.fairley@waterboards.ca.gov

NMFS, Joe Pecharich, joe.pecharich@noaa.gov

USFWS, Arwen Freeman, arwen_freeman@fws.gov