

## **SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 3**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 3, Maintenance, and addresses the regional modifications and conditions for this NWP. The South Pacific Division Engineer has considered the potential cumulative adverse effects on the aquatic environment that could result from the use of this NWP, including the need for additional modifications of this NWP by the establishment of regional conditions to ensure those cumulative adverse effects on the aquatic environment are minimal. The Division Engineer has also considered the exclusion of this NWP from certain geographic areas or specific waterbodies. These regional conditions are necessary to address important regional issues relating to the aquatic environment. These regional issues are identified in this document. These regional conditions are being required to ensure this NWP authorizes activities that result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This document also identifies regionally important high-value waters and other geographic areas in which this NWP should be regionally conditioned or excluded from NWP eligibility, as described below, to further ensure the NWP does not authorize activities that may exceed the minimal adverse effects threshold.

### Text of Nationwide Permit 3:

*Maintenance.* (a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance

dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. The placement of new or additional riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 31). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

Summary of changes to NWP 3 from 2007: NWP 3 now authorizes stream channel excavation immediately adjacent to the structure or fill being maintained. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill and must be immediately adjacent to the project or within the boundaries of the structure or fill; this excavation immediately adjacent to the structure or fill would not require a pre-construction notification (PCN). NWP 3 now authorizes minor deviations in the structure's configuration or filled area that are required by other regulatory agencies in addition to minor deviations due to changes in materials, construction techniques or current construction codes or safety standards. Paragraph (b) clarifies authorization of removal of accumulated sediments and debris in the vicinity of and within existing structures may include the placement of new or additional riprap to protect the structure. The next to last sentence in paragraph (b) clarifies that new or additional riprap may be placed to protect the structure or ensure the safety of the structure. Paragraph (d) clarifies that NWP 3 cannot be used for beach restoration to separate it

from the 2007 NWP 3 that implied beach restoration associated with maintenance dredging would not be authorized. The “Notification” paragraph now excludes the phrase, “[w]here maintenance dredging is proposed,…” to clarify that a PCN is now required for any activity covered under paragraph (b).

## **1.0 Background**

In the February 16, 2011, issue of the Federal Register (76 FR 9174), the Corps of Engineers (Corps) published its proposal to reissue 48 existing NWPs and issue two new NWPs. To solicit comments on its proposed regional conditions for these NWPs, the Los Angeles District issued a public notice on February 25, 2011. The issuance of the NWPs was announced in the February 21, 2012, Federal Register notice (77 FR 10184). After the publication of the final NWPs, the Los Angeles District considered the need for regional conditions for this NWP. The Los Angeles District’s findings are discussed below.

## **2.0 Consideration of Public Comments**

### **2.1 General Comments**

Please See the attached response to comments document (Section III)

### **2.2 Comments on Proposed Regional Conditions**

#### **2.2.1 Proposed Regional Condition 1**

Please see the attached response to comments document.

#### **2.2.2 Proposed Regional Condition 2**

Please see the attached response to comments document.

#### **2.2.3 Proposed Regional Condition 3**

Please see the attached response to comments document.

#### **2.2.4 Proposed Regional Condition 4**

Please see the attached response to comments document.

#### **2.2.5 Proposed Regional Condition 5**

Please see the attached response to comments document.

### **2.2.6 Proposed Regional Condition 6**

Please see the attached response to comments document.

### **2.2.7 Proposed Regional Condition 7**

Please see the attached response to comments document.

### **2.2.8 Proposed Regional Condition 8**

Please see the attached response to comments document.

### **2.2.9 Proposed Regional Condition 9**

Please see the attached response to comments document.

### **2.2.10 Proposed Regional Condition 10**

Please see the attached response to comments document.

## **3.0 Waters Excluded from NWP or Subject to Additional Pre-Construction Notification Requirements**

### **3.1 Waters excluded from use of this NWP**

#### **3.1.1 Special Aquatic Sites in Arizona and Mojave and Sonoran Deserts of California (Regional Condition 2)**

Reason for Exclusion: With this regional condition, NWPs 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, 39-46, and 48-52 may **not** be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site in the State of Arizona and the Mojave and Sonoran desert regions in California, including wetlands, mudflats, vegetated shallows, and sanctuaries and refuges as defined in 40 CFR Part 230.40-45. The regional condition would require applicants to submit an application for a Standard Individual Permit subject to authorization under section 10 of the Rivers and Harbors Act, section 103 of the Marine Protection, Resource and Sanctuaries Act, and/or section 404 of the Clean Water Act (CWA). Special aquatic sites in the desert regions of the Los Angeles District support substantial aquatic resources that exhibit relatively high physical and biological functions. Furthermore, these aquatic areas can provide important and unique habitat for endangered species, neotropical migratory birds, and other indigenous wildlife. Past construction activities in and adjacent to these special aquatic sites have degraded portions of these high value systems. Regional Condition 2 would ensure compliance with the 404(b)(1) guidelines and evaluation and mitigation, if warranted, of activities that may have an adverse effect on special aquatic sites in the otherwise arid regions of the Los Angeles District.

In the Los Angeles District, the semi-arid climate limits the extent and number of special aquatic sites. This scarcity of special aquatic sites is especially evident in Arizona and in the desert regions of California. In these areas, annual precipitation is usually below 10 inches, which precludes the development of wetlands in the majority of these desert regions. Furthermore, approximately 90 percent of wetlands in California have been affected by historic conversion to agricultural uses, grading, and filling activities. As a result, wetland areas are rare in the Los Angeles District and warrant more rigorous protection. Regional Condition 2 would serve to better protect special aquatic sites in desert regions of the Los Angeles District by requiring the additional scrutiny inherent in the Standard Individual Permit (SIP) process for most permanent discharges of dredged or fill material in these areas. The permit applicant would have to perform a 404(b)(1) alternatives analysis that would include careful examination of the purpose and need for the project and alternatives that avoid or reduce impacts to special aquatic sites. Regional Condition 2 would help ensure that discharges of dredged or fill material that would otherwise be authorized by NWP's would have minimal impacts, both individually cumulatively, to special aquatic sites in the Los Angeles District.

This regional condition has been amended from that included with the 2007 NWP's (Regional Condition 4) to clarify the definition of *desert regions of California* to include specific watersheds as defined by USGS Hydrologic Unit Code (HUC) accounting units. These include Lower Colorado (150301), Northern Mojave (180902), Southern Mojave (181001) and Salton Sea (181002). In addition, coral reefs and sanctuaries and refuges were removed from the list of special aquatic sites for which this regional condition would apply. Coral reefs were removed as they do not exist within the subject geographic area. Sanctuaries and refuges were removed as there are circumstances where a predominantly upland sanctuary or refuge may contain aquatic resources that exhibit relatively low physical and biological functions (such as a disturbed ephemeral drainage) yet nevertheless would be considered a special aquatic site. In those cases, mandatory notification (per regional condition 4a) would be sufficient to ensure a given project would have no more than minimal impacts by ensuring Corps review.

For additional information please see the supplemental decision document for Regional Condition 2.

### **3.1.2 Jurisdictional Vernal Pools (Regional Condition 5)**

Reason for Exclusion: This regional condition would require any project proposing to discharge dredged or fill material into a jurisdictional vernal pool to be reviewed under the standard individual permit (SIP) process, which requires a more rigorous alternatives review. This regional condition has been amended from the 2007 version to include an exception for discharges associated with restoration, enhancement, management, or scientific study activities that qualify for NWP's 5, 6, and 27. NWP's 5 and 6 authorize temporary activities and structures that could be used to further the understanding of vernal pool functions and services or for monitoring the effectiveness of enhancement, restoration, and establishment projects. NWP 27 authorizes only activities that result in net increases in aquatic resource functions and services. Per this regional condition, authorization under other NWP's cannot be considered and a PCN must be submitted in accordance with General Condition 31 and Regional Condition 3. In

discussions with local land managers, Regional Condition 5 has increased project costs and timelines in order to obtain an SIP for voluntary restoration and enhancement projects. This has also limited their ability to compete for grant and other public funding with restrictions on costs and timelines. Therefore, the Los Angeles District believes that by allowing the use of these three NWPs, the scientific community and open space land managers would benefit from the streamlined process and there may ultimately be a net increase in functions and services in vernal pool ecosystems through the implementation of restoration, enhancement, and management activities.

The Los Angeles District Regulatory Branch previously determined that the 0.5-acre SIP threshold for vernal pool impacts (established by the District in 1997) would not adequately protect remaining vernal pool resources in the region. It is estimated that 95 to more than 97 percent of the vernal pools that historically existed in the region have been lost through urbanization or agricultural practices (USFWS 1998); in some counties the loss is virtually total. Under the new and modified NWPs, a single and complete project could impact up to 0.5 acre of vernal pool habitat and be considered for NWP authorization. The District had previously been using a 0.5-acre SIP threshold for vernal pool impacts since 25 November 1997 (previous District Regional Condition 1). Despite the establishment of this earlier regional condition, the District experienced additional losses of vernal pool habitat, requiring the establishment of Regional Condition 5 as part of the 2000, 2002 and 2007 NWP Programs. Within the boundaries of the Los Angeles District, the sizes of jurisdictional vernal pools generally range from approximately 200 to 4,900 square feet (e.g. 0.00459 to 0.11248 acre). Therefore, 0.5 acre of vernal pools could include a large vernal pool complex or individual pools made up of 5 to 100 pools. Compounding this situation, mitigation for vernal pool impacts is not well developed, and often takes the form of preservation and enhancement of remaining pools, resulting in a continued net loss of vernal pool acreage, functions and services. The SIP review process includes an analysis of the propriety of the proposed fill in a special aquatic site pursuant to the 404(b)(1) Guidelines.

Vernal pools in the region comprise a severely diminished class of aquatic habitats and are fragile, easily disturbed ecosystems. Due to the decline of vernal pool habitat in the region, the District determined future impacts to vernal pools in the region would result in more than minimal adverse environmental effects both individually and cumulatively. With the proposed regional condition, any quantity of dredged or fill material discharged into a jurisdictional vernal pool that is not temporary in accordance with NWP 5 or 6 or does not result in a net increase in aquatic resources functions and services in accordance with NWP 27 would be subject to an SIP review. By requiring an SIP, the remaining jurisdictional vernal pools in the region would be afforded the maximum level of protection under the Regulatory Program which includes a 404(b)(1) analysis (i.e., under this more rigorous process, the Corps can only authorize the least environmentally damaging practicable alternative for a given project).

With the modification of Regional Condition 5, the District recognizes certain regulated activities involving restoration, enhancement, management, and scientific study of vernal pools would not contribute to the overall loss of vernal pool habitat and in such cases (with few exceptions) SIP review would not provide any additional protection or benefit to vernal pools.

Therefore, this regional condition has been modified since the 2007 NWP's to include language excluding these four categories of activities from this requirement. If the success of a proposed restoration or enhancement activity is uncertain, or the subject vernal pool is of particularly high ecological value, the District would still retain the ability to review any such action as an SIP through our discretionary authority. In addition, the Corps has determined that issuance of Regional Condition 5 would not be contrary to the public interest. Overall, the implementation of Regional Condition 5, which requires an SIP for discharges of dredged or fill material in jurisdictional vernal pools (with the exception of activities associated with the restoration, enhancement, management or scientific study), would provide additional assurances that the activities permitted under the NWP's would result in minimal impacts on both an individual and cumulative basis in the Los Angeles District.

For additional information please see the supplemental decision document for Regional Condition 5.

### **3.1.3 San Diego Creek and San Juan Creek/Western San Mateo Creek SAMPs (Regional Condition 8).**

Reason for Exclusion: Regional Condition 8 would exclude the use of selected NWP authorizations within all jurisdictional waters of the San Diego Creek, San Juan Creek, and western San Mateo Creek and their tributaries within three watersheds. This decision to revoke selected NWP's was made in accordance with two Special Area Management Plans (SAMP's) the Corps conducted in Orange County, and pursuant to the South Pacific Division (SPD) Commander's authority at 33 C.F.R. § 330.5(c).

Concurrent with establishing watershed-specific permitting frameworks, the following 24 NWP's are being revoked for use in these watersheds covered by the two SAMP's in Orange County: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, and 50. The remaining 26 NWP's would be retained for use in the watersheds covered by the two SAMP's in Orange County: 01, 02, 04, 05, 06, 08, 09, 10, 11, 15, 20, 22, 23, 24, 28, 30, 32, 34, 35, 36, 37, 38, 45, 48, 51 and 52.

The decision to revoke selected NWP's within these SAMP Watersheds involved establishing alternative permitting procedures determined to be more appropriate for the given aquatic resources in the watersheds, and promoting long-term aquatic resource conservation. This exclusion would require any project that involved a regulated activity within these particular watersheds to receive the level of permit review and evaluation in consideration of the applicable SAMP framework.

Specifically, the San Juan Creek/Western San Mateo Creek Watersheds SAMP incorporated alternative permitting procedures consisting of the establishment of a Regional General Permit (RGP) 74 for maintenance activities for use outside the targeted aquatic resource conservation areas, new LOP procedures, and a long-term Standard Individual Permit (SIP) and LOP procedures for the SAMP participants. Similarly, the San Diego Creek Watershed SAMP incorporated alternative permitting procedures consisting of new LOP procedures and RGP 74.

Regulated activities ineligible for retained NWP or the SAMPs' alternative permitting procedures would be reviewed under the SIP process, which would include a 404(b)(1) alternatives analysis.

The Corps conducted extensive analyses in its environmental impact statement (EIS) for the San Juan Creek/Western San Mateo Creek Watersheds SAMP and its joint EIS/environmental impact report (EIR) with the California Department of Fish and Game Habitat Conservation Branch, South Coast Region for the San Diego Creek Watershed SAMP/Watershed Streambed Alteration Agreement (WSAA) Process. The final decision to revoke selected NWPs was made by the SPD Commander in his record of decision signed July 19, 2010.

For additional information please see the supplemental decision document for Regional Condition 8.

### **3.2 Waters subjected to additional pre-construction notification requirements**

NWP 3 requires pre-construction notification for all activities authorized under paragraph (b), including information regarding the original design capacities and configurations of outfalls, intakes, small impoundments, and canals. NWP 3 does not require notification, except as modified by Regional Conditions 4a-4c below, for repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those due to minor changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement.

#### **3.2.1 All Perennial Waters and Special Aquatic Sites in Arizona and Desert Regions of California (Regional Condition 4a)**

Reason for Pre-Construction Notification Requirement: It is the position of the Los Angeles District that any discharges of dredged or fill material in a special aquatic site or a perennial water body in a desert area (excluding two reaches in the Colorado River) warrants the review of Regulatory Division. The loss of approximately 90% of wetland resources in southern California and the general scarcity of special aquatic sites in this semi-arid region indicate the need for compensatory mitigation to ensure adverse impacts to special aquatic sites are no more than minimal individually and cumulatively. Special aquatic sites in Los Angeles District support substantial aquatic resources exhibiting relatively high physical and biological functions. Furthermore, these aquatic areas can provide important and unique habitat for endangered species, migratory birds, and other wildlife. In addition, past construction activities in and adjacent to these special aquatic sites have degraded portions of these high value systems.

Two relatively small reaches of the Colorado River have been excluded from this regional condition because these areas exhibit relatively low physical and biological functions; however, due to a large amount of existing infrastructure and ongoing recreational activities, there are a large number of small structures and minor projects that require authorization pursuant to Section

10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act. As a result, requiring notification in the above two reaches of the Colorado River would increase the District's workload substantially while only providing minimal environmental benefits. With this notification requirement, the Los Angeles District can ensure that the use of the NWP for activities proposed within the special aquatic sites would have minimal impacts, both individually and cumulatively. Activities sited within special aquatic sites that are determined to have the potential to exceed the minor impact threshold would be subject to review under the SIP process that requires a rigorous alternatives analysis. As such, further impacts to the special aquatic sites and perennial water bodies in desert areas would be avoided and minimized to the maximum extent practicable. Through the mandatory pre-construction notification process, the Los Angeles District will review the proposed discharges of dredged or fill material into special aquatic sites and perennial streams in desert areas (excluding the above two reaches in the Colorado River) on a case-by-case basis to ensure that those activities would result in minimal adverse effects on the aquatic environment, individually and cumulatively. This regional condition has been amended from that included with the 2007 NWPs (Regional Condition 4) to clarify the definition of *desert regions of California* to include specific watersheds as defined by USGS Hydrologic Unit Code (HUC) accounting units. These include Lower Colorado (150301), Northern Mojave (180902), Southern Mojave (181001) and Salton Sea (181002). For additional information please see the supplemental decision document for Regional Condition 4a.

### **3.2.2 All areas designated as Essential Fish Habitat (EFH) in the Los Angeles District (Regional Condition 4b)**

Reason for Pre-Construction Notification Requirement: The EFH regional condition has been developed to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended. The 2007 NWPs included Regional Condition 5, which required notification for any project located in EFH. Regional Condition 4b would replace Regional Condition 5 and include the additional requirement to include an EFH assessment as part of the notification package. The EFH mandates of the MSFCMA are to integrate fisheries management and habitat management by stressing the ecological relationships between fishery resources and the environments upon which they depend, and ensure a consultation process by which federal agencies explicitly consider the effects of their actions on important habitats, with the goal of supporting the sustainable management of marine fisheries. The consultation process for any Federal project or action that may adversely affect EFH requires submission of an EFH assessment to the National Marine Fisheries Service (NMFS). The inclusion of the requirement for applications to provide an EFH assessment places the burden of preparing the assessment on the permit applicant rather than the Corps, however, the Corps has generally relied on permit applicants to provide this information to meet the requirements of the consultation process associated with the permit action. Therefore, the Los Angeles District does not believe this will create an unduly burdensome requirement on permit applicants relative to current procedures. Regional Condition 4b also includes a link to sample EFH assessments provided by NMFS.

For additional information please see the supplemental decision document for Regional Condition 4b.

### **3.2.3 Projects located in all watersheds in the Santa Monica Mountains (Regional Condition 4c)**

Reason for Pre-Construction Notification Requirement: The Santa Monica Mountains represent an important cultural and natural resource. The region contains a variety of protected areas, and serves as a recreation destination for Los Angeles area residents. Aquatic resources in the Santa Monica Mountains are important in the regional context and are also a center of native biodiversity. Despite their ecological importance, aquatic resources in the Santa Monica Mountains have experienced heavy losses. The Corps' ongoing study of cumulative impacts in the Malibu Creek watershed, the region's largest drainage basin, indicates that most of these impacts have occurred without Corps authorization (Lilien 2001<sup>1</sup>). The Santa Monica Mountains have high natural resource values that contain 1066 hectares of aquatic habitat and support a number of federally listed threatened and endangered species. As documented in Lilien 2001, despite their importance, aquatic ecosystems in the Santa Monica Mountains, particularly Malibu Creek, have experienced loss and degradation of riparian habitat and, as a result, this regional condition is required to ensure that the NWP's would have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat in various watersheds in the Santa Monica Mountains.

### **3.2.4 Projects located in the Santa Clara River watershed (Regional Condition 4d)**

Reason for Pre-Construction Notification Requirement: The entire Santa Clara River watershed encompasses approximately 1,634 square miles in Los Angeles and Ventura Counties (the upper watershed, which includes 45 miles of the river between its headwaters and the Ventura County line, is 680 square miles, while the lower watershed, between the county line and the ocean is 954 square miles). The river flows approximately 84 miles from its headwaters east of Acton to its delta located between the cities of Ventura and Oxnard. Recent estimates (as of 2005) for the total amount of urbanization, including residential, industrial, and commercial areas, in the entire Santa Clara River watershed vary between 4 and 4.5 percent (approximately 4.5%, with most of the development located in the Santa Clarita area). Between 1988 and 2006, the Corps has issued approximately 228 permits that have resulted in actual impacts to waters of the U.S. (this number excludes permit actions where the same permit was issued multiple times, permits that were never utilized by the applicant, and permits that authorized an activity in the same location multiple times). Of these actions, more were associated with emergency repairs and maintenance than any other type of activity (approximately 25%, more than half of which were for emergency actions). The above 228 permit actions resulted in temporary impacts to approximately 480 acres and permanent impacts to approximately 149 acres of waters of the U.S., including approximately 15 acres of wetlands in the Santa Clara River watershed (temporary impacts are usually addressed with on-site restoration as opposed to compensatory mitigation requirements). As compensatory mitigation for the above permanent impacts to waters of the U.S., the Corps required a total of approximately 518 acres of preservation, creation, enhancement, and restoration of aquatic and riparian habitat in the Santa Clara River watershed.

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<sup>1</sup>Lilien, J.P. Cumulative Impacts to Riparian Habitat in the Malibu Creek Watershed. Dissertation, University of California, Los Angeles.

To assess the current condition of the main stem of the Santa Clara River, an assessment was made to determine the condition for several reaches in the Santa Clara River downstream of the City of Santa Clarita. Based on the results of the fieldwork for the assessment, the main stem of the Santa Clara River exhibits relatively high physical and biological functions immediately downstream of the developed areas in Santa Clarita. The above assessment was completed in the summer of 2004 (and updated in 2007) and supports the results of past and present environmental assessments for Section 404 permit decisions in the Santa Clarita area that have determined that the Santa Clara River exhibits limited physical evidence of direct, indirect, and cumulative impacts from urbanization, agriculture and other land use changes in the watershed. The purpose of this regional condition is to ensure that the NWP's would continue to have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat that exhibits relatively high physical and biological functions in the Santa Clara River watershed.

For additional information please see the supplemental decision document for Regional Condition 4d.

## **4.0 Alternatives**

### **4.1 No Regional Conditions**

Use of NWP 3 is limited to aquatic resources previously disturbed by the original construction of a particular structure and immediately adjacent areas, or recently eroded areas due to specific storm, flood, fire or other discrete events. As a result, these areas typically support reduced physical and biological functions. In some cases, the jurisdictional areas support no vegetation, exhibit substantial changes in hydrology, and have limited nutrient cycling functions. Due to the reduced physical and biological functions in these disturbed jurisdictional areas, as well as the notification requirements for maintenance involving sediment removal or addition of rock riprap, the proposed NWP 3 would result in minimal impacts, both individually and cumulatively, in the majority of the Los Angeles District. As a result, no regional conditions for the proposed NWP 3 would have more than minimal impacts in only specific geographic areas and certain sensitive habitat types.

With no regional conditions, the proposed NWP 3 could have more than minimal impacts in some portions of the Los Angeles District. Without regional conditions requiring pre-construction notification in the Santa Clara River and Santa Monica Mountains watersheds, in special aquatic sites and perennial watercourses in desert areas, and in Essential Fish Habitat, there could be more than minimal impacts to waters of the United States, which exhibit both high physical and biological functions and documented cumulative impacts in some portions of these watersheds. Moreover, without a regional condition requiring pre-construction notification for projects in special aquatic sites and perennial waterbodies in Arizona and the desert regions of California, impacts to these relatively rare resources could occur without mitigation. As a result, there would be more than minimal impacts, both individually and cumulatively, to special aquatic sites and perennial waterbodies in the Los Angeles District. In addition, with no regional conditions, the proposed NWP 3 could have more than minimal impacts on jurisdictional vernal

pools in the Los Angeles District. Historically, there has been more than a 95 percent loss of jurisdictional vernal pool habitat in the southern California area. Further losses could result in more than minimal impacts both individually and cumulatively; Regional Condition 5, therefore, would exclude all discharges of dredged and fill material in vernal pools from NWP authorization throughout the Los Angeles District. Overall, with no regional conditions, the proposed NWP 3 could be utilized in areas with sensitive special aquatic sites and endangered species with no review by resource agencies. With no regional conditions, these activities could proceed without notification to the Corps and subsequent formal or informal consultation pursuant to the Endangered Species Act. With no regional conditions, the proposed NWP 3 could have more than minimal impacts to sensitive watersheds and resources, special aquatic sites and jurisdictional vernal pool habitat in the Los Angeles District and, therefore, this alternative has been eliminated from further consideration.

#### **4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds**

To further ensure NWP 3 would have minimal impacts to aquatic resources, both individually and cumulatively, the Los Angeles District considered augmenting the proposed notification requirements for NWP 3.

In the Los Angeles District, the semi-arid climate limits special aquatic sites throughout the region. In dryland areas, lack of vegetation and developed soils often result in high peak discharges for large storm events. With a predominance of deep alluvial soils, dryland systems are dominated by overland flow with groundwater recharge and throughflow only contributing a small amount to stream discharge. Areas of perennial flow are relatively limited in the region, particularly in Arizona and the desert areas of California, and frequently provide habitat for threatened and endangered species. Over the last fifty years, agricultural conversion and development activities have resulted in a loss of approximately 90 percent of wetlands and 95 percent of the jurisdictional vernal pools in southern California. This indicates further loss of special aquatic sites in southern California and Arizona, as well as perennial waterbodies in Arizona and the desert regions of California, could result in more than minimal cumulative impacts. To ensure any impact to special aquatic sites is offset by compensatory mitigation, the Los Angeles District would require notification for any project that impacts a special aquatic site or a perennial waterbody in Arizona or the desert regions of California. Further, certain watersheds and resources in the Los Angeles District support waters of the United States that have high physical and biological functions threatened by cumulative impacts at the watershed level. To ensure that NWP 3 would have minimal impacts to these resources, the Los Angeles District would require notification for all projects in the Santa Clara River watershed in Los Angeles and Ventura counties, the Santa Monica Mountains in Los Angeles and Ventura counties, and areas designated as Essential Fish Habitat.

The Los Angeles District would also eliminate the use of NWP 3 and all other NWPs throughout the Los Angeles District to authorize discharges of dredged or fill material into jurisdictional vernal pools. Eliminating the use of NWPs in jurisdictional vernal pool areas that have experienced close to 100 percent loss of vernal pool habitat would ensure minimal impacts to these sensitive wetland areas.

An alternative regional condition would prohibit the use of the proposed NWP 3 in all special aquatic sites in the Los Angeles District. This would require all maintenance projects in special aquatic sites be assessed under standard individual permits, including alternatives analyses. Due to the loss of approximately 90 percent of the wetland resources in southern California and the general scarcity of special aquatic sites in this semi-arid region, an argument could be presented that any project which would discharge dredged or fill material in a special aquatic site be assessed under the 404(b)(1) Guidelines and the public interest factors to determine the severity of the adverse impacts that may occur on or to special aquatic sites. However, the proposed NWP 3 would only impact previously disturbed areas that generally support low physical and biological functions. A review of three years of data on the use of NWP 3 in Los Angeles District predicts that most projects to be authorized under NWP 3 would only result in temporary impacts to a small area of waters of the United States. As a result, a regional condition that precludes all discharges in special aquatic sites would unnecessarily increase our workload by requiring an individual permit review on all projects, including those with small-scale temporary impacts in disturbed areas. This proposed modification would not be practicable and would result in minimal environmental benefits to the aquatic ecosystem.

The proposed NWP 3 would result in impacts to waters of the United States that have been disturbed by past construction activities or eroded by specific storm, flood, fire or other discrete events. Based on a review of permit data over the past three years (01 Oct 2008 through 30 Sep 2011), the majority of the work authorized under NWP 3 results in only temporary minor impacts to waters of the United States. Approximately 1.3 acres of permanent impact were authorized on an average annual basis, with the vast majority of individual impacts less than 0.1 acre. An average of 2.6 acres of mitigation was required on an average annual basis. The bulk of these impacts were in areas with limited aquatic resource functions. The majority of authorized impacts are temporary, which during this same period amounted to approximately 41 acres on an average annual basis (it should be noted that approximately half the average temporary impact area is the result of a single maintenance project for treatment wetlands).

As a result, additional regional conditions would not be required to ensure minimal impacts for the majority of the projects in the Los Angeles District, and more stringent regional limits and/or notification thresholds other than those discussed above that would limit the use of NWP 3 could substantially increase workload without a commensurate benefit to the aquatic environment. Similarly, some commenters' requests that their agency be notified for any project proposing to impact a special aquatic site under the NWP program would also unnecessarily increase our workload for those projects with small-scale temporary impacts in disturbed areas without a commensurate return in environmental benefits to the aquatic ecosystem.

With the inclusion of the above modifications, the Los Angeles District would ensure minimal impacts to high value aquatic resources, both individually and cumulatively, without a substantial increase in overall workload.

Based on the analysis above, alternative regional limits or notification thresholds have been dismissed from further consideration.

### **4.3 Alternative Regional Nationwide Permit Conditions**

The Los Angeles District believes the existing limitations on NWP 3, including the NWP general conditions and proposed regional conditions for Los Angeles District, provide adequate protection of these resources. NWP 3 limits almost all projects to work in areas previously disturbed under previous authorizations. Projects authorized under NWP 3 typically return the area to its level of service before the need for maintenance became an issue. With appropriate permit conditions, adverse effects on the aquatic environment can be avoided and minimized. The recommended resource agency pre-construction notification would impose additional workload on an already heavily burdened project manager staff without affording a commensurate degree of protection for the environment. The Corps has determined additional agency review for projects affecting special aquatic sites is not warranted. With the proposed modifications to NWP 3 (see 3.1 and 3.2, above), the Los Angeles District has identified the resources and watersheds that warrant additional scrutiny for NWP 3. The proposed modifications would likely result in only a minor increase in workload, but would result in substantial benefits to identified sensitive aquatic resources.

It has also been proposed that Los Angeles District could require a compensatory mitigation plan with a minimum replacement ratio of 1:1 prior to issuance of any NWP 3. Use of NWP 3 is limited to aquatic resources previously disturbed by the original construction of a particular structure and immediately adjacent areas, or recently eroded areas due to specific storms, floods, fire or other discrete events. As a result, these areas typically support reduced physical and biological functions. In some cases, the jurisdictional areas support no vegetation, exhibit substantial changes in hydrology, and have limited nutrient cycling functions. Our review of permit data over the past three years (01 Oct 2008 through 30 Sep 2011), the majority of the work authorized under NWP 3 results in only temporary minor impacts to waters of the United States. Approximately 1.3 acres of permanent impact were authorized on an average annual basis, with the vast majority of individual impacts less than 0.1 acre. The bulk of these impacts were in areas with limited aquatic resource functions. An average of 2.6 acres of mitigation was required on an average annual basis. The majority of authorized impacts are temporary, which during this same period amounted to approximately 41 acres on an average annual basis (it should be noted that approximately half the average temporary impact area is the result of a single maintenance project for treatment wetlands). Based on the above, there does not appear to be a need for a regional condition that stipulates compensatory mitigation at a 1:1 ratio to ensure NWP 3 has minimal impacts, both individually and cumulatively.

## **5.0 Endangered Species Act**

### **5.1 General Considerations**

In instances where a project may impact a federally listed species or its critical habitat, the applicant would be required to submit to the Corps appropriate biological investigations and supporting documentation to enable an effects determination be made by the Corps with respect to the Endangered Species Act. If a proposed project requiring authorization from the Corps is determined to have a potential effect on a federally listed species or its designated critical habitat,

consultation would be required per Section 7 of the ESA.

NWP 3 authorizes the discharge of fill material for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill (including temporary structures, fills, and work necessary to conduct the maintenance activity). It also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. To avoid and minimize impacts to the aquatic environment, the terms and conditions for NWP 3 contain several restrictions including a two-year limitation (subject to a case-specific waiver) from the date of damage to conduct needed repairs or restoration, an allowance for only minor deviations from the structure's configuration or fill area, a 200-foot limit on any sediment removal in any direction from the structure, and removal and restoration of any temporary fills. In addition, general and regional conditions provide further limitations on the use of NWP 3 in sensitive aquatic ecosystems. With these constraints, NWP 3 would result in minimal adverse impacts to threatened and endangered species, both individually and cumulatively, in the majority of the Los Angeles District.

Los Angeles District has established regional conditions for NWP 3 to further minimize impacts in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. Regional conditions for NWP 3 specify notification pursuant to General Condition 31 for all projects in special aquatic sites as defined at 40 CFR Part 230.40-45, in all perennial waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California (excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam), in the Santa Clara River watershed in Los Angeles and Ventura counties, in the Santa Monica Mountains in Los Angeles and Ventura counties, and for projects located in designated Essential Fish Habitat. Many of these aquatic resources harbor species listed as threatened or endangered, or are designated as critical habitat for a number of species. With the inclusion of these notification requirements for NWP 3, minor impacts to endangered and threatened species in the Los Angeles District would be further reduced. In addition, given the large number of listed species in Los Angeles District, continued coordination with USFWS and NMFS is required to ensure minimal impacts to endangered species. With the continuation of existing informal coordination procedures, the development and implementation of standard local operating procedures, and the inclusion of additional notification requirements, the use of NWP 3 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

In southern California, the large number of listed species has made the regulated public more aware of the need to contact the USFWS and NMFS for many proposed projects. In addition, General Condition 18 requires the applicant to contact the Corps if their proposed project may affect a threatened or endangered species or critical habitat. The District has substantial information, including maps, previous studies, and survey data that document areas that support endangered species. When the District receives an application within the range of a listed species and/or the project area otherwise supports suitable habitat, the USFWS or NMFS is contacted early in the review process. If the District has no available data for a proposed project, the applicant may be referred to the USFWS or NMFS for additional information. To facilitate

compliance with the ESA, the District has coordinated with the USFWS to complete programmatic consultations for several threatened and endangered species in Ventura, Santa Barbara, and San Luis Obispo counties.

## **5.2 Local Operating Procedures for Endangered Species**

Standard local operating procedures for endangered species, or SLOPES, formalize additional procedures between agencies to enable them to ensure better compliance with the ESA. However, it is anticipated there will be many situations that will not be addressed by SLOPES and a case-by-case determination will be made regarding consultation with the USFWS or NMFS pursuant to Section 7 of the ESA. In January 2003, the Corps of Engineers, Los Angeles District, Regulatory Branch and the U.S. Fish and Wildlife Service, Ventura Office finalized SLOPES for informal and formal ESA consultations. In addition, some the activities authorized by the NWP that may adversely affect Essential Fish Habitat have been addressed by the General Concurrence dated August 5, 2003 and a Programmatic Consultation that was completed by the Corps of Engineers, Los Angeles District, Regulatory Branch and NOAA's National Marine Fisheries Service. The District has completed conducted several preliminary meetings with USFWS and NMFS staff to determine the direction of further SLOPES discussions, and additional meetings will be conducted in the future.

## **6.0 National Historic Preservation Act**

### **6.1 General Considerations**

The Los Angeles District would ensure that activities authorized by NWP 14 would comply with the National Historic Preservation Act (NHPA). The District would review the latest version of the National Register of Historic Places (NRHP) to make an effect determination that activities verified under NWP 14 would have on Historic Properties. Once an effects determination has been made the District will coordinate with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), recognized Tribes, and, if necessary, the Advisory Council on Historic Preservation (ACHP) as appropriate. The District has considered the requirement of pre-construction notification for NWP activities in geographic areas of high site potential, or known locations of cultural resources including prehistoric sites, historic sites, tribal lands, traditional cultural properties, state landmarks or National Historic Landmarks. In areas where there is a high likelihood of cultural resources within the Corps' area of potential effect (APE), the district engineer may: (1) consult with SHPO, THPO, or Tribes during the NWP review process or (2) the district engineer may assert its discretionary authority to require an individual permit for the proposed activity and initiate consultation through the individual permit process. Option 2 would only be used if there is value added that compensates for the increase in workload due to processing more SIPs. If the consultation would be conducted under the NWP process without the district asserting discretionary authority to require an SIP, then the applicant would be notified that the activity could not be verified under the NWP until all Section 106 requirements have been satisfied.

## **6.2 Local Operating Procedures for National Historic Preservation Act**

The district engineer would ensure that NWP 14 complies with section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulation 36 C.F.R. Part 800: Protection of Historic Properties (amended August 5, 2004), and Appendix C (33 U.S.C. 325): Procedures of Historic Properties. Under section 106, federal agencies are prohibited from approving any federal “undertaking” (e.g., the issuance of any license, permit, or approval) without taking into account the effects of the undertaking on the historic properties, and affording the ACHP a reasonable opportunity to comment on the undertaking. In order to comply with section 106, the Corps, if evaluating an undertaking, must go through the process outlined in the ACHP’s regulations at 36 C.F.R. Part 800 and Appendix C. Pursuant to 36 C.F.R. § 800.4, 800.5, and 800.6, the Los Angeles District is required to consult with the SHPO, or tribal equivalent, THPO, if the undertaking would result in a “No Effect”, “No Adverse Effect”, or “Adverse Effect” to Historic Properties. The district engineer must (a) determine the permit area/APE; (b) identify historic properties within the permit area/APE; and (c) determine whether those properties are listed or eligible for listing in the NRHP. If the district engineer determines that NWP 14 would have no potential to cause effects to Historic Properties a memorandum for the record would be prepared and no further consultation with the SHPO/THPO or recognized tribes would need to occur.

## **7.0 Government-to-Government Consultation with Indian Tribes**

### **7.1 Summary of the Consultation Process**

Prior to the issuance of the Los Angeles District’s public notice announcing the proposed rule for the 2012 NWPs and our proposed regional conditions, all federally recognized tribes within Los Angeles District were contacted via letter dated December 13, 2010 to provide advance notification of the Corps’ intent to issue the 2012 NWPs and upcoming opportunity to engage in government-to-government consultation. Follow-up letters were sent to the same set of federally recognized tribes February 11, 2011 announcing the issuance of the proposed rule and formally requesting government-to-government consultation. An advance copy of the proposed rule was also included. One tribe provided a response, indicating they did not foresee a need to utilize the NWPs. No requests for government-to-government consultation were received.

### **7.2 Local Operating Procedures for Protecting Tribal Resources**

The Los Angeles District will avoid or minimize adverse effects to tribal lands, historic properties, sacred sites, or trust resources. This may involve identifying categories of activities that require pre-construction notification and/or conducting consultation with Tribes for specific activities in a particular geographic area. If coordination with recognized tribes is required the District Engineer will obtain a list of recognized tribes from the Native American Heritage Commission. From that list provided the District Engineer will initiate a 30-day coordination period to obtain comments on the project. The District Engineer will review comments and address as appropriate.

## **8.0 Essential Fish Habitat**

Pursuant to the Magnuson-Stevens Fishery Management and Conservation Act, Federal agencies are required to consult with the National Marine Fisheries Service (NMFS) for actions that may adversely affect essential fish habitat (EFH). The marine and estuarine waters within the Los Angeles District contain designated EFH, which are administered by four fishery management plans (FMP): the Pacific Groundfish FMP, the Highly Migratory Species FMP, the Pacific Coast Salmon FMP, and the Coastal Pelagic Species FMP. The Los Angeles District's Regional Condition 4b requires submission of a PCN for any NWP authorization in EFH. A similar PCN requirement has been in place since the issuance of the 2002 NWPs. The current proposed regional condition includes the additional requirement that applicants include an EFH assessment with the PCN. By requiring a PCN with an EFH assessment for all activities within designated EFH, the Los Angeles District ensures the appropriate level of consultation with NMFS is conducted and effects to EFH are adequately addressed prior to verification.

To facilitate the consultation process, the Los Angeles District has developed an EFH general concurrence with Southwest Region of the NMFS. The general concurrence establishes a coordination procedure between NMFS and the Los Angeles District and covers a variety of Corps-regulated activities with minimal and/or temporary adverse effects to EFH. In addition, the Los Angeles District has developed a programmatic consultation with the Southwest Region of the NMFS that covers a broader range of activities that do not fit within the scope of the general concurrence. In summary, the inclusion of Regional Condition 4b, in conjunction with Los Angeles District's well-established set of procedures for addressing the effects of regulated activities within EFH (including conducting coordination with the NMFS as appropriate) will ensure the effects to EFH from the implementation of the 2012 NWPs will be minimal.

## **9.0 Supplement to National Impact Analysis**

### **9.1 Public interest review factors (33 CFR 320.4(a)(1))**

In addition to the discussion in the national decision document for this NWP, the Los Angeles District has considered the local impacts expected to result from the activities authorized by this NWP, including the reasonably foreseeable cumulative effects of those activities.

(a) Conservation: Because the proposed NWP 3 would typically impact areas that have been previously disturbed by construction activities or have been recently eroded by flood events, there would be minimal impacts to conservation, both individually and cumulatively, of aquatic resources throughout the Los Angeles District. Regional conditions would preclude use of NWP 3 for discharges of dredged or fill material in jurisdictional vernal pools. In addition, regional conditions would require notification for use of NWP 3 in all special aquatic sites, perennial watercourses and waterbodies in Arizona and the desert regions of California, designated Essential Fish Habitat, the Santa Clara River watershed, and in the Santa Monica Mountains. This would be in addition to the notification requirements for NWP 3 at the national level for limited bank stabilization, sediment and debris removal, and upland restoration. With the inclusion of these regional restrictions and notification requirements for NWP 3, the above

long-term minor impacts to conservation in the Los Angeles District would be further reduced.

(b) Economics: Same as discussed in the national decision document.

(c) Aesthetics: Same as discussed in the national decision document.

(d) General environmental concerns: As described elsewhere in this document, Los Angeles District harbors numerous threatened or endangered species that require extensive coordination with the USFWS and NMFS. Aquatic resources in the arid and semi-arid environments common to much of the District in the southern California/Arizona area are relatively scarce and many are habitat for listed species. Los Angeles District has established regional conditions to limit use of certain NWP3s or require notification if a proposed project would impact a sensitive aquatic resource. Regional conditions would preclude NWP 3 for discharges of dredged or fill material in jurisdictional vernal pools, within the San Diego Creek and San Juan Creek/Western San Mateo Creek SAMP area, and for discharges resulting in a loss of most types of special aquatic sites in the State of Arizona and desert regions of California. Regional conditions would further require notification for use of NWP 3 in all special aquatic sites, perennial waterbodies in Arizona and the desert regions of California, designated Essential Fish Habitat, the Santa Clara River watershed, and in the Santa Monica Mountains. This would be in addition to the notification requirements at the national level for limited bank stabilization, sediment and debris removal, and upland restoration. Inclusion of these regional restrictions and notification requirements for NWP 3 would further reduce adverse effects on general environmental concerns in the Los Angeles District, resulting in minimal cumulative impacts to the aquatic environment.

(e) Wetlands: In the Los Angeles District, the arid and semi-arid climate limits the extent and number of wetland resources. This scarcity of wetlands is especially evident in Arizona and in the desert regions of California. In these areas, annual precipitation is often less than 10 inches, which precludes the development of wetlands in the majority of these desert regions. As a result, wetlands are rare in the Los Angeles District and warrant more rigorous protection. The Los Angeles District would require notification for all activities discharging dredged or fill material in a special aquatic sites to ensure minimal impacts to wetland resources in these arid regions. The activities authorized under NWP 3 rarely result in permanent impacts; thus, it is not expected that there would be more than minimal loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region due to projects authorized under NWP 3. Based on a review of permit data over the past three years (01 Oct 2008 through 30 Sep 2011), the majority of the work authorized under NWP 3 results in only temporary minor impacts to waters of the United States. Approximately 1.3 acres of permanent impact were authorized on an average annual basis, with the vast majority of individual impacts less than 0.1 acre. An average of 2.6 acres of mitigation was required on an average annual basis. The bulk of these impacts were in areas with limited aquatic resource functions. The majority of authorized impacts are temporary, which during this same period amounted to approximately 41 acres on an average annual basis. Over this period, 0.1 acres of permanent impacts and 22 acres of temporary impacts to wetlands were authorized under NWP 3 on an average annual basis, with 2.2 acres of wetland mitigation required (it should be noted that 98% of the temporary impacts to wetlands documented above were the result of a single project involving maintenance of a series of

constructed treatment wetlands). With the inclusion of the regional conditions, NWP 3 would have minimal impacts, both individually and cumulatively, to wetland resources in southern California and Arizona.

(f) Historic properties: Many known and unknown historic properties and cultural resources occur throughout Los Angeles District. Many are adjacent to watercourses or other aquatic resources, and as such, may be affected by projects proposed for authorization under NWP 3. It is anticipated that because projects authorized under NWP 3 would occur in areas already disturbed during original construction of the structure, intact cultural resources are not likely to be encountered. However, if cultural resources are known beforehand or are discovered during project activities, Section 106 of the National Historic Preservation Act requires the federal action agency to determine the eligibility of any known or discovered cultural resources that may be affected by the agency's action, and coordinate with the SHPO and/or THPO as appropriate. Because projects that may potentially be authorized under NWP 3 are brought to the attention of the Corps only when there is a specific project proposed, and because the project's relationship to the cultural resource may not be known until appropriate surveys are conducted, greater specificity cannot be determined at this time; however, through coordination with the State Historic Preservation Officer and the implementation of mitigation measures, the Corps would ensure that NWP 3 would result in minimal impacts to historic properties.

(g) Fish and wildlife values: NWP 3 authorizes maintenance of existing structures and fills that generally impact areas that have been previously disturbed by construction activities or have been recently eroded by flood events. As such, only minor, short-term impacts to fish and wildlife values are anticipated. Pre-construction notification is required for any activity authorized under NWP 3 that requires limited bank stabilization, debris removal, or placement of new or additional riprap to protect the structure. Additional regional conditions for NWP 3 would preclude discharges of dredged or fill material in jurisdictional vernal pools. In addition, regional conditions requiring notification for use of NWP 3 in all special aquatic sites, perennial watercourses and waterbodies in Arizona and the desert regions of California, designated Essential Fish Habitat, the Santa Clara River watershed, and in the Santa Monica Mountains would further reduce potential minor impacts to fish and wildlife values in the Los Angeles District.

(h) Flood hazards: With the dynamic storm season typical of southern California and parts of Arizona, large floods are an infrequent but normal part of the hydrologic regime. Due to a general lack of soil development and vegetation coverage in semi-arid areas, peak discharges for very high magnitude storm events are potentially larger for dryland basins than similar-sized humid region basins. By authorizing the maintenance of existing structures in stream channels, such as road culverts, inlets on flood control facilities, and armoring along flood control channels, NWP 3 would provide long-term benefits by authorizing necessary maintenance and restoration work with minimal delays, thereby reducing flood hazards within the Los Angeles District.

(i) Floodplain values: Same as discussed in the national decision document.

(j) Land use: Same as discussed in the national decision document.

(k) Navigation: Same as discussed in the national decision document.

(l) Shore erosion and accretion: Same as discussed in the national decision document.

(m) Recreation: Same as discussed in the national decision document.

(n) Water supply and conservation: With the arid and semi-arid climate and the large population in the Los Angeles District, maintenance of existing structures associated with water supply is especially important. NWP 3 would provide long-term benefits by authorizing maintenance of existing water supply structures and facilities. To ensure perennial watercourses and water bodies in desert areas would not be adversely affected by work under NWP 3, the Corps would require notification for all projects that affect perennial waters in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River from Davis Dam downstream to the north of Topock and downstream of Imperial Dam. Moreover, pre-construction notification would be required for projects proposing to impact special aquatic sites, the Santa Clara River watershed, or any watershed in the Santa Monica Mountains. With the pre-construction requirements, NWP 3 would be expected to have no more than minimal adverse effects on the water supply and conservation of water on an individual and cumulative basis.

(o) Water quality: In the heavily populated areas of southern California and Arizona, existing water quality in most rivers has been impaired by runoff from upland agricultural, residential, commercial, and industrial sources. To ensure minimal impacts to water quality, all structural work authorized under NWP 3 would be limited to the area immediately adjacent to the project or within the boundaries of the structure or fill. Sediment removal authorized by NWP 3 would be limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 linear feet in any direction from the structure. Furthermore, the required Section 401 water quality certification would ensure long-term minimal impacts to water quality in the aquatic resources of the Los Angeles District. In addition to the notification requirements at the national level for limited bank stabilization activities authorized under paragraph (b) of NWP 3, proposed regional conditions would preclude discharges of dredged or fill material in jurisdictional vernal pools, and require pre-construction notification for any use of NWP 3 in special aquatic sites and specific sensitive watersheds. With the implementation of the above conditions, NWP 3 would have minimal impacts on water quality on an individual and cumulative basis.

(p) Energy needs: Same as discussed in the national decision document.

(q) Safety: Same as discussed in the national decision document.

(r) Food and fiber production: Same as discussed in the national decision document.

(s) Mineral needs: Same as discussed in the national decision document.

(t) Considerations of property ownership: Same as discussed in the national decision document.

## **9.2 National Environmental Policy Act Cumulative Effects Analysis (40 CFR 1508.7)**

Please see the attached supplemental analysis (Section I), and the 404(b)(1) guidelines cumulative effects analysis (Section 9.4), below.

## **9.3 Section 404(b)(1) Guidelines Impact Analysis (Subparts C-F)**

(a) Substrate: With NWP 3, short-term impacts to channel substrate in the immediate vicinity of existing in-channel structures could occur. With the original construction of the structure, vertical grain size distribution and the natural channel morphology have been permanently altered. Subsequent maintenance activities near existing structures would result in minimal and generally temporary changes to the physical, chemical and biological characteristics in channel reaches disturbed by project activities. Under NWP 3, discharges associated with sediment removal would be limited to 200 linear feet from the structure. Use of NWP 3 would be precluded in any jurisdictional vernal pool, where the clay lens substrate is of particular importance to these scarce aquatic resources. With the inclusion of limitations inherent to the NWP, as well as regional conditions precluding its use in jurisdictional vernal pools and requiring notifications in identified sensitive aquatic resources or watersheds, NWP 3 would result in minimal impacts to channel substrate on an individual and cumulative basis.

(b) Suspended particulates/turbidity: In the heavily populated areas of southern California and Arizona, many rivers and streams are impaired by runoff from upland agricultural, residential, and industrial sources, including elevated levels of suspended sediment. Short-term construction activities related to maintenance activities often augment turbidity levels in rivers, streams, lakes and ponds; however, these activities generally have only short-term effects. Unmaintained or damaged facilities may have an adverse impact on suspended particulates and turbidity by sloughing sediments into watercourses unless repaired. With the proposed terms and conditions of NWP 3, discharges of fill material associated with sediment removal could only occur within 200 linear feet of the existing structure. In addition to the pre-construction notification requirements at the national level, inclusion of the proposed pre-construction notification requirements for NWP 3 in special aquatic sites and selected sensitive watersheds and other aquatic resources, would enable project-specific review of potential impacts and further minimize long-term minor impacts resulting from potential increases in turbidity in the Los Angeles District. Furthermore, the required Section 401 water quality certification would provide an extra-agency review to ensure only long-term minimal impacts to aquatic resources in the Los Angeles District would occur due to increased turbidity and suspended sediment loads. With implementation of the above measures, NWP 3 would have minimal impacts on turbidity levels in waters of the United States within the Los Angeles District.

(c) Water: Same as discussed in the national document.

(d) Current patterns and water circulation: Because maintenance activities are intended to restore authorized structures and fills (within previously described limits), such activities would by extension restore current patterns and water circulation to their previous condition. In the coastal watersheds of the Los Angeles District, impacts to currents and water circulation could affect spawning of southern steelhead. To ensure minimal impacts to steelhead, Regional Condition 1 would require all new bridge crossing designs ensure that passage and/or spawning of steelhead is not hindered in any way (e.g., span the stream or river, bottomless arch culvert simulating the natural streambed). Similarly, maintenance activities associated with bridge repairs should not reduce the cross-sectional area of the channel, adversely modify the existing gradient of the stream channel, or otherwise change conditions to prevent steelhead spawning or migration. Furthermore, the Los Angeles District would require pre-construction notification for any maintenance activities in identified sensitive watersheds and resources. This would provide the Los Angeles District with the opportunity to ensure aquatic impacts, including those involving sensitive watersheds or resources, are minimal individually and cumulatively. With the inclusion of the above provisions, NWP 3 would have minimal impacts on current patterns and circulation in waters of the United States within Los Angeles District.

(e) Normal water level fluctuations: Same as discussed in the national document.

(f) Salinity gradients: Same as discussed in the national document.

(g) Threatened and endangered species: As stated above, the majority of the activities that could be authorized under NWP 3 would take place in waters of the United States that typically have been previously disturbed by construction activities or in areas of recent substantial erosion resulting from flood events. These types of maintenance activities are generally less likely to affect endangered species and, if there is any effect, result in short-term minor impacts to the particular threatened or endangered species. These disturbed areas often support habitat that is less suitable for most native species, including threatened and endangered species. Nevertheless, maintenance activities authorized under NWP 3 do occasionally impact listed species and require formal or informal consultation with the USFWS and/or NMFS. Approximately 21 formal and informal consultations are conducted annually on projects authorized under NWP 3. Of those, approximately 4 require formal or programmatic consultation and the issuance of a Biological Opinion and Incidental Take Statement. No jeopardy opinions have been issued in association with NWP 3.

Given the large number of endangered species in the Los Angeles District, continued coordination with USFWS and NMFS is required to ensure minimal impacts to endangered species. To further enhance protection of threatened and endangered species, the Los Angeles District has proposed a regional condition requiring pre-construction notification in accordance with General Condition 31 for all NWP authorizations within Essential Fish Habitat. Notification allows the Los Angeles District to include special conditions to avoid or minimize impacts to endangered species. Common avoidance measures include restricting construction activities during the nesting season, restricting construction activities when surface flow is present in ephemeral/intermittent streams, and implementing best management practices to ensure downstream or nearby species and/or habitat are not indirectly affected by temporary

construction activities. Habitat restoration and/or preservation may also be required on a case by case basis.

To ensure discharges of fill material are limited to areas near the existing structure, maintenance activities cannot change the size or character of the original fill design (allowing for minor deviations to bring a given facility to current standards) and all debris sediment removal must be limited to within 200 linear feet of existing structures. Furthermore, bank stabilization measures such as riprap are limited to the minimum necessary to protect the structure. In addition, the general conditions for the Nationwide Permit Program require pre-construction notification for any NWP that may affect a federally listed threatened or endangered species and preclude the use of any NWP that would jeopardize the continued existence of any such species. Notification is also required in any special aquatic site, perennial waterbodies in Arizona and the desert regions of California, and certain sensitive watersheds (Santa Monica Mountains, Santa Clara River). With Regional Condition 7, no NWP can be used to authorize a discharge of dredged or fill material into a jurisdictional vernal pool. With the inclusion of the proposed notification requirements, existing and proposed restrictions, and the continuation of existing coordination procedures, the use of NWP 3 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District (see also the above discussion in section 5).

(h) Fish, crustaceans, molluscs, and other aquatic organisms in the food web: Same as discussed in the national document.

(i) Other wildlife: In Arizona and the desert and semi-arid portions of southern California, rivers and streams and the associated riparian habitat represent an important resource for wildlife. With NWP 3, most activities in waters of the United States would be limited to previously disturbed areas adjacent to existing structures. As a result, existing habitat and stream channel area would be minimally disturbed by most maintenance activities. To ensure minimal impacts to wildlife species, pre-construction notification would be required for all maintenance activities in special aquatic sites, sensitive watersheds (Santa Monica Mountains, Santa Clara River), essential fish habitat, and perennial watercourses in the State of Arizona and desert areas in California. This would be in addition to the notification requirements at the national level for sediment and debris removal. Use of NWP 3 would be precluded in jurisdictional vernal pools. These measures would provide the Los Angeles District the opportunity to minimize impacts to wildlife through the inclusion of special conditions (if appropriate), or in some cases to review projects under the SIP process. With the inclusion of the above requirements, NWP 3 would result in minimal impacts to wildlife, both individually and cumulatively.

(j) Special aquatic sites: The potential impacts to specific special aquatic sites are discussed below:

(1) Sanctuaries and refuges: Same as discussed in the national document.

(2) Wetlands: In the Los Angeles District, the arid and semi-arid climate limits the extent and number of wetland resources. This scarcity of wetlands is especially evident in

Arizona and in the desert regions of California. In these areas, annual precipitation is often well below 10 inches, precluding the development of wetlands in the majority of these desert regions. As a result, wetlands are relatively rare in the Los Angeles District and warrant more rigorous protection. To ensure minimal impacts to wetland resources in these arid regions, the Los Angeles District would require pre-construction notification for all activities discharging dredged or fill material in a special aquatic site, including wetlands. In addition, NWP 3 is precluded from authorizing permanent losses in most types of special aquatic sites within desert regions in southern California and all of Arizona, including all jurisdictional wetlands. The activities authorized under this NWP typically do not result in permanent impacts; thus, it is not expected that there would be more than minimal loss in any wetland functions and values, nor the loss of any unique or rare wetland types within the region. Based on a review of permit data over the past three years (01 Oct 2008 through 30 Sep 2011), the majority of the work authorized under NWP 3 results in only temporary minor impacts to waters of the United States.

Approximately 1.3 acres of permanent impact were authorized on an average annual basis, with the vast majority of individual impacts less than 0.1 acre. An average of 2.6 acres of mitigation was required on an average annual basis. The bulk of these impacts were in areas with limited aquatic resource functions. The majority of authorized impacts are temporary, which during this same period amounted to approximately 41 acres on an average annual basis. Over this period, 0.1 acres of permanent impacts and 22 acres of temporary impacts to wetlands were authorized under NWP 3 on an average annual basis, with 2.2 acres of wetland mitigation required (it should be noted that 98% of the temporary impacts to wetlands documented above were the result of a single project involving maintenance of a series of constructed treatment wetlands). With the inclusion of the regional conditions, NWP 3 would have minimal impacts, both individually and cumulatively, to wetland resources in southern California and Arizona.

(3) Mud flats: In the Los Angeles District, historic coastal development activities have reduced the extent and number of mud flat resources. As a result, about 90 percent of wetlands, including coastal wetlands and mud flats, in California have been affected by historic conversion to agricultural uses, harbors and marinas, and/or grading and filling activities for commercial and residential development. As mud flat areas are especially rare in the Los Angeles District, they warrant more rigorous protection. To ensure minimal impacts to mud flats, the Los Angeles District would preclude NWP 3 from authorizing permanent losses in most types of special aquatic sites within desert regions in southern California and all of Arizona, including mud flats. With the inclusion of this modification, NWP 3 would have only minimal impacts to mudflats in the Los Angeles District, individually and cumulatively.

(4) Vegetated shallows: In the Los Angeles District, historic construction activities for marinas, commercial and residential development, port development, maintenance dredging for navigation, agricultural conversion, and wholesale development on many watersheds, have severely impacted vegetated shallows. As a result, this habitat has been severely impacted in southern California and Arizona. As vegetated shallows are especially rare in the Los Angeles District they warrant more rigorous protection. To

ensure minimal impacts to this habitat type, the Los Angeles District would preclude NWP 3 from authorizing permanent losses in most types of special aquatic sites within desert regions in southern California and all of Arizona, including vegetated shallows. With the inclusion of this modification, it is anticipated NWP 3 would have only minimal impacts to vegetated shallows in the Los Angeles District, individually and cumulatively.

(5) Coral reefs: Same as discussed in the national document.

(6) Riffle-and pool-complexes: Limited water resources and the need for flood control have led to the construction of numerous dams and channelization of watercourses in the arid and semi-arid regions of southern California and Arizona, eliminating many riffle-and-pool complexes. Furthermore, construction of the dams modifies the hydrologic regime of the river, which can also degrade downstream riffle-and-pool complexes. As a result, riffle-and-pool complexes are much rarer in the Los Angeles District and warrant more rigorous protection. To ensure minimal impacts to this aquatic resource, the Los Angeles District would preclude NWP 3 from authorizing permanent losses in most types of special aquatic sites within desert regions in southern California and all of Arizona, including riffle and pool complexes. With the inclusion of this modification, NWP 3 would have only minimal impacts to riffle-and-pool complexes in the Los Angeles District, individually and cumulatively.

(k) Municipal and private water supplies: With the large population present in the Los Angeles District, maintenance of existing structures associated with water supply is especially important in this region. To ensure minimal impacts to water supplies, the Corps would require pre-construction notification for all discharges of dredged and fill material in perennial watercourses in the State of Arizona and the desert areas in California. As a result, NWP 3 would provide long-term benefits by authorizing maintenance of existing water supply structures and facilities with minimal adverse impacts to aquatic resources, individually and cumulatively.

(l) Recreational and commercial fisheries: Same as discussed in the national document.

(m) Water-related recreation: Same as discussed in the national document.

(n) Aesthetics: Same as discussed in the national document.

(o) Parks, national and historical monuments, national seashores, wilderness areas, research sites, and similar areas: Same as discussed in the national document.

#### **9.4 Section 404(b)(1) Guidelines Cumulative Effects Analysis (40 CFR 230.7(b)(3))**

The cumulative effects of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Impacts to aquatic resources authorized by the Los Angeles District's permit actions are tracked using the ORM (OMBIL Regulatory Module) database. This includes both temporary and permanent impacts, as well as any compensatory

mitigation required. Impact and mitigation data was collected for the period of Fiscal Year 2009 through 2011 to provide a reasonable basis to examine the cumulative effects of each NWP as well as the NWP Program as a whole within the Los Angeles District. Based on an analysis of the types of activities authorized by the Los Angeles District during this period, the Los Angeles District estimates that NWP 3 will be used approximately 80 to 85 times per year, resulting the loss of approximately 1.3 acres of waters of the United States on an annual basis. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Los Angeles District estimates that approximately 2.75 acres of compensatory mitigation will be required on an annual basis to offset the authorized losses of waters of the United States and ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

NWP 3 authorizes maintenance of existing authorized and currently serviceable structures such as bridges, modified channels, docks and piers, engineered road embankments, flood control and stormwater management facilities, and other. Thousands of these features are present throughout Los Angeles District and all of them are likely to require maintenance at some point in their service lifetime. Because they already exist, maintenance typically occurs on or immediately adjacent to the structure. Most do not incur additional permanent impacts, and those that do usually are the result of minor design upgrades or modifications to correct deficiencies or to meet current standards or codes. Many maintenance activities incur temporary impacts immediately adjacent to the structure, such as using a toe trench to bury slope protection (i.e., riprap) or dewatering of the work area by use of temporary cofferdams to divert flows around the work area. Temporary impacts are often short-term and the affected areas typically recover shortly after project completion. Many of these temporary impacts are mitigated by removal of invasive species in the work area and revegetation with native plants typical of the area. Areas of temporary impact are not included in the estimation of losses of waters of the U.S.

## **10.0 List of Final Corps Regional Conditions for NWP 3**

### **10.1 Regional condition 1**

For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.

### **10.2 Regional condition 2**

Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-52 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and

within the Mojave and Sonoran (Colorado) desert regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).

### **10.3 Regional condition 3**

When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 31 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at:

<http://www.spl.usace.army.mil/regulatory>. In addition, the PCN shall include:

- a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
- b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the project site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District Regulatory Division* (available on the Los Angeles District Regulatory Division website at: [www.spl.usace.army.mil/regulatory/](http://www.spl.usace.army.mil/regulatory/)); and
- c. Numbered and dated pre-project color photographs showing all waters proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.

### **10.4 Regional condition 4**

Submission of a PCN pursuant to General Condition 31 and Regional Condition 3 shall be required for all regulated activities in the following locations:

- a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902,

Southern Mojave-181001, and Salton Sea-181002).

- b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas). The PCN shall also include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.
- c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.
- d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

### **10.5 Regional condition 5**

Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWPs 5, 6, and 27 with the submission of a PCN in accordance with General Condition 31 and Regional Condition 3.

### **10.6 Regional condition 8**

In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 26 selected NWPs within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49 and 50. Consequently, these NWPs are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.

### **10.7 Regional condition 10**

The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

## **11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations**

Pursuant to Section 401 of the Clean Water Act (CWA), tribal or state Water Quality Certification, or waiver thereof, is required for activities authorized by NWP that may result in a discharge of fill material into waters the U.S. In addition, any state with a federally-approved Coastal Zone Management (CZM) plan must concur with the Corps determination that activities authorized by NWP that are either within the state's coastal zone, or will affect any land or water uses, or natural resources within the state's coastal zone, are consistent with the CZM plan. In accordance with Corps regulations at 33 CFR 330.5 (c) and (d), any state 401/CZM conditions for a particular NWP become regional conditions for that NWP. The Corps recognizes that in some tribes or states there will be a need to add regional conditions, or for individual tribal or state review for some activities to ensure compliance with water quality standards or consistency with CZM plans.

The Los Angeles District announced the proposal to reissue the Nationwide Permits and our proposed regional conditions in a Special Public Notice dated February 25, 2011. The Los Angeles District also send letters dated March 9, 2011 to the seven federally recognized tribes within the Los Angeles District (Big Pine Tribe, Bishop Paiute Tribe, Hopi Tribe, Hualapai Tribe, Navajo Nation, White Mountain Apache Tribe, and Twenty-nine Palms Band of Mission Indians) and the Arizona Department of Environmental Quality announcing the proposed rule and our proposed regional conditions, and requesting the State of Arizona and each tribe review the information for purposes of providing water quality certification pursuant to section 401 of the Clean Water Act. Similarly, acting on behalf of the three Corps Districts in California the Sacramento District provided the same letter on February 23, 2011 to the California State Water Resources Control Board (SWRCB) and EPA requesting 401 certification in the State of California and tribal lands within EPA Region 9, respectively (excluding those tribes with delegated 401 authority). The San Francisco District provided a letter to the California Coastal Commission (CCC) on behalf of both coastal districts in California on March 3, 2011, requesting Coastal Zone Management Act (CZMA) consistency certification. Additional discussions were held among the three Corps Districts in California and the SWRCB in an effort to strategize options for certifying a broader range of NWP or NWP-eligible activities than under the 2007 NWP.

Upon publication of the final rule in the February 21, 2012, issue of the Federal Register (77 FR 10184), the Los Angeles District again provided letters to each of the seven tribes with 401 authority, and the State of Arizona requesting final 401 certification of the 2012 NWP within their respective geographic areas of responsibility. Copies of the final regional conditions for the Los Angeles District were also provided. Similarly, the Los Angeles District provided a letter to the CCC on behalf of both coastal districts in California requesting final CZMA consistency certification of the 2012 NWP and the respective regional conditions (copies of the letters are provided in Section IV). Each tribe and the State of Arizona have 60 days to issue, waive or deny certification for any or all of the 2012 NWP. The CCC has 90 days to make their final determination. Due to the fact that the final rule was published on February 21, 2012, there is not sufficient time to allow the full 60- or 90-day review period before the 2012 NWP are scheduled

to go into effect on March 19, 2012. Therefore, the final outcome of 401 and CZMA certification within in the Los Angeles District is uncertain. Individual certifications will be required for any action authorized under the 2012 NWP's where applicable (i.e. projects within or affecting the Coastal Zone and/or projects that may affect water quality) until final determinations are provided by the respective state/tribal authorities.

The Los Angeles District believes, in general, that these NWP's and our regional conditions comply with State Water Quality Certification standards and are consistent with the Coastal Zone Management Plans.

## **12.0 Measures to Ensure Minimal Adverse Environmental Effects**

The terms and conditions of NWP 3, including the pre-construction notification requirements and the regional conditions listed in Section 10.0 of this document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 22, the regional conditions discussed in this document, and the pre-construction notification requirements of the NWP. Through the pre-construction notification process, the Los Angeles District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to an NWP authorization to ensure that the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer will exercise discretionary authority and require an individual permit for those activities that result in more than minimal individual and cumulative adverse effects on the aquatic environment.

Los Angeles District has established regional conditions for NWP 3 to further minimize impacts in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. Regional conditions for NWP 3 specify notification pursuant to General Condition 31 for all projects in special aquatic sites as defined at 40 CFR Part 230.40-45, in all perennial waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California (excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam), in the Santa Clara River watershed in Los Angeles and Ventura counties, in the Santa Monica Mountains in Los Angeles and Ventura counties, and for projects located in designated Essential Fish Habitat. With the inclusion of these notification requirements for NWP 3, minor impacts to aquatic resource functions and services in the Los Angeles District would be further reduced.

If, at a later time, there is clear, unequivocal evidence that use of the NWP would result in more than minimal adverse effects on the aquatic environment, individually or cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

### **13.0 Final Determination**

Based on the considerations discussed above, and in accordance with 33 CFR 330.4(e)(1) and 330.5(c), I have determined that this NWP, including its terms and conditions, all regional conditions, and limitations, will authorize only those activities with minimal adverse effects on the aquatic environment, individually or cumulatively.