SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 5

This document is a supplement to the national decision document for Nationwide Permit (NWP) 5, 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 that 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 that 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 that the NWP does not authorize activities that may exceed the minimal adverse effects threshold.

Text of NWP 5:

Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (e.g., foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to preconstruction elevations. (Sections 10 and 404)

Summary of changes to NWP 5 from 2007:

The Corps has modified the provision in the NWP to require the removal of the device and any other associated structures or fills to the maximum extent practicable when it will no longer be used to measure and record scientific data. Meteorological stations and biological observation devices were also added to the list of example devices.

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 None. In the past, jurisdictional vernal pools were excluded from the use of NWP 5. With the re-authorization of the nationwide permits, the Los Angeles District has amended regional condition No. 5 to allow the use of restoration, enhancement, scientific study, and management activities with submission of a pre-construction notification. Therefore, there are no regional exclusions with the amendment of Regional Condition No.5 that would prevent the use of NWP 5.

3.2 Waters subjected to additional pre-construction notification requirements

Projects that qualify for NWP 5 do not require notification to the Corps. In order to ensure use of NWP 5 would have minimal adverse effects on the aquatic environment, both individually and cumulatively, the Los Angeles District has adopted several regional conditions which require notification for selected sensitive watersheds and aquatic resources, as described below.

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 RHA and/or section 404 of the CWA. 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[1]). 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 NWPs would have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat in various watersheds in the Santa Monica Mountains.

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

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

[1] Lilien, J.P. Cumulative Impacts to Riparian Habitat in the Malibu Creek Watershed. Dissertation, University of California, Los Angeles.

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.

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 NWPs 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 documents for Regional Condition 4d.

3.2.5 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 NWPs 5, 6, and 27. NWPs 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 NWPs 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 NWPs 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 NWPs 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.

4.0 Alternatives

4.1 No Regional Conditions

Without Regional Condition 4 requiring a PCN for all jurisdictional activities in the Santa Monica Mountains, in special aquatic sites and perennial waterbodies in the State of Arizona and desert regions of California, in areas designated as Essential Fish Habitat (EFH), and projects located in the Santa Clara River watershed, there could be more than minimal impacts individually or cumulatively to waters of the U.S. exhibiting high physical, chemical, and biological functions. Without a PCN in these cases, losses of these sensitive resources could occur without compensatory mitigation or without adequate impact minimization measures, contributing to more than minimal impacts, individually and/or cumulatively, to the aquatic ecosystem in the Los Angeles District. Regional Condition 5 has been amended to allow the use of restoration, study, and enhancement activities. With this amendment this NWP is expected to have no more than minimal impacts to vernal pools. In light of the need to review requests for authorizations under NWP 5 in sensitive resources areas described above, the Los Angeles District believes the *no regional conditions* alternative would impair our ability to monitor actions in these areas that could have more than minimal adverse effects on the aquatic environment on a cumulative basis. For this reason the *no regional conditions* alternative has been rejected from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

With the construction of small weirs and flumes under NWP 5, discharges of under 25 cubic yards are authorized and not subject to the pre-construction notification requirements in General Condition 31. Other General and Regional Conditions would also require Corps notification, and potentially, agency notification and coordination. Project proponents are required to comply with all applicable general conditions, including general condition 2, Aquatic Life Movements, which prohibits activities from substantially disrupting life cycle movements of aquatic organisms. The removal of temporary fills or devices is required by general condition 13. The NWP authorizes single and complete scientific measurement device projects. Scientific measurement devices with independent utility can be authorized by separate NWP authorizations. Furthermore, we believe the district engineer's authority to issue case-specific special conditions and to impose regional conditions to require pre-construction notifications for certain activities, such as activities involving specified quantities of fills for the construction of small weirs and flumes, is adequate to address local concerns regarding potential adverse effects to the movement of aquatic organisms.

To further ensure NWP 5 would have minimal impacts to aquatic resources, both individually and cumulatively, the Los Angeles District could eliminate the use of NWP 5 in all special

aquatic sites, in all EFH, or in all perennial waterbodies in the desert regions of Los Angeles District. The loss of approximately 90 percent of wetland resources in southern California and the general scarcity of special aquatic sites in this semi-arid region indicates there could be a need for the review of any project that would discharge dredged or fill material in a special aquatic site under the 404(b)(1) Guidelines and the public interest factors to ensure no adverse impacts to special aquatic sites. Similar arguments could be made for EFH and the perennial waters in the desert areas, which are especially rare, in the Los Angeles District. However, NWP 5 would authorize small-scale activities that facilitate scientific measurement of hydrologic parameters in rivers and the ocean. Many of these activities would be expected to be very minor in scope and adverse impact, such as placement of small weirs, flumes and staff gages. Based on a review of the Los Angeles District's permit database, half or more of the projects qualifying for NWP 5 authorization would be expected to only result in temporary impacts. Between November 1, 2008 and October 31, 2011, there were permanent impacts to 0.067 acre and temporary impacts to 0.106 acre, and approximate 0.002 acre of mitigation of waters of the United States. No single project exceeded 0.02 acre of permanent impact to waters. In most cases, no impacts were reported or the impacts to jurisdictional areas were temporary. Therefore, the adverse impacts to the aquatic ecosystem associated with NWP 5 would be anticipated to be minor and often temporary. When considering the constraints on NWP 5 from the General Conditions and the proposed Regional Conditions, additional or stricter Regional Conditions that precluded all discharges in all special aquatic sites, EFH, and/or perennial waterbodies in the Los Angeles District would unnecessarily burden the regulated public and increase our workload to review small-scale and often temporary impacts in these areas. With the proposed Regional Conditions, the Los Angeles District would ensure that NWP 5 has minimal impacts, individually and cumulatively, on both sensitive resources and watersheds without a substantial increase in workload.

As discussed above, any adverse impacts that would be authorized by NWP 5 would be expected to be minor and often temporary. With the proposed modifications to NWP 5, the Los Angeles District has identified the resources and watersheds that warrant additional scrutiny under NWP 5. As a result, the District's proposed modifications would result in a relatively minor increase in overall workload, but would provide potentially substantial benefits to the aquatic environment in the identified areas, by ensuring minimal impacts, individually and cumulatively. Based on the above information, more stringent regional conditions would adversely impact workload levels in the Los Angeles District without commensurate benefits to the aquatic environment.

4.3 Alternative Regional Nationwide Permit Conditions

In order to better ensure the cumulative effects of NWP 5 are no more than minimal, the Los Angeles District could implement and alternative regional condition that would require post-project reporting of all uses of NWP 5, including projects for which submission of a PCN is not required. By doing so, the Los Angeles District would theoretically have a more complete picture of the use of NWP 5 and be better able to determine that its use is having no more than minimal impacts, particularly on a cumulative basis. However, as discussed previously, use of NWP 5 in the Los Angeles District almost entirely limited to projects with minor temporary impacts. A total of 0.067 acre of permanent impacts was documented over a three-year period,

with no permanent impact exceeded 0.02 acre. Projects that require notification are generally located in areas where sensitive aquatic resource are present and where regional conditions require notification. In addition, most project proponents eligible for NWP authorization must also obtain other state and local authorizations (such as 401 certifications and streambed alteration agreements). In many cases other agencies or authorities require project proponents to verify compliance with the Corps' regulatory program though a verification letter. Therefore, the Los Angeles District believes the existing PCN requirements, both at the national level and within the Los Angeles District address the vast majority of activities and impacts to aquatic resources authorized under the NWP program. Given the current realities of staff resources and the need to focus those limited resources where they will be most effective, the Los Angeles District does not believe an alternative reporting requirement would be practicable or particularly beneficial.

5.0 Endangered Species Act

5.1 General Considerations

NWP 5 authorizes the discharge of fill material for devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. To avoid and minimize impacts to the aquatic environment, the terms and conditions for NWP 5 contain several restrictions including that discharges are limited to 25 cubic yards for small weirs and flumes. In addition, the new General and Regional Conditions would provide further limitations on the use of NWP 5 in sensitive aquatic ecosystems. With these constraints, NWP 5 would result in minimal adverse impacts to threatened and endangered species, both individually and cumulatively, in the majority of the Los Angeles District. With no Regional Conditions for NWP 5, there would be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. The Regional Conditions for NWP 5 specify notification pursuant to General Condition 31 and Regional Condition 3 for all projects in special aquatic sites in the State of Arizona and the desert regions of California, as well as for projects located in designated Essential Fish Habitat, the Santa Clara River watershed and Santa Monica Mountains. With the inclusion of these proposed notification requirements for NWP 5, the above long-term 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 the existing informal coordination procedures, the development and implementation of SLOPES, and the inclusion of additional notification requirements, the use of NWP 5 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 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. The District is also very careful to inform all prospective applicants of the need to comply with the ESA. If the District has no available data for a proposed project, the applicant may be referred to the USFWS or NMFS for additional information. 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. 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.

As proposed, the NWP general and regional conditions ensure that other federal statutory requirements are met. For example, 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 for an "effects determination" with respect to the Endangered Species Act (ESA). Per General Condition 18, if the Federal Action were determined to have a potential effect on a federally listed species, or its designated critical habitat, consultation would be required pursuant to Section 7 of the ESA. (It should be noted that the Los Angeles District would ensure all federal project activities authorized under the NWPs comply with the ESA and use of the NWPs shall be determined to have minimal impacts on threatened and endangered species in the Los Angeles District, pursuant to the ESA).

5.2 Local Operating Procedures for Endangered Species

The Los Angeles District has various procedures for ensuring compliance with the ESA. SLOPES formalize additional procedures between agencies to enable the agencies to ensure better compliance with the ESA. With the implementation of SLOPES, these procedures could be formally documented, facilitating the compliance the NWPs with the ESA. 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 NWPs 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 Division 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.

As proposed, the NWP general and regional conditions ensure that other federal statutory requirements are met. For example, 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 for an "effects determination" with respect to the Endangered Species Act (ESA). Per General Condition 18, if the Federal Action

were determined to have a potential effect on a federally listed species, or its designated critical habitat, consultation would be required pursuant to Section 7 of the ESA. (It should be noted that the Los Angeles District would ensure all federal project activities authorized under the NWPs comply with the ESA and use of the NWPs shall be determined to have minimal impacts on threatened and endangered species in the Los Angeles District, pursuant to the ESA.

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 LAD 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 if 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: NWP 5 would only authorize discharges of dredged or fill material associated with scientific measurement devices. A review of the Los Angeles District's permit database for the past several years suggests that more than half of the projects qualifying for NWP 5 authorization would only result in temporary impacts. The proposed Regional Conditions would require a Corps PCN for any impacts proposed to special aquatic sites, EFH, perennial waterbodies in desert regions, waters of the U.S. in the Santa Monica Mountains, or within the Santa Clara River watershed. In addition, no activities would be authorized by a NWP that would impact jurisdictional vernal pools, unless for the purpose of restoration, enhancement, management or scientific study. With the above constraints, NWP 5 would result in minimal impacts to conservation, both individually and cumulatively, in the Los Angeles District.

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

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

(d) General environmental concerns: In the Los Angeles District, numerous threatened or endangered species already require extensive coordination with USFWS and NMFS. The semi-arid environment limits the extent of aquatic resources in the southern California/Arizona area. Regarding NWP 5, the proposed Regional Conditions would preclude discharges of dredged or fill material in jurisdictional vernal pools. In addition, a Corps PCN would be required for discharges in perennial waterbodies in desert regions, in special aquatic sites, in watersheds in the Santa Monica Mountains, in EFH, or within the Santa Clara River watershed. A review of the Los Angeles District's permit database for the past several years suggests that more than half of the projects qualifying for NWP 5 authorization would only result in temporary impacts. Thus, with the proposed restrictions and notification requirements, it would be expected that general environmental concerns in the Los Angeles District would be minimal with NWP 5.

(e) Wetlands: In the Los Angeles District, the 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 usually below 10 inches, which often precludes the development of wetlands. As a result, special aquatic sites, such as wetlands, are relatively rare in the Los Angeles District and warrant more substantial protection. To ensure minimal impacts to wetland resources, the Los Angeles District would require notification for case-specific review for any activity discharging dredged or fill material in any special aquatic site, including wetlands in the state of Arizona and desert regions of California. In addition, the Los Angeles District would preclude the use of all NWPs in jurisdictional vernal pools, which are an especially rare and sensitive wetland type, unless for the purpose of restoration, enhancement, management or scientific study. With the inclusion of these restrictions and requirements, NWP 5 would have long-term, minor impacts to wetland resources in the Los Angeles District. Because NWP 5 authorizes minor discharges associated with the placement of scientific measurement devices, aquatic habitat, including wetlands, is usually only subject to temporary impacts. In fact, a review of the Los Angeles District's permit database for the past several years suggests that more than half of the projects qualifying for NWP 5 authorization only resulted in small-scale temporary impacts to aquatic habitat, including wetlands. With the inclusion of the proposed regional conditions, NWP 5 would result in minimal impacts, both individually and cumulatively, to wetlands in southern California and Arizona.

(f) Historic properties: Many known and unknown historic properties and cultural resources occur in many areas of the Los Angeles District. Many of them are adjacent to watercourses or other aquatic resources, and as such, may be affected by projects proposed for authorization under NWP 5. Section 106 of the National Historic Preservation Act requires any 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/THPO, as appropriate. Because projects that may potentially be authorized under NWP 5 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 5 would result in minimal impacts to historic properties.

(g) Fish and wildlife values: NWP 5 can only be used for small-scale activities associated with scientific measurement devices. Therefore, many of the activities authorized by this NWP would be expected to only result in very small temporary impacts. A review of the Los Angeles District's permit database for the past several years suggests that more than a third of the projects qualifying for NWP 5 authorization resulted in only temporary impacts to jurisdictional areas. To ensure minimal impacts, the proposed Regional Condition 5 would preclude use of all NWPs in jurisdictional vernal pools, unless for the purpose of restoration, enhancement, management or scientific study. Furthermore, Corps notification (for case-specific review) would provide additional safeguards for NWP impacts proposed for special aquatic sites, EFH, waters of the U.S. in the Santa Monica Mountains, perennial waterbodies in desert regions, and waters within the Santa Clara River watershed. With all of these constraints, NWP 5 would result in minimal

impacts to fish and wildlife values, both individually and cumulatively, in the Los Angeles District.

(h) Flood hazards: With the dynamic storm season typical of southern California and parts of Arizona, large floods are a 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 dry-land basins than similar-sized humid region basins. Because of its focus on scientific measurement devices, NWP 5 would not be expected to have any demonstrable effect on flood hazards in 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: Water supply is a key issue in southern California, given the semi-arid climate and the dependence on drinking water from Northern California, the Colorado River, and elsewhere. However, it would not be expected that any of the projects qualifying for NWP 5 authorization would have any demonstrable effect on water supply or conservation efforts.

(o) Water quality: In the heavily populated areas of southern California and Arizona, existing water quality in most rivers is impaired by runoff from upland agricultural, residential, commercial, and industrial sources. NWP 5 would only authorize discharges of dredged or fill material associated with scientific measurement devices. As a result, discharges of fill associated with NWP 5 would only be expected to adversely affect water quality on a temporary basis. With the constraints on the NWP Program and the Regional Conditions proposed, water quality impacts would be expected to be minor on an individual and a cumulative basis. In cases where a Corps PCN is required (special aquatic sites, EFH, waters of the U.S. in the Santa Monica Mountains, and perennial waterbodies in desert regions, waters within the Santa Clara River watershed), General Condition 31 would require the Corps to forward this notification to other Federal and State agencies for comment if a proposed loss to waters of the U.S. exceeds 0.5 acre. In the Los Angeles District, no NWP could be used to authorize impacts in jurisdictional vernal pools, with the exception of NWPs 5, 6, and 27 and only for the purpose of restoration, enhancement, management or scientific study. Overall, with the proposed regional and general conditions, the Los Angeles District is convinced that adverse effects on water quality associated with NWP 5 would be minimal, both individually and cumulatively.

(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 5, in some cases, there would be short-term adverse impacts to aquatic substrate associated with the placement of scientific measurement devices. A review of the Los Angeles District's permit database for the past several years suggests that more than a third of the projects qualifying for NWP 5 authorization would result in temporary impacts to channel substrate. In cases where a Corps PCN is required (special aquatic sites, EFH, waters of the U.S. in the Santa Monica Mountains, perennial waterbodies in desert regions, waters within the Santa Clara River watershed), General Condition 31 would require the Corps to forward this notification to other Federal and State agencies for comment if a proposed loss to waters of the U.S. exceeds 0.5 acre. With these constraints and the nature of the activities authorized by this NWP, NWP 5 would be expected to result in minimal adverse impacts to substrate, both individually and cumulatively, in the most parts of the Los Angeles District.

With no Regional Conditions, NWP 5 could result in more than minimal impacts in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. Regarding NWP 5, the proposed Regional Conditions would preclude discharges of dredged or fill material in jurisdictional vernal pools. Furthermore, the proposed PCN requirements would provide additional safeguards for NWP impacts proposed for special aquatic sites, EFH, waters of the U.S. in the Santa Monica Mountains, perennial waterbodies in desert regions, and waters within the Santa Clara River watershed. With the inclusion of the proposed PCN requirements for NWP 5 in special aquatic sites and sensitive watersheds and resources, and the prohibitions for vernal pools (unless for the purpose of restoration, enhancement, management or scientific study), long-term adverse effects on substrate would be expected to be minor, both individually and cumulatively, throughout the Los Angeles District.

(b) Suspended particulates/turbidity: In heavily populated areas of southern California and Arizona, the existing turbidity levels in most rivers have been exacerbated by runoff from upland agricultural, residential, commercial, and industrial sources. Short-term construction activities often augment turbidity levels in waters of the U.S. However, these activities would generally only result in short-term, minor changes in turbidity levels. With NWP 5, in some cases, there would be short-term adverse turbidity impacts associated with the placement of scientific

measurement devices. NWP General Conditions, such as 9, 13 and 22, require the implementation of Best Management Practices to minimize turbidity impacts associated with project activities. These conditions would ensure that in most of the Los Angeles District, adverse turbidity effects would be minimal, both individually and cumulatively.

With no Regional Conditions, NWP 5 could result in more than minimal impacts in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. Regarding NWP 5, the proposed Regional Conditions would preclude discharges of dredged or fill material in jurisdictional vernal pools. Regional Condition 4 would require a Corps PCN (pursuant to General Condition 30) for impacts to special aquatic sites and perennial watercourses or waterbodies in desert regions, EFH, in waters of the U.S. in the Santa Monica Mountains, and waters within the Santa Clara River watershed, respectively. With the inclusion of the proposed PCN requirements for NWP 5 in special aquatic sites and sensitive watersheds and resources, and the prohibitions against vernal pool impacts (unless for the purpose of restoration, enhancement, management or scientific study), any turbidity impacts in the Los Angeles District associated with NWP 5 would be expected to be minor and temporary, both individually and cumulatively.

(c) Water: In the heavily populated areas of southern California and Arizona, existing water quality in most rivers is impaired by runoff from upland agricultural, residential, commercial, and industrial sources. NWP 5 would only authorize discharges of dredged or fill material associated with the placement of scientific measurement devices in waters of the United States. Discharges of fill would be expected to adversely affect water quality on only a temporary basis. With the constraints on the NWP Program and the Regional Conditions proposed, water quality impacts would be expected to be minor on an individual and a cumulative basis. In the Los Angeles District, no NWP could be used to authorize impacts in jurisdictional vernal pools unless for the purpose of restoration, enhancement, management or scientific study. Overall, the Los Angeles District is confident that adverse effects on water quality associated with NWP 5 would be minimal, both individually and cumulatively.

(d) Current patterns and water circulation: Same as discussed in the national decision document.

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

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

(g) Threatened and endangered species: The Los Angeles District supports habitat for numerous federally listed threatened and endangered species. Pursuant to General Condition 18, a prospective non-federal permittee shall notify the Corps if any federally listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized (federal prospective permittees are responsible for ensuring compliance with the ESA). With this constraint, the other General Conditions, and the nature of the activities authorized by this NWP, it would be expected that the use of NWP 5 would result in minimal impacts to threatened and

endangered species, both individually and cumulatively, in the majority of the Los Angeles District. In the past three years 3 consultations were completed.

With no Regional Conditions, there could be more than minimal impacts in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions. Regarding NWP 5, the Regional Conditions would preclude any discharges of dredged or fill material in jurisdictional vernal pools in Los Angeles District unless for the purpose of restoration, enhancement, management or scientific study. In addition, with the inclusion of the proposed PCN requirements for NWP 5 in special aquatic sites and sensitive watersheds and resources, any long-term 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 the existing informal coordination procedures, the development and implementation of Standard Local Operating Procedures for Endangered Species (SLOPES), and the inclusion of additional notification requirements, and discharge prohibitions for vernal pools (unless for the purpose of restoration, enhancement, management or scientific study), the use of NWP 5 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

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

(i) Other wildlife: In the semi-arid southern California climate, rivers and streams and their associated riparian habitat represent an important resource for wildlife. NWP 5 would authorize activities involving the placement of scientific measurement devices. A review of the Los Angeles District's permit database for the past several years suggests that more than half of the projects qualifying for NWP 5 authorization would only result in temporary impacts. A few areas in the Los Angeles District are especially sensitive, however, and require a Corps PCN before work can begin. A Corps PCN would be required for impacts proposed to special aquatic sites and perennial waterbodies in desert regions, EFH, and all waters of the U.S. in a specified area of the Santa Monica Mountains and within the Santa Clara River watershed. In addition, there are prohibitions against using NWPs to authorize discharges of dredge and fill material in jurisdictional vernal pools unless for the purpose of restoration, enhancement, management or scientific study. With all of these constraints and the nature of activities authorized by NWP 5, it would be expected that this NWP would have minimal adverse effects to wildlife in the Los Angeles District over the long-term.

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

> (1) Sanctuaries and refuges: A review of the Los Angeles District's permit database for the past several years suggests that more than a third of the projects qualifying for NWP 5 authorization would only result in temporary impacts, including any impacts to habitat recognized as a sanctuary or refuge. To further ensure minimal impacts to sanctuaries and refuges, the Los Angeles District would require a PCN for any activity discharging

dredged or fill material in any sanctuary or refuge in the State of Arizona or desert regions of California. Regarding NWP 5, the Regional Conditions would preclude discharges of dredged or fill material in jurisdictional vernal pools unless for the purpose of restoration, enhancement, management or scientific study. With the inclusion of additional requirements and constraints for NWP 5 in special aquatic sites and sensitive watersheds and other aquatic resources, it is expected that long-term adverse effects to sanctuaries and refuges in the Los Angeles District would be minimal, both individually and cumulatively.

(2) Wetlands: In the Los Angeles District, the 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 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. A review of the Los Angeles District's permit database for the past several years suggests that more than a third of the projects qualifying for NWP 5 authorization would only result in temporary impacts, including wetlands. To further ensure minimal impacts to wetland resources, the Los Angeles District would require a PCN for any activity discharging dredged or fill material in any special aquatic site, including wetlands, in the State of Arizona or desert regions of California. Regarding NWP 5, the Regional Conditions would preclude discharges of dredged or fill material in jurisdictional vernal pools (a type of wetlands) unless for the purpose of restoration, enhancement, management or scientific study. With the inclusion of additional requirements and constraints for NWP 5 in special aquatic sites and sensitive watersheds and other aquatic resources, it is expected that long-term adverse effects to wetlands in the Los Angeles District would be minimal, both individually and cumulatively.

(3) Mud flats: In the Los Angeles District, historic coastal development activities have greatly reduced the extent and number of mudflat resources. Approximately 90 percent of wetlands, including coastal wetlands and mudflats, in California have been affected by historic conversion to agricultural uses, grading, and filling activities. As a result, mudflats are especially rare in the Los Angeles District and warrant more rigorous protection. To ensure minimal impacts to mudflats, the Los Angeles District would require notification for any activity discharging dredged or fill material in any special aquatic site, including mudflats, in the State of Arizona or desert regions of California. In addition, the Los Angeles District would require notification for any discharge of dredged or fill material in EFH, such as within coastal estuaries. With the inclusion of these modifications, it would be expected that NWP 5 would have long-term minor impacts to mudflats in the Los Angeles District.

(4) Vegetated shallows: In the Los Angeles District, historic agricultural and construction activities have reduced the extent and number of vegetated shallows. Approximately 90 percent of wetlands in California, including some vegetated shallows, have been affected

by historic conversion to agricultural uses, grading, and filling activities, such as marina construction. As a result, vegetated shallows are especially rare in the Los Angeles District and warrant more rigorous protection. To ensure minimal impacts to vegetated shallows, the Los Angeles District would require notification for any activity discharging dredged or fill material in any special aquatic site, including vegetated shallows, in the State of Arizona or desert regions of California. Regarding NWP 5, the Regional Conditions would also preclude discharges of dredged or fill material in jurisdictional vernal pools unless for the purpose of restoration, enhancement, management or scientific study. With the inclusion of these modifications, NWP 5 would have minimal impacts on vegetated shallows in the Los Angeles District.

(5) Coral reefs: A review of the Los Angeles District's permit database for the past several years suggests that none or very few projects qualifying for NWP 5 authorization would involve coral reefs. More than a third of the projects verified for NWP 5 authorization over that period only resulted in temporary impacts, but coral reefs were not involved and there are no coral reefs documented with the boundaries of the Los Angeles District.

(6) Riffle and pool complexes: In the semi-arid southern California and Arizona areas, limited water resources and the need for flood control have led to the construction of numerous dams in the mountains of southern California and Arizona, and on the Colorado River. With the construction of these large dams, many riffle-and-pool complexes have been eliminated by the large reservoirs. Furthermore, construction of the dams also modifies the hydrologic regime of the river, which can also degrade downstream riffle-and-pool complexes. As a result, riffle-and-pool complexes in the Los Angeles District are essentially confined to montane and foothill regions. They warrant more rigorous protection due to their relatively high production of invertebrate fauna and other contributions to riparian aquatic resources such as aeration of the water, provision of substrate for decomposers, and other factors. To ensure minimal impacts to riffle-and-pool complexes, the Los Angeles District would require notification for any activity discharging dredged or fill material in any special aquatic site, including riffle-and-pool complexes, in the State of Arizona or desert regions of California. NWP 5 would have minimal impacts, individually and cumulatively, to riffle-and-pool complexes in the Los Angeles District.

(k) Municipal and private water supplies: Same as discussed in the national decision document.

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

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

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

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

Based on a review of the different public interest factors and resource categories above, the LAD has concluded that activity use of this NWP will result in no more than minimal individual and cumulative adverse effects on the aquatic environment, assuming the NWP program terms and conditions are met as well as the Regional Conditions above. The regional conditions, are expected to ensure that projects within sensitive areas will not have more than minimal impacts. In addition, the District Engineer may add special conditions on a case-by-case basis to ensure minimal adverse impacts or exercise discretionary authority by requiring an individual permit for those activities resulting in more than minimal individual and cumulative adverse effects on the aquatic environment. If, at a later time, there is clear, unequivocal evidence that the NWP would result in more than minimal adverse effects on the aquatic environment, individually and cumulatively, the modification, suspension, or revocation procedures at 33 CFR 330.4(e) or 33 CFR 330.5 will be used.

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 previous three years, the Los Angeles District estimates that this NWP will be used approximately 3-4 times per year, resulting in the loss of approximately 0.02 acre of permanent and 0.04 acre of temporary acre of waters of the United States on an annual basis. Given the low level of impacts and existing constraints on the use of NWP 5 (in the terms and conditions of the NWP itself, the general conditions of the NWP program and the Los Angeles District's regional conditions) compensatory mitigation is not expected to be required in most circumstances to ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively within the Los Angeles District.

The terms and conditions of the NWP, 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 the NWP authorization on a case-by-case basis 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.

If, at a later time, there is clear, unequivocal evidence that 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.

10.0 List of Final Corps Regional Conditions for NWP 5

10.1 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/); 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.

10.2 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.

10.3 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.

10.10 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 NWPs 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 NWPs 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 NWPs or NWP-eligible activities than under the 2007 NWPs.

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 NWPs 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 NWPs 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 NWPs. 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 NWPs 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 NWPs 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 NWPs 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 the NWP, 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.

With the inclusions of regional conditions requiring notification for NWP 5 authorization in perennial waters and special aquatic sites in desert regions, areas of designated EFH, watersheds of the Santa Monica Mountains, and the Santa Clara River watershed, the Los Angeles District will be able to evaluate actions in these sensitive resources and add project-specific special conditions (including compensatory mitigation, if needed) to ensure these actions would result in minimal impacts to the aquatic environment, both individually and cumulatively. In addition, Regional Condition 5 would preclude the use of NWP 5 in any jurisdictional vernal pool, unless for the purpose of restoration, enhancement, or scientific study (and with submission of a PCN). Finally, the Los Angeles District has practices and procedures in place for conducting appropriate consultation and coordination to address impacts to endangered species (including the adoption of SLOPES and programmatic biological opinions) and essential fish habitat (including the use of programmatic and general concurrences with NMFS).

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.