

**SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 9 – STRUCTURES IN FLEETING AND ANCHORAGE
AREAS**

This document is a supplement to the national decision document for Nationwide Permit (NWP) 9 – Structures in Fleeting and Anchorage Areas, 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 9:

Structures in Fleeting and Anchorage Areas. Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose. (Section 10)

Summary of changes to NWP 9 from 2007:

No new changes have been made to NWP 9

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

This permit is authorized for use in navigable waters regulated under Section 10 of the Rivers and Harbors Act and, therefore NWP 9 does not apply to waters of the United States (U.S) solely regulated under section 404 of the Clean Water Act. None of the Los Angeles District's proposed regional conditions would impose additional prohibitions on the use of NWP 9.

3.2 Waters subjected to additional pre-construction notification requirements

The applicant must notify the District Engineer (DE) with a pre-construction notification (PCN), in accordance with general condition 31, of intent to utilize this NWP if the one of the following general conditions or regional conditions apply: Regional condition 4(a) requires PCNs for all projects located within perennial waters and special aquatic sites in the state of Arizona and specific desert regions of California; regional condition 4(b) requires PCNs for all projects located in Essential Fish Habitat (EFH); general condition 18(c) requires PCNs if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat; and general condition 20(c) requires PCNs if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places (NRHP), including previously unidentified properties.

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 Standard Individual Permit (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 U.S. Geological Survey (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.

4.0 Alternatives

4.1 No Regional Conditions

The proposed regional conditions requiring notification will ensure any impact to sensitive aquatic sites and other aquatic resources is adequately evaluated and offset by compensatory mitigation. Without these regional conditions, impacts to these sensitive resources could occur without proper evaluation and compensatory mitigation, contributing to more than minimal impacts, both individually and cumulatively, in the Los Angeles District.

As the regional conditions above would ensure specific review and ensure projects result in no more than minimal impacts in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions, and will not substantially increase the Los Angeles District workload, the “No Regional Conditions” alternative has been dismissed from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

Limits placed on structures and work in waters of the U.S., including the placement of navigation aids and markers, prohibit activities which obstruct navigation or endanger sensitive aquatic sites.

General and regional conditions for NWP 9 further limit the potentially harmful use of this NWP while allowing for normal maritime activities. Additional limits are unnecessary and additional notification requirements are not possible. Lesser limits and/or notification thresholds may increase the likelihood of impacts to sensitive aquatic sites and are therefore not proposed. With the currently proposed constraints, NWP 9 would generally result in minimal impacts, both individually and cumulatively, in the majority of the Los Angeles District. However, more stringent regional limits and/or notification thresholds that would limit the use of NWP 9 could substantially increase workload without a commensurate benefit to the aquatic environment.

Based on the analysis above, the “Regional Limits or Notification Thresholds” alternative has been dismissed from further consideration.

4.3 Alternative Regional Nationwide Permit Conditions

To further ensure NWP 9 would have minimal impact on aquatic resources, both individually and cumulatively, the Los Angeles District could propose alternative regional conditions that prohibit the use of NWP 9 in all special aquatic sites and EFH.

Considering the inclusion of the constraints on NWP 9 from the general conditions and regional conditions, a regional condition that precludes use of NWP 9 in special aquatic sites and EFH would not be necessary. In addition, this change would unfairly burden applicants by forcing them to utilize the SIP process for even relatively low impact projects. This would increase workload without commensurate benefit to the aquatic ecosystem.

As the majority of projects that could be authorized under NWP 9 would likely have minimal impacts on the aquatic ecosystem and the proposed regional conditions would further ensure that NWP 9 has minimal impacts on sensitive resources without a substantial increase in workload, the “Alternative Regional Nationwide Permit Conditions” has been dismissed from further consideration.

5.0 Endangered Species Act

5.1 General Considerations

NWP 9 authorizes the placement of structures such as buoys, floats, or other devices to facilitate the mooring of vessels in established U.S. Coast Guard-approved fleeting and anchorage areas within Section 10 waters. No NWP 9 authorizations would be allowed except if the proposed project meets the general and regional conditions applicable to this NWP. Especially important for this NWP are the general conditions that ensure the authorized work does not have more than minimal impact to navigation, does not disrupt aquatic life movements, does not destroy spawning areas or avoids work in spawning areas during spawning seasons, avoids breeding areas for migratory birds, occurs outside of concentrated shellfish populations, and does not adversely affect water quality. General condition 18 insures that consultation with the USFWS and/or the NMFS is required where endangered species may be affected. Other general conditions further ensure that the use of this NWP will not result in more than minimal impacts.

With these constraints, NWP 9 would result in minimal adverse impacts to threatened and endangered species, both individually and cumulatively, in the Los Angeles District. With no regional conditions there would be more than minimal impacts. Regional condition 4 for NWP 9 specifies notification pursuant to general condition 31 for all projects in perennial waters and special aquatic sites, as defined at 40 CFR Part 230.40-45, within the State of Arizona and the Mojave and Sonoran (Colorado) deserts, projects located in designated EFH, and projects within the Santa Monica Mountains and Santa Clara River watershed. With these notification requirements, impacts to endangered and threatened species can be reduced through coordination with the USFWS and NMFS. 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 formal and informal coordination procedures, the implementation of SLOPES, and the inclusion of additional notification requirements, the use of NWP 9 would have minimal impacts, both individually and cumulatively, to threatened and endangered species.

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. The Los Angeles District has substantial information, including studies, survey data, and maps that document areas that support endangered/threatened species. The Los Angeles District is also very careful to inform all prospective applicants of the need to comply with the Endangered Species Act (ESA). If there is no available data for a proposed project, the applicant may be referred to the USFWS or NMFS for additional information. When the Los Angeles 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 Los Angeles 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 impacts to endangered/threatened species are minimal and appropriate coordination is conducted. 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 evaluations and supporting documentation for an “effects determination” with respect to the 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 the ESA).

5.2 Local Operating Procedures for Endangered Species

In January 2003, the Corps of Engineers, Los Angeles District, Regulatory Branch (now Division) and the U.S. Fish and Wildlife Service, Ventura Office finalized SLOPES for informal and formal ESA consultations. In addition, some of the activities authorized by the NWPs that may adversely affect EFH 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 (now Division) and NOAA’s National Marine Fisheries Service. General Concurrence is designed to address temporary/minimal impacts to EFH where sensitive habitats (e.g. – eelgrass) are located more than 25 feet from the project in a timely manner. Programmatic Consultation is designed to address adverse, but less than significant, impacts to EFH in an efficient manner by incorporating specific conservation recommendations. SLOPES is designed to efficiently and expeditiously address consultation efforts between the Corps and the USFWS under the ESA. These local operating procedures have minimum thresholds for disturbance/impact, and reporting and notification requirements to the appropriate agency. These requirements are built into the procedures to ensure projects authorized by this NWP comply with the ESA and MSFCMA.

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 the 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 (NAHC). 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: The activities authorized by this NWP may modify the natural resource

characteristics of the project area. Compensatory mitigation, if required for activities authorized by this NWP, will result in the restoration, enhancement, establishment, or preservation of aquatic habitats that will offset losses of conservation values. The adverse effects of activities authorized by this NWP on conservation will be minor. In addition, regional and general conditions require a pre-construction notification for projects that effect resources of higher value. This ensures projects with valuable resources are adequately evaluated and compensated for.

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

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

(d) General environmental concerns: Activities authorized by this NWP will affect general environmental concerns, such as water, air, noise, and land pollution. The authorized work will also affect the physical, chemical, and biological characteristics of the environment. Adverse effects to the chemical composition of the aquatic environment will be controlled by general condition 6, which states that the material used for construction must be free from toxic pollutants in toxic amounts. In the Los Angeles District, effects to water quality are addressed through issuance of a 401 water quality certification from the Regional Water Quality Control Board (RWQCB). General condition 2 prohibits activities that substantially disrupt the necessary life cycle movements of indigenous species, and general condition 3 states that activities in spawning areas during spawning season must be avoided to the maximum extent practicable. General condition 22 requires mitigation to minimize adverse effects to the aquatic environment through avoidance and minimization at the project site. Compensatory mitigation may be required by district engineers to ensure that the net adverse effects on the aquatic environment are minimal. It is important to note that the Corps scope of review is usually limited to impacts to aquatic resources. Specific environmental concerns are addressed in other sections of this document.

(e) Wetlands: Same as discussed in the national decision document.

(f) Historic properties: Same as discussed in the nation decision document.

(g) Fish and wildlife values: This NWP authorizes activities in navigable waters of the U.S., including open waters and wetlands, which provide habitat to many species of fish and wildlife. Activities authorized by this NWP may alter the habitat characteristics of open waters and wetlands. Compensatory mitigation may be required to restore, enhance, establish, and/or preserve wetlands and other aquatic habitats to offset losses of waters of the U.S.. These methods of compensatory mitigation will provide fish and wildlife habitat values. In addition, general conditions 2, 3, and 5, and regional condition 4 ensure impacts to aquatic species' life cycles, spawning areas, shellfish beds, special aquatic sites, and EFH are minimal and compensated for. Furthermore, issuance of this NWP requires compliance with the Bald and Golden Eagle Protection Act (16 U.S.C. 668(a)-(d)), the Migratory Bird Treaty Act (16 U.S.C. 703; 16 U.S.C. 712), and the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.), including any requirements to obtain take permits.

- (h) Flood hazards: Same as discussed in the national decision document.
- (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: The placement of structures in fleeting and anchorage areas may affect the circulation and currents within the waterbody, which may affect shore erosion and accretion; however, the effect is likely minimal or negligible for structures authorized under a NWP.
- (m) Recreation: Same as discussed in the national decision document.
- (n) Water supply and conservation: Activities authorized by this NWP will have little or no adverse effects on surface water and groundwater supplies and will not affect demand for potable water in the region.
- (o) Water quality: Structures in fleeting and anchorage areas will have minimal adverse effects on water quality. This NWP does not authorize discharges of dredged or fill material into waters of the U.S.. Compensatory mitigation may be required for activities authorized by this NWP, to ensure that the work does not have more than minimal adverse effects on the aquatic environment, including water quality. Wetlands and riparian areas restored, established, enhanced, or preserved as compensatory mitigation may provide local water quality benefits. During the construction of structures in fleeting and anchorage areas, small amounts of oil and grease from construction equipment may be discharged into the waterway. Because most of the construction will occur during a relatively short period of time, the frequency and concentration of these discharges are not expected to have more than minimal adverse effects on overall water quality. In addition, placement of these structures may be susceptible to water quality certification through the RWQCB.
- (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: Structures authorized under this NWP will be located in areas specified for anchorage and fleeting and are authorized by the United States Coast Guard. The NWP will not have an adverse effect on food and fiber production.
- (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)

The cumulative impacts 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 U.S. lost due to the activities authorized by this NWP. Based on an analysis of the types of activities authorized by the Los Angeles District during previous years, the Los Angeles District estimates that this NWP will be used approximately 1-2 times per year, resulting in the overwater coverage of approximately 0.33 acres of waters of the U.S. per year. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Los Angeles District estimates that approximately 0.33 acres of compensatory mitigation will be required to offset the authorized losses of waters of the U.S. and ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

See also the attached supplemental analysis (Section I).

10.0 List of Final Corps Regional Conditions for NWP 9

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 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 NWP 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 a standard 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 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.