

SUPPLEMENT TO THE DECISION DOCUMENT FOR NATIONWIDE PERMIT 11

This document is a supplement to the national decision document for Nationwide Permit (NWP) 11, 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 11:

Temporary Recreational Structures. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (Section 10)

Summary of changes to NWP 11 from 2007:

There were no changes to NWP 11.

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 (PCN) Requirements

3.1 Waters excluded from use of this NWP

Regional Condition 5 would exclude NWP 11 in jurisdictional vernal pools in Los Angeles District. Eliminating the use of NWPs in jurisdictional vernal pool areas that have experienced close to 100 percent loss of vernal pool habitat would ensure minimal impacts to these sensitive wetland areas. However, none of the vernal pools in the region are utilized by watercraft or would be utilized for the activities eligible for NWP 11 because they are typically very shallow and of very small area. Therefore this regional condition, though applicable to NWP 11, would have no practical effect on its use in the Los Angeles District

3.2 Waters subjected to additional PCN requirements

In accordance with General Condition 18(c), non-Federal permittees must submit a PCN to the DE 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 shall not begin work on the activity until notified by the DE that the requirements of the Endangered Species Act (ESA) have been satisfied and that the activity is authorized. In addition, in accordance with General Condition 20(c), non-Federal permittees must submit a PCN to the DE 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, 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 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 PCN 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 4(b) 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 4(b) 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 2001¹). The Santa Monica Mountains have high natural resource values that contain 1066 hectares of aquatic habitat and support a number of federally listed threatened and endangered species. As documented in Lilien 2001, despite their importance, aquatic ecosystems in the Santa Monica Mountains, particularly Malibu Creek, have experienced loss and degradation of riparian habitat and, as a result, this regional condition is required to ensure that the NWP's would have minimal impacts, both individually and cumulatively, to aquatic and riparian habitat in various watersheds in the Santa Monica Mountains.

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

4.0 Alternatives

4.1 No Regional Conditions

This alternative would not include any of the proposed regional conditions. Because NWP 11 does not require notification unless it falls under the requirements of General Conditions 18(c) and/or 20(c), the proposed regional conditions enhance the Los Angeles District's ability to ensure impacts to the aquatic environment authorized under NWP 11 are minimal. Regional Condition 4 requires the submittal of a PCN for proposed impacts to sensitive aquatic resources and all tidally influenced areas. Without these regional conditions, it would be difficult to ensure minimal impacts to aquatic resources that exhibit high physical, chemical, and biological functions. Without regional conditions, NWP 11 could be utilized in sensitive special aquatic sites in some areas with no review by the Los Angeles District or the resource agencies. Based on the analysis above, the "No Regional Conditions" alternative could result in more than minimal impacts and has been dismissed from further consideration.

4.2 Alternative Regional Limits or PCN Thresholds

Increasing restrictions on the use of NWP 11 through Regional Conditions: To further ensure NWP 11 would have minimal impacts to aquatic resources, both individually and cumulatively, the Los Angeles District could augment the proposed regional conditions. For example, an SIP could be required for projects that would impact any special aquatic resource but would

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

otherwise qualify for NWP 11. In addition, the use of NWP 11 could be eliminated altogether. Requiring either of these increased restrictions for projects qualifying for NWP 11 would unfairly burden applicants by forcing them to utilize the SIP process for relatively low impact projects. In addition, increased restrictions would increase the Los Angeles District's workload without commensurate benefit to the aquatic ecosystem. With the general conditions and proposed Regional Condition 4, the Los Angeles District has identified the resources that warrant additional scrutiny under NWP 11. The Los Angeles District's proposed modifications would result in a relatively minor increase in overall workload, but would potentially provide substantial benefits to the aquatic environment in the identified areas.

Decreasing restrictions on the use of NWP 11 through Regional Conditions: NWP 11 requires notification to the Los Angeles District if the proposed project qualifies under General Conditions 18(c) and/or 20(c). To ensure compliance with the terms and conditions of NWP 11, the Los Angeles District would implement Regional Conditions 4, which would require notification in specific sensitive resources. Less stringent limits and/or notification thresholds may increase the likelihood of impacts to sensitive aquatic resources and are therefore not proposed. With the proposed constraints, NWP 11 would generally result in minimal impacts, both individually and cumulatively, to the majority of aquatic resources in the Los Angeles District. As this NWP is rarely used, regional conditions requiring a PCN for sensitive aquatic resources and EFH would not create a substantial workload increase for the Los Angeles District. Therefore, the alternative of decreasing notification thresholds has been eliminated from further consideration because the proposed regional conditions are necessary to ensure minimal impacts to the aquatic environment, both individually and cumulatively, and would not result in a substantial increase in workload.

The majority of projects that would be authorized under NWP 11 would have minimal impacts on the aquatic ecosystem. In addition, the proposed regional conditions would further ensure that NWP 11 has minimal impacts on sensitive aquatic resources without a substantial increase in workload or unfairly burden to the applicant. Changes to the regional conditions to either increase or decrease the current constraints on NWP 11 are not warranted and thus the "Regional NWP Conditions" alternative has been dismissed from further consideration. In conclusion, although the majority of the projects that could be authorized under NWP 11 have no permanent impacts to the aquatic ecosystem, retaining the proposed regional conditions ensures the terms and general conditions of NWP 11 are complied with and that NWP 11 would have minimal individual and cumulative impacts to the aquatic environment without a substantial increase in workload.

4.3 Alternative Regional NWP Conditions

Agency Notification Alternative: To further ensure NWP 11 would have minimal impacts to aquatic resources, both individually and cumulatively, the Los Angeles District could augment the notification thresholds for the proposed regional conditions. For example, notification thresholds could be enhanced by requiring applicants to notify the Los Angeles District, the U.S. Fish and Wildlife Service (USFWS), and the other resource agencies in accordance with the agency coordination procedures in General Condition 31 (notification) for all projects authorized under NWP 11. However, requiring notification to the Los Angeles District and resource

agencies for all projects authorized under NWP 11 would unfairly burden applicants for relatively low impact projects and would not be practicable in light of the modest environmental benefits. With the NWP general conditions and proposed Regional Condition 4, the Los Angeles District has identified the resources that warrant additional scrutiny under NWP 11. The Los Angeles District's currently proposed modifications would result in a relatively minor increase in overall workload, but would potentially provide substantial benefits to the aquatic environment in the identified areas.

5.0 Endangered Species Act

5.1 General Considerations

To avoid and minimize impacts to the aquatic environment, the terms and conditions of NWP 11 contain several restrictions, including notification to the DE if any listed species or designated critical habitat might be affected or are located in the vicinity of the project, or if the project is located in designated critical habitat. In addition, the proposed regional conditions would provide further limitations on the use of NWP 11 in sensitive aquatic ecosystems. With these constraints, NWP 11 would likely result in only minimal adverse impacts to threatened and endangered species, both individually and cumulatively, in the Los Angeles District. Given the high number of listed species in the Los Angeles District, continued coordination with the USFWS and NMFS is required to ensure minimal impacts to federally listed 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 11 would have minimal impacts, both individually and cumulatively, to federally listed species and designated critical habitat in the Los Angeles District.

In the past three years, the Los Angeles District has consulted with the USFWS twice regarding NWP 11 requests. For the first project, the USFWS concurred that the Federal action was not likely to adversely affect California least tern (*Sterna antillarum browni*). For the second project, the USFWS determined that the Federal action would not affect California least tern.

In Southern California, the public is generally aware of the need to contact the USFWS and NMFS for relevant projects. The Los Angeles District has substantial information, including maps, previous studies, and survey data that document areas that support federally listed species and designated critical habitat. In addition, the Los Angeles District attempts to inform all prospective applicants of the need to comply with the ESA. If the Los Angeles District has no available species 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 endangered or threatened 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 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 NWP comply with the ESA and use of the NWP shall be determined to have minimal impacts on threatened and endangered species in the Los Angeles District, as required by the ESA).

5.2 Local Operating Procedures for Endangered Species

The Los Angeles District has various procedures for ensuring compliance with the ESA. SLOPES formalizes additional procedures to enable agencies to ensure better compliance 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 Los Angeles District and the USFWS, Ventura Office finalized SLOPES for informal and formal ESA consultations. In addition, some activities authorized by the NWP 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 Los Angeles District and NMFS. The Los Angeles District has conducted several preliminary meetings with USFWS and NMFS staff to determine the direction of further SLOPES discussions, and additional meetings will be conducted in the future.

6.0 National Historic Preservation Act (NHPA)

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 the NHPA

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 on 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 a PCN and/or conducting consultation with Tribes for specific activities in a particular geographic area. If coordination with recognized tribes is required the DE will obtain a list of recognized tribes from the Native American Heritage Commission. From the list provided, the DE will initiate a 30-day coordination period to obtain comments on the project. The DE will review comments and address them, 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 C.F.R. 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: Same as discussed in the national decision document.

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

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

(d) General environmental concerns: Same as discussed in the national decision document.

(e) Wetlands: In the Los Angeles District, historic agricultural and construction activities have reduced the extent and number of wetlands. Approximately 90 percent of wetlands in California have been affected by historic conversion to agricultural uses, grading, and filling activities. As a result, wetlands are relatively rare in the Los Angeles District and warrant more rigorous

protection. Regional Condition 4 would help ensure projects authorized under NWP 11 have only minimal impacts to sensitive wetlands and other special aquatic sites in the Los Angeles District by requiring notification in sensitive resources such as EFH and perennial waters and special aquatic sites in the State of Arizona and desert regions of California. In the past three years, the Los Angeles District has verified approximately nine NWP 11 requests. None of these projects impacted wetland resources or other special aquatic sites. The Los Angeles District anticipates that future impacts to wetlands as a result of NWP 11 would be minimal.

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

(g) Fish and wildlife values: As noted above, the Los Angeles District includes many Federally listed species and areas of designated critical habitat. Activities authorized under NWP 11 would likely cause only temporary impacts to the aquatic environment. Over the past three years, the Los Angeles District has consulted with the USFWS regarding two NWP 11 verification requests. Neither of these projects included activities likely to adversely affect federally listed species or adversely modify designated critical habitat. The Los Angeles District anticipates that future impacts to fish and wildlife values as a result of NWP 11 would be minimal.

(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: Same as discussed in the national decision document.

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

(n) Water supply and conservation: Same as discussed in the national decision document.

(o) Water quality: Same as discussed in the national decision document.

(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 C.F.R. 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 three times per year. NWP 11 would likely result in only temporary impacts to waters of the U.S. with no loss of aquatic resources. Recent projects authorized under NWP 11 have caused temporary impacts that range from 0.05 acre to 6.5 acres. Average impacts were approximately 1.3 acres. To ensure that these activities result in minimal adverse effects on the aquatic environment, individually and cumulatively, the Los Angeles District estimates that no 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 11

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 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 a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to 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 - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall 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 NWP that are either within the state's coastal zone, or will affect any land or water uses, or natural resources within the state's coastal zone, are consistent with the CZM plan. In accordance with Corps regulations at 33 CFR 330.5 (c) and (d), any state 401/CZM conditions for a particular NWP become regional conditions for that NWP. The Corps recognizes that in some tribes or states there will be a need to add regional conditions, or for individual tribal or state review for some activities to ensure compliance with water quality standards or consistency with CZM plans.

The Los Angeles District announced the proposal to reissue the Nationwide Permits and our proposed regional conditions in a Special Public Notice dated February 25, 2011. The Los Angeles District also sent 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 PCN 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 PCN requirements of the NWP. Through the PCN 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 DE 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 PCN process, the DE 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 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 C.F.R. 330.4(e) or 33 C.F.R. 330.5 will be used.

13.0 Final Determination

Based on the considerations discussed above, and in accordance with 33 C.F.R. 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.