SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 14

This document is a supplement to the national decision document for Nationwide Permit (NWP) 14, 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 14:

Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

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

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre;

or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

Note: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Summary of changes to NWP 14 from 2007:

No changes were made to NWP 14 from 2007.

1.0 Background

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

2.0 Consideration of Public Comments

2.1 General Comments

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

2.2 Comments on Proposed Regional Conditions

2.2.1 Proposed Regional Condition 1

Please see the attached response to comments document.

2.2.2 Proposed Regional Condition 2

Please see the attached response to comments document.

2.2.3 Proposed Regional Condition 3

Please see the attached response to comments document.

2.2.4 Proposed Regional Condition 4

Please see the attached response to comments document.

2.2.5 Proposed Regional Condition 5

Please see the attached response to comments document.

2.2.6 Proposed Regional Condition 6

Please see the attached response to comments document.

2.2.7 Proposed Regional Condition 7

Please see the attached response to comments document.

2.2.8 Proposed Regional Condition 8

Please see the attached response to comments document.

2.2.9 Proposed Regional Condition 9

Please see the attached response to comments document.

2.2.10 Proposed Regional Condition 10

Please see the attached response to comments document.

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

3.1 Waters excluded from use of this NWP

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

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

adverse effect on special aquatic sites in the otherwise arid regions of the Los Angeles District.

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

This regional condition has been amended from that included with the 2007 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). In addition, coral reefs and sanctuaries and refuges were removed from the list of special aquatic sites for which this regional condition would apply. Coral reefs were removed as they do not exist within the subject geographic area. Sanctuaries and refuges were removed as there are circumstances where a predominantly upland sanctuary or refuge may contain aquatic resources that exhibit relatively low physical and biological functions (such as a disturbed ephemeral drainage) yet nevertheless would be considered a special aquatic site. In those cases, mandatory notification (per regional condition 4a) would be sufficient to ensure a given project would have no more than minimal impacts by ensuring Corps review.

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

3.1.2 Jurisdictional Vernal Pools (Regional Condition 5)

Reason for Exclusion: This regional condition would require any project proposing to discharge dredged or fill material into a jurisdictional vernal pool to be reviewed under the standard individual permit (SIP) process, which requires a more rigorous alternatives review. This regional condition has been amended from the 2007 version to include an exception for discharges associated with restoration, enhancement, management, or scientific study activities that qualify for 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.

3.1.3 New Permanent Fills in Perennial and Intermittent Watercourses and for Projects with Greater than 0.1 Acre in Ephemeral Watercourses in Murrieta Creek and Temecula Creek Watersheds in Riverside County (Regional Condition 6)

Reason for Exclusion: Stein and Ambrose (1998[1]) found that cumulative losses have adversely affected the aquatic resources in the Murrieta Creek and Temecula Creek watersheds, which are part of the Santa Margarita Watershed in Riverside and San Diego Counties. Most of the losses were attributed to development activities in these watersheds. Regional Condition 6 would exclude the use of NWPs 14, 29, 39, 42, and 43 for permanent fill activities within perennial and intermittent watercourses and for projects that would permanently impact more than 0.1 acre of ephemeral watercourses in the Murrieta Creek and Temecula Creek watersheds. Because of the cumulative losses in these watersheds, with Regional Condition 6, development-related projects in these areas would receive greater review and scrutiny through the SIP process, which includes a 404(b)(1) analysis.

For additional information please see the supplemental decision document for Regional Condition 6.

3.1.4 Bank Stabilization Projects in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County and Bank Stabilization and Grade Control Projects in Gaviota Creek, Mission Creek, and Carpinteria Creek in Santa Barbara County (Regional Condition 7)

Reason for Exclusion: Regional Condition 7 would exclude bank stabilization from NWP authorization in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County, and bank stabilization and grade control projects in Gaviota Creek, Mission Creek, and Carpinteria Creek in Santa Barbara County. This exclusion would require any project that would stabilize a stream bank and/or grade control in these particular watersheds receive greater review and scrutiny through the SIP process, which includes a 404(b)(1) alternatives analysis. This regional condition has been modified from the version adopted in 2007 (Regional Condition 9) to include

1 Stein, E.D. and R.F. Ambrose. 1998. Cumulative impacts of Section 404 Clean Water Act permitting on riparian habitat of the Santa Margarita, California Watershed. *Wetlands* 18: 393-408.

Section 404 Letters of Permission (LOP) as an SIP that may be used following a final Environmental Impact Statement (2009) which evaluated cumulative impacts of bank stabilization in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County, California. While NWP 12, 14, 18, 25, 29, 39, 40, 42 and 43 and 45 address utility lines, linear transportation crossings, minor discharges, structural discharges, residential development, commercial/institutional development, agricultural activities, recreational facilities, stormwater management facilities, and repair of upland facilities damaged by discreet events respectively, these types of projects could also include stream bank stabilization or grade control. These watercourses were identified as vulnerable to adverse effects on endangered species and designated critical habitat associated with additional bank stabilization and grade control activities. In San Luis Obispo Creek and Santa Rosa Creek, a substantial number of bank stabilization projects have resulted in cumulative adverse impacts to flow velocity and water surface elevations during storm events. With the augmented flow velocity, channel substrate can be scoured during large storm events causing loss of vegetation and long-term channel incision. Although the existing bank stabilization projects have not resulted in the loss of a large amount of waters of the United States, the cumulative hydrogeomorphic effects of the bank stabilization have reduced the amount suitable of habitat for the threatened southern steelhead that utilizes these streams.

At present, the Los Angeles District has identified more than minimal cumulative impacts directly resulting from the use of NWP 13, and other NWPs in these stream channels. By taking discretionary authority over new bank stabilization projects in these two stream channels, the Los Angeles District will ensure future impacts are appropriately mitigated. In Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County, bank stabilization and grade control structures have resulted in more than minimal cumulative impacts to flow velocity and water surface elevations during storm events. With the augmented flow velocity, channel substrate can be scoured during large storm events causing loss of vegetation and long-term channel incision. Although the bank stabilization projects have not resulted in large losses of waters of the United States, the cumulative hydrogeomorphic effects of the bank stabilization have reduced the amount suitable of habitat for the endangered California red-legged frog (*Rana draytonii*) and southern and central coast steelhead (*Oncorhynchus mykiss*) that utilize these streams and have had adverse affects on designated critical habitat.

At present, there has been a cumulative adverse impact as a result of use of NWP 13, as well as other NWPs that may authorize bank stabilization and grade control structures in these stream channels. By taking discretionary authority over new bank stabilization and grade control structure projects in these three stream channels, the Los Angeles District will ensure future impacts are appropriately evaluated and mitigated. This regional condition will allow the Los Angeles District to review bank stabilization activities in these waterways on a case-by-case basis, ensuring that only the least environmentally damaging practicable alternative is permitted.

If, at a later time, there is clear unequivocal evidence that the above regional conditions do not produce the intended results, the Los Angeles District may further modify them, as warranted.

For additional information please see the supplemental decision document for Regional Condition 7.

3.1.5 San Diego Creek and San Juan Creek/Western San Mateo Creek SAMPs (Regional Condition 8).

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

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

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

Specifically, the San Juan Creek/Western San Mateo Creek Watersheds SAMP incorporated alternative permitting procedures consisting of the establishment of a Regional General Permit (RGP) 74 for maintenance activities for use outside the targeted aquatic resource conservation areas, new LOP procedures, and a long-term Standard Individual Permit (SIP) and LOP procedures for the SAMP participants. Similarly, the San Diego Creek Watershed SAMP incorporated alternative permitting procedures consisting of new LOP procedures and RGP 74. Regulated activities ineligible for retained NWPs or the SAMPs' alternative permitting procedures would be reviewed under the SIP process, which would include a 404(b)(1) alternatives analysis.

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

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

3.2 Waters subjected to additional pre-construction notification requirements

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[2]). 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.

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

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 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.

4.0 Alternatives

4.1 No Regional Conditions

Discharges of dredged or fill material authorized under NWP 14 are limited to a maximum of ½-acre loss of waters of the US in non-tidal waters, and a maximum of 1/3-acre loss of waters of the United States in tidal waters. The notification threshold for NWP 14 is 1/10-acre of impact to waters of the United States, or if there is a discharge in a special aquatic site, including wetlands. Terms of NWP 14 further limits its use, including a requirement that any stream channel modification must be limited to the minimum necessary to construct or protect the project. Due to these constraints, NWP 14 would result in minimal impacts, both individually and cumulatively, in the majority of the Los Angeles District.

However, NWP 14 could have more than minimal impacts in specific geographic areas and certain habitat types that exhibit relatively high physical, chemical and biological functions. Without regional conditions requiring pre-construction notification (PCN) for NWP 14 activities proposed in special aquatic sites and perennial waterbodies within the State of Arizona and within the Mojave and Sonoran desert regions of California, the Santa Monica Mountains watersheds, Santa Clara River watershed, and essential fish habitat (EFH) there could be more than minimal impacts to waters of the United States that exhibit both high physical and biological functions. As well, a lack of regional conditions would contribute to substantial cumulative impacts in some portions of the Los Angeles District. Without specific PCN requirements for road crossings, there could be more than minimal impacts to certain endangered species, such as southern steelhead (*Oncorhynchus mykiss*) in certain coastal watersheds and wetland and riparian obligate species, such as Santa Ana sucker (*Catostomus santaanae*) arroyo toad (*Bufo californicus*), Calfifornia red-legged frog (*Rana aurora draytonii*), and least Bell's vireo (*Vireo bellii pusillus*) throughout various watersheds in the Los Angeles District. In the absence of regional conditions for a PCN and a more rigorous review under a standard individual permit (SIP) process, impacts under NWP 14 to valuable high integrity resources such as the Santa Clara River, Murrieta and Temecula Creeks, the desert regions of Los Angeles District and San Diego Creek, San Juan Creek and Western San Mateo Creek SAMP areas under NWP 14 would be given less scrutiny and as a consequence would result in greater than minimal impacts, both individually and cumulatively. In addition, with no regional conditions, NWP 14 would have more than minimal impacts on jurisdictional vernal pools in the Los Angeles District. Historically, there has been a 95 to more than 99 percent loss of vernal pool habitat in the southern California area. Further losses would have more than minimal impacts both individually and cumulatively.

Overall, with no regional conditions, NWP 14 could be utilized in sensitive and high integrity aquatic resources in some geographic areas with no review by the Los Angeles District or a less rigorous review, which could potentially result in more than minimal individual and cumulative adverse impacts on the aquatic environment.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

In considering and evaluating other alternative regional limits or pre-construction notification thresholds to further minimize the potential for individual and cumulative adverse impacts on the aquatic environment, Los Angeles District could require a PCN in all circumstances for the use of NWP 14. Based on information from the Los Angeles District database, NWP 14 is one of the most frequently used and verified nationwide permits in the district's area of responsibility. The notification requirement for NWP 14 already requires a PCN be submitted to the Los Angeles District in accordance with General Condition 31 for projects in specific sensitive waters and regional as previously described. However, further restricting the pre-construction notification threshold of 1/10- acre impact to waters of the United States such that all uses of NWP 14 would require notification to the Los Angeles District would substantially increase the Los Angeles District workload without any measurable gain in protection to the aquatic environment. Verifications under NWP 14 often involve activities related to safety improvements, seismic retrofits, bridge stabilizations and minor road or rail modifications and tend to occur in areas of the Los Angeles District where the built environment is heavily disturbed by prior anthropogenic stressors such that many of the stream crossings are channelized and concreted and support fewer functions and lower biological values compared to undisturbed, natural streams. Therefore, the 1/10-acre threshold to waters of the United States provides an adequate level of protection to ensure Los Angeles District review and NWP 14 activities would not result in minimal adverse impacts on the aquatic environment. Requiring notification for use of NWP 14 where the impacts are to non-wetland waters of the United States and less than 1/10 of an acre would substantially increase the workload for the Los Angeles District while providing only limited additional protection for minor impact to open waters. Furthermore, Regional Condition 4 provides additional notification requirements that are appropriately focused on specific regions and resources within the Los Angeles District where more scrutiny is warranted. This modification has been considered, but rejected.

An alternative regional limit or pre-construction notification threshold would be to prohibit the use of NWP 14 in all special aquatic sites in the Los Angeles District; however, this alternative would result in an inability to construct, expand, modify, or improve linear transportation crossings without undergoing an SIP review process. 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. When considering the constraints already placed on the use of NWP 14 from the general conditions and regional conditions, a regional condition that precludes all discharges in special aquatic sites would unnecessarily increase the Los Angeles District's workload to review small-scale impacts in special aquatic sites that may exhibit lower physical and biological functions and therefore not warrant such a rigorous review. As a result, this proposed modification would not be practicable and would result in relatively minor environmental benefits to the aquatic ecosystem.

Finally, as suggested by Region 9 of the Environmental Protection Agency (EPA) in their comments to the proposed regional conditions, the Los Angeles District could develop a regional condition to impose limitations on the use of NWP 14 to authorize numerous single and

complete crossings of a single linear transportation project. EPA cited concerns with the potential cumulative effects of such multiple uses of NWP 14 to authorize large linear projects if each crossing is only considered separately. While it is possible for more than minimal cumulative effects to result in such circumstances, it would be difficult to develop a standard for number of crossings, as suggested, that could be applied consistently for all circumstances. Under existing regulations the Corps must be able to determine that use of any NWP will have no more than minimal impacts, both individually and cumulatively. As cited in the above comment, there are existing policy and guidance documents that address cumulative impact and the use of a watershed approach. The Los Angeles district believes the issues are more appropriately addressed at the national level or through application of existing guidance rather than through regional conditions. Furthermore, the Los Angeles District believes the regional conditions for the 2012 NWP provide adequate protection for sensitive aquatic resources, both through restrictions on the use of NWP 14 in particular regions and resources of concern, as well as through enhanced notification requirements. The Los Angeles District has also established a separate branch within the Regulatory Division specifically dedicated to transportation and special projects, which enables the district to focus its expertise on these types of projects and help ensure those that are eligible for NWP 14 result in no more than minimal impacts, both individually and cumulatively.

In conclusion, the majority of the projects that could be authorized under NWP 14 would result in only minimal impacts to the aquatic ecosystem. By ensuring the terms and general conditions are met and the proposed regional conditions are complied with the Los Angeles District would ensure that NWP 14 has minimal individual and cumulative impacts on the aquatic environment without a substantial increase in workload.

4.3 Alternative Regional Nationwide Permit Conditions

Alternative regional conditions to further minimize adverse impacts individually and cumulatively to the aquatic environment have been considered, but rejected. One option would be to require bridge spans at all stream crossings (i.e., each single and complete project) to ensure no disruption or effect to water quality, the stream flow, hydrodynamics and sediment transport, upstream as well as downstream of the bridge crossing. This restriction would essentially eliminate the use of culverts and would require bridges for almost all uses of NWP 14. Given the type and nature of the aquatic resources occurring within the Los Angeles District, there would be many instances where this requirement to construct a bridge span would be impracticable based on costs, logistics and/or existing technology. In addition, this restriction would not provide any measurable gain in protection of the aquatic environment when considering the existing regional conditions and general conditions that already place added protections to the use of NWP 14, particularly in sensitive water bodies and high value geographic areas within the Los Angeles District. Activities proposed for verification under NWP 14 that could not practicably implement a bridge span would be required to be evaluated under an SIP, resulting in a substantial increase in the Los Angeles District workload without a commensurate benefit to the aquatic environment. For this reason, this alternative regional condition was eliminated.

Another option for alternative regional nationwide permit conditions would be to require resource agency coordination for all verifications under NWP 14. This would necessitate Los Angeles District notification to specific federal and state agencies for comments on the use of NWP 14 prior to verification. Based on the number of times Los Angeles District consults formally and informally under section 7 of the Endangered Species Act and pursuant to section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act with U.S. Fish and Wildlife Service and NOAA there would be marginal added value from such coordination. Many proposed linear transportation projects proposed within the Los Angeles District have the potential to affect federally-listed species and/or adversely affect essential fish habitat, and consequently, the Corps would already need to engage with the resource agencies to solicit their input on measures to avoid or minimize impacts to federally-listed species, EFH and the aquatic environment. In addition, the regional and general conditions place added protections on NWP 14 to ensure a more rigorous review. For these reasons, this alternative regional condition was rejected.

5.0 Endangered Species Act

5.1 General Considerations

NWP 14 authorizes the discharge of fill material for linear transportation projects. To avoid and minimize impacts to the aquatic environment, the terms and conditions for NWP 14 contain several restrictions. Discharges of dredged or fill material authorized under NWP 14 are limited to a maximum of ½-acre loss of waters of the US in non-tidal waters, and a maximum of 1/3-acre loss of waters of the United States in tidal waters. The notification threshold for NWP 14 is 1/10-acre of impact to waters of the United States or any discharge in a special aquatic site, including wetlands. As well, the terms of NWP 14 further limits its use, including a requirement that any stream channel modification must be limited to the minimum necessary to construct or protect the project. The general and regional conditions would provide further limitations on the use of NWP 14 in sensitive aquatic ecosystems that often are found to support federally-listed endangered and threatened species. With these constraints, NWP 14 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 14, 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 14 specify notification pursuant to General Condition 31 for all projects in special aquatic sites and perennial waters in the State of Arizona and desert regions of California, as well as for projects located in designated Essential Fish Habitat (EFH). With the inclusion of these proposed notification requirements for NWP 14, 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 expected and would ensure minimal impacts to threatened and 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 14 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 federally-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 designated critical habitat. The District has substantial information, including maps, previous studies and survey data that document areas that would contribute to sound biological evaluations of the direct, indirect and cumulative impacts on endangered and threatened species resulting from the use of NWP 14. The District is also diligent to inform all prospective applicants of the need to comply with the Endangered Species Act (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 or be required to conduct specific biological surveys to help determine the presence/absence of species and/or whether suitable habitat exists. 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 regulatory 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 would 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 actions authorized under the NWPs comply with the ESA and use of the NWPs must 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 Branch and NOAA's National Marine Fisheries Service. The District has completed conducted several preliminary meetings with USFWS and NMFS staff to determine the direction of further SLOPES discussions, and additional meetings will be conducted in the future.

6.0 National Historic Preservation Act

6.1 General Considerations

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

6.2 Local Operating Procedures for National Historic Preservation Act

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

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

Prior to the issuance of the Los Angeles District's public notice announcing the proposed rule for the 2012 NWPs and our proposed regional conditions, all federally recognized tribes within 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 would avoid or minimize adverse effects to tribal lands, historic properties, sacred sites, or trust resources. This may involve identifying categories of activities that require PCN 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 would initiate a 30-day coordination period to obtain comments on the project. The district engineer would review comments and address issues, 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: Since the proposed NWP 14 would impact less than ½-acre of waters of the United States, there would be minimal individual and cumulative adverse impacts to conservation throughout the Los Angeles District. Furthermore, with the inclusion of the proposed pre-construction notification requirements in sensitive watersheds, waterbodies and special aquatic sites, the already minor impacts would be further reduced. Regional conditions for NWP 14 would preclude the use of NWP 14 for discharges of dredged or fill material in jurisdictional vernal pools; in wetlands, mudflats, vegetated shallows, and riffle and pool complexes in the State of Arizona and the desert regions of California (where a loss of such resources would occur); and jurisdictional areas in San Diego Creek, San Juan Creek and San Mateo Creek SAMP areas. Regional Condition 1 would require all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species employ a design that ensures passage and/or spawning of fish species is not hindered. In these areas, designs that span the watercourse, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless it is determined by the Corps to be impracticable.

(b) Economics: Same as discussed in the national document (impacts would be minimal).

(c) Aesthetics: Same as discussed in the national document (impacts would be minimal).

(d) General environmental concerns: In the Los Angeles District, numerous threatened or endangered species require extensive coordination with USFWS and NMFS. The semi-arid environment limits the extent of aquatic resources in the southern California/Arizona area. The general conditions would provide further limitations on the use of NWP 14 in waters of the U.S. Specifically, General Condition 22 prohibits authorization of activities under NWP 14 for those actions that would be conducted within, or directly affecting, designated critical resource waters, including wetlands adjacent to those waters, except for the discharge of dredged or fill material that occurs in a component of the National Wild and Scenic River System which then must comply with General Condition 16. In addition, Regional Condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species employ a design that ensures passage and/or spawning of fish species is not hindered. In these areas, designs that span the watercourse, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless it is determined by the Corps to be impracticable. Due to the above constraints, NWP 14 would result in minimal impacts to the environment in general, both individually and cumulatively, in the majority of the

Los Angeles District.

(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 a PCN for any activity discharging dredged or fill material in all perennial waterbodies and special aquatic sites, including wetlands, in the State of Arizona and the desert regions of California, as well as areas in the Santa Clara River watershed and watersheds in the Santa Monica Mountains that have the potential to support high value wetlands. The general conditions would provide further limitations on the use of NWP 14 in waters of the U.S. Specifically, General Condition 22 prohibits discharges of dredged or fill material into waters of the U.S. by NWP 14 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to those waters, except for the discharge of dredged or fill material that occurs in a component of the National Wild and Scenic River System which then must comply with General Condition 16. Due to the above constraints, NWP 14 would result in minimal impacts to wetlands, both individually and cumulatively, in the majority of the Los Angeles.

(f) Historic properties: Many known and unknown historic properties and cultural resources occur in many areas of the Los Angeles District. Many of these resources are adjacent to watercourses or other aquatic resources, and as such, may be affected by projects proposed for authorization under NWP 14. 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 14 would be brought to the attention of the Los Angeles District only when there is a specific project proposed, and because a site-specific project's relationship to the cultural resource may not be known until appropriate surveys are conducted, greater specificity cannot be determined or disclosed at this time.

(g) Fish and wildlife values: NWP 14 would only authorize discharges of dredged or fill material into a maximum of ½-acre of waters of the U.S. The PCN threshold for NWP 14 is 1/10-acre of impact to waters of the U.S. In addition, the NWP general conditions would provide further limitations on the use of NWP 14 in waters of the United States. Los Angeles District regional condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species employ a design that ensures passage and/or spawning of fish species is not hindered. In these areas, designs that span the watercourse, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless it is determined by the Corps to be impracticable. Due to the aforementioned requirements, NWP 14 would result in minimal impacts to fish and wildlife values, both individually and cumulatively, in the majority of the Los Angeles District. Regional conditions for NWP 14 would preclude the use of NWP 14 for discharges of dredged or fill material in jurisdictional vernal pools; San Diego Creek, San Juan Creek and Western San Mateo Creek SAMP areas; wetlands, mudflats, vegetated shallows, and riffle and pool complexes in the

State of Arizona and desert regions of California (where a loss of such resources would occur); and in the Murrieta Creek and Temecula Creek watersheds when NWP 14 is used in conjunction with residential, commercial or industrial development for impacts greater than 1/10-acre. As a result, discharges of dredged or fill material in these geographic locations would undergo a more rigorous permit evaluation through an SIP review process. With the inclusion of the proposed PCN requirements for NWP 14 in special aquatic sites and perennial waterbodies in the State of Arizona and the desert regions of California, EFH and sensitive watersheds identified in Regional Condition 4(c) and 4(d), the already minor impacts to fish and wildlife values in the Los Angeles would be further reduced. Due to the above constraints, NWP 14 would result in minimal impacts to fish and wildlife, both individually and cumulatively, in the majority of 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 dryland basins than similar-sized humid region basins. NWP 14 requires appropriate measures be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable. Furthermore, General Condition 9 requires an authorized activity be constructed to withstand expected high flows and that the activity must not restrict or impede the passage of normal or high flows. With these conditions NWP 14 would result in minimal impacts to flood hazards both individually and cumulatively, in the Los Angeles District.

(i) Floodplain values: Same as discussed in the national document (impacts would be minimal).

(j) Land use: Same as discussed in the national document (impacts would be minimal).

(k) Navigation: Same as discussed in the national document (impacts would be minimal).

(l) Shore erosion and accretion: Same as discussed in the national document (impacts would be minimal).

(m) Recreation: Same as discussed in the national document (impacts would be minimal).

(n) Water supply and conservation: Same as discussed in the national document (impacts would be minimal).

(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 and industrial sources. NWP 14 authorizes discharges of dredged or fill material for activities required for the construction, expansion, modification, or improvement of linear transportation crossings. Water quality impacts from discharges of this nature should be minimal, and certification under Section 401 of the Clean Water Act would also be required in most cases. The NWP general conditions would provide further limitations on the use of NWP 14 in waters of the U.S. Specifically, General Condition 22 prohibits authorization of any activities under NWP 14 that are within, or directly affecting, critical resource waters, including wetlands

adjacent to those waters, except for the discharge of dredged or fill material that occurs in a component of the National Wild and Scenic River System, which then must comply with General Condition 16. General Condition 6 requires permittees avoid the use of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and mandates that material used for construction or discharged are free from toxic pollutants in toxic amounts. General Condition 12 ensures appropriate soil erosion and sediment controls would be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, are permanently stabilized. In addition, regional conditions preclude the use of NWP 14 for discharges of dredged or fill material in jurisdictional vernal pools; wetlands, mudflats, vegetated shallows, and riffle and pool complexes in the State of Arizona and the desert regions of California (where a loss of such resources would occur); and in the San Diego Creek, San Juan Creek and Western San Mateo Creek SAMP areas. Due to the above constraints, NWP 14 would result in minimal adverse impacts to water quality, both individually and cumulatively, in the majority of the Los Angeles District.

(p) Energy needs: Same as discussed in the national document (impacts would be minimal).

(q) Safety: Same as discussed in the national document (impacts would be minimal).

(r) Food and fiber production: Same as discussed in the national document (impacts would be minimal).

(s) Mineral needs: Same as discussed in the national document (impacts would be minimal).

(t) Considerations of property ownership: Same as discussed in the national document (impacts would be minimal).

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 14, there would long-term impacts to channel substrate in the immediate vicinity of the transportation structure as well as short-term construction impacts in the immediate project area. Subsequent maintenance activities in close proximity to existing structures would result in minimal changes to disturbed channel reaches. To ensure minimal impacts to substrate in special aquatic sites and sensitive watershed areas and sensitive resources, waters excluded from NWP 14 or additional PCN requirements would be required for NWP 14. With the inclusion of the regional conditions, the proposed NWP 14 would result in minimal impacts, both individually and cumulatively, to channel substrate. The general conditions would provide further limitations on the use of NWP 14 in waters of the U.S. Specifically, General Condition 22 prohibits authorization of activities under NWP 14 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters, except for

the discharge of dredged or fill material that occurs in a component of the National Wild and Scenic River System, which then must comply with General Condition 16. Regional Condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species employ a design that ensures passage and/or spawning of fish species is not hindered. In these areas, designs that span the watercourse, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless it is determined by the Corps to be impracticable. In addition, regional conditions for NWP 14 would preclude the use of NWP 14 for discharges of dredged or fill material in jurisdictional wetlands, mudflats, vegetated shallows, and riffle and pool complexes located in the state of Arizona and the desert regions of California (where a loss of such resources would occur); all jurisdictional vernal pools, and would require pre-construction notification for EFH, special aquatic sites and perennial waterbodies in Arizona and the desert regions of California, and sensitive watersheds in the Los Angeles District area of responsibility. With the inclusion of the above restrictions, the aforementioned short- and long-term adverse impacts to channel substrate in the Los Angeles District would be further reduced and/or mitigated. Therefore use of NWP 14 in the Los Angeles District would result in minimal impacts to substrate, both individually and cumulatively.

(b) Suspended particulates/turbidity: In heavily populated areas of southern California and Arizona, existing turbidity levels in most rivers has been exacerbated by runoff from upland agricultural, residential 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. Furthermore, the required 401 water quality certification would ensure long-term minimal impacts to turbidity/suspended sediment loads in the rivers/streams of the Los Angeles District. With the implementation of the above conditions, the proposed NWP 14 would have minimal impacts on turbidity levels in waters of the U.S. within the Los Angeles District. All activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species employ a design that ensures passage and/or spawning of fish species is not hindered. In these areas, designs that span the watercourse, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless it is demonstrated the river or stream does not support resources conducive to the recovery of federally listed fish species. Additionally, General Condition 12 requires the use of appropriate soil erosion and sediment controls. Based on these restrictions, NWP 14 would result in minimal adverse impacts to turbidity levels, both individually and cumulatively, in the majority of the Los Angeles District. In addition, the required 401 certification would also ensure short-term and long-term minimal impacts to turbidity and suspended sediment loads in the rivers and streams in the Los Angeles District.

(c) Water: Same as discussed in the national document (impacts would be minimal).

(d) Current patterns and water circulation: Regional Condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species must employ road designs to ensure the passage and/or spawning of fish is not hindered. In these areas, designs that span the river or stream, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless determined by the Corps to be impracticable. Thus, impacts of activities for the construction, expansion,

modification, or improvement of linear transportation crossings on local current patterns and water circulation are expected to be minimal. With the inclusion of the above provisions, NWP 14 would have minimal long-term impacts to current patterns and circulation in waters of the U.S. resulting from minor placements of fill incidental to bridge construction.

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

(f) Salinity gradients: Same as discussed in the national document (impacts would be minimal).

(g) Threatened and endangered species: With NWP 14, there could be long-term adverse impacts to federally listed endangered species. The general conditions have additional limitations on the use of NWP 14 in waters of the U.S. The general conditions would provide further limitations on the use of NWP 14 in waters of the U.S. Specifically, General Condition 18 requires that no activity be authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the ESA, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. Based on existing data for the period between Fiscal Year 2009 to 2011, 57 consultations (mostly informal) under Section 7 of the ESA between the Los Angeles District and USFWS and/or NMFS occurred for anticipated NWP 14 impacts that would affect federally-listed species. In all cases, the Section 7 consultations resulted in a letter of concurrence from the USFWS or NMFS agreeing the NWP 14 authorized impacts may affect, but would not likely adversely affect federally-protected species or concluded in a USFWS or NMFS Biological Opinion containing non-discretionary terms and conditions that would help to ensure minimal impacts and the continued existence of federally-listed species.

In addition, Regional Condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species must employ road designs to ensure the passage and/or spawning of fish is not hindered. In these areas, designs that span the river or stream, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless determined by the Corps to be impracticable. With the inclusion of the proposed acreage limits and PCN requirements for NWP 14 in certain special aquatic sites and sensitive watersheds and resources, 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 Standard Local Operating Procedures for Endangered Species (SLOPES), and the inclusion of additional PCN requirements, the Los Angeles District would ensure project activities authorized under NWP 14 comply with the ESA and use of NWP 14 has minimal impacts on threatened and endangered species occurring within the Los Angeles District area of responsibility.

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

(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 14 would only authorize discharges of dredged or fill material into a maximum of ½-acre of waters of the U.S. The PCN threshold for NWP 14 is 1/10-acre of impact of waters of the US. In addition, the General Conditions have additional limitations on the use of NWP 14 in waters of the U.S. Specifically, General Condition 22 prohibits the authorization under NWP 14 of activities required for the construction, expansion, modification, or improvement of linear transportation crossings conducted within, or directly affecting, critical resource waters, including wetlands adjacent to those waters, except for the discharge of dredged or fill material that occurs in a component of the National Wild and Scenic River System which then must comply with General Condition 16. Regional Condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species must employ road designs to ensure the passage and/or spawning of fish is not hindered. In these areas, designs that span the river or stream, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless determined by the Corps to be impracticable. Furthermore, the regional conditions preclude the use of NWP 14 for discharges of dredged or fill material in jurisdictional vernal pools, wetlands, mudflats, vegetated shallows, and riffle and pool complexes in the State of Arizona and the desert regions of California (where a loss of such resources would occur); San Diego Creek, San Juan Creek and Western San Mateo Creek SAMP areas, and in the Murrieta Creek and Temecula Creek watersheds for NWP 14 used in conjunction with NWPs 29 or 39 when the impact to waters of the United States is greater than 1/10-acre. With the inclusion of additional PCN requirements for NWP 14 in desert special aquatic sites and sensitive watersheds and other aquatic resources, the above long-term minor impacts to wildlife in the Los Angeles District would be further reduced. With the inclusion of the above restrictions, long-term minor impacts to wildlife in the Los Angeles District due to NWP 14 should be minimal.

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

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

(2) Wetlands: In the Los Angeles District, the 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. Based on NWP 14 data from Fiscal Year 2009 to 2011, of the approximately 37 acres of waters of the United States that were permanently impacted in the Los Angeles District area of responsibility, approximately 0.42 acre consisted of wetlands. A total of 60 acres of waters were restored, created, enhanced and/or preserved to offset the

authorized losses, in addition to purchases of in-lieu fee and mitigation bank credits of varying compensatory value. To 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. The regional conditions would preclude the use of NWP 14 for discharges of dredged or fill material in jurisdictional vernal pools, wetlands, mudflats, vegetated shallows, and riffle and pool complexes in the State of Arizona and the desert regions of California (where a loss of such resources would occur); the San Diego Creek, San Juan Creek and Western San Mateo Creek SAMP areas, and in the Murrieta Creek and Temecula Creek watersheds for certain NWP 14 activities in conjunction with NWPs 29 or 39 when the impact to waters of the United States is greater than 1/10-acre. With the inclusion of additional requirements for NWP 14 in desert special aquatic sites and sensitive watersheds and other aquatic resources, there would be only long-term minor impacts to wetlands in the Los Angeles District.

(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 a PCN for any activity discharging dredged or fill material in any special aquatic site, including mudflats, in the State of Arizona and desert regions of California. In addition, the Los Angeles District would require a PCN for any discharge of dredged or fill material in essential fish habitat, such as within coastal estuaries. With the inclusion of these modifications, NWP 14 would have only 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 a PCN for any activity discharging dredged or fill material in any special aquatic site, including vegetated shallows, in the State of Arizona and desert regions of California. Regional Condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species must employ road designs to ensure the passage and/or spawning of fish is not hindered. In these areas, designs that span the river or stream, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless determined by the Corps to be impracticable. With the inclusion of these modifications, NWP 14 would have minimal impacts on vegetated shallows in the Los Angeles District.

(5) Coral reefs: Not applicable since coral reefs do not exist within the Los Angeles District area of responsibility.

(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 mountain 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 a PCN for any activity discharging dredged or fill material in any special aquatic site, including riffle-and-pool complexes, in the State of Arizona and desert regions of California. With the inclusion of these notification requirements, NWP 14 would have minimal impacts to riffle-and-pool complexes in the Los Angeles District.

(k) Municipal and private water supplies: Same as discussed in the national document (impacts would be minimal).

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

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

(n) Aesthetics: Same as discussed in the national document (impacts would be minimal).

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

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

The cumulative effects of this NWP on the aquatic environment are dependent upon the number of times the NWP is used and the quantity and quality of waters of the United States lost due to the activities authorized by this NWP. Impacts to aquatic resources authorized by the Los Angeles District's permit actions are tracked using the ORM (OMBIL Regulatory Module) database. This includes both temporary and permanent impacts, as well as any compensatory mitigation required. Impact and mitigation data was collected for the period of Fiscal Year 2009 through 2011 to provide a reasonable basis to examine the cumulative effects of each NWP as well as the NWP Program as a whole within the Los Angeles District. Based on an analysis of the types of activities authorized by the Los Angeles District during this period, the Los Angeles District estimates that this NWP would be used approximately 210 times per year, resulting in the loss of approximately 12 acres of waters of the United States on an annual basis, of which approximately 0.15 acre would be considered wetlands. An additional 15.3 acres of temporary

impacts to waters of the United States would also be expected. To ensure these activities result in minimal individual and cumulative adverse impacts on the aquatic environment, the Los Angeles District estimates that approximately 20 acres of compensatory mitigation, in addition to mitigation bank and in-lieu fee credit purchases of varying compensatory value, would be required to offset the authorized losses of waters of the United States on an annual basis. Temporary impacts associated with linear transportation projects generally result from construction-related activities, such as cut and fill, stockpiling of fill material, and staging and storage areas for equipment and materials. Permanent impacts typically encompass the footprint of the stream or wetlands crossing, bridge piers and support piles, associated bank stabilization and grade stabilizers, such as rock rip-rap or wing deflectors. Review of the existing data in conjunction with projections of reasonably foreseeable future linear transportation projects and required compensatory mitigation within the Los Angeles District's area of responsibility suggests the proposed NWP 14 would continue to affect only a relatively small amount of waters of the U.S. with the authorized work resulting in minimal individual and cumulative adverse impacts.

The terms and conditions of the NWPs, including the pre-construction notification requirements and the regional conditions listed in Section 10.0 of this document, would ensure that NWP 14 authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. Impacts to high value aquatic resources, including wetlands, would be minimized by the restrictions in the NWP general conditions, including General Conditions 2, 3, 4, 9, 10, 11, 12, 13, 16, 18, and 22, in addition to the Los Angeles District regional conditions discussed in this document. Through the pre-construction notification process, the Los Angeles District would review certain activities on a case-by-case basis to ensure those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer could add special conditions to the NWP authorization on a case-by-case basis to ensure the activity results in minimal adverse effects on the aquatic environment, individually and cumulatively. During the pre-construction notification process, the district engineer would also have the opportunity to exercise discretionary authority and require an SIP for those activities that would result in more than minimal individual and cumulative adverse impact on the aquatic environment.

Based on data and information extracted from the Los Angeles District database for the period Fiscal Year 2009 to 2011, a total of 37 acres of waters of the United States were permanently impacted and 60 acres of compensatory mitigation for those unavoidable impacts authorized under NWP 14 were required to replace the lost functions and services. As a result, we believe there was no net loss of waters of the United States and cumulatively, impacts were not more than minimal. 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 14

10.1 Regional condition 1

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

10.2 Regional condition 2

Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-52 cannot be used to authorize structures, work, and/or the discharge of dredged or fill material that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).

10.3 Regional condition 3

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

a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the 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.

10.4 Regional condition 4

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

a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002);

b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - 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; and

d. The Santa Clara River watershed in Los Angeles and Ventura counties, including but not limited to Aliso Canyon, Agua Dulce Canyon, Sand Canyon, Bouquet Canyon, Mint Canyon, South Fork of the Santa Clara River, San Francisquito Canyon, Castaic Creek, Piru Creek, Sespe Creek and the main-stem of the Santa Clara River.

10.5 Regional condition 5

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

10.6 Regional condition 6

Individual Permits shall be required in Murrieta Creek and Temecula Creek watersheds in Riverside County for new permanent fills in perennial and intermittent watercourses otherwise authorized under NWPs 29, 39, 42 and 43, and in ephemeral watercourses for these NWPs for projects that impact greater than 0.1 acre of waters of the United States. In addition, when NWP

14 is used in conjunction with residential, commercial, or industrial developments the 0.1 acre limit would also apply.

10.7 Regional condition 7

Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.

10.8 Regional condition 8

In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority has revoked the use of the following 24 selected NWPs within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49 and 50. Consequently, these NWPs are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.

10.9 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

In the Los Angeles District, the semi-arid climate limits special aquatic sites throughout the region. In dryland areas, lack of vegetation and developed soils result in high peak discharges for large storm events. With a predominance of deep alluvial soils, dryland systems are dominated by overland flow with groundwater recharge and throughflow only contributing a relatively small quantity to stream discharge. Over the past fifty years, agricultural and construction activities have resulted in a loss of approximately 90 percent of wetlands and 95 to

more than 99 percent of the vernal pools in southern California. Further loss of special aquatic sites in southern California and Arizona could result in more than minimal cumulative impacts. To ensure any impact to special aquatic sites is offset by compensatory mitigation, the Los Angeles District would require notification for any project that impacts a special aquatic site or EFH. The Los Angeles District would eliminate the use of NWP 14 in jurisdictional vernal pools; in wetlands, mudflats, vegetated shallows, and riffle and pool complexes in Arizona and the desert regions of California; and San Diego Creek, San Juan Creek and Western San Mateo Creek SAMP areas in Orange County, California. The regional conditions as proposed also prevent the use of NWP 14 in Murrieta and Temecula Creeks when used in conjunction with NWPs 29 or 39 and the impact to waters of the United States is greater than 1/10-acre. With the inclusion of the above regional conditions associated with NWP 14, the Los Angeles District would ensure minimal impacts to jurisdictional vernal pools and special aquatic sites through additional review without substantially increasing the regulatory workload. Lastly, certain watersheds and resources in the Los Angeles District support high physical and biological functions that are threatened by cumulative impacts at the watershed level. To ensure that NWP 14 would have minimal impacts to these resources, the Los Angeles District would require notification for all projects in the Santa Monica Mountains, perennial watercourses and waterbodies in desert regions, the Santa Clara River watershed, and areas designated as Essential Fish Habitat. Regional Condition 1 requires that all activities, including road crossings, proposed in waters of the United States that are suitable habitat for federally-listed fish species employ a design that ensures passage and/or spawning of fish species is not hindered in any way. In these areas, designs that span the watercourse, or designs based on a bottomless arch culvert simulating the natural stream bed must be used unless it is determined by the Corps to be impracticable.

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.

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.