SUPPLEMENT TO THE DECISION DOCUMENT
FOR NATIONWIDE PERMIT 41

This document is a supplement to the national decision document for Nationwide Permit (NWP) 41, 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 41:

Reshaping Existing Drainage Ditches. Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 31.) (Section 404)

Summary of changes to NWP 41 from 2007:

There were no changes proposed for this NWP.

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 the State of 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 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

The permittee must submit a PCN to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. In addition, the Los Angeles District proposes to include the following regional conditions to expand the scope of PCN requirements

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

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

Two relatively small reaches of the Colorado River have been excluded from this regional condition because these areas exhibit relatively low physical and biological functions; however, due to a large amount of existing infrastructure and ongoing recreational activities, there are a large number of small structures and minor projects that require authorization pursuant to Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act. As a result, requiring notification in the above two reaches of the Colorado River would increase the District's workload substantially while only providing minimal environmental benefits. With this notification requirement, the Los Angeles District can ensure that the use of the NWP for activities proposed within the special aquatic sites would have minimal impacts, both individually and cumulatively. Activities sited within special aquatic sites that are determined to have the potential to exceed the minor impact threshold would be subject to review under the SIP process that requires a rigorous alternatives analysis. As such, further impacts to the special aquatic sites and perennial water bodies in desert areas would be avoided and minimized to the maximum extent practicable. Through the mandatory PCN 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 Projects located in all watersheds in the Santa Monica Mountains (Regional Condition 4c)

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

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

3.2.3 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

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

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

Use of the proposed NWP 41 is limited to aquatic resources previously disturbed by the construction of drainage ditches that were previously authorized by the Corps. As a result, these areas typically support reduced physical and biological functions in the aquatic environment. In some cases, the jurisdictional areas support no vegetation, exhibit substantial changes in hydrology, and have limited nutrient cycling functions. Use of the proposed NWP 41 requires the applicant to submit a PCN to the district engineer (DE), pursuant to NWP General Condition 31, when greater than 500 linear feet of drainage ditch would be affected. Due to the reduced physical and biological functions in these disturbed jurisdictional areas and the above requirement for a PCN before commencement of the activity to allow for the DE to condition the authorization, the proposed NWP 41 is anticipated to result in minimal impacts, both individually and cumulatively, in the majority of the Los Angeles District.

In some cases in the Los Angeles District, NWP 41 might have more than minimal impacts, individually and cumulatively, to waters of the United States. The use of NWP 41 can still have

more than minimal impacts if the submitted information does not accurately describe the conditions. The purpose of Regional Condition 3, which requires a written statement regarding how the activity has been designed to avoid an minimize adverse effects to waters of the U.S., drawings prepared in compliance with the Los Angeles District's map and drawing standards, and submittal of color photographs or color photocopies of the project area, is for the DE to have better information when making decisions whether to verify a NWP, conditionally verify a NWP, or require an individual permit for a proposed project. Without this condition, the Los Angeles District is more likely to authorize a project that has greater than minimal adverse impacts, to require inappropriate mitigation, or to require an individual permit even though impacts to aquatic resources are minimal. As a result, without Regional Condition 3, NWP 41 might not avoid and minimize impacts to waters of the United States to the maximum extent practicable. Furthermore, the Los Angeles District has determined that augmented PCN requirements for projects in special aquatic sites and sensitive watersheds (Santa Clara River, Santa Monica Mountains), as well as precluding the use of NWP 41 in vernal pools and special aquatic sites in Arizona and the desert areas of California, would be necessary to ensure minimal impacts, both individually and cumulatively, in the Los Angeles District. Finally, use of NWP 41 would be prohibited in areas with particularly sensitive aquatic resources or where adverse cumulative effects have been identified. This includes wetlands, mudflats, vegetated shallows, and riffle and pool complexes in the State of Arizona and desert regions in the State of California; jurisdictional vernal pools throughout the Los Angeles District; and within the San Diego Creek and San Juan Creek/Western San Mateo Creek watersheds. Without these restrictions there could be more than minimal adverse effects to aquatic resources in the Los Angeles District. Therefore, the "No Regional Conditions" alternative has been eliminated from further consideration.

4.2 Alternative Regional Limits or Pre-Construction Notification Thresholds

The proposed NWP 41 would result in impacts to waters of the United States that have been disturbed by past construction activities. Because NWP 41 would be limited to modifications to existing drainage ditches to improve water quality, only temporary, minor impacts to jurisdictional waters would be anticipated, and compensatory mitigation is, therefore, not required to use this NWP. As a result, regional conditions or alternative notification thresholds would not be required to ensure minimal impacts for the majority of the projects in the Los Angeles District.

In the Los Angeles District, the semi-arid climate limits the amount of special aquatic sites that occur throughout the region. In dryland areas, the lack of vegetation and developed soils result in high peak hydrologic discharges from large storm events. With a predominance of deep alluvial soils, dryland systems are dominated by overland flow with groundwater recharge and through-flow only contributing a small amount to stream discharge. Over the past 50 years, substantial construction activities have resulted in a loss of approximately 90% of the historic wetlands and at least 95% of the jurisdictional vernal pools in southern California. The above indicates that further loss of special aquatic sites (including jurisdictional vernal pools) could result in more than minimal cumulative impacts, particularly in the State of Arizona and desert regions of California. To improve protection of these sensitive resources, the Los Angeles District would

prohibit use of NWP 41 in wetlands, mudflats, vegetated shallows, and riffle and pool complexes in the State of Arizona and desert regions of California. This would allow the Los Angeles District to assess these actions under the more rigorous SIP review process. Also, because of the wide-spread loss of jurisdictional vernal pools in the Los Angeles District, the Corps has determined that additional vernal pool impacts would exceed the minimal impact threshold, individually or cumulatively; therefore, pursuant to Regional Condition 5, NWP 41 would be excluded from authorizing discharges of dredged of fill material into jurisdictional vernal pools in the Los Angeles District. With the inclusion of the above modifications to NWP 41, the Los Angeles District would ensure minimal impacts to special aquatic sites without substantially increasing workload in the District.

Lastly, certain watersheds and resources in the Los Angeles District support waters of the United States which, in turn, support high physical and biological functions that are threatened by cumulative impacts at the watershed level. To ensure that NWP 41 would have minimal impacts on these resources, the Los Angeles District would require PCN for all projects in the Santa Monica Mountains and Santa Clara River watershed, and perennial watercourses in the State of Arizona and Mojave and Sonoran (Colorado) desert regions in California.

The Los Angeles District has determined that all of the above modifications would be necessary to ensure minimal impacts to waters of the U.S., both individually and cumulatively, for projects authorized under NWP 41

An alternative regional limit would preclude use of NWP 41 in all special aquatic sites in the Los Angeles District. Due to the loss of approximately 90% of the wetland resources in southern California and the general scarcity of special aquatic sites in this arid and semi-arid region, there could be a need for the review of any project that would discharge dredged or fill material into a special aquatic site under the 404(b)(1) Guidelines and the public interest factors to ensure no adverse impacts occur on or to special aquatic sites. However, as discussed previously, the proposed NWP 41 would only impact previously disturbed areas that support low physical and biological functions. Furthermore, it is predicted that most if not all projects to be authorized under NWP 41 would only result in temporary impacts to waters of the United States. Additionally, the use of NWP 41 already requires the submittal of a PCN when greater than 500 linear feet would be affected. Moreover, Regional Condition 4 would require a PCN for all proposed discharges of dredged or fill material in the Santa Monica Mountains, the Santa Clara River watershed, and perennial watercourses and special aquatic sites in the State of Arizona and Mojave and Sonoran (Colorado) desert regions in California. This would allow the district engineer to determine whether a proposed discharge would have more than minimal adverse effect on the aquatic ecosystem, and if so, take discretionary authority and require the more rigorous SIP review process. A regional condition that precluded all discharges in special aquatic sites would unnecessarily increase the Los Angeles District's workload by requiring an individual permit on all such projects, including temporary impacts in disturbed areas with low physical and biological functions. As a result, the Los Angeles District has determined that these proposed alternative conditions would not be practicable.

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

4.3 Alternative Regional Nationwide Permit Conditions

An alternative regional nationwide permit conditions could include resource agency coordination for all NWP 41 PCNs, or post-project reporting for non-notifying uses of NWP 41 and other NWPs as recommended by EPA in their comments to the proposed regional conditions. Forwarding PCNs to resource agencies could result in a substantial increase in workload with minimal benefits to the aquatic environment. Because the proposed projects would be in aquatic ecosystems previously impacted by facilities previously authorized by the Corps, they would typically have low hydrological, biogeochemical, and habitat functions. The additional workload in coordinating with the resource agencies and incorporating their comments into the permit decision would not result in commensurate environmental benefits. As a result, the Los Angeles District has determined that the above alternative agency coordination procedures would not be practicable and would result in minimal benefits to the aquatic ecosystem.

Similarly, adopting a requirement all uses of NWP 41, including those not requiring a PCN would not provide substantial information or benefit to the aquatic environment, particularly in consideration of the additional workload it would impose on limited staff resources. The Corps has developed notification requirements at the national level, and the Los Angeles District has further expanded these locally, to address resources and activities that warrant project-specific review and approval. In addition, most project proponents eligible for most NWP authorizations must also obtain other state and local authorizations (such as 401 certifications and streambed alteration agreements). In many cases other agencies or authorities require project proponents to verify compliance with the Corps' regulatory program though a verification letter. Therefore, the Los Angeles District believes the existing PCN requirements, both at the national level and within the Los Angeles District address the vast majority of activities and impacts to aquatic resources authorized under the NWP program.

Based on the discussion above, these alternative regional nationwide permit conditions have been dismissed from further consideration.

5.0 Endangered Species Act

5.1 General Considerations

NWP 41 authorizes the discharge of fill material into non-tidal waters for reshaping existing drainage ditches. To avoid and minimize impacts to the aquatic environment, the terms and conditions for NWP 41 contain several restrictions including the exclusion of non-tidal wetlands adjacent to tidal waters; a restriction on increasing the drainage capacity beyond the original as-built capacity; and a prohibition of draining additional wetlands or other waters of the United States. In addition, the new general and regional conditions would provide further limitations on the use of NWP 41 in sensitive aquatic ecosystems. With these constraints, NWP 41 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 41, there could be more than minimal impacts only in specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions and may also support habitat for threatened and endangered species. The regional conditions for NWP 41 specify notification pursuant to General Condition 31 for all projects in special aquatic sites as defined at 40 CFR Part 230.40-45 and perennial waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California (excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam). With the inclusion of these proposed PCN requirements for NWP 41, 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 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 41 would have minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

In southern California, the large number of listed species has made the public more aware of the need to contact the USFWS and NMFS for many proposed projects. In addition, General Condition 18 requires the applicant to contact the Corps if their proposed project may affect a threatened or endangered species or critical habitat. The District has substantial information, including maps, previous studies and survey data that document areas that support endangered species. The District is also very careful to inform all prospective applicants of the need to comply with the ESA. If the District has no available data for a proposed project, the applicant may be referred to the USFWS or NMFS for additional information. When the District receives an application within the range of a listed species and/or the project area otherwise supports suitable habitat, the USFWS or NMFS is contacted early in the review process. To facilitate compliance with the ESA, the District has coordinated with the USFWS to complete programmatic consultations for several threatened and endangered species in Ventura, Santa Barbara, and San Luis Obispo counties.

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

5.2 Local Operating Procedures for Endangered Species

The Los Angeles District has various procedures for ensuring compliance with the ESA. SLOPES formalize additional procedures between agencies to enable the agencies to ensure better compliance with the ESA. With the implementation of SLOPES, these procedures could be formally documented, facilitating the compliance the NWPs with the ESA. It is anticipated there will be many situations that will not be addressed by SLOPES and a case-by-case determination will be made regarding consultation with the USFWS or NMFS pursuant to Section 7 of the ESA. In January 2003, the Corps of Engineers, Los Angeles District, Regulatory Branch and the U.S. Fish and Wildlife Service, Ventura Office finalized SLOPES for informal and formal ESA consultations. In addition, some the activities authorized by the NWPs that may adversely affect Essential Fish Habitat have been addressed by the General Concurrence dated August 5, 2003 and a Programmatic Consultation that was completed by the Corps of Engineers, Los Angeles District, Regulatory 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.

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

6.0 National Historic Preservation Act

6.1 General Considerations

The Los Angeles District would ensure that activities authorized by NWP 14 would comply with the National Historic Preservation Act (NHPA). The District would review the latest version of the National Register of Historic Places (NRHP) to make an effect determination that activities verified under NWP 14 would have on Historic Properties. Once an effects determination has been made the District will coordinate with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), recognized Tribes, and, if necessary, the Advisory Council on Historic Preservation (ACHP) as appropriate. The District has considered the requirement of pre-construction notification for NWP activities in geographic areas of high site potential, or known locations of cultural resources including prehistoric sites, historic sites, tribal lands, traditional cultural properties, state landmarks or National Historic Landmarks. In areas where there is a high likelihood of cultural resources within the Corps' area of potential effect (APE), the district engineer may: (1) consult with SHPO, THPO, or Tribes during the NWP

review process or (2) the district engineer may assert its discretionary authority to require an individual permit for the proposed activity and initiate consultation through the individual permit process. Option 2 would only be used if there is value added that compensates for the increase in workload due to processing more SIPs. If the consultation would be conducted under the NWP process without the district asserting discretionary authority to require an SIP, then the applicant would be notified that the activity could not be verified under the NWP until all Section 106 requirements have been satisfied.

6.2 Local Operating Procedures for National Historic Preservation Act

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

7.0 Government-to-Government Consultation with Indian Tribes

7.1 Summary of the Consultation Process

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

7.2 Local Operating Procedures for Protecting Tribal Resources

The Los Angeles District will avoid or minimize adverse effects to tribal lands, historic properties, sacred sites, or trust resources. This may involve identifying categories of activities that require a 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 will initiate a 30-day coordination period to obtain comments on the project. The District Engineer will review comments and address as appropriate.

8.0 Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Management and Conservation Act, Federal agencies are required to consult with the National Marine Fisheries Service (NMFS) for actions that may adversely affect essential fish habitat (EFH). The marine and estuarine waters within the Los Angeles District contain designated EFH, which are administered by four fishery management plans (FMP): the Pacific Groundfish FMP, the Coastal Pelagic Species FMP, the Highly Migratory Species FMP and the Pacific Coast Salmon FMP, all of which occur within tidally influenced waters. As the terms and conditions of NWP 41 do not authorize its use within tidally influenced waters, its implementation would have no effect on EFH in the Los Angeles District.

9.0 Supplement to National Impact Analysis

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

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

(a) Conservation: Because the proposed NWP 41 would typically impact areas that have been previously disturbed by construction activities, there would be minimal impacts, both individually and cumulatively, to aquatic resources throughout the Los Angeles District. Thus, the use of NWP 41 would not result in new impacts to pristine aquatic resources; impacts would be associated with maintenance and modification of existing drainage ditches, and the changes are anticipated to provide some environmental benefits by improving water quality parameters. Furthermore, use of NWP 41 involves a PCN requirement to the district engineer for projects that impact greater than 500 linear feet, with color photographic documentation. Due to types of disturbed aquatic resources that could be impacted by NWP 41 and the above conditions, NWP 41 would result in minimal impacts to conservation, both individually and cumulatively.

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

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

(d) General environmental concerns: In the Los Angeles District, a large number of threatened or endangered species are federally listed within the region, thus requiring extensive coordination with the USFWS and NMFS in accordance with the Endangered Species Act (ESA). In addition, the semi-arid environment limits the number of special aquatic sites in the southern California/Arizona area. With the continuation of the existing informal coordination procedures and with the continuation of the PCN requirements that began with the 2002 NWP Regional Conditions, NWP 41 would have only minimal impacts on general environmental resources in the Los Angeles District. Based on information from our Regulatory Analysis and OMBIL Regulatory Module Database (ORM2) over the last three years, no discharges of dredged or fill material in waters of the United States that affected listed species or designated critical habitat pursuant to ESA were authorized under NWP 41. As a result, based on a review of past projects authorized under NWP 41, the majority of the activities authorized under NWP 41 are utilized for projects that occur in areas that are part of existing facilities that have been previously disturbed and exhibit relatively low physical and biological functions.

The use of NWP 41 requires a PCN to the district engineer for projects affecting greater than 500 linear feet. The proposed regional conditions would expand upon this by requiring notification for specific geographic areas and certain habitat types that exhibit relatively high physical and biological functions including the Santa Monica Mountains and Santa Clara River watershed, and in the perennial waters in Arizona and the desert regions of California. With the inclusion of the above general and regional conditions, NWP 41 would result in minimal impacts, both individually and cumulatively, to general environmental concerns in 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 precludes the development of wetlands in the majority of these desert regions. As a result, special aquatic sites (which include wetlands) are rare in the Los Angeles District and warrant more rigorous protection. With respect to NWP 41, based on a review of OMBIL Regulatory Module Database (ORM2), use of the NWP 41 in the Los Angeles District is often limited to temporary impacts in jurisdictional areas that support aquatic resources that have been previously disturbed by the original construction of a particular drainage facility. In many cases, NWP 41 authorizes maintenance activities in disturbed areas typically supporting reduced physical and biological functions. To avoid impacts to sensitive aquatic resources, the Los Angeles District would preclude use of NWP 41 in wetlands in the State of Arizona and desert regions of California, jurisdictional vernal pools, and within the San Diego Creek and San Juan Creek/Western San Mateo Creek watersheds. In addition, use of NWP 41 requires a PCN for projects affecting greater than 500 linear feet of jurisdictional drainage ditch. Furthermore, the proposed regional conditions would require a PCN in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. With the inclusion of the above general and regional conditions, NWP 41 would result in minimal impacts, both individually and cumulatively, to wetlands in the Los Angeles District.

Based on information from our Regulatory Analysis and OMBIL Regulatory Module Database (ORM2) over the last three years, no discharges of dredged or fill material into wetland waters of the United States were authorized under NWP 41. This trend would be expected to continue during the 5-year duration of the reissued NWP 41.

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

(g) Fish and wildlife values: Same as discussed in the national decision document.

(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 larger for dryland basins than similar-sized humid area basins. With the maintenance of drainage facilities, NWP 41 provides long-term minor benefits by maintaining the capacity of drainage ditches in the Los Angeles District. Overall, the effects of NWP 41 are expected to be beneficial, both individually and cumulatively, and would have minimal or no negative impacts on flood hazards.

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

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

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

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

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

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

(o) Water quality: In the heavily populated areas of southern California and Arizona, existing water quality in most rivers has been impaired by runoff from upland agricultural, residential, and industrial sources. In addition, the use of NWP 41 often requires best management practices to be included to ensure that impacts are minimal. Furthermore, the required Section 401 water quality certification would ensure long-term minimal impacts to water quality in the rivers and streams of the Los Angeles District. With NWP 41, the intent of the reshaping of drainage ditches is to improve water quality by creating gentler slopes, which can reduce erosion, allowing an increase in the growth of vegetation, which uptake nutrients and other substances. Additionally, the proposed regional general conditions would require a PCN in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of southern California. With the implementation of the above conditions, NWP 41 would have minimal adverse impacts on water quality in the Los Angeles District.

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

(q) Safety: 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 larger for dryland basins than similar-sized humid area basins. With the maintenance of drainage facilities, NWP 41 provides long-term minor benefits by maintaining the capacity of drainage ditches in the Los Angeles District typically through creating gentler slopes. Overall, the effects of NWP 41 are expected to be beneficial, both individually and cumulatively, and would have minimal or no negative impacts on safety.

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

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

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

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

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

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

(a) Substrate: With NWP 41, only short-term impacts to channel substrate in the drainage ditch would occur. NWP 41 can only be used in areas already modified for the purpose of creating a drainage ditch. With the original construction of the facility, the natural channel morphology would have been permanently altered. Subsequent maintenance activities in existing drainage ditches would result in minimal changes to disturbed channel reaches, because this NWP only affects areas that have been previously disturbed and exhibit relatively low physical and biological functions. Proposed regional conditions would further restrict use of NWP 41 in sensitive areas by precluding its use in certain special aquatic sites in the State of Arizona and desert regions of California, jurisdictional vernal pools, and within the San Diego Creek and San Juan Creek/Western San Mateo Creek watersheds. In addition, use of NWP 41 requires submittal of a PCN to the district engineer, when greater than 500 linear feet of jurisdictional drainage ditch would be affected. Furthermore, the proposed regional conditions would require a PCN when in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. With the inclusion of the above general and regional conditions, NWP 41 would result in minimal impacts, both individually and cumulatively, to channel substrate.

(b) Suspended particulates/turbidity: In the heavily populated areas of southern California and Arizona, existing turbidity levels in most rivers is impaired by runoff from upland agriculture, residential, and industrial sources. Construction activities related to maintenance of drainage ditches augment turbidity levels in waters of the United States. However, these activities would generally result in only short-term increases in turbidity. To ensure minimal impacts, the use of NWP 41 usually requires incorporating siltation controls and BMPs to be included in the

proposed project. Furthermore, the required 401 water quality certification would ensure long-term minimal impacts result from turbidity and suspended sediment loads in rivers and streams of the Los Angeles District. In addition, the proposed regional conditions would further restrict use of NWP 41 in sensitive areas by precluding its use in certain special aquatic sites in the State of Arizona and desert regions of California, jurisdictional vernal pools, and within the San Diego Creek and San Juan Creek/Western San Mateo Creek watersheds. In addition, use of NWP 41 requires submittal of a PCN to the district engineer, when greater than 500 linear feet of jurisdictional drainage ditch would be affected. Furthermore, the proposed regional conditions would require a PCN when in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. With the inclusion of the above general and regional conditions, NWP 41 would result in minimal impacts, both individually and cumulatively, to suspended particulates/turbidity.

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

(d) Current patterns and water circulation: NWP 41 can only be used in areas already hydrologically modified for the purpose of creating a drainage ditch. With the original construction of a drainage ditch, natural current patterns and water circulation would have been permanently altered. This NWP would only result in hydrological modifications related to re-establishing as-built physical characteristics. In addition, use of NWP 41 requires submittal of a PCN to the district engineer, with color photographic documentation, when greater than 500 linear feet of jurisdictional drainage ditch would be affected. In addition, the proposed regional conditions would further restrict use of NWP 41 in sensitive areas by precluding its use in certain special aquatic sites in the State of Arizona and desert regions of California, jurisdictional vernal pools, and within the San Diego Creek and San Juan Creek/Western San Mateo Creek watersheds. In addition, use of NWP 41 requires submittal of a PCN to the district engineer, when greater than 500 linear feet of jurisdictional drainage ditch would be affected. Furthermore, the proposed regional conditions would require a PCN when in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. With the inclusion of the above general and regional conditions, NWP 41 would result in minimal impacts, both individually and cumulatively, to current patterns and waters circulation.

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

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

(g) Threatened and endangered species: As stated above, the majority of the activities that could be authorized under NWP 41 would take place in waters of the United States already modified for the purpose of creating a drainage ditch. These disturbed areas typically support habitat that is less than optimal suitability for most native, sensitive species. These types of maintenance activities are generally less likely to affect threatened and endangered species, and any impacts to the listed species that do occur are short-term and minor. Nevertheless, given the large number of federally listed species in the Los Angeles District, continued coordination with USFWS and NMFS is required to ensure minimal impacts to listed species pursuant to General Condition 18.

In addition, the proposed regional conditions would further restrict use of NWP 41 in sensitive aquatic areas that may support threatened and endangered species by precluding its use in certain special aquatic sites in the State of Arizona and desert regions of California, jurisdictional vernal pools, and within the San Diego Creek and San Juan Creek/Western San Mateo Creek watersheds. In addition, use of NWP 41 requires submittal of a PCN to the district engineer, when greater than 500 linear feet of jurisdictional drainage ditch would be affected. Furthermore, the proposed regional conditions would require a PCN when in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. With the inclusion of the above general and regional conditions, NWP 41 would result in minimal impacts, both individually and cumulatively, to threatened and endangered species in the Los Angeles District.

Based on information from our Regulatory Analysis and OMBIL Regulatory Module Database (ORM2) over the last three years, no discharges of dredged or fill material in waters of the United States that affected listed species or designated critical habitat pursuant to ESA were authorized under NWP 41.

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

(i) Other wildlife: In the semi-arid and arid climate of southern California and Arizona, rivers and streams and the associated riparian habitats represent important resources for wildlife. The majority of the activities that could be authorized under NWP 41 would take place in waters of the United States already modified for the purpose of creating a drainage ditch. As a result, minimal existing habitat and stream channel area would be disturbed by most maintenance activities. To ensure minimal impacts to wildlife species, the use of NWP 41 would be prohibited in certain special aquatic sites in the State of Arizona and desert regions of California, jurisdictional vernal pools, and within the San Diego Creek and San Juan Creek/Western San Mateo Creek watersheds. In addition, the proposed regional conditions would require a PCN when special aquatic sites are present in the project area, in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. With the continuation of existing coordination procedures with the Services and the above PCN requirements, the use of NWP 41 would have minimal impacts, both individually and cumulatively, on wildlife in the Los Angeles District.

(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 decision 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. As a result, special aquatic sites (which include wetlands) are rare in the

Los Angeles District and warrant more rigorous protection. With respect to NWP 41, based on a review of OMBIL Regulatory Module Database (ORM2), use of the NWP 41 in the Los Angeles District is often limited to temporary impacts in jurisdictional areas that support aquatic resources that have been previously disturbed by the original construction of a particular drainage facility. In many cases, NWP 41 authorizes maintenance activities in disturbed areas typically supporting reduced physical and biological functions. To avoid impacts to sensitive aquatic resources, the Los Angeles District would preclude use of NWP 41 in wetlands in the State of Arizona and desert regions of California, jurisdictional vernal pools, and within the San Diego Creek and San Juan Creek/Western San Mateo Creek watersheds. In addition, use of NWP 41 requires a PCN for projects affecting greater than 500 linear feet of jurisdictional drainage ditch. Furthermore, the proposed regional conditions would require a PCN in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. With the inclusion of the above general and regional conditions, NWP 41 would result in minimal impacts, both individually and cumulatively, to wetlands in the Los Angeles District.

Based on information from our Regulatory Analysis and OMBIL Regulatory Module Database (ORM2) over the last three years, no discharges of dredged or fill material into wetland waters of the United States were authorized under NWP 41.

(3) Mudflats: In the Los Angeles District, historic construction activities have reduced the extent and number of mud flat resources. Approximately 90% of wetlands, including coastal wetlands and mud flats, in California have been affected by historic conversion to agricultural uses and/or grading and filling activities. As a result mud flats are especially rare in the Los Angeles District, and warrant more rigorous protection. To ensure minimal impacts to mudflats, NWP 41 has been developed to allow maintenance work only in existing drainage ditches, which already have significant modifications and reduced biological, chemical, and physical functions. In addition, the proposed regional conditions would preclude use of NWP 41 in the State of Arizona and desert regions of California when mudflats are present in the project area. Use of NWP 41 would require the submittal of a PCN for projects exceeding 500 feet of impact to the district engineer and proposed regional conditions would augment this requirement by requiring a PCN in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. This would allow the district engineer to determine whether a proposed discharge would have more than minimal adverse effect on the aquatic ecosystem (including mudflats), and if so, take discretionary authority and require the more rigorous IP process. Due to the restrictions on use of NWP 41 and the general and regional conditions, the proposed NWP 41 would have only minimal impacts to mudflats in the Los Angeles District.

(4) Vegetated shallows: In the Los Angeles District, historic construction activities have reduced the extent and number of vegetated shallows. Approximately 90% of wetlands, including vegetated shallows, in California have been affected by historic conversion to agricultural uses and/or grading and filling activities. 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, NWP 41 has been developed to allow maintenance work only in existing drainage ditches, which already have significant modifications and reduced biological, chemical, and physical functions. In addition, the proposed regional conditions would preclude use of NWP 41 in the State of Arizona and desert regions of California when vegetated shallows are present in the project area. Use of NWP 41 would require the submittal of a PCN for projects exceeding 500 feet of impact to the district engineer and proposed regional conditions would augment this requirement by requiring a PCN in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. This would allow the district engineer to determine whether a proposed discharge would have more than minimal adverse effect on the aquatic ecosystem (including vegetated shallows), and if so, take discretionary authority and require the more rigorous IP process. Due to the restrictions on use of NWP 41 and the general and regional conditions, the proposed NWP 41 would have only minimal impacts to vegetated shallows in the Los Angeles District.

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

(6) Riffle and pool complexes: In the semi-arid southern California and Arizona areas, limited water resources and the need for flood control have let to the construction of numerous dams in the mountains surrounding southern California and on the Colorado River in Arizona. With the construction of these large dams, many riffle and pool complexes have been eliminated by large reservoirs. Furthermore, construction of the dams modifies the hydrologic regime of the river, which can also degrade downstream riffle-and-pool complexes. As a result, riffle and pool complexes are especially rare in the Los Angeles District, and warrant more rigorous protection. To ensure minimal impacts to riffle and pool complexes, NWP 41 has been developed to allow maintenance only in existing drainage ditches, which already have significant modifications and reduced biological, chemical, and physical functions. In addition, the proposed regional conditions would preclude use of NWP 41 in the State of Arizona and desert regions of California when riffle and pool complexes are present in the project area. Use of NWP 41 would require the submittal of a PCN for projects exceeding 500 feet of impact to the district engineer and proposed regional conditions would augment this requirement by requiring a PCN in the sensitive Santa Monica Mountains and Santa Clara River watershed, and in perennial waters in Arizona and the desert regions of California. This would allow the district engineer to determine whether a proposed discharge would have more than minimal adverse effect on the aquatic ecosystem (including riffle and pool complexes), and if so, take discretionary authority and require the more rigorous IP process. Due to the restrictions on use of NWP 41 and the general and regional conditions, the proposed NWP 41 would have only minimal impacts to riffle and pool complexes in the Los Angeles District.

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

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

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

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

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

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 will be used less than 1 time per year, resulting the loss of approximately 0 acres of waters of the United States on an annual basis.

No permanent loss of jurisdictional waters is anticipated based on limited past use of the NWP within the Los Angeles District and the intent of this NWP to improve water quality through reshaping of existing drainage ditches. Moreover, because the work is designed to improve water quality, no compensatory mitigation would be required to offset the authorized temporary impacts to waters of the United States and ensure that the NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment.

The terms and conditions of the NWP, including the PCN requirements and the regional conditions listed in Section 10.0 of this supplement to the decision document, would ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters would be protected by the restrictions in General Condition 22, the regional conditions discussed in this document, and the PCN requirements of the NWP. Through the PCN process, the Los Angeles District would review certain activities on a case-by-case basis to ensure that those activities would result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the district engineer can add special conditions to the NWP authorization on a case-by-case basis to ensure that the activity would result in minimal adverse effects on the aquatic environment, individually and cumulatively. During the PCN process, the district engineer would 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.

10.0 List of Final Corps Regional Conditions for NWP 41

10.1 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).

10.2 Regional condition 3

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

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

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the project site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los Angeles District Regulatory Division* (available on the Los Angeles District Regulatory Division website at: www.spl.usace.army.mil/regulatory/); and

c. Numbered and dated pre-project color photographs showing all waters proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.

10.3 Regional condition 4

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

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

b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas). The PCN shall also include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: http://www.swr.noaa.gov/efh.htm.

c. All watersheds in the Santa Monica Mountains in Los Angeles and Ventura counties bounded by Calleguas Creek on the west, by Highway 101 on the north and east, and by Sunset Boulevard and Pacific Ocean on the south.

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

10.4 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.

10.5 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.

10.6 Regional condition 10

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

11.0 Water Quality Certification and Coastal Zone Management Act consistency determinations

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

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

Upon publication of the final rule in the February 21, 2012, issue of the Federal Register (77 FR 10184), the Los Angeles District again provided letters to each of the seven tribes with 401

authority, and the State of Arizona requesting final 401 certification of the 2012 NWPs within their respective geographic areas of responsibility. Copies of the final regional conditions for the Los Angeles District were also provided. Similarly, the Los Angeles District provided a letter to the CCC on behalf of both coastal districts in California requesting final CZMA consistency certification of the 2012 NWPs and the respective regional conditions (copies of the letters are provided in Section IV). Each tribe and the State of Arizona have 60 days to issue, waive or deny certification for any or all of the 2012 NWPs. The CCC has 90 days to make their final determination. Due to the fact that the final rule was published on February 21, 2012, there is not sufficient time to allow the full 60- or 90-day review period before the 2012 NWPs are scheduled to go into effect on March 19, 2012. Therefore, the final outcome of 401 and CZMA certification within in the Los Angeles District is uncertain. Individual certifications will be required for any action authorized under the 2012 NWPs where applicable (i.e. projects within or affecting the Coastal Zone and/or projects that may affect water quality) until final determinations are provided by the respective state/tribal authorities.
The Los Angeles District believes, in general, that these NWPs and our regional conditions comply with State Water Quality Certification standards and are consistent with the Coastal Zone Management Plans.

12.0 Measures to Ensure Minimal Adverse Environmental Effects

The terms and conditions of the NWP, including the PCN requirements and the regional conditions listed in Section 10.0 of this document, will ensure that this NWP authorizes only activities with minimal individual and cumulative adverse effects on the aquatic environment. High value waters will be protected by the restrictions in general condition 22, the regional conditions discussed in this document, and the PCN requirements of the NWP. Through the PCN process, the Los Angeles District will review certain activities on a case-by-case basis to ensure that those activities result in minimal adverse effects on the aquatic environment, individually and cumulatively. As a result of this review, the 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 PCN 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.