

*LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS*

**DEPARTMENT OF THE ARMY PERMIT
REGIONAL GENERAL PERMIT NO. 79
PREVENTIVE MAINTENANCE AND CONSTRUCTION ACTIVITIES
IN
BURNED AREAS**

Permittee: Individuals, public and private entities, and government agencies within the boundary of the Los Angeles District.

Permit Number: SPL-2009-00348-KW

Issuing Office: Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

Project Description:

The District Engineer (DE) of the U.S. Army Corps of Engineers, Los Angeles District, hereby issues Regional General Permit No. 79.

This Regional General Permit (RGP) authorizes preventive maintenance and construction activities in waters of United States undertaken for the purpose of managing debris flows and sediment from burned areas. This RGP authorizes discharge of fill materials that would result in permanent impacts (up to $\frac{1}{10}$ acre) or temporary impacts in waters of the United States located within the boundary of the Los Angeles District where fires have burned at least 20% of the drainage area within the past five years.

Preventive maintenance and construction activities would protect life and property or minimize impacts to functions and services of aquatic resources downstream. Examples include (1) sediment removal from debris basins, waterways, and plugged culverts; (2) construction of debris retention structures such as rail and timber structures, trash racks, temporary debris basins and debris racks; (3) maintenance of serviceable structures or like-for-like reconstruction of fire-damaged structures with allowances for minor deviations required to undertake fire-related sediment management activities; (4) construction of temporary structures such as access roads and ramps in waters of United States required to undertake fire-related sediment

management activities; and (5) placement of temporary flow diversion structures such as earthen berms, K-rails, and sand bags. The above list is not inclusive and other preventive measures within jurisdictional areas may be authorized if the DE determines they would be effective in managing debris flows and sediment from burned areas.

Definitions:

1. **Drainage Area:** Drainage area is the portion of a watershed upstream of a given point along a drainage such that all surface water runoff originating in that area would flow down through that point.
2. **Burned Area:** For the purposes of this RGP, a burned area is a drainage area where fires have burned at least 20% of the drainage area within the past five years.
3. **Permanent Impact:** Permanent impacts are discharges fill material that permanently changes an aquatic area to dry land, increases the bottom elevation of a waterbody, or permanently changes the use of a waterbody (Federal Register, Vol. 72, No. 47, p. 11196).
4. **Temporary Impact:** Temporary impacts are discharges of fill material that would allow affected jurisdictional areas to return to their pre-project conditions and contours through natural stream processes or through active restoration.

Permit General Conditions:

1. **Time Period Covered:** This RGP shall expire on **September 30, 2014**. Notifications to Proceed (NTP) under this RGP shall be valid for one year from the date of issuance (See General Condition 8 below).
2. **Notification Requirements:** A notification to the DE is required for all activities proposed for authorization under this RGP.
3. **Contents of Notification:** The notification should be in writing and include the following information:
 - a. The name, address and telephone number of the applicant and the designated point of contact and their address and telephone number;
 - b. The latitude/longitude coordinates (in decimal degree format) of the location of the proposed project;
 - c. A vicinity map at an appropriate scale depicting the project location, the drainage where the proposed work will take place, the boundary and approximate acreage of the drainage area upstream of the project location, and the boundary and approximate acreage of the fire within the drainage area;
 - d. Plan and elevation views of the proposed work;

- e. Rationale for how the proposed activity or facility would be effective in managing debris flows and sediment from burned areas;
 - f. A project description detailing the following:
 - i. Overall project description;
 - ii. Proposed work in waters of the United States including:
 - 1. The acreage of waters of United States that would be affected (permanent and temporary);
 - 2. The volume and type of material proposed for discharge;
 - 3. Project schedule, including the estimated time required to initiate and complete work in waters of the United States;
 - iii. Proposed work in non-jurisdictional areas directly related to work in waters of United States (e.g., establishment of staging areas or construction of access roads/ramps in adjacent uplands);
 - g. Biological and/or cultural surveys encompassing affected waters of the United States and non-jurisdictional areas directly related to work in waters of United States;
 - h. For the purpose of evaluating whether the proposed activity would result in more than minimal impacts individually and cumulatively (See General Condition 7b), the applicant may, as an option, submit a proposed mitigation plan (see General Condition 6).
4. **Form of Notification:** The standard Application for Department of the Army Permit (Form ENG 4345), available from the District's Website at (<http://www.spl.usace.army.mil/regulatory/eng4345a.pdf>), or a signed letter request may be used as the notification.
- a. Both forms of notification above shall include all of the information required in General Condition 3 above.
 - b. The applicant shall also provide an electronic copy of the notification in an Adobe Acrobat (*.pdf) format for the purpose of expediting coordination with other State and Federal agencies.
5. **Agency Coordination:** Upon receipt of a complete notification package in both printed and electronic formats, this office will undertake the following coordination procedures:

- a. **Consultations with Agencies:** To ensure that the proposed project is in compliance with applicable federal laws and regulations, the DE may initiate consultations with appropriate State or Federal agencies as deemed necessary. Agencies with which the DE initiates consultations include but are not limited to:
 - i. U.S. Fish and Wildlife Service (USFWS): If review of the notification indicates a need for consultation with the USFWS, the DE whenever possible and appropriate will attempt to expedite the consultation process through informal consultations or through the use of existing programmatic Biological Opinions. Pursuant to General Condition 11, a NTP will not be issued until the proposed project is in compliance with the Endangered Species Act.
 - ii. State Historic Preservation Officer (SHPO): If review of the notification indicates a need for consultation with the SHPO, the DE whenever possible and appropriate will attempt to expedite the consultation process. Pursuant to General Condition 12, a NTP will not be issued until the proposed project is in compliance with the National Historic Preservation Act.

- b. **Coordination with Permitting Agencies:**
 - i. State and Regional Water Quality Control Boards: The DE will coordinate with appropriate State or Regional Water Quality Control Boards according to procedures detailed in General Condition 9.
 - ii. California Coastal Commission: For California projects located within the coastal zone or immediately outside of the coastal zone where authorized work could affect coastal uses or resources, the DE will require submittal of a federal consistency determination prior to issuance of a NTP (see General Condition 10 below).

- 6. **Mitigation:** Discharges of dredged or fill material into waters of the United States must be avoided or minimized to the maximum extent practicable at the project site. Compensation for unavoidable discharge of fill materials may require appropriate mitigation measures. Factors that the DE will consider when determining the acceptability of appropriate and practicable mitigation will include, but are not limited to: the approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.; the permanence of the project's impacts on the resource; and the potential long-term effects of the action on remaining functions and values of the impacted aquatic resource. Pursuant to the mitigation rule, and on a case-by-case basis, the DE to the extent appropriate may require (in order of preference):
 - a. purchase of credits from mitigation banks;

- b. payment to a Corps-approved in-lieu fee program where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources; or
 - c. permittee-responsible mitigation whereby the permittee would replace lost aquatic resource functions and services by creating, restoring, or enhancing similar functions and services.
7. **Eligibility Evaluation Criteria:** In reviewing whether the proposed activity qualifies for authorization under the RGP, the DE will determine whether the proposed activity:
- a. is located within a “burned area” as defined above;
 - b. is related to management of debris flows and sediment from burned areas;
 - c. would result in more than minimal individual or cumulative environmental effects. (the DE will consider any mitigation the applicant has included in the project description in determining whether the net adverse environmental effects for the proposed work are minimal); and
 - d. may be contrary to the public interest.
8. **District Engineer's Decision:**
- a. **Notice to Proceed (NTP):** A NTP *authorizes the applicant to initiate work in waters of United States on the date of issuance. The NTP is valid for up to one year from the date of issuance.* If applicable, the NTP would also include as attachments, agreements or permits from other Federal or State agencies (e.g., biological opinions from the USFWS, memoranda of agreement between the DE and the SHPO). If applicable, the NTP would include as attachments statewide or region-wide 401 Water Quality Certifications (WQCs) issued for this RGP. The NTP would incorporate by reference all terms and conditions of the attached documents as project-specific special conditions. An NTP will be issued if the DE determines that the proposed activity:
 - i. is eligible for the RGP (i.e., meets evaluation criteria 7(a) through 7(d) above);
 - ii. complies with other applicable federal laws such as the Endangered Species Act or the National Historic Preservation Act;
 - iii. qualifies for any statewide or regionwide 401 WQCs issued for this RGP or is authorized by a project-specific 401 WQC;
 - iv. has been issued a federal consistency determination by the California Coastal Commission pursuant to the Coastal Zone Management Act (applicable only to those projects located within the coastal zone or projects *immediately* outside the coastal zone where the proposed discharge of fill could affect uses or resources of the coastal zone in the state of California).
9. **Water Quality Certifications:**
- a. **Arizona Applicants:** Arizona Department of Environmental Quality (ADEQ) has issued a 401 WQC for all projects (on non-tribal areas within Arizona) undertaken by federal, state, or local government or agencies (see Attachment A). All other applicants will need to apply to ADEQ for project specific 401WQCs.

b. California Applicants:

- i. If a statewide 401 WQC or an applicable region-wide 401 WQC is not available for this RGP, applicants shall obtain a project-specific 401 WQC or waiver from the appropriate California Regional Water Quality Control Board (CRWQCB).
- ii. If a statewide 401 WQC or an applicable region-wide 401 WQC is available for this RGP, the DE will transmit an electronic copy of the notification package via electronic mail to the appropriate CRWQCB for all projects proposed for authorization under this RGP. The CRWQCB in receipt of the electronic notification will have up to 5 business days from the date of the DE's electronic transmittal to provide comments on the proposed project. Comments received during the 5-day comment period will be considered by the DE, and may be incorporated as special conditions of the NTP as deemed appropriate. If no comments are received, and the proposed project is in compliance with all terms and conditions of this RGP, the DE will proceed with issuance of a NTP to the applicant pursuant to General Condition 8.

10. Coastal Zone Management: Pursuant to the Federal Coastal Zone Management Act (CZMA), applicants for projects affecting uses or resources of the coastal zone shall obtain federal consistency determination from the California Coastal Commission (CCC) certifying that the proposed project is consistent with the State's certified Coastal Management Program or a waiver.

- a. Coastal development permits (CDP) from local governments with CCC-certified local coastal programs do not constitute a federal consistency determination. Because a CDP issued by a local agency does not satisfy the federal consistency requirements of the CZMA, the applicant should also contact James Raives, (415) 904-5292, Federal Consistency Coordinator for the Commission to determine the appropriate procedures for obtaining a federal consistency determination or a waiver.
- b. For any activity located immediately outside the coastal zone, but with the potential to affect coastal uses or resources, or for any activity conducted by a federal agency, the applicant should contact James Raives, (415) 904-5292, Federal Consistency Coordinator for the Commission to determine the appropriate procedures for obtaining a federal consistency determination or a waiver.

11. **Endangered Species:** No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat as identified under the Federal Endangered Species Act (ESA) unless Section 7 consultation addressing the effects of the proposed activity has been completed.
 - a. Authorization of an activity by the RGP does NOT authorize the "take" of a listed threatened or endangered species, as defined under the Federal ESA.
12. **Historic Properties:** No activity is authorized under this RGP which may affect historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
13. **Wild and Scenic Rivers:** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while that river is in an official study status unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
 - a. Currently the only designated Wild and Scenic River systems in the Los Angeles District are the main stem of Sespe Creek from its confluence with Rock Creek and Howard Creek downstream to where it leaves Section 26, T5N, R20W; the Sisquoc River from its origin to the Los Padres National Forest boundary in California; and the Verde River from the section line between Sections 26 and 27, T13N, R5E, Gila-Salt River meridian to the confluence of Red Creek with the Verde River within Section 34, T9 1/2N, R6E .
14. **Disposal of Excavated Debris and Sediment:** Excavated sediment and debris shall be disposed at upland disposal sites. This RGP does not authorize disposal of excavated debris and sediment in any waters of the United States.
 - a. In the case where storm flows, debris flows, or other discrete events expand the geographical limits of waters of the United States such that it encompasses an existing sediment placement site in the adjacent uplands, the permittee shall not discharge excavated sediment at the sediment placement site without first restoring the adjacent uplands to pre-damage contours and boundaries pursuant to the terms and conditions of Nationwide Permit 45. In certain circumstances, the permittee may be able to reclaim lost uplands without a Section 404 permit.
15. **Removal of Fills:** Debris retention structures where impacts exceed 1/10 acre shall be removed in their entirety 5 1/2 years from the date of the NTP. Unless the affected area is likely to naturally re-establish native riparian or wetland vegetation to a level similar to pre-project or pre-event conditions within two years, the permittee shall restore the

affected area to its pre-existing contours and revegetate the affected area with appropriate native riparian or wetland vegetation common to the area.

16. **Permanent or Long-term Presence of Debris Retention Structures:** If there is a need for debris retention structures, where impacts exceed $\frac{1}{10}$ acre, to remain permanently or for an additional period of time beyond the five-year burn area recovery window, the permittee shall submit a supplemental Department of Army permit application for the structure within five years from the date of the NTP. The DE will utilize the additional information to assess the long term environmental consequences of leaving debris retention structures in place. A supplemental application would include:
- a. a standard Application for Department of the Army Permit (Form ENG 4345);
 - b. a statement documenting the need for the long-term or permanent presence of the structure;
 - c. a maintenance baseline (a description of the physical characteristics such as depth, width, length, location, configuration, or design capacity);
 - d. as-built plans;
 - e. a statement describing typical maintenance activities needed to keep the structures function properly; and
 - f. a current biological survey documenting the existing conditions at the project site.

The above list is not inclusive, and the DE may require in writing additional information required to process the request. Upon receipt of a complete supplemental Department of Army application, the DE shall process such requests in accordance with procedures at 33 CFR Part 325. If the Department of Army permit request is denied, the applicant shall remove the structure in its entirety 5 $\frac{1}{2}$ years from the date of the NTP.

17. **Stream Channelization:** This RGP does not authorize stream channelization. Stream channelization is the manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes (Federal Register , Vol. 72, No. 47, p. 11197). Examples include but are not limited to conversion of a natural stream into a concrete-lined channel.
18. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
19. **Regional and Case-by-Case Conditions:** The activity must comply with Regional Conditions for the Los Angeles District (see Attachment B) and with any case-specific conditions added to the NTP by this office.
20. **Erosion and Siltation Controls:** Every effort must be made to ensure any material dredged or excavated from waters of the United States is not likely to be washed back into any waters of the United States. When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or straw (or hay) bales or other means designed to minimize turbidity in the watercourse shall be used and maintained in effective operating condition during construction unless conditions

preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work.

21. **Equipment:** When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance, such as use of wide-treaded equipment or floatation devices.
22. **Aquatic Life Movements:** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
23. **Spawning Areas:** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
24. **Migratory Bird Breeding Areas:** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
25. **Suitable Material:** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
26. **Adverse Effects From Impoundments:** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
27. **Proper Maintenance:** Any structure or fill authorized by this RGP shall be maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to private or public property. In such situations, corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original corrective action, or appropriate mitigation as determined through coordination with the permittee and the appropriate Federal and State agencies.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



David J. Castanon
Chief, Regulatory Division

9-30-09

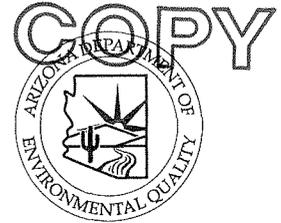
DATE



Janice K. Brewer
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007
(602) 771-2300 • www.azdeq.gov



Patrick J. Cunningham
Acting Director

June 16, 2009

401 cert reading file: rs309:015

Applicant: Los Angeles District, Corps Of Engineers, Regulatory Division
ATTN: CESPL-RG-NL-2009-00348-KW
Kenneth Wong
P.O Box 532711
Los Angeles, California 90053-2325

Subject: CWA 401 Water Quality Certification for the proposed
**Regional General Permit No. 79: Preventive Construction and Maintenance
Activities within Burned Watersheds Project** impacting any waters of the United
States located within burned watersheds on non-tribal lands within the state of
Arizona.
U.S. Army Corps of Engineers (Los Angeles District) File No.:
SPL-2009-00348-KW

Dear Mr. Wong:

The Arizona Department of Environmental Quality (ADEQ) has reviewed the U.S. Army Corps of Engineers (CoE) public notice (5/18/09) for the subject Regional General Permit No. 79 (RGP) pursuant to Section 401 of the Clean Water Act (CWA).

ADEQ wishes to have the following 401 Water Quality Conditions applied to all projects (on non-tribal areas within Arizona) approved by the CoE under the proposed RGP and undertaken by federal, state or local governments or agencies. All others will need to apply to ADEQ for an individual 401 certification.

Any applicant is responsible for obtaining all other permits, certifications and licenses that may be required by federal, state or local authorities. Activities which may require other Arizona approvals include, but are not limited to:

- a. Construction activities disturbing greater than one acre of land will require an AZPDES Stormwater Permit. Prior to the commencement of activities herein certified, the applicant will have available for inspection onsite a copy of the Notice of Intent (NOI) and associated ADEQ authorization letter, and a Stormwater Pollution Prevention Plan as required by the applicable stormwater regulations.
- b. If reclaimed wastewater is used for irrigation or dust control, a Reclaimed Water Permit will be required and an AZPDES Permit may be required if in a WUS. In any case, water used for dust suppression or irrigation shall not contain contaminants that could violate state water quality standards (WQS).
- c. If dewatering operations are needed, this water shall not be discharged into a WUS without proper permits, including, but not necessarily limited to an AZPDES Permit.

Northern Regional Office
1801 W. Route 66 • Suite 117 • Flagstaff, AZ
86001
(928) 779-0313

Southern Regional Office
400 West Congress Street • Suite 433 • Tucson, AZ
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(520) 628-6733

401 Conditions

- 1) Any discharge occurring as a result of activities certified for the subject project shall not cause a violation of WQS. Applicability of this condition is as defined in A.A.C. R18-11-102.
- 2) This certification does not authorize the discharge of wastewater, process residues or other waste to any WUS.
- 3) Work shall be conducted and monitored to ensure that runoff, seepage and pollution from the activities certified herein does not cause an exceedence of Arizona WQS in any WUS.
- 4) Except as allowed in the RGP or herein, activities herein certified shall be performed during periods of low flow (baseflow or less) in any watercourse or other WUS, or no flow in the case of ephemeral and intermittent waterbodies. No equipment or vehicles shall enter any WUS while flow is present regardless whether flow is in a channel or is surface runoff; e.g., sheetflow, unless all conditions herein are met.
- 5) The effectiveness of all control measures shall be reevaluated after each flow event and repaired/modified as needed.
- 6) Applicant must minimize clearing, grubbing, scraping or otherwise limit exposure of erodible surface to the minimum necessary for each construction phase or location.
- 7) Except as allowed in the RGP or herein, if activities certified herein are likely to create an erosion or sedimentation problem, operations shall cease until the problem is resolved or until control measures have been undertaken.
- 8) Except as allowed in the RGP or herein, erosion control, sediment control and/or bank protection measures shall be installed before construction activities, and shall be maintained during construction and post-construction periods to minimize channel or bank erosion, soil loss and sedimentation. Control measures shall not be constructed of uncemented or unconfined imported soil, or other materials easily transported by flow.
- 9) The applicant is responsible for ensuring construction material and/or fill (other than replacement of native fill or that necessary to support revegetation) including, but not limited to: rock, gabion fill or other uncemented channel-lining materials, placed within the Ordinary High Water Mark (OHWM) of any WUS, shall not include materials; e.g., pollutant-contaminated soil, that can cause or contribute to pollution of a surface water. Material used to support vegetation rooting or growth shall be protected from erosion. Any fill material washing must occur outside of the OHWM of any WUS prior to placement and the rinseate from such washing shall be contained and treated, or otherwise prevented from contributing sediment or causing erosion to any WUS. Other than replacement of native fill or material used to support vegetation rooting or growth, fill placed in locations subject to scour must resist washout whether such resistance is derived via particle size limits, presence of a binder, vegetation, or other armoring.
- 10) Any dredged material is to be placed and retained in areas outside the OHWM of any WUS. Runoff from this material/area is to be settled, filtered or otherwise treated to prevent migration of pollutants (including sediment) to any WUS.

- 11) Except as allowed in the RGP or herein, upon completion of construction the applicant shall ensure no adverse change due to the subject project has occurred in the stability (with respect to stream hydraulics, erosion and sedimentation) of any WUS including upstream and downstream from the project. If such change has occurred, the applicant shall take steps to restore the pre-project stability of any impacted segments.
- 12) Areas denuded by activities permitted under the RGP shall be revegetated as soon as possible. Vegetation shall be maintained on unarmored banks and slopes to stabilize soil and prevent erosion.
- 13) Except as allowed in the RGP or herein, when flow is present in any WUS within the project area, the applicant and any contractor will not divert, impede, restrict, or stop the flow by any means except to prevent erosion or pollution of any WUS.
- 14) Silt laden or turbid water resulting from construction activity shall be settled, filtered or otherwise treated prior to discharge to ensure no violation of Arizona WQS in any WUS.
- 15) The applicant must designate area(s) for equipment staging and storage located entirely outside of the OHWM of any WUS. Any equipment maintenance, washing or fueling that cannot be done offsite will be done in the designated area. The spill containment plan (condition 16) shall include this(these) area(s). Material specifically manufactured and sold as spill containment and adsorbent/absorbent will be on hand to control small spills. All equipment shall be inspected for leaks prior to use within the OHWM of any WUS. All leaks shall be repaired and all equipment will be cleaned (using steam or a pressure washer) to remove any fuel or other fluid residue prior to use in any WUS with flow.
- 16) The applicant shall have a spill containment plan onsite to ensure that pollutants are prevented from entering any WUS. In addition, the applicant must designate areas, located entirely outside of the OHWM of any WUS, for chemical and petroleum storage, and solid waste containment. All materials stored onsite will be stored in appropriate containers or packaging. Any pollutant produced by activities certified herein shall be properly disposed of in accordance with applicable regulations. A spill response kit will be maintained in this (these) area(s) to mitigate a potential spill. The kit will include material specifically manufactured and sold as spill adsorbent/absorbent and spill containment. The applicant will ensure that whenever there is activity on the site, that there are personnel on site trained in the proper response to spills and the use of spill response equipment.
- 17) Except as allowed in the 404 permit, application documents or allowed herein, permanent and temporary pipes, and culverted crossings shall be adequately sized to handle expected flow and properly set with end section, splash pads, or headwalls that dissipate water energy to control erosion.

Permanent and temporary access roadways, culverted and unculverted crossings, staging areas, material stockpiles and pads shall be constructed so as to accommodate the overtopping of the fill by streamflow and fill must resist washout whether such resistance is derived via particle size limits, presence of a binder, vegetation, or other armoring.

- 18) Acceptable construction materials that will or may contact water in any WUS are: crushed stone, native fill (meeting the requirements in condition 9), concrete, steel (including galvanized), plastic, or aluminum and other materials specifically approved in writing by ADEQ.
- 19) If fully, partially or occasionally submerged structures are constructed of cast-in-place concrete instead of pre-cast concrete, applicant will take steps; e.g., sheet piling or temporary dams (earth-filled cofferdams are not allowed), to prevent contact between water (instream and runoff) and the concrete until it cures and until any curing agents have evaporated or otherwise cease to be available; i.e., are no longer a pollutant threat. Where possible, construction work will be during extreme low water conditions or at a time and season with the highest probability of ensuring work is done in "the dry".
- 20) For portions of the project utilizing potable water or groundwater for irrigation, direct runoff of irrigation water and overflows from runoff detention and/or retention areas into any WUS shall be limited to the extent practicable and shall not cause downstream erosion or flooding.
- 21) For portions of the project utilizing reclaimed wastewater for irrigation, direct runoff of irrigation water and overflow from retention/detention structures or storage impoundments into any WUS is prohibited without the proper permits including, but not limited to, Arizona's Reclaimed Wastewater Permit and, if within the wetted area of a 25-year flood event (or within the floodplain in some cases), an AZPDES permit.

ADEQ CWA 401 Water Quality Certification of these activities to operate under the terms (including the conditions herein) of the applicable CoE CWA RGP 79 does not affect or modify in any way the obligations or liability of any person for any damages, injury, or loss, resulting from these activities. This Certification is not intended to waive any other federal, state or local laws.

ADEQ contact information:

Robert Scalamera telephone: (602) 771-4502

mailing address: Arizona Department of Environmental Quality
Surface Water Section, 401 Certifications, mailstop 5415A-1
1110 W. Washington St.
Phoenix, AZ 85007

Sincerely,



Debra Daniel, Surface Water Section Manager
Water Quality Division

electronic copies: U.S. Army Corps of Engineers, Regulatory Branch – Attn.: Ron Fowler, Sallie McGuire
USEPA, Wetlands Regulatory Office – Attn.: Dave Smith (WTR-8)

ATTACHMENT B

Regional Conditions for the Los Angeles District:

In accordance with General Condition Number 23, "Regional and Case-by-Case Conditions," the following Regional Conditions, as added by the Division Engineer, must be met in order for activities authorized under RGP79 to remain valid:

1. For coastal watersheds from the southern reach of the Santa Monica Mountains in Los Angeles County to the San Luis Obispo County/Monterey County boundary, all road crossings must employ a bridge crossing design that ensures passage and/or spawning of steelhead (*Oncorhynchus mykiss*) is not hindered in any way. In these areas, bridge designs that span the stream or river, including designs for pier- or pile-supported spans, or designs based on use of a bottomless arch culvert simulating the natural stream bed (i.e., substrate and streamflow conditions in the culvert are similar to undisturbed stream bed channel conditions) shall be employed unless it can be demonstrated the stream or river does not support resources conducive to the recovery of federally listed anadromous salmonids, including migration of adults and smolts, or rearing and spawning. This proposal also excludes approach embankments into the channel unless they are determined to have no detectable effect on steelhead.
2. For the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), no nationwide permit, except Nationwide Permits 1 (Aids to Navigation), 2 (Structures in Artificial Canals), 3 (Maintenance), 4 (Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities), 5 (Scientific Measurement Devices), 6 (Survey Activities), 9 (Structures in Fleeting and Anchorage Areas), 10 (Mooring Buoys), 11 (Temporary Recreational Structures), 20 (Oil Spill Cleanup), 22 (Removal of Vessels), 27 (Stream and Wetland Restoration Activities), 30 (Moist Soil Management for Wildlife), 31 (Maintenance of Existing Flood Control Projects), 32 (Completed Enforcement Actions), 35 (Maintenance Dredging of Existing Basins), 37 (Emergency Watershed Protection and Rehabilitation), 38 (Cleanup of Hazardous and Toxic Waste) and 47 (Pipeline Safety Program Designated Time Sensitive Inspections and Repairs), or other nationwide or regional general permits that specifically authorize maintenance of previously authorized structures or fill, can be used to authorize the discharge of dredged or fill material into a jurisdictional special aquatic site as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes).
3. For all projects proposed for authorization by nationwide or regional general permits where prior notification to the district engineer is required, applicants must provide color photographs or color photocopies of the project area taken from representative points documented on a site map. Pre-project photographs and the site map would be provided with the permit application. Photographs should represent conditions typical or indicative of the resources before impacts.
4. Notification pursuant to general condition 27 shall be required for projects in all special aquatic sites as defined at 40 CFR Part 230.40-45 (sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle-and-pool complexes), and in all perennial waterbodies in the State of Arizona and the Mojave and Sonoran (Colorado) desert regions of California in Los Angeles District (generally north and east of the San Gabriel, San Bernardino, San Jacinto, and Santa Rosa mountain ranges, and south of Little Lake, Inyo County), excluding the Colorado River from Davis Dam downstream to the north end of Topock and downstream of Imperial Dam (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).
5. Notification pursuant to general condition 27 shall be required for projects in all areas designated as Essential Fish Habitat by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092), regional conditions requiring notification do not apply to Nationwide Permit 47).
6. Notification pursuant to general condition 27 shall be required for projects in 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 (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).
7. Individual permits shall be required for all discharges of fill material in jurisdictional vernal pools.
8. 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 NWP's 29, 39, 42 and 43, and in ephemeral watercourses for these NWP's 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.

9. Individual permits 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. Notification pursuant to general condition 27 shall be required for projects in 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 mainstem of the Santa Clara River (Federal Register dated March 12, 2007 (72 FR 11092) - regional conditions requiring notification do not apply to Nationwide Permit 47).

4. Further information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
 - () Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
2. Limits of this authorization.
 - (a) This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - (b) This permit does not grant any property rights or exclusive privileges.
 - (c) This permit does not authorize any injury to the property or rights of others.
 - (d) This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:
 - (a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - (b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - (c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - (d) Design or construction deficiencies associated with the permitted work.
 - (e) Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - (a) You fail to comply with the terms and conditions of this permit.
 - (b) The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
 - (c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 330.5 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. This letter of verification is valid for a period not to exceed two years unless the nationwide permit is modified, reissued, revoked, or expires before that time.
7. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition H below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
8. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.