

DEPARTMENT OF THE ARMY

Los Angeles District Corps of Engineers P.O. Box 532711 Los Angeles, CA 90017-3401

December 10, 2013

Regulatory Division

Scott Quinnell, Senior Environmental Planner California Department of Transportation, District 8 464 West 4th Street, 6th Floor San Bernardino, California 92401-1400

DEPARTMENT OF THE ARMY NATIONWIDE PERMIT AUTHORIZATIONS

Dear Mr. Quinnell,

This correspondence is in reply to your request, dated November 8, 2013, for a Department of the Army Permit. Your proposed project, Interstate 215/15 Interchange Improvement Project, would result in discharges of permanent fill into approximately 1.73 acres and of temporary dredged or fill material into approximately 4.04 acres of non-wetland waters of the U.S. Therefore, pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344; 33 C.F.R. parts 323 and 330), your proposed project requires a Department of the Army permit. The proposed work would take place within unnamed tributaries to Cajon Creek, near the community of Devore, San Bernardino County, California (see attached figures). This letter supersedes our July 10, 2013 Nationwide Permits (NWPs) 14 and 43 verification letter for this project (File No. SPL-2009-00460-VCC).

I have determined construction of Interstate 215/15 Interchange Improvement Project complies with NWP No. 14 Linear Transportation Projects and No. 43 Stormwater Management Facilities, if conducted as described in your application. This letter covers multiple NWP verifications, listed below.

Specifically, you are authorized to (as shown on the enclosed figures):

- Discharge permanent fill material into approximately 1.73 acres (14,732 linear feet) and temporarily discharge dredged or fill material into approximately 4.04 acre (7,052 linear feet) of non-wetland waters of the U.S. associated with constructing the Interstate 15/ Interstate 215 Interchange Improvement Project at the following locations (also see attached tables):
 - PCN Group 1 (Cajon Creek Subwatershed near the proposed Cajon Boulevard): Permanent: 0.49 acre non-wetland waters of the U.S.; and Temporary: 3.97 acres of non-wetland waters of the U.S.
 - PCN Group 2 (South of I-15/I-215 Interchange Area, Cajon Creek Subwatershed): Permanent: 0.086 acre non-wetland waters of the U.S.; and Temporary: 0.006 acre non-wetland waters of the U.S.
 - PCN Group 3 (North of Pittman Canyon): Permanent: 0.459 acre non-wetland waters of the U.S.; and Temporary: 0.023 acre non-wetland waters of the U.S.

- PCN Group 4 (Pittman Canyon Subwatershed): Permanent: 0.496 acre non-wetland waters of the U.S.; and Temporary: 0.029 acre non-wetland waters of the U.S.
- PCN Group 5 (Cable Creek Subwatershed): Permanent: 0.190 acre non-wetland waters of the U.S.; and Temporary: 0.012 acre (25 linear feet) of non-wetland waters of the U.S.

For this NWP No. 14 and No. 43 verification letter to be valid, you must comply with all of the terms and conditions in Enclosure 1. Furthermore, you must comply with the following non-discretionary Special Conditions listed below:

- 1. The Permittee shall abide by the terms and conditions of the Clean Water Act (CWA) section 401 Water Quality Standards Certification, dated October 10, 2012.
- 2. Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a complete set of final detailed grading/construction and drainage plans showing all work areas and structures in waters of the U.S. All plans shall be in compliance with the Final Map and Drawing Standards for the Los Angeles District Regulatory Division dated August 6, 2012

(http://www.spl.usace.army.mil/Portals/17/docs/regulatory/Permit_Process/ SPD-RG_map-drawing-standards_final_20120806v3.pdf). All plan sheets shall be signed, dated, and submitted on paper no larger than 8.5 x 11 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-mail), Corps Regulatory Division approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps Regulatory Division-approved plans.

- 3. Prior to initiating construction in waters of the U.S., and to mitigate for permanent impacts to 1.72 acres of non-wetland waters of the U.S. and for temporary impacts to 3.37 acres of non-wetland waters of the U.S., the Permittee shall provide documentation verifying purchase of 8.9 acres worth of mitigation credits for the enhancement of waters of the U.S. from a Corps-approved in-lieu fee program (i.e., RCRCD In-Lieu Fee Program). The Permittee shall not initiate work in waters of the U.S. prior to receiving written confirmation (by letter or e-mail) from the Corps Regulatory Division as to compliance with this special condition. The Permittee retains responsibility for providing the compensatory mitigation until the number and resource type of credits described above have been secured from a sponsor and the Corps Regulatory Division has received documentation that confirms that the sponsor has accepted the responsibility for providing the required compensatory mitigation. This documentation may consist of a letter or form signed by the sponsor, with the permit number and a statement indicating the number and resource type of credits that have been secured from the sponsor.
- 4. The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter avoided waters of the U.S. areas shown in the attached figures. Adverse impacts to waters of the U.S. beyond the Corps Regulatory Division-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.

- 5. Upon project completion, all temporary fills shall be removed and all temporarily affected streams shall be re-contoured to pre-construction conditions. In addition, the Permittee shall hydroseed, where practicable, the disturbed portions of the earthen stream banks with native, non-invasive species, as appropriate to the affected areas, to reduce the potential for erosion. The Permittee shall submit the proposed planting palette for review and approval by the Corps Regulatory Division prior to initiation of construction. The Permittee shall ensure the hydroseeded areas are maintained and monitored for a period of two years after completing the seeding activities, such that less than 10 percent of the areas disturbed by the project are vegetated by non-native and invasive plant species. The Permittee shall submit a memorandum by December 15th after completion of the two year maintenance and monitoring period. The memo shall indicate for each project crossing/impact area, when temporary construction areas were re-contoured to pre-construction conditions, when native seeding was completed, the species and percent cover (absolute) of invasive and/or non-invasive plant species that occur onsite each year prior to treatment, and when and how many/the extent of invasive and/or non-invasive plant species were removed that year.
- 6. Within 45 calendar days of completing authorized work in waters of the U.S., the Permittee shall submit to the Corps Regulatory Division a memo including the following:
 - A) Date(s) work within waters of the U.S. was initiated and completed;
 - B) Summary of compliance status with each special condition of this permit (including any noncompliance that previously occurred or is currently occurring and corrective actions completed or being taken to achieve compliance);
 - C) Color photographs taken at the project site before and after construction for those aspects directly associated with impacts to waters of the U.S.;
 - D) One copy of as-built drawings for the entire project (all sheets must be signed, dated, toscale, and no larger than 8.5 x 11 inches); and
 - E) Signed Certification of Compliance.
- 7. This Corps permit does not authorize you to take any federally listed as threatened or endangered species, in particular the San Bernardino kangaroo rat (Dipodomys merriami parvus) and arroyo toad (Anaxyrus californicus), or to adversely modify designated critical habitat of any federally listed species. In order to legally take a federally listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA section 10 permit, or a Biological Opinion (BO) under ESA section 7, with "incidental take" provisions with which you must comply). The enclosed U.S. Fish and Wildlife Service (USFWS) BO (FWS-SB-10B0097-12F0001) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps Regulatory Division permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, terms and conditions of which are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with the incidental take specified in the BO, where a take of the federally listed species occurs, would constitute an unauthorized take, and it would also constitute noncompliance with your Corps Regulatory Division permit. The Corps Regulatory Division and USFWS are the appropriate authorities to determine compliance with the terms and conditions of the referenced BO and with the ESA.

8. Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Regulatory Division (Veronica Chan at 213-452-3292 or Stephanie Hall at 213-452-3410) and Archaeology staff (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861) within 24 hours. The Permittee shall immediately suspend all work within 100 feet of any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps Regulatory Division re-authorizes project construction, per 36 C.F.R. section 800.13.

Your verification is valid through March 18, 2017. All nationwide permits will expire on March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. A public notice of the change(s) will be issued when any of the NWPs are modified, reissued, or revoked. Furthermore, if you commence or are under contract to commence this activity before the date on which the relevant NWP is reissued, modified, or revoked, you will have twelve (12) months from the date of the reissuance, modification, or revocation of the NWP to complete the activity under the present terms and conditions of the relevant NWP.

A preliminary jurisdictional determination (PJD) has been conducted to determine the extent of U.S. Army Corps of Engineers (Corps) geographic jurisdiction, upon which this NWP verification is based. A preliminary JD is advisory in nature and is a written indication that Corps geographic jurisdiction may be present on a particular site, but is not appealable. Please refer to the enclosed Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form for more information.

A NWP does not grant any property rights or exclusive privileges. Additionally, it does not authorize any injury to the property, rights of others, nor does it authorize interference with any existing or proposed Federal project. Furthermore, it does not obviate the need to obtain other Federal, state, or local authorizations required by law.

Thank you for participating in our regulatory program. If you have any questions, please contact Veronica Chan at 213-452-3292 or via e-mail at Veronica.C.Chan@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <u>http://per2.nwp.usace.army.mil/survey.html</u>.

Sincerely,

Y. pl. Castan

David J. Castanon Chief, Regulatory Division

Enclosure(s)



LOS ANGELES DISTRICT U.S. ARMY CORPS OF ENGINEERS

CERTIFICATE OF COMPLIANCE WITH DEPARTMENT OF THE ARMY NATIONWIDE PERMIT

Permit Number: SPL-2009-00460-VCC

Name of Permittee: California Department of Transportation, District 8 (POC: Scott Quinnell)

Date of Issuance: December 10, 2013

Upon completion of the activity authorized by this permit and the mitigation required by this permit, sign this certificate, and return it to the following address:

U.S. Army Corps of Engineers, Los Angeles District Regulatory Division ATTN: CESPL-RG-SPL-2009-00460-VCC P.O. Box 532711 Los Angeles, CA 90017-3401

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this Nationwide Permit, you may be subject to permit suspension, modification, or revocation procedures as contained in 33 C.F.R. § 330.5 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit condition(s).

Signature of Permittee

Date

Group 1

			Project Impacts						
	Feature Attri	butes			Habitat 1	Гуре			
			Width / Length						
Drainage		Jurisdictional	within BSA					Linear ft	Project Proposed
Number	Description	Status	(feet)	Impact Type	Non-Wetland	Wetland	Total Impact	of Impact*	Modifications
				Permanent	0.000	0.000	0.000		Avoided in median
D16	Earthen / Concrete Ditch	Jurisdictional	0.5/1516	Temporary	0.000	0.000	0.000		Avoided in median
									Ditch to be
									relocated and 4'-
				D	0.000	0.000	0.000	720	wide bioswale
D14	Forthern Ditch	lu via di ati a va a l	0 5 /720	Permenent	0.008	0.000	0.008	/28	installed
D14	Earthen Ditch	Jurisdictional	0.5/728	Dormonont	0.000	0.000	0.000	07	,
D12	Earthon / Concrota Ditch	lurisdictional	1/10/	Tomporary	0.002	0.000	0.002	97	
013		Jurisuictional	1/194	Permanent	0.000	0.000	0.000	157	/ Fill w/ Pine
D11	Farthen Ditch	lurisdictional	5/276	Temporary	0.000	0.000	0.000	157	
		Julisaletional	37270	Permanent	0.000	0.000	0.000		
					0.000	0.000	0.000		
									Pipe to be
									relocated in kind in
D27	Asphalt Ditch	Jurisdictional	1/2994	Temporary	0.290	0.000	0.290	1282	portions or avoided
				Permanent	0.019	0.000	0.019	138	Fill w/ Pipe
D37	Earthen Drainage	Jurisdictional	6/514	Temporary	0.005	0.000	0.005	34	
				Permanent	0.026	0.000	0.026	141	. Fill w/ Pipe
D38	Earthen Drainage	Jurisdictional	8/310	Temporary	0.005	0.000	0.005	27	7
				Permanent	0.000	0.000	0.000		
									Concrete Ditch to
									be reconstructed to
D39	Concrete Ditch	Jurisdictional	1/2875	Temporary	0.024	0.000	0.024	1053	north
									Fill w/ Pipe
									Headwall /
				Permanent	0.009	0.000	0.009	57	Retaining Wall
D40	Earthen Drainage	Jurisdictional	7/251	Temporary	0.002	0.000	0.002	11	
				Permanent	0.000	0.000	0.000		
5.04			1/1001	_				1001	Concrete Ditch
D84	Concrete Ditch	Jurisdictional	1/1891	Temporary	0.043	0.000	0.043	1891	Fillow (Direction of the second seco
D10	Forthen Droinogo	Invicdictional	6/557	Temperant	0.058	0.000	0.058	424	Fill w/ Pipe
010	Earthen Drainage	Jurisaictional	0/55/	Dormanont	0.002	0.000	0.002	107	Eill w/ Pipo
D05	Earthon Drainago	lurisdictional	5/649	Tomporary	0.012	0.000	0.012	21	
005		Jurisulctional	3/048	Permanent	0.002	0.000	0.002	21	•
				rennanent	0.043	0.000	0.043	23	
									Regrade Basin to
D41	Farthen Basin	lurisdictional	80/524	Temporary	0.743	0 000	0.743	405	existing contours
5.1		Variodicticitat	00,021	remportary		0.000	0.1.10		
									Fill w/ Pipe and
				Permanent	0.150	0.000	0.150	655	concrete headwalls
									Earthen Drainage
									reconstructed at
									same grade/size as
D02	Earthen Drainage	Jurisdictional	10/1078	Temporary	0.075	0.000	0.075	328	existing
				Permanent	0.000	0.000	0.000		
D03	Earthen Drainage	Jurisdictional	1/320	Temporary	0.000	0.000	0.000		

				Project Impacts					
	Feature Attr	ibutes			Habitat 1	Гуре			
			Width / Length]					
Drainage		Jurisdictional	within BSA					Linear ft	Project Proposed
Number	Description	Status	(feet)	Impact Type	Non-Wetland	Wetland	Total Impact	of Impact*	Modifications
				Permanent	0.007	0.000	0.007	320	Fill w/ Pipe
D93	Earthen Drainage	Jurisdictional	1/320	Temporary	0.000	0.000	0.000		
				Permanent	0.005	0.000	0.005	200	
D94	Earthen Drainage	Jurisdictional	1/320	Temporary	0.000	0.000	0.000		
				Permanent	0.000	0.000	0.000		
D121	Earthen Drainage	Jurisdictional	3/608	Temporary	0.004	0.000	0.004	62	
				Permanent	0.108	0.000	0.108	669	120" CMP
D08	Earthen Drainage	Jurisdictional	7/716	Temporary	0.001	0.000	0.001	8	
				Permanent	0.000	0.000	0.000		
									Pipe Replacement
D43	Pipe / Earthen Ditch	Jurisdictional	7/1486	Temporary	0.014	0.000	0.014	87	of existing structure
				Permanent	0.000	0.000	0.000		
									Drainage relocated
D44	Concrete Ditch	Jurisdictional	1/1073	Temporary	0.025	0.000	0.025	1073	north
				Permanent	0.000	0.000	0.000		
D07	Earthen Drainage	Jurisdictional	2/348	Temporary	0.000	0.000	0.000	4	
				Permanent	0.000	0.000	0.000		
D4	Earthen Drainage	Jurisdictional	9/385	Temporary	0.000	0.000	0.000		
				Permanent	0.000	0.000	0.000		
D12	Earthen Drainage	Jurisdictional	1/279	Temporary	0.000	0.000	0.000		
				Permanent	0.000	0.000	0.000		
D42	Earthen Drainage	Jurisdictional	1/366	Temporary	0.000	0.000	0.000		
				Permanent	0.000	0.000	0.000		
D95	Earthen Drainage	Jurisdictional	1/473	Temporary	0.000	0.000	0.000		
				Permanent	0.000	0.000	0.000		
D96	Earthen Drainage	Jurisdictional	1/372	Temporary	0.000	0.000	0.000		
				Permanent	0.000	0.000	0.000		
D122	Earthen Drainage	Jurisdictional	2/205	Temporary	0.000	0.000	0.000		
				Permanent	0.033	0.000	0.033	500	
Cajon Wash	Earthen channel	Jurisdictional	2/348	Temporary	2.736	0.000	2.736	415	
Total Permanent Impacts					0.498	0.000	0.498	4016	
Total Tempora	ry Impacts				3.971	0.000	3.971	6717	

Group	2
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	Feature Attrib	outes		Project Impacts					
			Width / Longeth		Habitat Ty	pe (acres)		Approximato	
Drainage Number	Description	Jurisdictional Status	within BSA (feet)	Impact Type	Non-Wetland	Wetland	Total Impact (acres)	Approximate Linear Feet of Impact	
51	Concrete and earthen-bottomed roadside drainage	Jurisdictional	6 / 267	Permanent	0.027	0.000	0.027	152	
	channels, devoid of vegetation			Temporary	0.005	0.000	0.005	34	
52	Earthen-bottomed. Flows easterly	Jurisdictional	2 / 993	Permanent	0.003	0.000	0.003	63	
	small culvert			Temporary	0.000	0.000	0.000	0	
	Flows under the I-15		10/005	Permanent	0.056	0.000	0.056	205	
53 via c	via a large RCB culvert to D53	Jurisdictional	12/205	Temporary	0.000	0.000	0.000	0	
54 b	Small earthen-			Permanent	0.000	0.000	0.000	0	
	bottomed roadside drainage ditch	Jurisdictional	1 / 340	Temporary	0.000	0.000	0.000	0	
	Small earthen-			Permanent	0.000	0.000	0.000	0	
55	bottomed roadside drainage ditch	Jurisdictional	1 / 410	Temporary	0.000	0.000	0.000	0	
56	Small earthen- bottomed roadside	Jurisdictional	2 / 432	Permanent	0.000	0.000	0.000	0	
	drainage ditch			Temporary	0.001	0.000	0.001	15	
57	Large concrete	Jurisdictional	6 / 2615	Permanent	0.000	0.000	0.000	0	
73a	Concrete-apron devoid of vegetation	Jurisdictional	10 / 2213	Permanent	0.000	0.000	0.000	0	
				Temporary	0.000	0.000	0.000	0	
	D80 flows into D81, D81 conveys flows			Permanent	0.000	0.000	0.000	0	
80	under I-15 via a large RCB culvert to D53	Jurisdictional	34 / 113	Temporary	0.000	0.000	0.000	0	
	D80 flows into D81, D81 conveys flows			Permanent	0.000	0.000	0.000	0	
81	under I-15 via a large RCB culvert to	Jurisdictional	8 / 578	Temporary	0.000	0.000	0.000	0	
83	Concrete or earthen- bottomed roadside	Jurisdictional	2/219	Permanent	0.000	0.000	0.000	0	
	drainage			Temporary	0.000	0.000	0.000	0	
97	Earth-Bottom	Jurisdictional	0.5 / 157	Permanent	0.000	0.000	0.000	0	
				remporary	0.000	0.000	0.000	U	
00	Impacts Already included in Drainage 41	lurindictions		Permanent	0.000	0.000	0.000	0	
98	Kimbark Canyon	Jurisdictional					1		

	Feature Attrib		Project Impacts					
	Description	Jurisdictional Status	Width / Length within BSA (feet)		Habitat Type (acres)			Approximate
Drainage Number				Impact Type	Non-Wetland	Wetland	(acres)	Linear Feet of Impact
	Drainage: natural, earthen-bottomed drainage			Temporary	0.000	0.000	0.000	0
Total Permanent Impacts					0.086	0.000	0.086	420.000
Total Temporary Impacts					0.006	0.000	0.006	49.000

Group	3
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	Feature Attrib	outes	Project Impacts					
			Width / Longth		Habitat Ty	pe (acres)		Approvimato
Drainage Number	Description	Jurisdictional Status	within BSA (feet)	Impact Type	Non-Wetland	Wetland	Total Impact (acres)	Linear Feet of Impact
15	Natural, earthen- bottomed. Flows under the I-15 via a 6-foot CSP and	Jurisdictional	11 / 304	Permanent	0.051	0.000	0.051	201
	Blvd via a 3-foot CSP directly into Cajon Creek.			Temporary	0.000	0.000	0.000	0
17	Farth-Bottom	lurisdictional	2 / 589	Permanent	0.027	0.000	0.027	515
		ounoulonal	27000	Temporary	0.000	0.000	0.000	0
18	Farth-Bottom	Jurisdictional	6 / 393	Permanent	0.004	0.000	0.004	25
		Junsaictional	07393	Temporary	0.000	0.000	0.000	0
19	Earth-Bottom	Jurisdictional	2 / 204	Permanent	0.003	0.000	0.003	55
	Earth Bollom	ounsalotional		Temporary	0.000	0.000	0.000	0
20	Earth-Bottom	Jurisdictional	1 / 374	Permanent	0.005	0.000	0.005	176
				Temporary	0.000	0.000	0.000	0
24	Earth-Bottom	lurisdictional	7 / 472	Permanent	0.053	0.000	0.053	260
21	Lann-Dollom		11412	Temporary	0.004	0.000	0.004	26
22	Earth-Bottom	Jurisdictional	3 / 542	Permanent	0.006	0.000	0.006	80
	Earth Bottom	ounsalotional	07042	Temporary	0.002	0.000	0.002	25
23	Natural, earthen- bottomed flows	Jurisdictional	9 / 464	Permanent	0.058	0.000	0.058	124
	a double box culvert			Temporary	0.006	0.000	0.006	28
24	Forth Dottors	lunia di stis e s l	0 / 101	Permanent	0.003	0.000	0.003	36
24	Earth-Bollom	Junsuictional	0/131	Temporary	0.003	0.000	0.003	16
	Partially concrete- lined and partially			Permanent	0.011	0.000	0.011	480
25	earthen-bottomed roadside drainage ditches	Jurisdictional	1 / 480	Temporary	0.000	0.000	0.000	0
26	Partially concrete- lined and partially earthen-bottomed	Jurisdictional	1 / 1238	Permanent	0.014	0.000	0.014	1238
	roadside drainage ditches		1 / 1230	Temporary	0.000	0.000	0.000	0
	Earth D. W	burde all of the l	0 / 4 / 2 /	Permanent	0.070	0.000	0.070	997
1 28	Earth-Bottom	Jurisdictional	3/1121					

Feature Attributes				Project Impacts					
			Width / Longth		Habitat Ty	vpe (acres)		Approvimato	
Drainage Number	Description	Jurisdictional Status	within BSA (feet)	Impact Type	Non-Wetland	Wetland	Total Impact (acres)	Linear Feet of Impact	
				Temporary	0.003	0.000	0.003	50	
22	Earthen channel and large CSP draining Middleman Canyon drainage (D33)	luriodictional		Permanent	0.060	0.000	0.060	1302	
32		Junsuictionar	271000	Temporary	0.001	0.000	0.001	30	
Middleman Canyor natural, earthen- bottomed drainage Flows under I-15 v 33 a 6-foot CSP; a 4- foot x 8-foot doubl box culvert convey flows under Cajor Blvd.		0 (205	Permanent	0.000	0.000	0.000	0		
	foot x 8-foot conveys flows under Cajon Blvd.	Junsaictional	0/200	Temporary	0.000	0.000	0.000	0	
34	Earthen-bottomed drainages. Flows	lurisdictional	4 / 722	Permanent	0.004	0.000	0.004	36	
	under the I-15 via a 4-foot CSP	Jungalotional		Temporary	0.000	0.000	0.000	0	
	Earthen-bottomed. Flows under the I-15 via a 4-foot CSP	5 Jurisdictional	4 / 80	Permanent	0.007	0.000	0.007	80	
				Temporary	0.000	0.000	0.000	0	
36	Natural, earthen- bottomed. Flows under the I-15 via a 6-foot CSP and		0 / 662	Permanent	0.037	0.000	0.037	181	
	Blvd via a 3-foot CSP directly into Cajon Creek.			Temporary	0.003	0.000	0.003	15	
82	Concrete or earthen	luriadiational	E / 022	Permanent	0.000	0.000	0.000	0	
02	bottomed	Junsaictional	0/933	Temporary	0.000	0.000	0.000	0	
87	Earth-Bottom	Jurisdictional	2/411	Permanent	0.018	0.000	0.018	354	
			=	Temporary Permanant	0.000	0.000	0.000	0	
99	Earth-Bottom	Jurisdictional	1 /184	Temporary	0.004	0.000	0.000	0	
100	Earth-Bottom	Jurisdictional	0.5 / 93	Permanent	0.000	0.000	0.000	0	
101	Farth-Bottom	Jurisdictional	05/64	Permanent	0.000	0.000	0.001	58	
		Jungulouolidi	0.0704	Temporary	0.000	0.000	0.000	0	
102	Pipe Outfall	Jurisdictional	1 / 147	Permanent Temporary	0.000	0.000	0.000	0	
103	Earth-Bottom with	Jurisdictional	2 / 51	Permanent	0.002	0.000	0.002	40	
	Pipe Outfall	Jurisdictional	2/51	Temporary	0.001	0.000	0.001	11	
104	Earth-Bottom	Jurisdictional	1 / 431	Permanent	0.010	0.000	0.010	431	
	Earth-Dollom			Temporary	0.000	0.000	0.000	0	

	Feature Attrib		Project Impacts					
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Ty Non-Wetland	vpe (acres) Wetland	Total Impact (acres)	Approximate Linear Feet of Impact
105	Earth-Bottom	Jurisdictional	1 / 174	Permanent	0.004	0.000	0.004	174
100			.,	Temporary	0.000	0.000	0.000	0
106	Earth Battom	lurisdictional	1 / 212	Permanent	0.007	0.000	0.007	313
100	Earth-Bollon	Junsuictional	1/313	Temporary	0.000	0.000	0.000	0
107	Earth-Bottom	lurisdictional	1 / 263	Permanent	0.000	0.000	0.000	16
107	Lann-Dollom	Junsuictional	17200	Temporary	0.000	0.000	0.000	0
108	Earth-Bottom	lurisdictional	1 / 103	Permanent	0.000	0.000	0.000	0
100	Lann-Dollom	Junsuictional	17105	Temporary	0.000	0.000	0.000	0
	Earth-Bottom	Jurisdictional	1 / 163	Permanent	0.000	0.000	0.000	0
109				Temporary	0.000	0.000	0.000	0
120	Outside BSA, connects to D23 - Natural, earthen-	Jurisdictional		Permanent	0.000	0.000	0.000	0
120	bottomed flows under Cajon Blvd. in a double box culvert			Temporary	0.000	0.000	0.000	0
Total Permanent Impacts					0.459	0.000	0.459	7284.000
Total Temporary Impacts					0.023	0.000	0.023	201.000

Group 4

Feature Attributes				Project Impacts					
			Width / Longth		Habitat Ty	rpe (acres)		Approvimato	
Drainage Number	Description	Jurisdictional Status	within BSA (feet)	Impact Type	Non-Wetland	Wetland	Total Impact (acres)	Linear Feet of	
20	Earth Battam	lurisdictional	20 / 466	Permanent	0.203	0.000	0.203	295	
29	Earth-Boltom	Junsaictional	307400	Temporary	0.028	0.000	0.028	41	
30	Farth-Bottom	lurisdictional	9 / 677	Permanent	0.140	0.000	0.140	677	
30	Earlin-Dollonn	Junsaletional		Temporary	0.000	0.000	0.000	0	
31	Farth-Bottom	lurisdictional	E / 1504	Permanent	0.130	0.000	0.130	1134	
51	Lanin-Dollom	Junsaictional	37 1334	Temporary	0.000	0.000	0.000	0	
74	74 Earth-Bottom	Jurisdictional	1 / 592	Permanent	0.000	0.000	0.000	0	
74		Julisactional	1 / 592	Temporary	0.000	0.000	0.000	0	
75	75 Earth Dattom Lucia	lurisdictional	1 / 281	Permanent	0.000	0.000	0.000	0	
75 Eartn-Bottom	Jurisdictional	17201	Temporary	0.000	0.000	0.000	0		
76 Earth-Bottom	Jurisdictional	2 / 472	Permanent	0.000	0.000	0.000	0		
			Temporary	0.000	0.000	0.000	0		
77	Earth Pottom	lurisdictional	1 / 426	Permanent	0.000	0.000	0.000	0	
11	Earth-Boltom	sancalouonal	17430	Temporary	0.000	0.000	0.000	0	
78	Farth-Bottom	Jurisdictional	1 / 250	Permanent	0.000	0.000	0.000	0	
70	Earlin-Dollonn		.,	Temporary	0.000	0.000	0.000	0	
79	Farth-Bottom	Jurisdictional	l 2/278	Permanent	0.000	0.000	0.000	0	
	Lanin Bollom	bullouiolional		Temporary	0.000	0.000	0.000	0	
89	Farth-Bottom	Jurisdictional	3 / 135	Permanent	0.000	0.000	0.000	0	
	Lanin Bollom	bullouiolional	07100	Temporary	0.000	0.000	0.000	0	
90	Farth-Bottom	Jurisdictional	4 / 242	Permanent	0.000	0.000	0.000	0	
	Lanin Bollom	builduotionar	17212	Temporary	0.000	0.000	0.000	0	
91	Farth-Bottom	Jurisdictional	5 / 182	Permanent	0.000	0.000	0.000	0	
51	Earth Bottom	ounoulonal	07102	Temporary	0.000	0.000	0.000	0	
02	Earth Pattam	lurisdictional	2 / 127	Permanent	0.007	0.000	0.007	96	
32			57157	Temporary	0.001	0.000	0.001	19	
110	Earth-Bottom	Jurisdictional	10/116	Permanent	0.007	0.000	0.007	29	
				Temporary	0.000	0.000	0.000	0	
111	Earth-Bottom	Jurisdictional	1 / 208	Temporary	0.004	0.000	0.004	0	
				Permanent	0.002	0.000	0.002	68	
112	Earth-Bottom	Jurisdictional	1 / 191	Temporary	0.000	0.000	0.000	0	
		1		iomporary	0.000	0.000	0.000	, v	

112	Earth Pottom	lurisdictional	05/47	Permanent	0.000	0.000	0.000	35
115	Earth-Bottom	Junsuictional	0.3741	Temporary	0.000	0.000	0.000	0
114	Earth-Bottom	Jurisdictional	1 / 175	Permanent	0.002	0.000	0.002	88
	drainage 90			Temporary	0.000	0.000	0.000	0
115	Earth-Bottom	lurisdictional		Permanent	0.000	0.000	0.000	0
115	Outside of BSA Pipe System along draiange	Junsuictional	 1 / 179	Temporary	0.000	0.000	0.000	0
116		lurisdictional		Permanent	0.000	0.000	0.000	0
110		Junsuiciionai		Temporary	0.000	0.000	0.000	0
117	Earth-Bottom	Jurisdictional	05/431	Permanent	0.000	0.000	0.000	0
117	Lani-Dottom	Gangalotional	0.57451	Temporary	0.000	0.000	0.000	0
1190	Earth-Bottom	Jurisdictional	05/12	Permanent	0.000	0.000	0.000	0
Поа	Earth Bottom	Jurisdictional	0.5 / 170	Temporary	0.000	0.000	0.000	0
1186				Permanent	0.000	0.000	0.000	0
TIOD	Lann-Dollom	Jurisdictional	0.57170	Temporary	0.000	0.000	0.000	0
110	Earth-Bottom	lurisdictional	2/13	Permanent	0.000	0.000	0.000	0
119	Lann-Dollom	Junsuictional	2/13	Temporary	0.000	0.000	0.000	0
Total Permanent Impacts					0.496	0.000	0.496	2598.000
Total Temporary Impacts					0.029	0.000	0.029	60.000

Group	5
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Feature Attributes				Project Impacts				
Drainage Number	Description	Jurisdictional Status	Width / Length within BSA (feet)	Impact Type	Habitat Type (acres)			Approximate
					Non-Wetland	Wetland	Total Impact (acres)	Linear Feet of Impact
45	Farth-Bottom	Jurisdictional	20/3146	Permanent	0.190	0.000	0.190	414
10	Earth Bottom	ounoulonal	2070110	Temporary	0.012	0.000	0.012	25
47	Cable Creek (D47- D49, D85, D86, and D88) is a larger natural, earthen- bottomed drainage	Jurisdictional	20 / 47	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
48	Cable Creek (D47- D49, D85, D86, and D88) is a larger natural, earthen- bottomed drainage	Jurisdictional	3 / 467	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
49	Cable Creek (D47- D49, D85, D86, and D88) is a larger natural, earthen- bottomed drainage	Jurisdictional	2 / 1468	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
85	Cable Creek (D47- D49, D85, D86, and D88) is a larger natural, earthen- bottomed drainage	Jurisdictional	1 / 198	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
86	Cable Creek (D47- D49, D85, D86, and D88) is a larger natural, earthen- bottomed drainage	Jurisdictional	2 / 518	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
88	Cable Creek (D47- D49, D85, D86, and D88) is a larger natural, earthen- bottomed drainage	Jurisdictional	10 / 1278	Permanent	0.000	0.000	0.000	0
				Temporary	0.000	0.000	0.000	0
Total Permanent Impacts					0.190	0.000	0.190	414.000
Total Temporary Impacts					0.012	0.000	0.012	25.000





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Figure 4, Sheet 8 ACOE Impacts ATC Drainage Group 1 Impacts

Interstate 15/Interstate 215 Interchange Improvement Project











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Figure 4, Sheet 9 ACOE Impacts ATC Drainage Group 1 Impacts

Interstate 15/Interstate 215 Interchange Improvement Project









ACOE Impacts ACOE Cajon Creek Impacts ACOE Drainage Group 1

- Alternative Technical Concept Design Impacts Permanent | Permanent Permanent (Project Footprint, Grading)
 - Temporary Temporary
- Temporary (Work Areas)
- Avoiding
- - 💋 Drainage Group 1 Floodplain
- --- Drainage Group 1
 - ACOE Drainage Groups
 - ----- Other Drainage Groups
- Design Drainages

-- Existing Drainage



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Figure 4, Sheet 10 ACOE Impacts ATC Drainage Group 1 Impacts

Interstate 15/Interstate 215 Interchange Improvement Project





Calb

1 inch = 300 feet

Impacts to Potential Waters of the U.S. FIGURE 5 Group 4 Sheet 1 of 2















Map Created: 10/19/2012

0 50 100 200 1 inch = 300 feet

Data Sources: LSA Associates, Inc. ESRI Inpacts to Potential Waters of the U.S. FIGURE 5 Group 5 Sheet 1 of 5


















Enclosure 1: NATIONWIDE PERMIT NUMBER(S) NWP 14 Linear Transportation Projects. TERMS AND CONDITIONS

1. Nationwide Permit(s) NWP No. 14 Linear Transportation Projects and No. 43 Stormwater Management Facilities. Terms:

Your activity is authorized under Nationwide Permit Number(s) NWP No. 14 Linear Transportation Projects and No. 43 Stormwater Management Facilities. subject to the following terms:

14. Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. This NWP cannot be used to authorize nonlinear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars. Notification: The permittee must submit a preconstruction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See Note: Some discharges for the construction of farm roads or general condition 27.) (Sections 10 and 404) forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

43. Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-

tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams. Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as appropriate, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

2. Nationwide Permit General Conditions: The following general conditions must be followed in order for any authorization by an NWP to be valid:

1. <u>Navigation</u>. (a) No activity may cause more than a minimal adverse effect on navigation.
(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

- 2. <u>Aquatic Life Movements</u>. 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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
- 3. <u>Spawning Areas</u>. 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.
- 4. <u>Migratory Bird Breeding Areas</u>. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
- 5. <u>Shellfish Beds</u>. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

- 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).
- 7. <u>Water Supply Intakes</u>. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
- 8. <u>Adverse Effects From Impoundments</u>. 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.
- 9. <u>Management of Water Flows</u>. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
- 10. <u>Fills Within 100-Year Floodplains</u>. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
- 11. <u>Equipment</u>. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
- 12. <u>Soil Erosion and Sediment Controls</u>. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
- 13. <u>Removal of Temporary Fills</u>. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.
- 14. <u>Proper Maintenance</u>. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
- 15. <u>Single and Complete Project</u>. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.
- 16. <u>Wild and Scenic Rivers</u>. 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 the 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

- 17. <u>Tribal Rights</u>. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
- 18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification

or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at http://www.fws.gov/ or <u>http://www.fws.gov/ipac</u> and <u>http://www.noaa.gov/fisheries.html</u> respectively.

- 19. <u>Migratory Birds and Bald and Golden Eagles</u>. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.
- 20. <u>Historic Properties</u>. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot

begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. <u>Discovery of Previously Unknown Remains and Artifacts</u>. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. <u>Designated Critical Resource Waters</u>. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. <u>Mitigation</u>. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered. (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) - (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment. (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs. (f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may

require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permitteeresponsible mitigation. For activities resulting in the loss of marine or estuarine resources, permitteeresponsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

- 24. <u>Safety of Impoundment Structures</u>. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
- 25. <u>Water Quality</u>. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
- 26. <u>Coastal Zone Management</u>. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.
- 27. <u>Regional and Case-By-Case Conditions</u>. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
- 28. <u>Use of Multiple Nationwide Permits</u>. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road

crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. <u>Transfer of Nationwide Permit Verifications</u>. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

30. <u>Compliance Certification</u>. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(1)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

(c) The signature of the permittee certifying the completion of the work and mitigation.

31. <u>Pre-Construction Notification</u>. (a) <u>Timing</u>. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer

will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) <u>Contents of Pre-Construction Notification</u>: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps.

The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation

requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) <u>Form of Pre-Construction Notification</u>: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) <u>Agency Coordination</u>: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require preconstruction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

3. Regional Conditions for the Los Angeles District:

In accordance with General Condition Number 27, "Regional and Case-by-Case Conditions," the following Regional Conditions, as added by the Division Engineer, must be met in order for an authorization by any Nationwide to be valid:

- 1. For all activities in waters of the U.S. that are suitable habitat for federally listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed, unless determined to be impracticable by the Corps.
- 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).
- 3. When a pre-construction notification (PCN) is required, the appropriate U.S. Army Corps of Engineers (Corps) District shall be notified in accordance with General Condition 31 using either the South Pacific Division PCN Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. The PCN Checklist and application form are available at: <u>http://www.spl.usace.army.mil/regulatory</u>. In addition, the PCN shall include:
 - a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;
 - b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for projects located within the boundaries of the Los Angeles District shall comply with the most current version of the *Map and Drawing Standards for the Los*

Angeles District Regulatory Division (available on the Los Angeles District Regulatory Division website at: <u>www.spl.usace.army.mil/regulatory/</u>); and

- c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the project site, and all waters proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be documented on the plan-view drawing required in subpart b of this regional condition.
- 4. Submission of a PCN pursuant to General Condition 31 and Regional Condition 3 shall be required for all regulated activities in the following locations:
 - a. All perennial waterbodies and special aquatic sites within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California, excluding the Colorado River in Arizona from Davis Dam to River Mile 261 (northern boundary of the Fort Mojave Indian Tribe Reservation). The desert region in California is limited to four USGS HUC accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002).
 - b. All areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <u>http://www.swr.noaa.gov/efh.htm</u>.
 - 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.
- 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.
- 6. Individual Permits shall be required in Murrieta Creek and Temecula Creek watersheds in Riverside County for new permanent fills in perennial and intermittent watercourses otherwise authorized under NWPs 29, 39, 42 and 43, and in ephemeral watercourses for these NWPs for projects that impact greater than 0.1 acre of waters of the United States. In addition, when NWP 14 is used in conjunction with residential, commercial, or industrial developments the 0.1 acre limit would also apply.
- 7. Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.
- 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 26 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.

9. Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 29, 39, 40 and 42, 43, 44, 51 and 52 or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:

a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characters observed associated with an Ordinary High Water Mark (e.g. bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community and a statement regarding the wetland status of the associated vegetation community (i.e. wetland, non-wetland); surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.

b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 31 and Regional Condition 3;

c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and

d. A compensatory mitigation plan describing how the unavoidable losses are proposed to be compensated, in accordance with 33 CFR Part 332.

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.

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).
 - (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 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.



United States Department of the Interior

FISH AND WILDLIFE SERVICE Ecological Services Carlsbad Fish and Wildlife Office 6010 Hidden Valley Road, Suite 101 Carlsbad, California 92011



In Reply Refer To: FWS-SB-10B0097-12F0001

Mr. Aaron Burton Senior Environmental Planner Department of Transportation – District 8 Environmental Planning (MS 827) 464 West Fourth Street, 6th Floor San Bernardino, California 92401 January 27, 2012

Subject: Formal Section 7 Consultation for the Interstate 15/Interstate 215 Interchange Improvements Project, San Bernardino County, California

Dear Mr. Burton:

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the Interstate 15/Interstate 215 Interchange Improvements Project (Project), and its effects on the federally endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*, "SBKR") and its designated critical habitat, in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). We received your September 20, 2011, request for formal consultation on September 22, 2011.

The proposed Project is receiving Federal funding through the Federal Highway Administration (FHWA), and your agency, the California Department of Transportation (Caltrans), has assumed the FHWA's responsibilities under the Act for this consultation in accordance with Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) 2005, as described in the National Environmental Policy Act (NEPA) Delegation Pilot Program Memorandum of Understanding between FHWA and Caltrans (effective July 1, 2007) and codified in 23 U.S.C. 327(a)(2)(A).

This biological opinion is based on information provided in: (1) *Interstate 15/Interstate 215 Interchange Improvements Project Biological Assessment* (Caltrans 2011a, "BA"); (2) *Natural Environment Study* (Caltrans 2011b); and (3) other sources of information including survey reports and email correspondence.

This biological opinion does not address five other federally listed species with ranges that overlap the construction area the proposed Project: the endangered slender-horned spineflower (*Dodecahema leptoceras*, "spineflower"), Santa Ana River woolly-star (*Eriastrum densifolum* subsp. *sanctorum*, "woolly-star"), Nevin's barberry (*Berberis nevinii*, "barberry"), and arroyo toad (*Anaxyrus californicus*), and the threatened coastal California gnatcatcher (*Polioptila californica*, "gnatcatcher"). Focused surveys for the spineflower, woolly-star, and

barberry were conducted in 2008, 2009, and 2010 with negative findings (Caltrans 2011a). Protocol surveys for the gnatcatcher were conducted in 2008, 2009, 2010, and 2011 with negative findings (Caltrans 2011a) and the Project site is not located in gnatcatcher critical habitat. Based on 3 years of botanical surveys and 4 years of gnatcatcher surveys with negative outcomes, we have determined that the proposed Project is not likely to adversely affect the spineflower, woolly-star, barberry, or gnatcatcher. Therefore, this biological opinion does not further consider these species.

Focused surveys were conducted in 2008, 2009, and 2010 to determine the presence of arroyo toad within the action area (Caltrans 2011a). As these surveys resulted in negative findings, we consider the action area to be unoccupied by this species. The action area overlaps less than an acre of designated critical habitat for the arroyo toad. More specifically, permanent impacts to 0.15 acre (ac) and temporary impacts to 0.06 ac of arroyo toad critical habitat are anticipated. As outlined in the BA (Caltrans 2011a), the minor effects from the proposed Project to the primary constituent elements (PCEs) for arroyo toad critical habitat will not appreciably diminish the ecological function or value of the critical habitat, particularly with implementation of the proposed conservation measures. For these reasons, we have determined that the proposed Project is not likely to adversely affect the arroyo toad, or its designated critical habitat. Therefore, this biological opinion does not further consider the arroyo toad.

CONSULTATION HISTORY

Early coordination between Caltrans and Carlsbad Fish and Wildlife Office (CFWO) began on February 20, 2008. Representatives of Caltrans (along with other project team representatives) and the Service met on site several times between October 2008 and September 2011 to review project design, discuss project effects to SBKR, and assess proposed avoidance and minimization measures. For more information, the Project file is located at the CFWO.

BIOLOGICAL OPINION

DESCRIPTION OF PROPOSED ACTION

Caltrans proposes to realign the Interstate 15 (I-15) and Interstate 215 (I-215) confluence adjacent to the unincorporated community of Devore and Devore Heights in San Bernardino County, California. The biological study area for the proposed Project includes a 750.82-ac area positioned between Cleghorn Canyon to the north, North Little League Drive overpass to the southeast, and Lytle Creek Road to the southwest. Included within the 750.82-ac biological study area is a 392.31-ac Project impact area where construction activities will occur. All construction activities occur within the U.S. Geological Survey (USGS) Devore, CA 7.5-minute series topographic quadrangle (Township 2 North, Range 5 West, Sections 19, 20, and 29, projected Sections 27 and 28, Section 33, and projected Section 34).

Construction of the proposed Project will eliminate the existing lane reductions on I-15, reduce operational deficiencies at the interchange including non-standard design features, and improve

local circulation. The safety of the interchange will be improved by (1) reducing congestion, (2) reducing problems caused by weaving trucks, (3) removing local traffic from the freeway, and (4) improving design standards of the facility, consistent with Caltrans standards. As the Project covers a large linear area, approximately 3.4 miles, we discuss each Project segment separately. For a more detailed description and timeline of the proposed action, please see pages 5–13 of the BA provided by Caltrans (2011a).

I-15 South Segment (South of Cajon Creek)

Caltrans will construct the following elements in the design of the I-15 south leg (south of Cajon Creek):

- A northbound auxiliary lane between the Glen Helen Parkway on-ramp and the I-215 junction.
- A southbound auxiliary lane between the I-215 junction and the southbound Glen Helen Parkway off-ramp.
- A southbound mainline lane between the I-215 junction and the Glen Helen Parkway onramp; this element will connect with the existing fourth southbound mainline lane.
- Minor additions to the Glen Helen Parkway on-ramps and off-ramps will accommodate new lanes, such as the northbound deceleration lane prior to the Glen Helen off-ramp and the southbound acceleration lane from the on-ramp.
- Additional support columns for I-15 as the freeway passes over Cajon Creek.

The additional lanes will be constructed in the existing median and the existing lanes will be shifted into the median. The existing bridges over Glen Helen Parkway will be widened by one 12-foot (ft) wide lane in each direction. The existing bridge over Glen Helen Road will be widened by two lanes in each direction in the median. No new right-of-way will be required south of the railroad. Immediately north of Glen Helen Road, the northbound widening will begin to shift to the outside to align with the connector ramps of the I-15/I-215 interchange.

I-15/I-215 Branch Connectors

The proposed Project includes the following modifications to I-15/I-215 branch connectors:

- The northbound I-215 to southbound I-15 branch connector will be retained approximately in its present location, but widened to two lanes for most of its length to allow for passing.
- The northbound I-15 to southbound I-215 branch connector will be relocated easterly.

I-15 North Segment (North of Cajon Creek)

The improvements to I-15 north of Cajon Creek include the following elements:

- Caltrans will widen I-15 to provide four through lanes from the I-215 southbound exit to the I-15 truck bypass exit located north of I-215 northbound overcrossing. I-15 provides three auto lanes between the truck bypass exit and the merge with I-215 auto lanes. After the northbound I-215 merge, I-15 will provide five lanes (for autos) and an auxiliary lane.
- Caltrans will modify the existing I-15 truck exit north of the I-215 overpass. The truck lane merges with the northbound I-215 truck bypass and runs parallel to northbound I-15 to the Kenwood Avenue Overcrossing. The northbound truck bypass merges with the mainline 2,100 ft north of Kenwood Avenue overcrossing. Two auxiliary lanes will be added from the truck bypass merge to the existing five lanes over the next 3,000 ft.
- The northbound Kenwood Avenue interchange ramps will be realigned to accommodate truck bypass, maintaining a diamond configuration.

Southbound I-15

- Caltrans will add three auxiliary lanes starting approximately 1.4 miles north of the Kenwood Avenue undercrossing, extending to the I-215 and truck bypass north of the Kenwood Avenue undercrossing.
- The I-215 southbound exit from I-15 is now combined with the I-15 truck bypass exit located north of the Kenwood Avenue undercrossing. I-215 southbound will be split from the I-15 southbound truck bypass north of Kenwood Avenue, and will bridge over the I-15 auto mainline.
- The Kenwood Avenue ramps will retain the current diamond configuration, realigned to accommodate truck bypass. The revised southbound on-ramp provides access to I-15 only. No direct freeway access from Kenwood Avenue to southbound I-215 as access will be provided via Cajon Boulevard.

Cajon Boulevard Reconnection

The proposed Project includes the reconnection of Cajon Boulevard from Kenwood Avenue to the existing Devore Road. The County of San Bernardino (County) closed the segment of Cajon Boulevard south of Kenwood Avenue soon after completion of the I-15/I-215 interchange as the interchange eliminated the connection between the two segments of Cajon Boulevard north and south of I-15, leaving Cajon Boulevard south of Cajon a four-lane 3,500-ft long cul-de-sac that served only limited uses such as access to existing wells. The County now uses portions of the roadway as a storage yard, and oversized trucks must take Cajon Boulevard south from Cleghorn Road to avoid the sign structures before the I-15/I-215 interchange. The trucks reenter I-15 at a

private gate at the end of Cajon Boulevard and detour around the last interchange sign-bar, the sign structure that spans the interstate. As such, Cajon Boulevard south of Kenwood maintains some degree of use as a truck route.

The Cajon Boulevard component of the project will reopen two lanes of the closed roadway, one in each direction on either side of the median, and bring the Kenwood Avenue/Cajon Boulevard intersection up to current design standards. Improvements north of Kenwood Avenue will be limited to approximately 1,000 ft of intersection transition. No additional improvements will be made to Cajon Boulevard north of this point.

At the south end of the existing roadway, northbound and southbound lanes of Cajon Boulevard will come together in a standard two-lane roadway. The two-lane Cajon Boulevard will transition onto a new alignment southeast of Kenwood Avenue, curving to the south-southeast to parallel the existing I-15 to the I-15 southbound connector. As the roadway approaches Cajon Creek, the road will make an easterly turn to pass under the existing I-15 bridges over Cajon Creek. The roadway under the freeway will roughly follow an existing dirt road, and require a retaining wall to avoid impacts to Federal and State jurisdiction waters and protect the roadway from flooding.

Having crossed under the freeway, Cajon Boulevard will then curve to the northeast, intersecting the existing Cajon Boulevard just east of the existing Devore Road/Glen Helen Parkway intersection. The existing Cajon Boulevard cul-de-sac northwest of Devore Road will remain connected to Devore Road. To match existing conditions, Cajon Boulevard will be widened to two lanes in each direction as it approaches the Devore Road/Glen Helen Parkway intersections. To protect travelers from the adjacent drop-off into Cajon Creek, Caltrans will install a 3-ft barrier wall on top of the retaining wall.

Approximately 3,000 ft of the southern edge of Cajon Boulevard will be improved with a retaining wall approximately 15-17 ft high. The retaining wall replaces the standard roadway design, which would be to construct a 2:1 to 4:1 side slope. The retaining wall design reduces the overall environmental impact of the new Cajon Boulevard connection in the following ways:

- The retaining wall design reduces the footprint cross-section of Cajon Boulevard by up to 60 ft and eliminates most of the direct construction encroachment into Cajon Creek. With the retaining wall, the proposed encroachment will be 0.027 ac; without the retaining wall, additional impacts to jurisdictional waters in Cajon Creek would be approximately 3 ac.
- The retaining wall will reduce loss of SBKR habitat as compared to the standard side slope design.
- The barrier on top of the wall will reduce the impacts of automobile lights on the adjacent SBKR habitat.

• The retaining wall will reduce changes to flood flows in Cajon Creek.

Local Roadway Changes

The proposed Project includes the following modifications to local roadways:

- Nedlee Avenue and Dement Street will be realigned to accommodate the widened freeway cross section.
- Cul-de-sacs will be constructed where existing local streets would be shortened to accommodate the widened freeway.
- The Cajon Boulevard and Kenwood Avenue intersection will be reconstructed with the addition of turning lanes.

Conservation Measures

Caltrans, in accordance with their Federal delegated authority, will ensure these conservation measures are implemented to avoid and minimize impacts to SBKR and its designated critical habitat.

General Measures

- 1. Caltrans and/or its contractor will retain a Service-authorized biological monitor on site during initial ground disturbance and during construction activities to monitor habitat conditions and impacts.
 - a. The biological monitor will have expertise with SBKR and its habitat, and hold a valid section 10(a)(1)(A) permit for SBKR.
 - b. The biological monitor will ensure compliance with the Project description evaluated in this biological opinion, including all conservation measures and terms and conditions, and will have the authority to halt/suspend all activities until appropriate corrective measures have been taken.
 - c. The biological monitor will report any non-compliance within 24 hours to the Palm Springs Fish and Wildlife Office (PSFWO).
 - d. At least 30 days prior to the start of any project-related activities, Caltrans will submit to PSFWO, in writing, the name(s), any permit numbers, and résumés of all prospective biological monitors. The PSFWO will approve the biological monitor (or monitors) before project activities can begin.

- 2. Before any ground disturbance begins and under the supervision of the approved biological monitor, the contractor will delineate and mark all limits of construction to be clearly visible to all personnel. All construction-related activities by contractors, subcontractors or their agents, and equipment (including vegetation removal, grading, equipment lay-down and storage, and contractor parking) will be restricted to the designated limits of construction and staging areas. Construction staging and equipment storage will be located outside of any potential habitat areas. All movement of contractors, subcontractors or their agents, and equipment will be restricted to the limits of construction and staging areas.
- 3. Prior to clearing or construction and under the supervision of the approved biological monitor, highly visible barriers (such as orange construction fencing) will be installed around scalebroom scrub communities (*Lepidospartum squamatum* Alliance, Sawyer et al. 2009) adjacent to the project footprint to designate Environmentally Sensitive Areas (ESAs) to be protected from construction impacts. No grading or fill activity of any type will occur within these ESAs. In addition, heavy equipment, including motor vehicles, will not drive or operate within the ESAs. All construction equipment will be operated in a manner to prevent accidental damage to nearby protected areas. No structure of any kind, or incidental storage of equipment or supplies, will occur within these protected zones.
 - a. In addition, black mesh silt fencing will be installed to prevent accidental deposition of fill material in areas where vegetation is immediately adjacent to planned grading activities. The biological monitor will inspect the fencing at the close of each business day throughout the construction phase. The contractor will implement any required repairs to the fencing within 24 hours of receiving notification of the required repair.
 - b. Should any work occur beyond the fenced or demarcated limits of impact, the biological monitor will request that the resident engineer halt work until the problem has been remedied. The biological monitor will notify the PSFWO of the problem within 24 hours of its occurrence.
- 4. Caltrans and its contractor will ensure that all project activities are implemented using the following standard best management practices, including but not limited to:
 - a. Preparation and implementation of a storm water pollution prevention plan
 - b. Staging or vehicle repair will only occur in designated areas outside of sensitive habitats.
 - c. All equipment maintenance and dispensing of fuel, oil, coolant, or any other such activities will be restricted to designated staging areas to prevent the release of hazardous substances into the project site or adjacent drainages (i.e., Cajon Creek and/or tributaries). Any accidental spills will be immediately contained and disposed of properly.

- d. Erosion control (see conservation measure 12), fuel spill cleanup, and mandated equipment noise control measures will be used at all times.
- e. Trash will be stored so that it is inaccessible to scavengers, (e.g., crows, raccoons) and will be removed from the construction site on a daily basis so as not to attract potential SBKR predators.
- f. Spoils and rubble will not be deposited outside the limits of construction and all fill material and waste will be disposed of properly and removed from the construction site on a daily basis.
- g. No pets will be allowed in, or adjacent to, the Project site.
- h. No rodenticides, herbicides, insecticides, or other chemicals will be used that could be harmful to the SBKR or SBKR or arroyo toad critical habitats.
- 5. Prior to initiating project impacts, Caltrans will develop a restoration plan for the temporary impact areas. The plan will be submitted to the PSFWO for review and approval no later than 30 days prior to initial ground-disturbing activities.
 - a. Upon completion of construction, the temporary impact areas will be revegetated with native plant species consistent with those found adjacent to affected areas. A Caltrans biologist will approve the native plant palette to be used in areas to be revegetated. No species listed on Cal-IPC's California Invasive Plant Inventory that have a high or moderate rating will be used for revegetation.
 - b. This plan will include a detailed description of restoration methods, slope stabilization and erosion control, criteria for restoration to be considered successful, and monitoring protocol(s).
 - c. Following the completion of construction activities, these temporary impact areas will be planted as soon as possible to prevent encroachment by nonnative invasive weeds. The restoration plan will be implemented for a minimum of 5 years, unless the Service agrees that success criteria are met earlier and no artificial water has been used for at least 2 years.
- 6. The existing culvert structures that will be extended or modified by the Project will be designed to be at least as compatible with wildlife usage as the existing culverts. For example, to create traction for wildlife, textured concrete will be used within the culvert and on culvert inlet/outlet structures. Existing culverts will be day-lighted or sky-lighted to enhance wildlife visibility, as determined to be feasible by the Caltrans Project Manager. Vegetation will be removed from culvert areas with hydrological flow. However, because vegetation around culverts provides cover for animals, routine maintenance of culverts will involve clearing vegetation mainly in the flow line so use by wildlife is not inhibited.

- 7. Appropriate wildlife fencing will be installed to direct wildlife toward existing undercrossing structures and to inhibit wildlife movement onto the I-15 and I-215 freeways. Equipment maintenance, lighting, and staging must be in designated areas, away from wildlife corridor entrances. The corridors will be kept clear of all equipment or structures that could potentially serve as barriers to wildlife passage.
- 8. The Project design incorporates a 3-ft barrier wall along the southerly side of Cajon Boulevard to limit headlight intrusion into adjacent suitable habitat areas. This wall also will discourage off-highway vehicle (OHV) traffic from entering Cajon Creek and associated alluvial habitats. In addition, streetlights are not proposed for the length of the Cajon Boulevard reconnection.
- 9. Following Project construction, all disturbed habitat adjacent to Pittman Canyon, Middleman Canyon, Cajon Creek, and Burlington Northern Santa Fe Railroad wildlife crossings will be restored with native vegetation.
- 10. During construction, soil and vegetation disturbance will be minimized to the greatest extent feasible.
- 11. During construction, the construction contractor will ensure implementation of appropriate dust control measures, to prevent excessive amounts of dust, and to control the aeolian removal of weeds and seeds from stockpiled materials.
- 12. Erosion and sediment control devices, including certified weed-free straw, mulch, fiber rolls, and bonded fiber matrix, will be made from biodegradable materials such as jute, with no plastic mesh, to avoid creating a wildlife entanglement hazard.
- 13. After installation of erosion control and revegetation measures, the erosion control and revegetation sites will be monitored twice yearly (spring and fall) for 5 years after revegetation installation by a Caltrans biologist to detect and control the introduction/invasion of nonnative species.
- 14. A Caltrans biologist will identify any necessary eradication procedures (e.g., spraying, hand weeding) should an invasion of nonnative plants occur; the use of herbicides will be prohibited within and adjacent to native vegetation, except as specifically authorized by the PSFWO and monitored by a Caltrans biologist.
- 15. To reduce the number of invasive plant species that may invade temporarily disturbed construction areas, all large and/or woody invasive species (e.g., arundo, tamarisk, tree tobacco) will be removed from the Project limits.

SBKR Conservation Measures

16. To offset permanent and temporary impacts to SBKR suitable habitat (occupied and potentially occupied), Caltrans will purchase credits within the Cajon Creek Conservation Bank or another accredited conservation bank for SBKR according to the ratios specified in Table 1 below. In addition, temporary effects will be offset by restoring habitat to preproject conditions. Table 1 shows the proposed mitigation ratios and total mitigation credits (in acres to be purchased). Please see Appendix M in Caltrans BA (2011)

Table 1.	Proposed	conservation	ratios and	total credits
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Habitat category Permanent effects (acres)		Permanent effects ratio	Temporary effects (acres)	Temporary effect ratio	Total credits to be purchased (acres)	
Category 1 (suitable)	12.0	3:1	6.0	1:1	42.0	
Category 2 (marginally suitable)	11.2	3:1	0.1	1:1	33.7	
Total	23.2		6.1		75.7	

- 17. During the initial grading and excavating within suitable SBKR habitat, the approved biological monitor will be on site to conduct the following inspection duties in each area prior to the commencement of Project activities and to monitor grading and grubbing.
 - a. At the beginning and close of each workday throughout the duration of construction, the contractor and/or biological monitor will inspect unfilled excavations, unburied pipes, and soils stockpiles for the presence of any SBKR that may be entrapped. Should any SBKR be located, the permitted biologist will remove and release the entrapped animals outside the project footprint to adjacent habitat.
 - b. At the close of each work day, and after any discovered SBKR have been removed, the contractor will backfill, cover, or otherwise close all excavations or unburied pipes, and will temporarily store and cover soils stockpiles within the designated temporary work area (and not outside that area where SBKR may burrow overnight). The contractor will also inspect the SBKR exclusionary fencing and immediately repair any gaps larger than 0.5 inches.
 - c. During construction, the biological monitor will conduct walk-over surveys of the project area at least 2 days a week (or other interval approved by the PSFWO) before the start of daily activities for the purpose of detecting any evidence that SBKR are

entering the construction footprint. During these walk-over surveys, the biological monitor will remove any live SBKR from the construction area and locate any dead or injured SBKR within the limits of construction.

- d. The approved biological monitor will prepare a weekly monitoring memo to document the construction activities, describe the conservation measures utilized, and report any observations of live or dead SBKR for transmittal to Caltrans and PSFWO.
- e. The biological monitor will develop and conduct an environmental awareness education program for all construction personnel (including temporary contractors and subcontractors) before any work is begun on or adjacent to the project site. At a minimum, the information presented will include (1) the purpose of resource protection; (2) a description of SBKR and its habitat; (3) a description of the arroyo toad and its critical habitat; (4) the conservation measures that will be implemented in conjunction with project construction; (5) delineation and flagging of the project area, and limitations on movement of personnel and equipment and; (6) the general provisions of the Act including the legal status of SBKR, arroyo toad and the meaning of "take."
- 18. Prior to Project-related vegetation clearing and grading, an exclusionary fence will be installed around the limits of construction in areas of SBKR suitable habitat (category 1). The exclusionary fence will consist of a 5-ft-tall chain link fence with a ¼-inch gauge wire mesh strip (i.e., hardware cloth) attached to the inside base of the chain link fence.
 - a. The wire mesh will be buried to a minimum depth of 12 inches below the ground surface and have a height of 4 ft above ground level. The proposed fence design will be submitted to and approved by the PSFWO at least 30 days prior to emplacement and grading.
 - b. The biological monitor (see conservation measure 1) will be present on-site when the fence is installed to minimize the disturbance of SBKR burrows from the fence installation.
 - c. During fence construction, the biological monitor will hand-excavate marked burrows within 100 ft in advance of the trenching backhoe; if necessary, another biologist will stand by the backhoe to observe any animals caught up in the backhoe bucket. The biological monitor will remove any SBKR found in the burrow or backhoe bucket and release them outside the fence alignment while following proper protocol for working around heavy equipment as selected by Caltrans or their designated contractor.
- 19. After any required exclusionary fence is in place, and before initial ground disturbance and construction activities, the fenced area will be trapped and all small mammals captured will be removed and released outside the project footprint to adjacent suitable habitat.

- a. The permitted biological monitor or other qualified, permitted biologist will live-trap and remove as many SBKR as possible from within the enclosed construction area and recapture any SBKR that return to the site.
- b. Trapping will continue for at least 5 consecutive nights, or until there have been 2 consecutive nights of trapping with no SBKR captures, or until PSFWO has provided written or verbal approval to discontinue trapping.
- c. The SBKR-permitted biologist will mark all SBKR captures on the chest with a red Sharpie pen (or comparable pen) to identify any recaptures that re-enter the fenced area and will report the number of captures and recaptures to the PSFWO.
- 20. After construction is complete, and at the direction of the Caltrans biologist, the contractor will remediate compacted soils in the temporary work area by ripping all areas not directly in the active channels (ordinary high water mark) to a depth of about 1 ft. Stockpiled sand and cobble topsoil will be placed to an appropriate depth (about 1 ft) to provide SBKR burrowing substrates of soil densities similar to pre-construction conditions.
- 21. No night work will be conducted in SBKR habitat areas. When night work is conducted adjacent to SBKR or arroyo toad habitat areas, noise and lighting would be directed away from habitat areas and wildlife movement corridors.
- 22. Following construction, all permanent lighting installed along the new freeway alignment will be permanently shielded and directed onto the roadway.
- 23. Caltrans will develop appropriate restoration plans for any temporarily impacted areas within SBKR suitable habitat. Such restoration plans will be implemented immediately following the completion of construction. Restoration plans will be submitted to PSFWO for approval no later than 30 days prior to ground-disturbing activities. Components of the restoration plan will include methods for recontouring the land, replacing the topsoil (if it was collected), planting seed and/or container stock, and maintaining (e.g., weeding, replacement planting, supplemental watering) and monitoring the restored area for a period of 5 years (or less if the Service agrees the restoration meets all success criteria). In some areas during initial ground-disturbing activities, the upper 6 inches of topsoil will be salvaged and stockpiled for use in areas to be revegetated.

Arroyo Toad Conservation Measure

24. Caltrans will fund the enhancement of 1 acre of suitable arroyo toad habitat within Cajon Creek Wash to offset 0.15 acre of permanent effects and 0.06 acre of temporary effects to arroyo toad critical habitat (Table 2). Caltrans will fund the habitat enhancement effort by entering into an agreement with the Inland Empire Resource Conservation District and Santa Ana Watershed Authority to perform in-stream enhancement of arroyo toad habitat within Cajon Creek Wash upstream of the proposed Project site. This in-stream

enhancement location will be within the same critical habitat unit as the area affected. Prior to ground-disturbing activities, Caltrans will provide the PSFWO with a copy of the agreement with the Inland Empire Resource Conservation District and Santa Ana Watershed Authority.

Action Area

According to 50CFR § 402.02 pursuant to section 7 of the Act, the "action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. Subsequent analysis of the environmental baseline, effects of the action, and level of incidental take are based upon the action area. For this proposed action, we consider the action area to be the approximately 3.4-mile length of the Project site including approximately 392.92 ac of permanent and temporary impacts (Caltrans 2011b). The action area also includes the surrounding habitat, which may be exposed to project-related effects such as increased noise, light, and dust levels and human activity during project construction and operation of the facilities. This indirect impact area for the Project is defined as a 300-ft buffer beyond the permanent impact area. The action area also includes the approximately 588.5-ac the Cajon Creek Habitat Conservation Management Area, where Caltrans likely will purchase credits to offset Project impacts.

STATUS OF THE SPECIES/CRITICAL HABITAT

San Bernardino Kangaroo Rat

SBKR was emergency listed as endangered on January 27, 1998 (Service 1998a), and listed as endangered on September 24, 1998 (Service 1998b). Critical habitat for SBKR was initially proposed on December 8, 2000 (Service 2000), and designated on April 22, 2002 (Service 2002). Critical habitat for the SBKR was subsequently re-proposed on June 19, 2007 (Service 2007), and a final designation of the revised critical habitat was published on October 17, 2008 (Service 2008). In 2009, a lawsuit was filed challenging the 2008 critical habitat designation. On January 8, 2011, the court vacated the 2008 critical habitat designation and reinstated the 2002 critical habitat designation.

Please see our recent 5-year review for specific information on the description, habitat affinities, life history, status and distribution, threats, and conservation needs of the SBKR across its range (Service 2009). All documents are available at <u>http://ecos.fws.gov/</u>.

Threats to the Species in the Vicinity of the Action Area

SBKR are primarily threatened with habitat degradation as a result of vegetation senescence and changes in substrate composition in the absence of major flood events (Burke et al. 2007, Service 2010a). Burke et al. (2007) noted a general gradual increase in the silt/clay and organic fraction and a decrease in the relative amount of sand in alluvial soils that develops as time since the last flood-disturbance increases, and that small changes in soil texture were correlated with larger

changes in scalebroom scrub. Because the SBKR requires sandy soils that do not accumulate moisture, permanent changes in substrate characteristics are of concern.

In the Lytle/Cajon Creeks SBKR population, flood control levees and groins have altered flows and narrowed the active floodplains of both creeks, increasing the proportion of open channel and mature scalebroom scrub over that of pioneer and intermediate scrub. Additionally, withinchannel flood control berms (levees) preclude movement of SBKR within Cajon Creek and effectively fragment the area into isolated pockets of habitat. These flood control activities have the potential to keep much of the available channel habitat in a degraded state and upland habitat inaccessible for SBKR. In addition, aggregate mining operations in both creeks have eliminated or degraded terrace and bench habitat for SBKR and reduced population connectivity.

Residential and commercial development is gradually eliminating large areas of SBKR upland refugia habitat outside of the active floodplains. At the northern terminus of Cajon Boulevard, south of the I-15/I-215 interchange, multiple businesses operate during evening hours. These businesses maintain exterior lighting to attract and provide safety for customers. Night lighting likely makes SBKR more visible to predators than they would be under natural conditions and thus may increase the rate of effective predation on SBKR or alter SBKR foraging behavior (Service 2009).

Site visits by PSFWO staff to the proposed Project area have shown some unauthorized OHV use occurs within the Cajon Creek streambed during periods when the channel is devoid of water. However, most activity is concentrated in the upland areas adjacent to southbound I-15 and at the terminus of Cajon Boulevard south of the I-15/I-215 interchange. OHV activity in the upland and channel areas disturbs SBKR and destroys forage and burrowing habitat.

Specific actions that have adversely affected designated SBKR critical habitat within the Lytle and Cajon Creeks Unit (Unit 2) include emergency repairs of the Cajon Creek Pipeline, CALNEV Kinder-Morgan Pipeline, and Southern California Edison Arrowhead transmission line. Other actions that likely impacted critical habitat are emergency repairs associated with the flood control levees, berm, and emergency repairs to pillars supporting the I-15 overpass. However, because the U.S. Army Corps of Engineers and County coordinate emergency actions with the Service, we recommend avoidance and minimization measures to decrease possible adverse impacts to SBKR and its critical habitat.

Conservation Needs in the Vicinity of the Action Area

Conservation and recovery of the SBKR within the action area will depend upon the same sort of actions required to conserve and recover the subspecies within its extant range (Service 2009). Given the prevalence of nonnative annual grasses throughout the action area and the anticipated lack of major flooding within the upper Santa Ana River alluvial floodplain, vegetation management and perhaps soils management are likely needed to sustain this subspecies over the long term (Service 2010a).

While four conservation areas have been established within the Lytle/Cajon Creeks SBKR population to offset development impacts, only the Cajon Creek Habitat Conservation Management Area and Cajon Creek Conservation Bank are actively managed for the benefit of SBKR. The existing conservation areas include: (1) the 1,265-ac Cajon Creek Habitat Conservation Management Area, which encompasses the 588.5-ac Cajon Creek Conservation Bank and other lands owned and managed by Vulcan Materials Company (formerly CalMat) to minimize impacts associated with ongoing mining operations [Formal section 7 consultation (1-6-94-F-51) and reinitiation of consultation and revision to biological opinion (1-6-94-F-51R1) on mining activities and industrial development at the CalMat San Bernardino and Cajon Creek properties]; (2) a 120-ac area set aside to offset impacts of the San Bernardino Sheriff's Office training facility; (3) a 37-ac area along Lytle Creek [Formal section 7 consultation on the construction and extension of the North Levee at Sunwest's Lytle Creek Quarry (1-6-99-F-42)]; and (4) a 213-ac area within the Lytle Creek floodplain [Formal section 7 consultation on the Lytle Creek North planned development project (FWS-SB-1640.11)].

Habitat restoration, protection, and management of additional areas throughout its range would also help conserve this animal. Facilitating easier access from the creek to the Cajon Creek Habitat Conservation Management Area would also likely be beneficial to SBKR within the immediate vicinity of the proposed Project to provide access to refugia habitat.

Critical Habitat Designation and Status of Critical Habitat in the Vicinity of the Action Area

Designated SBKR critical habitat totals approximately 33,295 ac in San Bernardino and Riverside counties (Service 2002). A detailed description of the PCEs of critical habitat for the SBKR can be found within the 2002 final rule designating critical habitat (Service 2002).

The proposed Project and associated restoration activities are located in the Lytle and Cajon Creeks Unit, which encompasses approximately 13,970 ac and includes the northernmost and one of three remaining significant populations of SBKR (Service 2002). Unit 2 contains alluvial fans, floodplain terraces, and historic braided river channels and includes scalebroom scrub and other vegetation types that provide habitat for SBKR on the terraces and adjacent areas with sandy soils. The hydro-geomorphological processes that rejuvenate and maintain the dynamic mosaic of scalebroom scrub remain largely intact in Lytle and Cajon creeks (i.e., stream flows are not impeded by dams or debris basins), and the remaining habitat allows for dispersal between these two drainages, which is important for genetic exchange between populations. As a result, Unit 2 includes areas that are essential because of the presence of substantial, existing populations of the subspecies and habitat connectivity within and between Lytle and Cajon Creeks. This critical habitat unit includes upland terraces that provide important refugia habitat during periods of high rainfall when bank-to-bank and over-bank flooding and bank erosion occur (Service 2002).

Unit 2 includes the northern extent of the SBKR's remaining distribution, and supports a major population of SBKR. The unit contains all of the physical and biological features (PCEs) essential to SBKR life history, but the precise extent of SBKR occupancy in this unit is

undocumented. This unit contains habitat along and between Lytle and Cajon Creeks from the point that the creeks emanate from canyons within San Bernardino National Forest to flood control channels downstream (Service 2002). Numerous flood control levees and groins have altered the flows and narrowed the active floodplains downstream of the project area. The alteration of the natural fluvial processes increases the proportion of open channel and mature scalebroom scrub and decreases the amount of intermediate scalebroom scrub preferred by SBKR. Existing and proposed out-of-stream aggregate mining operations have eliminated or degraded SBKR habitat and reduced population connectivity within the floodplains of both creeks. Residential and commercial development is gradually eliminating large areas of upland refugia habitat (i.e., mature scalebroom scrub) outside of the active floodplains.

Despite past and ongoing development in the area, the hydrological processes that maintain various successional stages of scalebroom scrub largely are intact in Lytle and Cajon Creeks, and habitat remains that allows for SBKR dispersal between the two drainages. However, flood control structures and urban development have degraded or eliminated much of the upland refugia in Unit 2. Long-term conservation of the SBKR within Lytle and Cajon Creeks will require maintenance of existing fluvial dynamics and habitat connectivity, as well as protection of additional upland areas to provide refugia for the SBKR in the event of catastrophic flooding. No current or anticipated regional planning effort is ongoing or planned to address these multiple threats. The section "Conservation Needs in the Vicinity of the Action Area" describes existing conservation efforts within Unit 2.

ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR § 402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation and the impacts of State and private actions that are contemporaneous with the consultation in progress.

Site Characteristics and Surrounding Land Uses

The proposed Project area contains habitat historically known to be occupied by SBKR according to Service data and is within designated critical habitat for this subspecies (Service 2002, Service 2009). As a proxy for focused species surveys, a habitat assessment was conducted in 2008 and 2009 by Caltrans and Service biologists to identify potentially suitable SBKR habitat within the action area (Caltrans 2011a). Habitat categories, for purposes of analysis, were divided into three numbered categories as follows:

- 1. Suitable habitat, most of it within designated critical habitat, is assumed to be occupied by SBKR.
- 2. Habitat of marginal suitability for SBKR, but adjacent to suitable habitat, may be used by wandering and dispersing animals, and is assumed to be occupied.

3. Habitat considered unsuitable for SBKR and that does not provide PCEs and includes roadways, other development, and areas isolated within those features, as well as areas covered by dense unsuitable vegetation and areas considered too steep to be suitable for SBKR, these areas are assumed to be unoccupied.

Based on the habitat assessment, the Project impact area contains approximately 29.3 ac of assumed occupied SBKR habitat (Table 2). The dominant plant community is scalebroom scrub (Sawyer et al. 2009) and has the potential to support the SBKR and a variety of other native species, such as arroyo toad. Characteristic perennial plants of this habitat include scalebroom (*Lepidospartum squamatum*), California buckwheat (*Eriogonum fasiculatum*), and California sagebrush (*Artemesia californica*). The soils are alluvial and consist of a mosaic of rocky and sandy soils throughout the area. Habitat types within the proposed Project footprint include SBKR habitat located outside of the low-flow channel of Cajon Creek, which contains scattered shrubs and forbs; and SBKR habitat located within the low-flow channel, which contains minimal shrubs and forbs; and non-suitable SBKR habitat (highly disturbed and/or developed). Both suitable and marginally suitable habitats have various levels of disturbance.

Suitable (Category 1)		Marginally suital	ole (Category 2)	Total category 1 and 2		
Permanent	Temporary	Permanent	Temporary	Permanent	Temporary	
12.0	6.0	11.2	0.1	23.2	6.1	

Tabla 2	SRKD	cuitable/	notontially	cuitabla	habitat in	nronos	od Proj	act im	nant araa
Table 2.	SDUU	suitable/	potentially	suitable	napitat m	propos	eu rroj	ect IIII	Jact area

We have estimated relative abundance of SBKR in the action area based on the amount and quality of habitat within the Project footprint. McKernan (1997) provides a relative abundance index for SBKR in association with habitat quality. Estimates of 1-5 SBKR per acre generally occur within low-quality habitat, 5-15 SBKR per acre within moderate-quality habitat, and 20-30 SBKR within high-quality habitat. Dense cover of nonnative plant species or mature scalebroom scrub are associated with low densities of SBKR, whereas moderate SBKR densities occur in association with intermediate phases of scalebroom scrub or those areas which experience modification of the plant community during a high hydrological flow event: high relative abundance of SBKR is associated with active hydrological channels containing pioneer to intermediate phases of scalebroom scrub (McKernan 1997).

We use the 2008/2009 habitat assessment survey results only as a coarse indication that, overall, SBKR probably inhabit the proposed Project area in low to moderate densities, or one to five SBKR per ac according to general SBKR density categories described above. Thus, based on the likely low density of 1-5 SBKR per ac within the Project impact area and considering the existing level of disturbance (see below) within and adjacent to the impact area, we estimate that between 29 and 145 SBKR inhabit the 29.3 ac of suitable habitat impacted by the proposed Project. However, because of existing, altered hydrological regimes (see "Disturbance" section below), historical survey numbers, and disturbance due to OHV activity, we anticipate the

number of SBKR within the action area to be on the lower end of that range. In addition, recent surveys for the Glen Helen grade separation, a project approximately 900 yards southeast of the proposed Project area, stated only two SBKR were captured over a multiple-year survey period (Davenport 2010).

Hydrology

The biological communities of Cajon Creek have adapted to the natural processes of periodic disruption by natural flood events. The soil is composed of boulders, cobbles, sands, and fine silts, which are washed down from higher elevations in the San Gabriel Mountains and deposited in the alluvial fans and floodplain. The vegetative communities in Cajon Creek, specifically scalebroom scrub, develop into pioneer, intermediate, and mature phases, dependent upon the magnitude of recent hydrologic events. In a natural system, floodwaters periodically break from the main flood channel, forming a complex pattern of braided channels and subsequently create a mosaic of vegetation phases within the floodplain.

The engineered control of the hydrologic regime within Cajon Creek has significantly altered the temporal aspects of the floodplain habitat development, which has resulted in the area becoming less suitable for SBKR populations. Presently, the typical hydrological regimes in Cajon Creek adjacent to the proposed Project are altered due to levees protecting the Burlington Northern Santa Fe Railroad to the southwest and Cajon Boulevard to the east. Additionally, there are a series of flood control berms and levees south of the I-15/I-215 interchange. Large engineered levees exist on both sides of the channel and a temporary flood control berm occurs within the main channel of Cajon Creek, which helps protect the low-water crossing of Glen Helen Parkway [see previous biological opinion for the Glen Helen Parkway Grade Separation Project (FWS-SB-08B0293-11F0415)] and directs flow into a narrow area on the east side of the creek. This berm increases the occurrence and degree of scour events within the facilitated channel, thus eliminating the establishment of suitable SBKR habitat. The directed flow also decreases the amount of suitable habitat on the west side of the creek due to the lack of scouring events, which results in an increase of mature vegetation making the area less suitable for SBKR over time (Davenport 2010).

Connectivity

SBKR habitat within the Project action area is constrained by other human-made barriers that preclude SBKR movement to adjacent upland refugia habitat. The upland habitat, which includes part of the Cajon Creek Habitat Conservation Management Area, consists of isolated patches of habitat fragmented by the Union Pacific and Burlington Northern Santa Fe railroad tracks, Glen Helen Parkway, and Cajon Boulevard. Upstream, the western bank is bounded by the Union Pacific and Burlington Northern Santa Fe railroads. Portions of the western bank support swaths of intermediate and mature scalebroom scrub. To the east is a steep, earthen bank, on which the historic Cajon Boulevard and I-15 are located. Culverts installed under I-15 allow for connectivity under the freeway; however, research to determine if SBKR would use

these passages does not exist. SBKR likely do not use these culverts because of the length and inaccessibility of the culvert due to a highly incised and head-cut stream channel.

Disturbance

Several factors contribute to the high level of habitat disturbance within the proposed Project area. Flood control activities cause a high degree of ongoing disturbance to the banks of Cajon Creek downstream of the proposed Project area. Extensive amounts of rock riprap and concrete are associated with the engineered levees and low-flow crossing at Glen Helen Parkway. In addition, the earthen flood control berm in the center channel north of Glen Helen Parkway is routinely reconstructed using heavy equipment each time the berm is degraded by a high-flow event [Biological opinion for Glen Helen Parkway grade separation project (FWS-SB-08B0293-11F0415)].

Cajon Creek and adjacent upland habitat are subject to degradation from OHV use, including within the Cajon Creek Habitat Conservation Management Area. The wash area between Institution Road to the south and the Glen Helen Parkway low-flow crossing is popular and easily accessible by ORV from either point. The upland habitat is also vulnerable to high levels of disturbance from dumping, industrial and commercial development, residential development, and excessive noise and traffic from the railroads and nearby highways. These types of disturbance can impact the SBKR either directly through mortality or indirectly due to loss of habitat for breeding, feeding, or sheltering.

Conservation

Since its establishment in 1998, the 1,265-ac Cajon Creek Habitat Conservation Management Area, including the 588.5-ac Cajon Creek Conservation Bank, have provided the largest, contiguous block of conserved and managed habitat available for SBKR within its current range (Service 2009, Vulcan Materials Company 2011). The conservation bank provides habitat of varying quality for the SBKR in a mixture of active floodplain and alluvial terraces in Cajon Creek that will be managed and protected into perpetuity for the benefit of the SBKR and other sensitive species (Service 1998).

Critical Habitat

The proposed Project is located within and adjacent to Cajon Creek in SBKR designated critical habitat Unit 2. The action area contains a total of 203.2 acres of critical habitat for the SBKR of which 146.4 acres support the PCEs necessary for SBKR breeding, feeding, and sheltering, although with various degrees of disturbance. The remaining 56.8 acres are considered unsuitable because these acres are either developed or do not contain PCEs to support SBKR. The results of the habitat assessment found an additional 6.21 ac of potentially suitable habitat outside critical habitat within the action area. As a result, 152.61 ac of potentially suitable habitat occurs within the action area.
EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species, together with the effects of other activities that are interrelated and interdependent with that action, which will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action, are later in time, and still reasonably certain to occur.

San Bernardino Kangaroo Rat

Direct Effects

Effects to SBKR with implementation of the proposed Project may occur in the form of direct mortality and harm through the loss of habitat. Habitat loss and temporary construction effects will be offset through the purchase of conservation credits, revegetation of temporary impact areas, and monitoring of construction activities as detailed in the "SBKR Conservation Measures" section of this document.

Habitat Destruction

Cumulatively, the proposed project includes 243.62 ac of permanent impacts and 22.97 ac of temporary impacts to developed and disturbed/ruderal areas, 103.26 ac of permanent impacts and 21.98 ac of temporary impacts to native and nonnative upland habitats, and 0.42 ac of permanent impacts and 0.67 ac of temporary impacts to wetland habitats; the total combined permanent and temporary impacts area is approximately 392.92 ac (Caltrans 2011b). The proposed reconnection of Cajon Boulevard and freeway realignment will result in permanent destruction of a total of 23.2 ac of upland SBKR habitat. The 23.2 ac of upland habitat that would be permanently lost contains 12 ac of suitable habitat and 11.2 ac of marginally suitable habitat. Within the creek, 0.02 ac of SBKR habitat would be permanently destroyed due to the installation of bridge footings and slope protection materials.

In addition, implementation of the proposed Project would result in temporary destruction of 6.1 ac of upland SBKR habitat (Table 2). Though we expect that few SBKR are burrowing in the active river wash area where temporary and permanent impacts occur, construction activities will prevent SBKR from foraging or moving through the creek bed to adjacent habitat during construction and after Project completion until the native vegetation reestablishes. Although the habitat is highly disturbed in places, and of moderate quality in others, SBKR may burrow within less suitable habitat within the permanent and temporary impact areas (upland and creek banks).

Death/Injury

SBKR within the 29.3 ac of habitat impacted (see "Environmental Baseline" section for estimated abundance) may be crushed or buried within their burrows as a result of Project-related vegetation removal, grading, hauling construction materials throughout the site, and movement of heavy equipment such as bulldozers, scrapers, and dump trucks.

To minimize the number of SBKR injured or killed by construction activities, the contractor will install exclusionary fencing around the Project site to prevent entry into the construction area from adjacent occupied habitat. Any SBKR found during fence installation, and subsequently found within the fenced area throughout the course of construction activities, will be captured and released in nearby suitable habitat by a Service-approved biologist. Trenching completed to install the exclusionary fence may directly injure and/or kill SBKR through crushing of the burrows by movement of personnel, vehicles, and equipment. Indirect injury and death may result from the effects of trapping and relocation in order to maintain the SBKR-free enclosed action area, as discussed below in the "Indirect Effects" section. Despite risks associated with the exclusionary fencing, trapping, and release of SBKR to adjacent habitat, we believe these activities will minimize the number of animals that otherwise would be killed by construction activities. Additionally, though captured SBKR may be injured or killed during live trapping or relocation, this impact rarely occurs during trapping conducted by biologists approved by our agency (CFWO Listing and Recovery Branch, internal database).

We expect that SBKR likely will not enter the construction area after initial clearing and grading due to high levels of disturbance and human activity. However, SBKR may be attracted to newly turned or stockpiled soils in the construction area or seek shelter in pipes or other materials left on site overnight. To decrease the possibility for SBKR to enter the site, exclusionary fencing will provide the primary barrier for SBKR movement into the proposed Project area. In addition, as addressed in conservation measure 4b, to minimize injury to these SBKR, all trenches, pipes, and stockpiled soils will be backfilled or covered and the permitted biological monitor will inspect these sites daily to remove any stranded SBKR from the construction area and release them into nearby suitable habitat.

Indirect Effects

In general, the proposed Project will have temporary and permanent indirect effects to the local SBKR population. Such effects may include post-construction stress to relocated SBKR, nonnative plant invasion or animal infestation along road edges, litter, fire, OHV use, and pollutants in rainfall runoff associated with vehicular use of the interstates and the Cajon Boulevard reconnection. Additional indirect effects may result from an increase in light, glare, and noise associated with vehicles and daytime and nighttime construction activities.

The proposed Project improvements will increase the 100-year floodplain elevation and reduce the freeboard from existing conditions, but by less than a foot (with the use of retaining walls as the roadway embankment). Fundamentally, a slight increase in the height of the 100-year Cajon

Creek flood level likely will occur immediately upstream from the new bridge columns. This effect will be localized and limited to the areas immediately surrounding the bridge columns. These effects are not considered substantial, and would not adversely affect natural floodplain values within Cajon Creek. We anticipate little to no measurable effect to SBKR.

The proposed Project will have potential negative effects to water quality. These effects come in the form of fluids in rainfall runoff from the increased traffic utilizing the proposed reconnection of Cajon Boulevard. Implementation of Caltrans' storm water pollution prevention plan (Caltrans' best management practice; conservation measure number 4) will eliminate or reduce effects from water quality issues on SBKR during and post-construction.

Trapping/Relocation

Adverse impacts to SBKR may result from trapping and release activities. After release, a small portion of animals may not survive displacement owing to increased vulnerability to predation; other individuals may suffer from reduced fitness resulting from competitive exclusion by SBKR or other small mammals now established within the release area. Physiological stress associated with the failure to reestablish quickly a new home range for obtaining food and shelter would result in reduced individual fitness, as manifested by reduced survival or reproduction after release. Individual SBKR inhabiting the adjacent habitat also may suffer from these competition-related stresses, including reduced reproduction, for some time after new animals are released into their territories. Utilization of biological monitors maintaining a section 10(a)(1)(A) permit for previous trapping and relocation projects following standardized protocols ensures proper handling of SBKR during capture and translocation. This expertise, in turn, minimizes the potential for harm to individual SBKR as the result of project related activities.

Development/Traffic/Noise

The completion of the Cajon Boulevard reconnection is anticipated to increase traffic volume and activity within the area (Caltrans 2011a). Large truck traffic may increase and the new infrastructure could accommodate more development and future use expansion. Access to and from the Glen Helen Pavilion will be significantly easier via the new Glen Helen Parkway bridge and likely will facilitate more events and patrons over time. The additional activity will also introduce a new source of ambient noise underneath the bridge and adjacent to the creek habitat from the reconnection of Cajon Boulevard. The proposed installation of the barrier wall will remove the eastern bank access points into Cajon Creek for OHV use. This barrier may reduce ongoing OHV use on the eastern upland terrace habitat and streambed, which is expected to benefit conservation of SBKR in the area. OHV use can result in crushing of animals and burrows, and destruction of vegetative cover and food sources (Service 2011b).

Increased fire frequency, as a result of increased vehicular utilization of Cajon Boulevard (lit cigarettes from passing vehicles, vehicle collisions, et al.), may result in type conversion of native habitat and an increase of nonnative plant species, which may degrade habitat for the SBKR. In addition, OHV use may type convert the vegetation by destroying native habitat and

sensitive species, and promoting nonnative plants. Future development and use of the roads may result in additional litter that may also attract scavengers and result in animal infestations, which may result in additional predators in the area that may prey on the SBKR. As the I-15/I-215 interchange is an existing transportation corridor, additional noise from traffic and the potential for increased fire frequency are not expected to rise significantly beyond baseline levels.

Artificial Lighting

SBKR depend on appropriate vegetation cover to provide shelter from predators while they forage at night. SBKR at the urban/wildland interface are vulnerable to predators (e.g., owls, raccoons, opossums, coyotes, skunks, domestic/feral cats) likely to be present in the Project vicinity. This risk may be amplified following Project completion due to increased light spill into the Cajon Creek habitat resulting from increased traffic and use of Cajon Boulevard. No direct light will spill from the proposed reconnection of Cajon Boulevard due to the conservation measures 8 and 22. Conservation measure 8 proposes no installations of street lighting along the new alignment and the installation of a 3-foot-high barrier to mitigate light from passing vehicles. Though a diffuse glare likely will be visible, increased artificial light associated with the proposed Cajon Boulevard reconnection will be minimized. Nonetheless, SBKR will be at a slightly elevated risk of predation in the open space of the Project area after construction. Until shrub cover is restored, predation likely will contribute to reduced reproduction and numbers due to persistent demographic effects (time lags) on local population dynamics (Huxel and Hastings 1999). Specific measures to be implemented for effects of lighting are addressed in the conservation measures section.

Human Access

Human trespass into Cajon Creek will be decreased as a result of the proposed Project. Today the channel is easily accessible to pedestrians and OHVs via an access road from the northern terminus of Cajon Boulevard located south of the interchange. Providing a reconnection of Cajon Boulevard will remove this access point. While trespass will not be completely blocked, trespass will be minimized at this access point on Cajon Creek and reduced from existing access levels. Decreased access to the creek will reduce future degradation of the habitat and limit injury to SBKR from human trespass.

Vegetation Restoration

Natural recovery of scalebroom scrub after flood events is complex and may take several years before early or pioneer vegetation is restored to pre-construction conditions. The time lag between vegetation disturbance and recolonization by SBKR will likely involve a temporary reduction of habitat value for at least 5 years (the length of time expected to implement restoration activities), even if revegetation is successful. Although kangaroo rat populations typically fluctuate in abundance in response to temporal variations in plant productivity, population growth rates are limited by a relatively small litter size (2-3 young) and long intervals between litters (Brown and Harney 1993, Goldingay et al. 1997, Service 2009). This time lag,

together with the estimated low numbers of SBKR in the Project area and other indirect effects, may reduce SBKR recolonization and population growth in the Project area immediately after construction.

Critical Habitat

This biological opinion does not rely on the regulatory definition of "destruction or adverse modification" of critical habitat at 50 CFR § 402.2. Instead, we are relying upon the statutory provisions of the Act to complete the following analysis with respect to critical habitat.

The proposed Project will result in permanent and temporary impacts to a total of 29.3 ac of SBKR designated critical habitat. Of the 29.3 ac impacted, permanent impacts account for 23.2 ac (Table 1). Of the 23.2 ac of permanent impacts, 12 ac contain all four PCEs necessary for breeding, feeding, and sheltering. Those being: (1) soil series of sand, loamy sand, sandy loam or loam; (2) scalebroom scrub and associated vegetation with moderately open canopy; (3) river, creek, stream, wash channels; alluvial fans; floodplains; benches and terraces; and (4) upland areas proximal to floodplain with suitable habitat. The remaining 11.2 ac of permanent impacts contain some assemblage of at least three of the above PCEs or all PCEs with some degree of disturbance. The loss of 23.2 ac out of 13,970 ac (0.17 percent) of critical habitat is not significant and not expected to reduce appreciably the ecological function and value of Unit 2, which is to provide largely intact live-in and refugia habitat in which individual SBKR of one of three remaining significant populations can forage, shelter, and reproduce over the long term.

Temporary impacts resulting from construction activities in the upland area immediately adjacent to the new infrastructure right-of-way will affect the remaining 6.1 ac of SBKR designated critical habitat. The impacted area supports PCEs 1, 2, and 4, which pertain to the appropriate soil type and moderately open scalebroom scrub in an upland area next to the floodplain. Caltrans proposes to minimize temporary impacts by revegetation of 6.1 ac of in-kind habitat types, which provide appropriate soils and scalebroom scrub within the creek and adjacent upland habitat. Not only is this temporal loss of habitat exceedingly small (0.04 percent of Unit 2), but the effects are effectively offset with the revegetation efforts. As a result, the temporary impacts will not adversely affect the ecological function or value of SBKR critical habitat. In fact, following the completion of the restoration work within temporary impact areas, the ecological function of critical habitat will be functionally improved as SBKR will have connectivity throughout the entire creek corridor and enhanced access to the adjacent upland areas, including the conservation bank habitat. The increased ecological functions and values of this critical habitat acreage should improve the long-term survival of SBKR in the area and increase SBKR densities over time.

Total Critical Habitat Effects

Implementation of the proposed Project will result in the permanent loss of 23.2 ac of designated critical habitat that support PCEs. This loss represents 0.17 percent of SBKR critical habitat within Unit 2 and less than 0.07 percent of the total designated critical habitat range-wide. To

offset these impacts, Caltrans will purchase 76 ac of SBKR credits within the Cajon Creek Conservation Bank. This habitat, managed for the benefit of SBKR, will maintain PCEs and the physical and biological features essential for the conservation of the SBKR within Cajon Creek and the adjacent uplands within the conservation bank. While the ecological function or value of critical habitat in the Project area will be insignificantly reduced by the improvements to the interchange and construction of a contiguous Cajon Boulevard, this function will be maintained within the overall Project vicinity by offsetting impacts through purchase of conservation bank credits. In addition, because of the proposed habitat restoration for temporary impacts within the Project area, the increased ecological functions and values of this critical habitat acreage should improve the long-term survival of SBKR in the area and the affected critical habitat should remain ecologically functional to serve its intended conservation role for the subspecies.

Effect on SBKR Recovery

According to section 2(b), the primary purposes of the Act are to provide a means whereby the ecosystems upon which listed species depend may be conserved, and to provide a program for the recovery of listed species. Under section 2(c), Congress established a policy requiring all Federal agencies to use their authorities in seeking to recover listed species in furtherance of the purposes of the Act. Consistent with these purposes and Congressional policy, sections 3(5), 4(f), 7(a)(1), the implementing regulations to section 7(a)(2) at 50 CFR § 402.02 and related preamble at 51 FR 19926 (June 3, 1986) generally require Federal agencies to further the survival and recovery of listed species in the use of their authorities. According to these mandates, our analysis below assesses (1) whether the proposed action adequately offsets its adverse effects to the environmental baselines for the SBKR, and (2) the extent to which the proposed action would cause "significant impairment of recovery efforts" or adversely affect the "species' chances for survival to the point that recovery is not attainable" (51 FR 19926).

While the Service has not developed a recovery plan for the SBKR, our conservation and recovery strategy is to conserve and manage as much remaining habitat as possible according to our 5-year review for the subspecies (Service 2009). In particular, the 5-year review contains recommendations for actions that should be implemented over the next 5 years to assist in SBKR recovery. The 5-year review also recommends that the Service work with partners to identify opportunities for habitat management, restoration, and enhancement, and to protect additional SBKR habitat. Habitat protection must include upland refugia to support SBKR during floods, and occupied floodplains and adjacent upland habitats should be conserved to ensure protection of populations large enough to remain viable in the long term (Service 2009). However, owing to the lack of adequate demographic data, we do not know how large a sustainable SBKR population must be or how large a habitat area is needed to support a viable population.

Overall, implementation of the proposed Project will result in a loss of suitable habitat for SBKR within the proposed Project area. As noted in the 5-year review, the SBKR faces a high degree of threat and has a low potential for recovery. However, we believe that the proposed action, which includes the acquisition and conservation of 76 acres at the Cajon Creek Conservation

Bank and other conservation measures, is not likely to cause significantly impair recovery efforts or adversely affect the SBKR's prospects for recovery.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. We have no information on plans for future State, tribal, local or private actions that are reasonably certain to occur in the action area.

CONCLUSION

After reviewing the current status of the SBKR, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is our biological opinion that the proposed action is not likely to jeopardize the continued existence of the SBKR or adversely modify SBKR critical habitat. Our conclusion is based on the following:

- 1. Overall, impacts are expected to occur to low/moderate quality SBKR habitat over a small portion of its range.
- 2. Injury/death to SBKR within the action area will be minimized through installation and maintenance of exclusionary fencing, and release of SBKR trapped within the fenced area to adjacent appropriate habitat.
- 3. Permanent loss of 23.2 ac of SBKR designated critical habitat supporting PCEs constitutes an insignificant loss of less than 0.17 percent within critical habitat Unit 2 and less than 0.07 percent of the total designated critical habitat for SBKR.
- 4. Temporary impacts to 6.1 ac of SBKR designated critical habitat supporting PCEs are effectively offset with the revegetation efforts and, as a result, such impacts will not adversely affect the ecological function or value of SBKR critical habitat.
- 5. Overall, 76 ac will be purchased by Caltrans from the Cajon Creek Conservation Bank to offset Project impacts.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential

behavioral patterns such as breeding, feeding, or sheltering. Harass is further defined as an intentional or negligent act or omission that creates the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and 7(o)(2) of the Act, such incidental take is not considered a prohibited taking under the Act, provided that such taking is in compliance with this incidental take statement.

The measures described below are non-discretionary, and must be undertaken by Caltrans so that they become binding conditions of any permit or grant documents issued to the permittee, as appropriate, for the exemption in section 7(0)(2) to apply. Caltrans has a continuing duty to regulate the activity covered by this incidental take statement. If Caltrans fails to assume and implement the terms and conditions of the incidental take statement or to make them enforceable terms of permit or grant documents, the protective coverage of section 7(0)(2) may lapse. To monitor the impact of the incidental take, Caltrans must report the progress of the action and its impact on the species to the PSFWO as specified in the incidental take statement [50 CFR § 402.14(i)(3)].

AMOUNT OR EXTENT OF TAKE

We expect incidental take of individual SBKR will be difficult to detect because SBKR burrow underground and project-related injuries or deaths may be masked by seasonal or annual fluctuations in numbers. Because we lack specific information on the actual numbers, distribution, or density of SBKR within the proposed Project footprint, we cannot quantify with certainty the amount of take that will occur. Finding dead or injured animals is difficult and rarely occurs, as individuals may be crushed or buried underground in burrows. While we cannot provide the precise number of SBKR that may be taken, we have estimated the number of adult SBKR in the proposed Project footprint to be between 29 and 145.

In addition to application of the McKernan study (1997) for providing a proxy on a population estimate, we also utilize the trapping study provided by Davenport (2010) to provide a means to estimate population abundance in the Project area. Using the information obtained from those surveys as a proxy, the number of SBKR supported within the project impact area is likely to be at the lower end of the range, or about 29 adult SBKR. However, as focused surveys have not been conducted, up to 145 adult SBKR may occur within the Project area based on McKernan's relative abundance index (1997). Using our best professional judgment, we have established the following take thresholds that, if exceeded, will trigger reinitiation of consultation:

1. Up to 145 adult SBKR and 219 immature SBKR (pups) may be injured or killed through accidental crushing of a SBKR burrow system as a result of this Project. However, we anticipate most SBKR will be found during pre-construction clearance surveys and released to adjacent habitat. Assuming a 1:1 sex ratio, and that all 73 adult females have litters of 3 young, up to 219 pups could be present within burrows. Further assuming that

trenching for installation of the exclusionary fencing will impact about 10 percent of the proposed Project footprint, we conservatively anticipate that about 10 percent of the resident adult SBKR population and 10 percent of pups, or 15 adult SBKR and 22 pups, could be impacted by backhoe operations to install the fence.

- 2. All SBKR within the proposed Project footprint may be taken in the form of trapping, capture, and collection in conjunction with the following activities, subject to the reasonable and prudent measures and terms and conditions below:
 - a. Initial removal of SBKR from the proposed Project footprint immediately before clearing and grading, and release to adjacent habitat;
 - b. Subsequent removal of any SBKR that re-enter the project footprint during the construction timeframe and release to adjacent habitat. After the initial removal of SBKR from within the proposed Project footprint, and with ongoing maintenance of the exclusionary fencing, we anticipate the number of SBKR that subsequently re-enter the construction area will be low. Because capture, collection, and release will be conducted by Service-approved and permitted biologists, we do not expect these activities to result in injury or death of any relocated SBKR, and we do not want to limit the ability of the Service-approved biologist to implement such measures to avoid and minimize the direct injury or death of SBKR that could occur in conjunction with the construction-related activities identified above.
 - c. If any SBKR are directly injured or killed as a result of capture and release activities, the take threshold will be exceeded.

If any of these take thresholds are reached, Caltrans, or their agents (i.e., the biological monitor) shall immediately contact the PSFWO to review the activities resulting in take and to determine if additional protective measures are required.

EFFECT OF TAKE

In the accompanying biological opinion, we have determined the level of anticipated take noted above would not result in an appreciable reduction in the number, distribution, or reproduction of the SBKR subspecies as a whole, and is thus not likely to result in jeopardy to the SBKR or in adverse modification of its designated critical habitat.

REASONABLE AND PRUDENT MEASURES

Caltrans shall implement the conservation measures included as part of the proposed action analyzed in this biological opinion to minimize the incidental take of SBKR. In addition to these conservation measures, we consider the following reasonable and prudent measures are necessary to minimize the effects of incidental take on the SBKR:

- 1. Caltrans shall monitor and report on compliance with the established take thresholds for the SBKR associated with the proposed action.
- 2. Caltrans shall monitor and report on compliance with, and the effectiveness of, the proposed action's conservation measures.

TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the Act, Caltrans shall comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

To implement reasonable and prudent measure number 1 (monitor and report on compliance with established SBKR take thresholds), Caltrans shall:

- 1.1 Implement the conservation measures as specified in the project description evaluated in this biological opinion. If the biological monitor detects impacts to SBKR from project-related activities in excess of that described in the above incidental take statement, Caltrans, their agents, or the biological monitor will contact the PSFWO immediately.
- 1.2 Ensure the biological monitor (and any project biologists who will trap or handle SBKR or their burrows) has a valid section 10(a)(1)(A) permit and has been pre-approved by PSFWO for work on this project. In addition to the conservation measures outlined in this biological opinion, when trapping, collecting, and releasing any SBKR found in the construction area or vicinity during the course of work, the biological monitor/biologist will implement the following measures:
 - a. Locate all traps in areas that best typify SBKR habitat, and place them in sufficient numbers to provide adequate coverage of suitable habitat. Mark all trap locations with flagging, reflective tape, or other technique that is visible under day and night conditions, and at a distance of at least 16.3 ft.
 - b. Use only 12-inch Sherman or wire-mesh live traps; 9-inch models may be used only if obtained before March 13, 1990. Ensure all trap models are modified to eliminate or substantially reduce the risk of SBKR injury (e.g., tail lacerations or excisions). Do not place any batting in the traps.
 - c. Sterilize traps previously used outside of San Bernardino County.
 - d. Conduct trapping only if the nightly low temperature is forecast to be 50 degrees Fahrenheit or above, and if no extended periods of wind, rain, fog, or other inclement weather will occur to make conditions unsuitable for trapping or will unduly imperil the lives of the animals.

- e. Adjust traps by hand each time they are placed, set, and baited, at a sensitivity level appropriate for capturing SBKR. Visually inspect all traps before closing, and close them by hand.
- f. Check all traps at least twice each night, once near midnight and again at sunrise.
- g. Identify all trap locations with a unique identification code on a log sheet, note the date and time each trap is checked, and periodically review the log sheet to ensure no traps are inadvertently missed. Field documentation shall be available to Service personnel upon request.
- h. Hold individual SBKR for no longer than 1 hour before releasing them, and relocate them as quickly as possible. Do not place the animal in a plastic bag; transfer it in a clean, structurally sound, breathable container with adequate ventilation. Do not at any time allow the animal to become stressed due to temperature extremes (either hot or cold).

To implement reasonable and prudent measure number 2 (monitor and report on compliance/ effectiveness of conservation measures), Caltrans shall:

- 2.1 Submit a monthly report to PSFWO covering results of the biological monitor's visits to the Project site during all phases of project construction, until construction is complete.
- 2.2 Submit annual reports on vegetation restoration activities and results as specified in the restoration plan for the temporary impact areas.
- 2.3 Ensure Service personnel have the right to access and inspect the Project site during project implementation (with prior notification from us) for compliance with the project description, conservation measures, and terms and conditions of this biological opinion.

DISPOSITION OF SICK, INJURED, OR DEAD SPECIMENS

Caltrans shall notify the PSFWO at the letterhead address above or telephone number below within 3 working days if any endangered or threatened species is found dead or injured as a direct or indirect result of project implementation. Notification must include the date, time, and location of the injured animal or carcass, and any other pertinent information. In addition, mark dead animals appropriately, photograph, and leave the carcass on site; transport injured animals to a qualified veterinarian; and contact the PSFWO regarding the final disposition of any treated animals that survive.

CONSERVATION RECOMMENDATIONS

Section 7(a) (1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information. We recommend SBKR protocol presence/absence surveys in years 3 and 5 of the vegetation restoration plan to gage the success of habitat restoration.

REINITIATION NOTICE

This concludes formal consultation regarding the Interstate 15/Interstate 215 Interchange Improvements Project as described in materials submitted to us. As provided in 50 CFR § 402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In all instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. For further information about this biological opinion, please contact John M. Taylor of the PSFWO at 760-322-2070, extension 218.

Sincerely,

Jim A. Bartel Field Supervisor

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NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

REQUEST FOR APPEAL						
Applica (POC: S	nt: California Department of Transportation District 8 Scott Quinnell)	File Number: SPL-200900460-VCC	Date: 12-10-13			
Attached is:			See Section below			
	INITIAL PROFFERED PERMIT (Standard Permi	А				
	PROFFERED PERMIT (Standard Permit or Letter of permission)		В			
	PERMIT DENIAL		С			
	APPROVED JURISDICTIONAL DETERMINAT	APPROVED JURISDICTIONAL DETERMINATION				
Х	PRELIMINARY JURISDICTIONAL DETERMIN	NATION	Е			
SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <u>http://www.usace.army.mil/cecw/pages/reg_materials.aspx</u> or Corps regulations at 33 CFR Part 331.						
A: IN	A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.					
• AC aut sig to a	• ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.					
• OE the Yo to a mo the dis	OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.					
B: PR	OFFERED PERMIT: You may accept or appeal the	e permit				
• AC aut sig to a	ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.					
• AP ma for dat	APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.					
C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.						
D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.						
• AC dat	ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.					
• AP	PEAL: If you disagree with the approved JD, you may appea	l the approved JD under the Corps of E	ngineers Administrative			

• APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the						
record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to						
clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However,						
you may provide additional information to clarify the location of information that is already in the administrative record.						
POINT OF CONTACT FOR QUESTIONS OR INFORMATION:						
If you have questions regarding this decision and/or the appeal	If you only have questions regarding the appeal process you may					
process you may contact:	also contact: Thomas J. Cavanaugh					
	Administrative Appeal Review Officer,					
	U.S. Army Corps of Engineers					
	South Pacific Division					
	1455 Market Street, 2052B San Francisco, California 04103 1300					
	Phone: (415) 503-6574 Fax: (415) 503-6646					
		Email: thomas.j.ca	vanaugh@usace.army.mil			
RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government						
consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day						
notice of any site investigation, and will have the opportunity to participate in all site investigations.						
	Date:		Telephone number:			
			*			
Signature of appellant or agent.						