



**US Army Corps
of Engineers®**

PUBLIC NOTICE

Proposed Reauthorization of Regional General Permit 63 for Repair and Protection Activities in Emergency Situations

LOS ANGELES DISTRICT

Public Notice/Application No.: 995007000-BAH

Comment Period: October 10, 2008 through October 28, 2008

Project Manager: Bruce A. Henderson (805) 585-2145 Bruce.A.Henderson@usace.army.mil

Location

In any jurisdictional waters of the United States throughout the Los Angeles District of the U.S. Army Corps of Engineers, including the coastal drainages of San Luis Obispo County, all of Santa Barbara County except the Carrizo Plain eastward, all of Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego and Imperial counties, the eastern slopes of Inyo County, the eastern slopes of Mono County to the Conway Summit above Mono Lake, the southern slopes of the Tehachapi Mountains in Kern County, and all of the State of Arizona. In the event of future modifications to District boundaries, this permit would also apply in any areas so revised.

Proposed Activity

To reauthorize Regional General Permit 63 (RGP63) for emergency actions to provide an expedited response to public agencies and private parties for necessary emergency repair and protection measures in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899, where there is a sudden, unexpected occurrence involving a clear and imminent threat to life or property (such as those situations that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately) demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. For more information, see page 3 of this notice.

The Corps of Engineers is soliciting comments from the public, Federal, state, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed action. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, or condition this RGP. To make this decision, comments are used to assess impacts on endangered and threatened species or species proposed for listing as endangered or threatened, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed action.

Interested parties are hereby notified that the Los Angeles District, U.S. Army Corps of Engineers is considering reauthorization of a RGP for the activity described herein. Interested parties are invited to provide their views on the proposed action, which will become a part of the record and will be considered in the decision. This permit will be issued or denied under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403). Comments should be mailed to:

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch - Ventura Field Office
ATTN: CESPL-RG-N-99-50070-BAH
2151 Alessandro Drive, Suite 110
Ventura, California 93001-3748

Or sent electronically to: Bruce.A.Henderson@usace.army.mil

Evaluation Factors

The decision whether to reauthorize this regional general permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed action on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, the evaluation of the activity will include application of the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

Preliminary Review of Selected Factors

EIS Determination – A preliminary determination has been made that an environmental impact statement is not required for the proposed action.

Water Quality – Section 401 requires that any applicant for a Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to utilization of any Section 404 permit. For the purpose of this proposed reauthorization of Regional General Permit 63, it will be the responsibility of the applicant to acquire Section 401 certification or waiver thereof from the appropriate agency prior to conducting their project unless the pertinent agency has already issued their certification. Such certification would be acquired from the California State Water Resources Control Board or the appropriate California Regional Water Quality Control Board for non-tribal land in the State of California; the Arizona Department of Environmental Quality office for non-tribal land in the State of Arizona; the Navajo Nation, Hopi Tribe, White Mountain Apache Tribe and Hualapai Indian Tribe for lands under their control in Arizona; the Paiute-Shoshone Indians of the Bishop Community and the Big Pine Band of Owens Valley (Paiute-Shoshone) for lands under their control in California; and U.S. Environmental Protection Agency for other tribal lands in Los Angeles District. Due to often limited time constraints with emergency actions, the applicant would not be required to provide prior proof to the Corps if such an action would result in undue harm to life or property. However, the applicant would be required to provide proof of Section 401 certification or waiver

upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the SWRCB, RWQCB, EPA or Indian Tribe, as appropriate, have received Section 401 certification or waiver.

Coastal Zone Management - For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that the applicant obtain concurrence from the California Coastal Commission (CCC) that the project is consistent with the State's Coastal Zone Management Plan (CZMP). Although projects may receive approval under an approved Local Coastal Plan, federal consistency requirements may not be satisfied; it is intended that corrective measures will comply with and will be conducted in a manner that is consistent with the CZMP. Due to often limited time constraints with emergency actions, the applicant would not be required to provide prior proof to the Corps if such an action would result in undue harm to life or property. However, the applicant would be required to provide proof of consistency upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the CCC have received such determinations or waivers.

Cultural Resources - Given that the majority of emergency activities involving flood events that potentially endanger life or property are located in what are now or what were in the past active floodplains, or are threatened by an active period of erosion, cultural resources that may be present have low potential for complete integrity. Historic disturbances probably occurred to such a degree that emergency corrective measures would not further endanger the resource. It is the position of the District Engineer that most cultural resources that may be impacted through actions authorized under this RGP would already be impacted through flood events, and that further damage through authorized actions would probably be considered not adverse. If sites do exist, those portions immediately adjacent to flood channels are often disturbed. In fact, bank stabilization may result in site protection, and therefore could provide a beneficial effect. The District Engineer hereby requests the State Historic Preservation Officer's input on the proposed action.

Endangered Species - Section 7 of the Endangered Species Act (ESA) of 1973, as amended, contains provisions for consultation in the event of emergencies that threaten human welfare or property. The Corps, U.S. Fish and Wildlife Service, and NOAA Fisheries (National Marine Fisheries Service) have expedited coordination among the agencies during emergency situations under informal procedures. In brief, if the Corps determines that emergency authorization is warranted, Corps staff contact, by telephone and/or facsimile transmission, specific personnel from the Service(s) to determine if listed species or designated critical habitat may be present and, if so, what actions could be taken during the emergency response to minimize the effects of the response on the listed species or designated critical habitat. These recommended measures would be provided by the Corps to the applicant seeking emergency authorization. As a requirement of the emergency authorization's conditions, the permittee would provide a written report to the Corps which describes the emergency, a justification of the emergency response, and an evaluation of the response to and the effects of the emergency on the listed species and their habitats. This information would be provided to the Corps at the conclusion of the emergency response. THIS REPORTING REQUIREMENT IS NOT DISCRETIONARY. The Corps has additional responsibilities to ensure compliance with the ESA. These reports are a critical part of such compliance. Failure to provide timely reports following responses to emergency situations where threatened or endangered species are involved would be considered non-compliance with permit conditions and would be considered a violation pursuant to regulations at 33 CFR Part 326.4(d). In addition to the above information, the Corps requires that permittees provide a map of the affected areas and photographs of the emergency area prior to (if possible) and after the emergency response.

At the conclusion of the emergency, the Corps and the Service(s) complete formal consultation on the effects of the emergency action on listed species or designated critical habitat, as required by

Section 7 of the ESA. The Corps and Service(s) also use these procedures to consider the effects of flood response actions on species that are proposed for listing under the ESA.

Public Hearing - Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

Request for Additional Information from other Regulatory and Resource Agencies - The Corps is requesting that each agency that wishes to review projects submitted for approval under this RGP provide the following information to ensure proper coordination is conducted efficiently:

1. Maps (preferably 8.5" x 11") indicating the geographical extent of the agency's authority or responsibility, or specific areas of particular interest;
2. A list of telephone and facsimile numbers where project information should be sent;
3. A list of personnel and phone numbers if specific persons are to be contacted for specific geographic areas or specific areas of responsibility; and
4. Agency street and mailing addresses.

Proposed Action

The Corps of Engineers Los Angeles District proposes to reauthorize Regional General Permit 63 for emergency actions to provide a rapid response to public agencies and private parties for emergency repair and protection measures in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899. **Emergency situations are described as sudden, unexpected occurrences involving a clear and imminent threat to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.**

Additional Project Information

Existing emergency procedures in Corps regulations at 33 CFR Part 325.2(e)(4) require the Corps to determine if a particular situation constitutes an emergency as defined above. The District Engineer would explain the circumstances and recommend special procedures to the Division Engineer who would then instruct the District Engineer as to further processing of the application. Reasonable efforts would be made to receive comments from interested Federal, state, and local agencies and the affected public. These measures are usually accomplished within 24 hours of receiving the request. Notice of any special procedures authorized and their rationale would be appropriately published as soon as practicable, or other appropriate procedures as called for in regulations would be conducted after-the-fact. Further coordination would be conducted with other agency personnel unless that agency has already indicated to the Corps that notification for a particular class of projects or projects within particular geographic areas was unnecessary. Because emergencies due to flooding events, or others exacerbated by other environmental conditions such as fires, typically occur in several areas at once and are often not isolated, infrequent events, appropriately responding to multiple requests in an often short time frame severely taxes Regulatory personnel to the detriment of human safety and in many cases the natural environment.

The proposed RGP would be limited to sudden, unexpected situations that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. Examples of work anticipated for emergency authorization

under this RGP include debris and sediment removal, placement of riprap for bank stabilization or bridge pier or abutment reinforcement, culvert cleanout, construction of temporary earthen berms for flow control, or minimal vegetation removal to allow routing of flow within the existing watercourse. This list is not inclusive and other activities may be authorized if the Corps determines they are appropriate for the situation. It is not anticipated that this RGP would be used to authorize channelization of watercourses.

Since its reauthorization on October 31, 2003, RGP 63 has been utilized to authorize approximately 145 actions determined to meet the terms and conditions of the permit. Approximately 90 of these actions were in Fiscal Year 2005, a year with substantially greater than normal rainfall. Actions authorized included protection of bridges or drop structures; replacement of collapsed bridges or culvert repairs; repair of slopes supporting roadways; various water and sewer pipeline repair and protection projects; protection of existing communications and power transmission line poles and towers; bank erosion repair; various other road protection projects subject to high flows or high surf; cleanup operations for a ferrous chloride spill; installation of debris racks to intercept debris flows on burned watersheds; removal of accumulated sediments to restore capacity in retention basins and conveyance of channels; discharge fills to allow access by firefighting equipment during a wildfire; remove or repair deteriorated pier pilings; and remove exposed rebar within the near-shore marine environment. Most of these actions resulted in work in waters of the United States of substantially less than one acre, but a few bank stabilization projects extended several hundred feet along the bank to effect the response. In most cases, mitigation was not warranted because high flows already exacted damage to the streamcourse that would reestablish through normal processes in the absence of any repairs. Most of the actions occurred during periods of high flows or high surf conditions, primarily winter wet conditions in coastal California, which often are exacerbated by wildfires of the previous summer and fall, and heavy rainfall events in summer in Arizona. Compliance with permit terms and conditions was high.

The proposed RGP is generally not intended to address maintenance of channels or other projects in anticipation of a *potential* need. Other procedures are currently in place to address such concerns, or the project proponent may apply for other Department of the Army authorization such as standard permits or other general permits already established.

In addition, pursuant to 33 CFR Part 323.4(a)(2), the discharge of dredged or fill material that may result from the following activities is not prohibited by or otherwise subject to regulation under Section 404:

“Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.” In addition, regulations at 33 CFR Part 323.4(c) state “[a]ny discharge of dredged or fill material into waters of the United States incidental to. . .” such maintenance activities. . . “must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.” Further, note that activities conducted under this exemption may still be constrained by regulations of one or more other agencies unless the agency or agencies have established separate emergency or exemption procedures.

The proposed RGP does not in any way infringe upon the responsibilities of any other Federal, state or local agency that may have other jurisdictions that pertain to a particular action, nor does it obviate the need to acquire any other such approvals from other Federal, state or local agencies.

The need for mitigation for impacts to aquatic resources will be determined on a case-by-case basis. The Corps will strive to be fair and judicious in any such determination. We recognize that many of the project areas that may be considered for authorization under this RGP may already be extremely affected by high storm flows and imposition of mitigation in such situations may be unwarranted. However, this may not be true for all actions authorized under this RGP. If this is determined to be true of a particular situation, the Corps, after discussion with other resource agencies and the permittee, will determine appropriate mitigation to replace impacted functions and values resulting from a specific project or group of projects within a defined geographic area.

Failure to comply with all applicable permit conditions or to demonstrate a "good faith" effort to comply with permit conditions prior to initiating the project will be considered a violation of Section 404 of the Clean Water Act. Resolution of enforcement actions may include restoration to pre-project conditions, or after-the-fact authorization of a project after achieving compliance with applicable permit terms and conditions, including those imposed by the California State Water Resources Control Board or the appropriate California Regional Water Quality Control Board for non-tribal land in the State of California; the Arizona Department of Environmental Quality office for non-tribal land in the State of Arizona; the Navajo Nation, Hopi Tribe, White Mountain Apache Tribe and Hualapai Indian Tribe for lands under their control in Arizona; the Paiute-Shoshone Indians of the Bishop Community and the Big Pine Band of Owens Valley (Paiute-Shoshone) for lands under their control in California; and U.S. Environmental Protection Agency for other tribal lands in Los Angeles District pursuant to Section 401 of the Clean Water Act, and/or other mitigation as determined to be appropriate. For situations where the District Engineer determines the unauthorized activity to be willful, repeated, flagrant, or of substantial impact, he may recommend criminal or civil actions to obtain penalties and refer the case to the local U.S. Attorney and/or to EPA.

Proposed General Conditions

At this time, the Corps is proposing that all actions conducted under this RGP be subject to the following general conditions, which are repeated almost verbatim (Condition 1 being the notable exception), from the current RGP 63 permit language:

1. **Time Period Covered:** This Regional General Permit shall expire on **October 31, 2013**. Reauthorizations of this permit will likely be favorably considered as compliance with the reporting requirement on the part of the permittees is demonstrated.
2. **Notification/Communication:**
 - a. **Timing:** The applicant must notify the District Engineer (DE) as early as possible and shall not begin the activity until notified by the DE that the activity may proceed under this RGP with any site-specific special conditions imposed by the District or Division Engineer. This office recognizes there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed from the DE. It is not the intention of this office to imply that one allows such threat to life or property result in actual loss. If one proceeds without such notice from the DE, one must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means.
 - b. **Contents of Notification:** The notification should be in writing and include the following information:

- (1) The name, address and telephone number of the applicant and the designated point of contact and their address and telephone number;
 - (2) The location of the proposed project in detail, including the identification of the waterbody (this should include a copy of a U.S. Geologic Survey [USGS] topographic map, Thomas Guide map, or hand-drawn location map with suitable landmarks; the map should have sufficient detail to clearly indicate the location and extent of the project, as well as detailed directions to the site);
 - (3) A brief, but clear, description of the imminent threat to life or property and the proposed project's purpose and need;
 - (4) A description of methods anticipated to be used to rectify the situation ("field engineering" is not an adequate description. It is presumed if one mobilizes matériel and a particular piece of equipment to a site, then one probably has a fairly well defined intention for that matériel and equipment. Plans, drawings or sketches showing the area to be impacted, cross sections showing details of construction, and a short narrative describing how the work is to be completed should be provided as a minimum); and
 - (5) A brief description of the project area's existing conditions and anticipated impacts resulting from the proposed work (amount of dredge or fill material, removal of significant vegetation, loss of habitat, etc.).
- c. **Form of Notification:** The standard Application for Department of the Army Permit (Form ENG 4345), available from the District's Website at (<http://www.spl.usace.army.mil/regulatory/>), may be used as the notification and must include all of the information required in General Condition 2.b. Items (1)-(5) above. A letter or facsimile transmission may also be used. In certain situations where there is an imminent threat to life or property and the applicant is unable to make direct contact with this office, a message shall be left on voice mail or an e-mail message shall be sent. Again, those messages should include the information identified in General Condition 2.b. Items (1)-(5) above. Formal written notification should be sent to this office as soon as possible.
- d. **Agency Coordination:** Upon receipt of a notification, the DE will immediately provide (i.e., by facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), the California Department of Fish and Game (CDFG), the California State Water Resources Control Board (SWRCB), the Arizona Department of Environmental Quality, the appropriate Regional Water Quality Control Board (RWQCB), the California Coastal Commission (CCC), the State Historic Preservation Office (SHPO), and the Monterey Bay National Marine Sanctuary, as appropriate. These agencies will be requested to telephone or facsimile transmit to the DE (c/o the Regulatory Branch Project Manager), as expeditiously as possible, a notice indicating whether or not they intend to provide substantive, site-specific comments regarding the proposed project. If notified that comments will be provided by an agency, the DE will allow them to provide their comments in a short timeframe determined by this office on a case-by-case basis to not likely result in loss of life or property before making a decision on the proposed project.

The DE will fully consider any comments from Federal or State agencies received within the specified timeframe concerning the proposed activity's compliance with the conditions of their authority and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The DE will indicate the results of that consideration in the administrative record associated with the notification, but will not provide a formal response to the agency comments.

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

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, or enhancing similar functions and values; or using bioremediation techniques in conjunction with other methods to offset project impacts. To the extent appropriate, applicants should consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds, "in-lieu" fees to organizations such as The Nature Conservancy or State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

- f. **District Engineer's Decision:** In reviewing the notification for the proposed activity, the DE will determine whether the activity authorized by this RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.e. above.) the applicant has included in the proposal in determining whether the net adverse environmental effects for the proposed work are minimal. If the DE determines the activity complies with the terms and conditions of this RGP and the adverse effects are minimal, this office will notify the applicant and include any situation-specific conditions deemed necessary.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan also. However, the DE may approve the mitigation proposal after the proposal for the work is approved and project work has commenced.

If the DE determines the adverse effects of the proposed work are more than minimal, the DE will notify the applicant either:

- (1) That the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit, or
- (2) That the project is authorized under this RGP subject to the applicant submitting a mitigation proposal that would reduce the adverse effects to the minimal level.

3. **Authorized Work:** Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction does not result in significantly increased impacts to aquatic resources and logistical concerns indicate such

reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment. Moderate upgrading would be considered if the applicant wishes to use bioremediation or other environmentally sensitive solutions. For example, it may be determined that reconstruction of a bridge crossing or a roadway damaged by flood flows is a more appropriate course of action than temporarily shoring up the facility to allow an immediate return of its use. When continued public safety is an issue, such reconstruction will remain a viable option for consideration for authorization under this RGP. The RGP may NOT be used to upgrade an existing structure to current standards when that activity would result in additional adverse effects on aquatic resources, except in very unusual and limited circumstances. Such upgrade projects are considered separate activities for which other forms of authorization will be required.

4. **Start Work Date:** Any projects authorized under this RGP generally must be initiated within fourteen (14) days of receiving authorization to proceed. Projects that cannot be initiated within this immediate timeframe may not meet the definition of an “emergency.” If the project start time is delayed for more than two weeks, the permittee must demonstrate why the imminent threat of impending loss is not diminished in magnitude or immediacy.

In some circumstances, the RGP could be used to authorize projects as they become discovered, such as with the receding flows of a river some time after a flood event occurred but which likely was the immediate cause of identified damage. However, this RGP cannot be used to authorize long-planned-for projects, nor shall it be used for projects that are likely to have been known to the applicant but for which an application was not submitted in a timely manner. That is, the applicant's failure to act in a timely manner prior to the storm season will not obligate the Corps or other agencies to authorize work because of an “emergency” situation unless we agree that the situation qualifies as an emergency as defined on pages 1 and 4.

5. **Access to Site:** You must allow representatives from this office and other agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.
6. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
7. **Water Quality Certification:** The California State Water Resources Control Board and the Arizona Department of Environmental Quality both issued conditional certifications for the current RGP 63. These agencies are anticipated to issue conditions for the proposed 2008 reissuance of the RGP. Permittees in the State of California within the Los Angeles District boundaries must comply with the conditions specified in that certification as special conditions to this RGP. Conditions of Certification for activities specified within RGP 63 from the States of California and Arizona are repeated here verbatim [Note that these State agencies have the discretion to determine whether these conditions still apply or to modify them unilaterally]:

For non-tribal lands in Los Angeles District in California:

Within those activities specified within RGP 63, certification is limited to the following:

[1.] This certification is limited to emergency actions that meet the CEQA definition of “emergency.” Under CEQA, and “emergency is defined to be: “a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. Emergency includes such occurrences as fire, flood, earthquake, or other soil or geologic movements, as well

as such occurrences as riot, accident, or sabotage.” (California Public Resources Code section 21060.3)

[2.] Emergency projects exempt from the requirements of CEQA as defined by the State CEQA Guidelines § 15269 as:

- (a) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with section 8550 of the Government Code.
- (b) Emergency repairs to publicly or privately owned service facilities necessary to maintain service essential to the public health, safety, or welfare.
- (c) Specific actions necessary to prevent or mitigate an emergency. This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term.
- (d) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore an existing highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, provided that the project is within the existing right of way of that highway and is initiated within one year of the damage occurring. This does not apply to highways designated as official State scenic highways, nor any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.
- (e) Seismic work on highways and bridges pursuant to section 180.2 of the Streets and Highways Code, section 180 et seq.

[3]. Permitted activities shall not cause a violation of any applicable water quality standards, including designated beneficial uses for receiving waters adopted by a Regional Water Quality Control Board (RWQCB) or the State Water Resources Control Board (SWRCB).

[4]. Prospective permittees shall send a copy of any Final Reports (required under District General Condition No. 26) to the appropriate RWQCB(s) at the address(es) included in the Enclosure and the SWRCB (Certification Unit, Division of Water Quality, State Water Resources Control Board, ATTN: Emergency Assistance Program, P.O. Box 944213, Sacramento, CA 94244-2130).

[5]. Activities permitted shall not result in the taking of any State endangered species, threatened species, or candidate species or the habitat of such a species unless the activity is authorized by the Department of Fish and Game (DFG) pursuant to a permit, memorandum of understanding, or other document or program in accordance with the DFG Code sections 2081, 2081.1, or 2086 conditions or mitigation requirements which the DFG District imposes.

[6]. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).

[7]. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

For non-tribal lands in Arizona:

1. Notification

The prospective permittee must notify ADEQ in writing within 48 hours of initiating repair and/or protection activities. Notifications may be faxed, addressed to:

Arizona Department of Environmental Quality
Federal Permits and Program Development Unit
Attn: Andy Cajero-Travers
3033 North Central Avenue, M0401A
Phoenix, Arizona 85012
Fax (602) 207-4674

2. *Contents of Notification*

- a. *Name, address and telephone numbers of the prospective permittee, and appropriate point of contact, address and phone number.*
- b. *Location of the proposed project in detail (include a copy of a USGS topo map, Thomas Guide map, hand-drawn location map with suitable landmarks, etc.), the map should clearly indicate the location and extent of the project, as well as directions to the site.*
- c. *Brief and clear description of the project's purpose and need.*
- d. *Description of anticipated methods to be used to rectify the situation.*

3. *General Conditions*

A Regional General Permit and CWA 401 Certification do not obviate the need to obtain any other permits, certifications and licenses that may be required by federal, state or local authorities.

4. *Erosion Protection Measures*

- a. *Erosion control and/or other bank protection features (silt fences, straw bales, mulching, or rock rip rap) shall be used to minimize erosion and soil loss, where appropriate. Denuded areas shall be revegetated as soon as possible with native plants and seed.*
- b. *Upon completion of emergency activities, the work area shall restore or maintain the stability of upstream and downstream segments of water of the U.S. with respect to erosion and sedimentation.*

5. *Chemicals and Materials Handling*

- a. *The permittee shall use designated areas for chemical (herbicide) and petroleum storage, solid waste containment, and equipment washing. These designated areas shall all be located outside of jurisdictional waters.*
- b. *The permittee shall have a spill containment plan and an equipment maintenance plan available on site at all times.*

6. *Contaminated Soils and Materials*

The permittee is responsible for ensuring construction material and/or fill, placed within the ordinary high water mark, be free from substance that can cause or contribute to pollution of a surface water.

8. **Coastal Zone Management:** For those projects affecting uses or resources of the coastal zone, the Federal Coastal Zone Management Act (CZMA) requires that the permittee obtain concurrence from the California Coastal Commission that the project is consistent with the State's certified Coastal Management Program or that consistency is waived. For activities within the coastal zone that require a coastal development permit from the commission, the permittees should contact the Commission office to request an emergency permit, and no additional federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local coastal program, the permittee should contact the appropriate local government. Because a coastal permit issued by a local agency does not satisfy the federal consistency requirements of the CZMA, the permittee should also contact James Raives, (415) 904-5292, Federal Consistency Coordinator for the Commission to determine the appropriate emergency procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or

resources, or for any activity conducted by a federal agency, the permittee should contact James Raives, (415) 904-5292, Federal Consistency Coordinator for the Commission to determine the appropriate emergency procedures.

Due to the often limited time constraints with emergency actions, the Corps would not require the permittee to provide proof of review by the Commission, if such an action would result in undue harm to life or property. However, the Corps will require the permittee to provide evidence of consistency upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the Commission, have received such determinations or waivers.

Disposal of flood-delivered sediments into the marine environment are not authorized under RGP 63 due to potential adverse effects to the habitat and water quality. If such activity is proposed, it shall be addressed through other permitting procedures.

9. **Endangered Species:** No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat as identified under the Federal Endangered Species Act (ESA).

Authorization of an activity by the RGP does NOT exempt a permittee from the prohibition of "take" of a listed threatened or endangered species, as defined under the Federal ESA. Applicants shall notify the DE if any listed or proposed species or designated or proposed critical habitat might be affected by or is in the vicinity of the project. The applicant shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and the activity is authorized. In all circumstances, the applicant should, if aware of the potential presence of listed or proposed species or designated or proposed critical habitat, make considerable efforts to contact this office and/or personnel at FWS and/or NMFS. In some cases the FWS and NMFS may be able to make *a priori* determinations that listed species are not present.

Information on the location of listed or proposed threatened or endangered species and their designated or proposed critical habitat can be obtained directly from the FWS or NMFS or from their websites at:

USFWS – <http://www.fws.gov/endangered>

NMFS – <http://www.nmfs.noaa.gov/pr/species/>

To the extent possible, this office will implement any programmatic biological opinions and incidental take statements that may be available. Any terms and conditions inherent to these documents will become conditions on a particular applicant's utilization of this RGP.

In many cases, information on the presence of listed or proposed species at a specific project site may not be available. In such cases, the nature of the emergency may prevent an applicant from conducting the surveys necessary to make a reasonable determination. Therefore, the applicant may assume the species is present, if suitable habitat occurs onsite, and request that the emergency provisions of Section 7 of the ESA be implemented.

10. **Historic Properties:** Impacts to historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources are impacted because of actions authorized under this RGP, you shall provide a full report of the action and the impacts incurred by the resource to this office within 45 days after completion of the action. The Corps, the SHPO and/or the Advisory Council for Historic Preservation will then jointly make a determination as to appropriate procedures and/or mitigation to be addressed.

If you discover any previously unknown historic or archeological remains while

accomplishing the activity authorized by this RGP, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

11. **Regional and Case-by-Case Conditions:** The activity must comply with any regional conditions added by the Division Engineer (See CFR Part 330.4(e).) and with any case-specific conditions added by this office.
12. **Erosion and Siltation Controls:** Every effort must be made to ensure any material dredged or excavated from Waters of the United States is not likely to be washed back into any Waters of the United States. When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or straw (or hay) bales or other means designed to minimize turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.
13. **Equipment:** When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on construction mats, or other measures must be taken to minimize soil disturbance, such as use of wide-treaded equipment or floatation devices.
14. **Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act (CWA))
15. **Wild and Scenic Rivers:** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while that river is in an official study status, unless the appropriate Federal agency with direct management responsibility for that river has determined in writing that the proposed activity would not adversely effect 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 in the area (e.g., FWS, National Park Service, USDA Forest Service, Bureau of Land Management). Currently the only designated Wild and Scenic River systems in the Los Angeles District are the main stem of Sespe Creek from its confluence with Rock Creek and Howard Creek downstream to where it leaves Section 26, T5N, R20W; the Sisquoc River from its origin to the Los Padres National Forest boundary in California; and the Verde River from the section line between Sections 26 and 27, T13N, R5E, Gila-Salt River meridian to the confluence of Red Creek with the Verde River within Section 34, T9 1/2N, R6E .
16. **Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Culverts placed in streams must be installed to maintain normal flow conditions, such as by use of bottomless arch culverts.
17. **Shellfish Production:** No discharge of dredged or fill material may occur in areas of

concentrated natural or commercial shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by the Corps' Nationwide Permit 4.

18. **Spawning Areas:** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
19. **Waterfowl Breeding Areas:** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
20. **Navigation:** No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. You understand and agree 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, you 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.
21. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.
22. **Obstruction of High Flows:** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing river plain (unless the primary purpose of the fill is to impound waters).
23. **Adverse Effects from Impoundments:** If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
24. **Proper Maintenance:** Any structure or fill authorized by this RGP shall be maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to private or public property. In such situations, corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective action, or appropriate mitigation as determined through coordination with you and the appropriate Federal and State agencies. Temporary levees constructed to control flows shall not be maintained beyond the current storm season (i.e., maintenance of temporary levees is not authorized after the storm season in which the need arose).
25. **Removal of Temporary Fills:** Temporary fills shall be removed in their entirety and the affected areas returned to their pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such a temporary fill is considered likely to naturally re-establish native riparian or wetland vegetation to a level similar to pre-project or pre-event conditions within two years, you will not be required to do so.
26. **Reports:** You shall provide a written report to this office as soon as practicable (within 45 days of completing the project) after completion of any action conducted under this RGP.

PROVIDING THIS REPORT IS MANDATORY because these reports enable us to track the use of this RGP to verify that the minimal effects determination is being met as required by Section 404(e) of the CWA. Failure to provide timely reports following responses to emergencies is non-compliance with the General Conditions of this RGP and would be considered a violation (33 CFR Part 326.4(d)).

At a minimum the Report shall include the following:

- I. The name, address, and telephone number of:
 - a. the applicant; and
 - b. the applicant's agent (if appropriate).
- II. Full description of the activity including:
 - a. description of the emergency and the potential for loss of life or property;
 - b. purpose of the activity;
 - c. final goal of the entire activity;
 - d. location (e.g., latitude/longitude or UTM coordinates; section/township/range on appropriate USGS topographic map; Thomas Guide map, or other source to accurately portray project location);
 - e. size and description of project area (include maps or drawings showing the areal and lineal extent of the project, and pre- and post-construction photographs);
 - f. quantities and types of materials used;
 - g. information on receiving waterbody impacted including:
 - (1) name of waterbody;
 - (2) type of receiving waterbody (e.g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland type, etc.);
 - (3) temporary/permanent adverse impact(s) in acres/cubic yards/linear feet;
 - (4) compensatory mitigation in acres/cubic yards/linear feet;
 - (5) other mitigation steps (to avoid, minimize, compensate); and
 - h. information on federally listed or proposed endangered species or designated or proposed critical habitat (notification must be provided to FWS and/or NMFS as appropriate) including:
 - (1) temporary/permanent adverse impacts;
 - (2) compensatory mitigation; and
 - (3) other mitigation to regarding avoidance and minimization of, and compensation for project impacts.

If there are a substantial number of projects and this requirement would consume large quantities of your staff resources, you may, as an option, submit a comprehensive report providing all of the information required in the notification condition (Item 2.b.) above. The report shall include a description of the emergency and the potential for loss of life or property, maps to the project location, maps or drawings showing the areal and lineal extent of the project, quantities of material used, and pre- and post-construction photographs. If the project was conducted in an area known to harbor Federally listed or proposed endangered species or designated or proposed critical habitat, you must include a list of measures taken to minimize harm to the species and/or habitat and provide a copy of the report to the FWS and/or the NMFS, as appropriate. If mitigation was determined to be appropriate for a specific project or group of projects, a mitigation proposal must be submitted to this office for review and approval. We will forward the report to the appropriate agencies for their review and comment.

For additional information regarding this proposed RGP, please call Bruce A. Henderson of my staff at (805) 585-2145. This public notice is issued by the Chief, Regulatory Branch.