

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

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT
Regional General Permit No. 41
Removal of Invasive, Exotic Plants**

Permittee: This Regional General Permit applies to anyone in the California portion of the Los Angeles District of the Corps of Engineers as shown on the attached map (Los Angeles, Orange, Riverside, San Diego, San Bernardino, Imperial, Ventura, Santa Barbara, Mono, Inyo, and San Luis Obispo counties).

Permit Number: 200301094-JMB

Issuing Office: Los Angeles District

Effective Date: December 10, 2003

Expiration Date: December 10, 2008

The District Engineer, Los Angeles District U.S. Army Corps of Engineers hereby issues Regional General Permit (RGP) No. 41, which authorizes the mechanized removal of invasive, exotic plants (exotics) from waters of the U.S including wetlands.

This permit is being issued under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and is in accordance with provisions of the Regulatory Programs of the Corps of Engineers (33 CFR Part 322.2(f) for activities which are substantially similar in nature, which cause only minimal individual and cumulative environmental impacts. This RGP applies to anyone wishing to remove exotics in a manner which is consistent with the terms and conditions of this RGP.

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

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

This regional general permit (RGP) authorizes mechanized removal of the following invasive, exotic plants from waters of the U.S including wetlands, within the California portion of the Los Angeles District of the Corps of Engineers, for the purposes of habitat recovery (see attached map):

giant reed - *Arundo donax*
 salt cedar - *Tamarix spp.*
 tree tobacco - *Nicotiana glauca*
 castor bean - *Ricinus communis*
 Russian thistle - *Salsola tragus*
 Italian thistle - *Carduus pycnocephalus*
 Milk thistle - *Silybum marianum*
 Tocalote - *Centaurea melitensis*
 star thistle - *Centaurea solstitialis*
 Bristly Ox-Tongue - *Picris echioides*
 artichoke thistle - *Cynara cardunculus*
 thistle - *Cirsium arvense and vulgare only*
 pampas grass - *Cortaderia selloana*
 fountain grass - *Pennisetum setaceum*
 cape ivy - *Delaireia odorata* (formerly called German Ivy, *Senecio mikanoides*)
 alligator weed - *Alternanthera philoxeroides*
 perennial pepperweed - *Lepidium latifolium*
 white top, hoary cress - *Cardaria draba*
 Russian olive - *Elaeagnus angustifolia*
 myoporum - *Myoporum laetum*
 eucalyptus - *Eucalyptus spp.*
 evergreen ash - *Fraxinus udhei*
 bottle brush - *Callistemon citrinus*
 California (Peruvian) pepper - *Schinus molle*
 carrotwood - *Cupaniopsis anacardioides*
 Chinese elm - *Ulmus parvifolia*
 oleander - *Nerium oleander*
 Mexican fan palm - *Washingtonia robusta*
 Canary Island date palm - *Phoenix canariensis*
 Geraldton carnation weed - *Euphorbia terracina*
 Edible fig (*Ficus carica*)
 blue crown passion flower (*passiflora caerulea*)
 pecan (*Carya illinoensis*)
 olive (*Olea europea*)

For the purposes of this RGP, areas are classified as "fully infested stands" if they contain 80% or greater relative or canopy cover of exotics. Areas that contain between 50% and 80% relative or canopy cover of exotics are classified as "partially infested stands". This RGP is not applicable in areas that contain less than 50% relative or canopy cover of exotics. For a parcel to be considered a "stand" it must be at least 0.5 acre in size or completely isolated from contiguous native riparian habitat. Following flood, fire, disease, or other natural event which scours or destroys an area, the area shall be classified based on the areal coverage of exotics immediately prior to the natural disturbance.

The following activities are authorized on a year-round basis in "fully infested stands":

1. Broadcast foliar application of herbicides which are approved by the U.S. Environmental Protection Agency (USEPA) for use in wetlands and by the California Department of Pesticide Regulation for use within the State. Application of herbicides in any area supporting threatened and/or endangered species should be consistent with the USEPA's Office of Pesticide Programs, Endangered Species Protection Program county bulletins. To reduce potential impacts to migratory birds using parcels adjacent to "fully infested stands", no aircraft (e.g. helicopter) based application may occur between March 15 and September 15.

2. Mechanized landclearing, mechanical mulching (i.e. Hydro-Ax), mechanized removal, chipping, and excavation of living or dead invasive plants and any associated debris. Native riparian vegetation should be avoided to the maximum extent practicable. Any native riparian trees 3-inches DBH (diameter at breast height) or larger which are removed from fully infested stands, must be replaced on-site at a 2:1 ratio.

3. Stockpiling of invasive plants and associated debris which have been excavated, except during the flood season (November 15- April 15), when stockpiling is prohibited. Stockpiles must be placed in previously disturbed or degraded areas, cannot be placed within 50 feet of flowing water, must be placed in such a manner that it is not dispersed by currents or other forces, and must be disposed of within 3 months of initial creation of the stockpile by either removal to an appropriate upland disposal area or by burning. Prior to upland disposal or burning of any stockpiles or debris, all appropriate state and local permits must be obtained. To reduce potential impacts to migratory birds using parcels adjacent to "fully infested stands", burning cannot occur within 1,000 feet of native riparian or wetland habitat areas between March 15 and September 15.

4. Construction of access roads provided that the width and length of the road are the minimum necessary for access to the exotics removal site. Native woody riparian vegetation in the access road alignment must be flagged and avoided. Placement of fill, such as decomposed granite, gravel, or concrete, on newly constructed or existing access roads within waters of the U.S. is not authorized under this RGP. All appropriate Best Management Practices must be used to preclude increased turbidity and to ensure that road construction does not restrict or impede the passage of normal or expected high flows or cause the relocation of the water. Access roads which are no longer necessary for site monitoring, restoration, maintenance, or treatment, or abandoned access roads must be restored with appropriate native riparian or wetland vegetation.

The following activities are authorized on a seasonal basis, between September 16 and March 14, in "partially infested stands":

1. Plant specific application of herbicides which are currently approved by the USEPA for use in wetlands. Application of herbicides in any area supporting threatened and/or endangered species should be consistent with the USEPA's Office of Pesticide Programs, Endangered Species Protection Program county bulletins. Plant specific techniques may consist of application via a backpack sprayer and/or the cut/paint technique (cutting of the plant, followed by immediate direct application of herbicide to the freshly cut stump). No herbicide may be applied to native riparian vegetation.

2. Mechanized landclearing, mechanical mulching (i.e. Hydro-Ax), mechanized removal, chipping, and excavation of living or dead invasive plants and any associated debris. Native

riparian vegetation must be flagged prior to commencement of any mechanized activities and must be avoided.

3. Construction of access roads provided that the width and length of the road are the minimum necessary for access to the exotics removal site. Native woody riparian vegetation must be flagged and avoided. Placement of fill, such as decomposed granite, gravel, or concrete, on newly constructed or existing access roads within waters of the U.S. is not authorized under this RGP. All appropriate Best Management Practices must be used to preclude increased turbidity and to ensure that road construction does not restrict or impede the passage of normal or expected high flows or cause the relocation of the water. Access roads which are no longer necessary for site monitoring, restoration, maintenance, or treatment or abandoned access roads must be restored with appropriate native riparian or wetland vegetation.

Broadcast foliar application of herbicide and stockpiling are prohibited in "partially infested stands". Hand clearing (including use of chain saws) is generally not subject to Corps jurisdiction under Section 404. However, if hand clearing occurs in "partially infested stands" native riparian vegetation should be flagged and avoided.

Invasive plant removal from "partially infested stands" during the migratory bird breeding season (March 15 - September 15) may be authorized by the Corps under this RGP on a case-by-case basis. Prior to requesting such authorization, the proposed project area must be surveyed by a qualified biologist in accordance with all appropriate U.S. Fish and Wildlife Service protocols. Results of these surveys must be submitted to the Corps as part of the Notification requirement.

Notification requirement - Prior to use of this RGP, prospective permittees must notify the Corps in accordance with the modified notification procedures under General Condition 16 of this RGP. A copy of the notification package should be sent to the U.S. Fish and Wildlife Service, California Department of Fish and Game, National Marine Fisheries Service (if appropriate), California Coastal Commission (for projects which may affect the coastal zone), State Water Resources Control Board, and the appropriate Regional Water Quality Control Board.

Work may not commence until verification of compliance with this RGP is received from the Corps or thirty days have passed since the Corps receives a complete notification package. The Corps maintains discretion to add Special Conditions to RGP verifications to clarify compliance with the terms and conditions of this RGP or to ensure that the proposed project would have only minimal individual and cumulative adverse impacts to the environment. In cases where the proposed project does not comply with the terms and conditions of this RGP or the Corps determines that the proposed project would be contrary to the public interest or would result in greater than minimal individual or cumulative adverse impacts to the environment, the applicant will be notified by the Corps of Engineers within thirty days of receipt of a complete notification. Under these circumstances, an individual permit would likely be required to perform the proposed work.

Permit Conditions

General Conditions:

1. The time limit for completing the authorized activity ends on December 10, 2008. Based on an ongoing evaluation of the general permit, the Corps maintains the discretion to reissue, modify, rescind, or exclude certain activities or areas from the RGP.

2. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area.

3. No activity may cause more than minimal adverse effect on navigation and activities shall not interfere with the public's right to free navigation on all navigable waters of the United States. For projects occurring in navigable waters of the United States, the permittee shall notify the Commander Eleventh Coast Guard District POW, BLDG 50-6 Coast Guard Island, Alameda, California, 94501-5000, (510) 437-2968, at least two weeks prior to start of activity and 30 days if buoys are to be placed. The notification should include the following information:

- a. the location of the work site;
- b. the size and type of equipment that will be performing the work;
- c. name and radio call signs for working vessels, if applicable;
- d. telephone number for on-site contact with project engineers; and
- e. the schedule for completing the project.

4. The permittee must ensure that nodes, root stalks, or other debris resulting from their activity do not enter or remain in any actively flowing watercourse.

5. The permittee shall not stockpile invasive plants and associated debris during the flood season (November 15- April 15). Stockpiling is allowed between April 16 and November 14; however, it must occur in previously disturbed or degraded areas. Stockpiles cannot be placed within 50 feet of flowing water, must be placed in such a manner that it is not dispersed by currents or other forces, and must be disposed of within 3 months of initial creation of the stockpile by either removal to an appropriate upland disposal area or by burning. Prior to upland disposal or burning of any stockpiles or debris, all appropriate state and local permits must be obtained.

6. Burning of stockpiles shall not occur within 1,000 feet of native riparian or wetland habitat areas between March 15 and September 15.

7. Access roads which are no longer necessary for site monitoring, restoration, maintenance, or treatment or abandoned access roads must be restored with appropriate native riparian or wetland vegetation.

8. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. For projects proposed on tribal lands, the permittee shall submit an approval letter from the tribe with their notification package and shall obtain Section 401 water quality certification, or waiver thereof, from the U.S. Environmental Protection Agency.

9. No activity is authorized under this RGP which is likely to 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, or which is likely to destroy or adversely modify the critical habitat of such species. Federal agencies should follow their own procedures for complying with the Endangered Species Act. Non-federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration - Fisheries. The Corps may require focused endangered species surveys be performed prior to verification of compliance with this RGP. In addition, the USFWS may require the submittal of an Integrated Pest Management Plan.

10. No activity is authorized which may adversely affect historic properties listed, or eligible for listing, in the National Register of Historic Places until the District Engineer has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). Federal permittees should follow their own procedures for compliance with the requirements of the National Historic Preservation Act and other Federal historic preservation laws. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, 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. Discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.

12. In partially infested stands, native riparian vegetation must be flagged prior to commencement of any mechanized activities and must be avoided. In fully infested stands, native riparian vegetation should be avoided to the maximum extent practicable. Any native riparian trees 3-inches DBH (diameter at breast height) or larger which are removed from fully infested stands, must be replaced on-site at a 2:1 ratio.

13. All project sites shall be marked in such a way as to inform the public about the use of herbicides and the permittee shall provide public safety warnings.

14. All pesticide mixing shall occur outside waters of the U.S. or at locations devoid of vegetation.

15. Aircraft based application of herbicides in waters of the U.S. shall not occur between March 15 and September 15.

16. No mechanized equipment, rubber-tired vehicles, track vehicles, or other equipment shall be stored, staged, or fueled in waters of the U.S., including wetlands.

17. Following the use of this General Permit, permittees shall ensure that the project site contains less than 5% relative coverage of invasive weeds (the invasive weeds covered by this General Permit) for a period of two years from completion of the initial weed removal. At the end of the two year follow-up period, the permittee shall submit to the Corps a brief description of the status of the site including photo documentation and an estimate of the degree of infestation and amount of native flora before and after the project.

18. Prospective permittees must submit the following information to the Corps prior to use of this RGP:

- a. Name, address and telephone number of the prospective permittee;
- b. Location of the proposed project, including a vicinity map;
- c. Project purpose
- d. Brief description of the proposed project, including the areal extent of work being proposed and the method of biomass removal/disposal;
- e. Acreage of "fully infested stands" and "partially infested stands" which would be affected by the proposed project;
- f. Citation of this RGP;
- g. Copy of a letter to the State Historic Preservation Office (SHPO) inquiring about the presence or absence of listed and/or eligible sites for listing in the National Historic Register in the proposed project area that may be affected by the proposed activity;
- h. Copy of a letter to the U.S. Fish and Wildlife Service (USFWS) inquiring about the presence or absence of any federally-listed endangered or threatened species or designated critical habitat in the proposed project area that may be affected by the proposed activity;
- i. For work occurring on tribal lands, an approval letter from the tribe;
- j. Results of a migratory bird survey (if work is being proposed in "partially infested stands" between March 15 and September 15).

A copy of the notification package should be sent to the U.S. Fish and Wildlife Service, California Department of Fish and Game, National Marine Fisheries Service (if appropriate), California Coastal Commission (for projects which may affect the coastal zone), State Water Resources Control Board, and the appropriate Regional Water Quality Control Board.

19. Permittees shall take steps to secure, as appropriate, a Streambed Alteration Agreement with the California Department of Fish and Game (CDFG) for activities involving the mechanized removal of invasive exotic species. In order to ensure that beneficial uses associated with State fish and wildlife and especially that state-listed species habitats are adequately protected, a copy of the full notification package prepared by prospective permittees for the Corps (see Special Condition #16) shall be sent at the same time to the CDFG. For projects in Ventura, Santa Barbara, Orange, Los Angeles and San Diego Counties, the package should be sent to Department of Fish and Game, 4949 Viewridge Ave., San Diego, California 92123. For projects in Inyo, Mono, San Bernardino and Riverside Counties, packages should be sent to 330 Golden Shore, Suite 210, Long Beach, California 90802. Addresses can be verified at www.dfg.ca.gov.

20. The permittee shall not commence work until verification of compliance with this RGP is received from the Corps or thirty days have passed since the Corps receives a complete notification package. The Corps maintains discretion to add Special Conditions to RGP verifications to clarify compliance with the terms and conditions of this RGP or to ensure that the proposed project would have only minimal individual and cumulative adverse impacts to the environment.

21. The permittee shall ensure that all contractors receive a copy of this RGP and are made aware of the conditions and restrictions it contains. 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.

22. 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. 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 from this permit from this office, which may require restoration of the area.

23. This RGP is certified pursuant to Section 401 of the Clean Water Act (Water Quality Certification) subject to the standard conditions that apply to all certifications as well as the following additional conditions:

- a. Applicants of projects proceeding under RGP 41 shall provide a copy of the "Notification" package required by RGP 41 Condition No. 18 to the State Board and the appropriate Regional Water Quality Control Board (Regional Board). These Copies shall be mailed at the same time to:

Program Manager
401 Water Quality Certification Program
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, California 95812-0100

Program Manager
401 Water Quality Certification Program
(Address of Appropriate Regional Board)

The applicant shall provide a fee of \$60 for review and processing of the notice per CCR Title 23, section 2200. If the applicant is not contacted by the Regional Board within 30 days of the postmarked date of the notification, the applicant may assume that the project meets the conditions of this certification and may proceed with the project.

- b. **Extracted Plant Material Stockpile:** Extracted plant materials stockpiled at sites know to experience flash flooding outside the flood season (April 14 – November 14) shall be removed within 15 days of the initial creation of the stockpile in order to contain the potential spread of exotic, invasive plant material in such flash-flood prone areas.
- c. **Other State Permits:** Projects proceeding under RGP 41 shall comply with all applicable National Pollutant Discharge Elimination System permits and Waste Discharge Requirements.
- d. **California Environmental Quality Act (CEQA):** Projects permitted under RGP 41 shall comply with CEQA.
- e. **California Endangered Species Act:** The discharge shall not result in the taking of any State endangered species, threatened species, or candidate species, or the habitat of any such species unless the activity is authorized by the California Department of Fish and Game pursuant to a permit, memorandum of understanding, or other document or program in accordance with Fish and Game Code sections 2081, 2081.1, or 2086.
- f. **Pollution:** The discharge shall not cause pollution, contamination, or nuisance as defined in California Water Code Section 13050.
- g. **Cumulative Impact:** The discharge by itself or in combination with other discharges shall not have a significant cumulative effect or degrade water quality or beneficial uses.
- h. **Channel Destabilization:** The discharge shall not directly or indirectly destabilize the channel or bed of a receiving water.
- i. **Toxic Substances:** The discharge shall not include substances in concentrations toxic to human, plant, animal or aquatic life or the produce detrimental physiological responses.

- j. Hazardous Substances: The discharge shall not include waste classified as "hazardous" or "designated" as defined in Title 22 CCRs section 66261 and California Water Code Section 13173.

Further Information:

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

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

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

This permit is issued for and on behalf of Colonel Richard G. Thompson, District Engineer.


Aaron O. Allen
Acting Chief, Regulatory Branch *fr*

5 Dec. 2003
DATE

