

**FOR CONTRACT NO.: 01-439804**

# **INFORMATION HANDOUT**

## **WATER QUALITY**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
NORTH COAST REGION**

**BOARD ORDER NO. 1B08109WNHU**

## **PERMITS**

**UNITED STATES ARMY CORPS OF ENGINEERS  
NON-REPORTING NATIONWIDE 404 PERMIT**

## **AGREEMENTS**

**CALIFORNIA DEPARTMENT OF FISH AND GAME**

**NOTIFICATION NO.R1-09-0082**

**ROUTE: 01-Hum-299-R8.0/R22.7**



**California Regional Water Quality Control Board  
North Coast Region  
Bob Anderson, Chairman**



Linda S. Adams  
Secretary for  
Environmental Protection

[www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)  
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Arnold  
Schwarzenegger  
Governor

June 16, 2009

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In the Matter of  
**Water Quality Certification**

for the

**California Department of Transportation  
Highway 299 –Culvert Rehabilitation Project:  
WDID No. 1B08109WNHU**

APPLICANT: California Department of Transportation  
RECEIVING WATER: Tributaries to Redwood Creek and the Mad River  
HYDROLOGIC AREA: Redwood Creek Hydrologic Unit No.107.00. and  
Mad River Hydrologic Unit No.109.00  
COUNTY: Humboldt  
FILE NAME: CDOT Hwy 299, Culvert Rehabilitation Project

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BY THE EXECUTIVE OFFICER:

1. On February 9, 2009, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application and \$640.00 fee from the California Department of Transportation (Caltrans) District 1, requesting Federal Clean Water Act (CWA), section 401, Water Quality Certification for activities related to the proposed Highway 299, Culvert Rehabilitation project (project). Additional information was received by the Regional Water Board on April 13, 2009. Additional project fees were received April 29, 2009. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on April 29, 2009, and posted information describing the project on the Regional Water Board's website. No comments were received.
2. The proposed project includes five locations along Highway 299 at post mile (PM) 8.00, PM 9.94, PM 10.58, PM 11.66 and PM 22.66 in Humboldt County. The purposes and objectives of the project are to repair and upgrade the culverts and downdrains to protect the roadway from erosion-related structural failures. The proposed construction activities will consist of: installing new corrugated steel pipes;

**California Environmental Protection Agency**

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installing a culvert liner; replacing headwalls and end sections; installing culvert aprons and downdrains; installing rock slope protection; conducting slope revegetation and erosion control. The proposed project may result in soil disturbances up to approximately 1.26-acres, including 780 ft<sup>2</sup> (80 linear feet) of temporary impacts to the jurisdictional drainages. All areas with disturbed soil will be stabilized with appropriate erosion control and subsequent to the completion of the project the disturbed soil areas will be revegetated.

3. The proposed project will result in approximately 145 ft<sup>2</sup> of new permanent impacts to waters of the U.S and waters of the State. However, the permanent impacts are associated with the installation of the rock energy dissipater at an inlet structure, which is ultimately designed to reduce the amount of sediment in the drainage and improve water quality. The proposed project may require a water diversion to conduct the repair/replacement activities. In addition, temporary concrete washout areas will be needed at all locations. Caltrans will utilize Best Management Practices (BMPs) for all activities including work windows for stream work, and proper erosion control, sediment control and pollution prevention during construction.
4. Caltrans has applied for authorization from the U.S. Army Corps of Engineers (USACE) to perform the project under their Nationwide Permit No. 3 (maintenance) pursuant to Clean Water Act, section 404. Caltrans has determined that this project is categorically exempt from California Environmental Quality Act (CEQA) review (General Rule Categorical Exemption). In addition, Regional Water Board staff also determined that this project is categorically exempt from CEQA review (Class 1 Categorical Exemption) and anticipate filing a Notice of Exemption. In addition, all project activities will only be performed during the dry weather months between May 15 and October 15.

Receiving Water: Tributaries to Redwood Creek  
Redwood Creek Hydrologic Unit No.107.00.

Filled or Excavated Area: Permanent impacts: 145 feet<sup>2</sup>  
Temporary impacts: 780 feet<sup>2</sup>

Latitude/Longitude: 40.8857 N / 123.9512 W to 40.9033 N / 123.80537 W

Expiration: June 16, 2014

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE REGIONAL WATER BOARD CERTIFIES THAT THE CALTRANS – HIGHWAY 299 – CULVERT REHABILITATION PROJECT, WDID NO. 1B09019WNHU, AS DESCRIBED IN THE APPLICATION WILL COMPLY WITH SECTIONS 301, 302, 303, 306 AND 307 OF THE CLEAN WATER ACT, AND WITH APPLICABLE PROVISIONS OF STATE LAW, PROVIDED THAT CALTRANS COMPLIES WITH THE FOLLOWING TERMS AND CONDITIONS:

1. This certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. 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 title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under title 23, California Code of Regulations, section 3833, unless otherwise stated in writing by the certifying agency.
4. The Regional Water Board shall be notified in writing each year at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during installation and removal activities, and to answer any public inquiries that may arise regarding the project.
5. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed revegetation being completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Basin Plan.
6. Caltrans shall construct the project in accordance with the project described in the application and the findings above, and shall comply with all applicable water quality standards.
7. Any change in the implementation of the project that would have a significant or material effect on the findings, conclusions, or conditions of this Order must be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.
8. Caltrans shall provide Regional Water Board staff access to the project site to document compliance with this order.
9. Caltrans shall provide a copy of this order and attachments to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. Caltrans shall be responsible for work conducted by its contractor or subcontractors.

10. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
11. All conditions required by this Order shall be included in the Plans and Specifications prepared by Caltrans for the Contractor. In addition, Caltrans shall require compliance with all conditions included in this Order in the bid contract for this project.
12. The Resident Engineer shall hold on-site water quality permit compliance meetings (similar to tailgate safety meetings) to discuss permit compliance, including instructions on how to avoid violations and procedures for reporting violations. The meetings shall be held at least every other week, and particularly before forecasted storm events and when a new contractor or subcontractor arrives to begin work at the site. The contractors, subcontractors and their employees, as well as any inspectors or biological monitors assigned to the project, shall be present at the meetings. Caltrans shall maintain dated sign-in sheets for attendees at these meetings, and shall make them available to the Regional Water Board on request.
13. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
14. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete or concrete washings, welding slag, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State.
15. Water which has come into contact with wet concrete during construction shall be captured and disposed of in appropriate locations at least 100 linear feet beyond waters of the State. No excess concrete or concrete washings shall be allowed to contact waters of the State. In addition, all concrete contact water disposal locations as well as concrete washout basins shall have adequate BMPs in accordance with the Caltrans Construction Site Best Management Practices Manual (CCSBMPM).
16. All materials used for cleaning concrete from tools and equipment, and any wastes generated by this activity, shall be adequately contained to prevent contact with soil and surface water and shall be disposed of properly within a clearly designated area at least 100 linear feet beyond waters of the State.
17. When operations are complete, any excess material or debris shall be removed from the work area and disposed of properly and in accordance with the Special Provisions for the project and/or Standard Specification 7-1.13, Disposal of Material Outside the Highway Right of Way. Caltrans shall submit to the Regional Water

Board the satisfactory evidence provided to the Caltrans engineer by the Contractor referenced in Standard Specification 7-1.13.

18. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited. If construction dewatering is found to be necessary, the Applicant shall use a method of water disposal other than disposal to surface waters (such as land disposal) or the Applicant shall apply for coverage under the General Construction Dewatering Permit and receive notification of coverage to discharge to surface waters, prior to the discharge.
19. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the United States and the State. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall not result in a discharge or a threatened discharge to any waters of the State or the United States. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality.
20. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities, construction activities, or any other project activities that could result in erosion or sediment discharges to surface water. The BMPs shall be implemented in accordance with the CCSBMPM and all contractors and subcontractors shall comply with the CCSBMPM.
21. Caltrans shall take photos of all areas disturbed by project activities, including all excess materials disposal areas, after rainfall events that generate visible runoff from these areas in order to demonstrate that erosion control and revegetation measures have been successful. A brief report containing these photos shall be submitted within 60 days of the rainfall event that generated runoff from the disturbed areas. In addition, Caltrans shall provide photos of the completed work to the appropriate Regional Water Board staff person, in order to document compliance.
22. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this Order to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the

benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.

23. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
24. The Mad River watershed is identified on the State of California Clean Water Act Section 303(d) list as impaired for sediment, temperature and turbidity. Total Maximum Daily Load (TMDL) analyses have been completed for the Mad River watershed for sediment and turbidity listings. Given that roads are responsible for the vast majority of the sediment in the watershed (directly, from surface erosion, and, indirectly, by triggering landslides) a good first step can be made by focusing on reducing sediment from roads in the middle and lower portions of the watershed. Reducing road-related sediment in that subarea should be made a high priority. In addition, activities that impact the riparian zone and riparian vegetation are identified as sources contributing to increased stream temperatures. At present, there are no watershed-specific implementation plans for this TMDL. If a TMDL implementation plan is adopted prior to the expiration date of this Order, the Regional Water Board may revise the provisions of this Order to address actions identified in such action plan.
25. The Redwood Creek watershed is identified on the State of California Clean Water Act Section 303(d) list as impaired for sediment and temperature. Total Maximum Daily Load (TMDL) analyses have been completed for the Redwood Creek watershed for the sediment listing. Given that roads are responsible for the vast majority of the sediment in the watershed (directly, from surface erosion, and, indirectly, by triggering landslides) a good first step can be made by focusing on reducing sediment from roads in the middle and lower portions of the watershed. Reducing road-related sediment in that subarea should be made a high priority. In addition, activities that impact the riparian zone and riparian vegetation are identified as sources contributing to increased stream temperatures. At present, there are no watershed-specific implementation plans for this TMDL. If a TMDL implementation plan is adopted prior to the expiration date of this Order, the Regional Water Board may revise the provisions of this Order to address actions identified in such action plan.
26. This Order is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board. The successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of this Order to discharge dredged or fill material under this Order. The request must contain the following:

- a. requesting entity's full legal name
- b. the state of incorporation, if a corporation
- c. address and phone number of contact person
- d. description of any changes to the project or confirmation that the successor-in-interest intends to implement the project as described in this Order.

27. The authorization of this certification for any dredge and fill activities expires on June 16, 2014. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

28. Please contact Jeremiah Puget of our staff at (707) 576-2835 or [jpuget@waterboards.ca.gov](mailto:jpuget@waterboards.ca.gov) if you have any questions.



Catherine Kuhlman  
Executive Officer

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Web link: State Water Resources Control Board Order No. 2003-0017 -DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at:  
[http://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Original sent to: Ms. Sandra Rosas, California Department of Transportation,  
P.O. Box 911, Marysville, CA 95901

Copies sent to: Ms. Jane Hicks, U.S. ACoE, Regulatory Functions,  
1455 Market Street, San Francisco, CA 94103-1398

U.S. Army Corps of Engineers, District Engineer,  
601 Startare Drive, Box 14, Eureka, CA 95501



18. NATURE OF ACTIVITY (Description of project, include all features)

Loc # 1-Remove existing FES, place new headwall, 42" cross culvert, down-drain, & rock slope protection (RSP) at outlet. Abandon existing culvert. Loc # 2-Remove existing Drainage Inlet (DI) & install a G2 DI. Remove & replace culvert & abandon & replace downdrain (DD). Loc # 3-Replace Steel FES, line existing culvert with plastic pipe liner. Place 299 cubic feet of RSP to backfill hole with 1/2 ton & 1/4 ton RSP at outlet. Remove separated DD. Loc # 4-Remove & replace headwall, (cont below)

19. PROJECT PURPOSE (Describe the reason or purpose of the project, see instructions)

cross culvert, & DD. Abandon 26 ft of existing culvert & raise MBGR to standard height. Replace RSP at outlet. Loc # 5- Place RSP in scour hole at baffle wall at inlet. Repair/Replace damaged steel invert planks & plates, pave invert of culvert. The purpose of this project is to rehabilitate, replace, or repair drainage culverts due to deterioration.

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. REASON(S) FOR DISCHARGE

Caltrans is proposing a project to repair and rehabilitate drainage culverts at five locations along State Route 299 in Humboldt County due to deterioration and invert attrition. The purpose and objective of the project is to repair and upgrade the culverts and downdrains to protect the roadway from erosion related structural failures.

21. TYPE(S) OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS

For the 5 drainage culverts: Loc. #1 – 19.5 cubic yards for rock slope protection (RSP), Loc. # 2 – None, Loc. #3 – 157 cubic yards for RSP, Loc. #4 – 6.0 cubic yards for RSP, and Loc. #5 – 10.2 cubic yards for RSP.

22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED (see instructions)

0.018 acres - of "other waters" - ephemeral drainages

23. IS ANY PORTION OF THE WORK ALREADY COMPLETE? YES  NO  IF YES, DESCRIBE THE WORK

Not Applicable

24. ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC. WHOSE PROPERTY ADJOINS THE WATERBODY (If more than can be entered here, please attach a supplemental list)

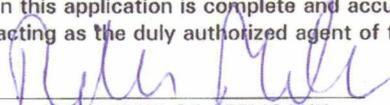
All work will be done within Caltrans right-of-way.

25. LIST OF OTHER CERTIFICATIONS OR APPROVALS/DENIALS RECEIVED FROM OTHER FEDERAL, STATE, OR LOCAL AGENCIES FOR WORK DESCRIBED IN THIS APPLICATION

AGENCY	TYPE APPROVAL *	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
NCRWQCB	Section 401 permit	1B08109WNHU	Feb. 2009	June 16, 2009	
CDFG	1602 LSA Agreement	R1-09-0082	Feb. 2009	Pending	

\* Would include but is not restricted to zoning, building and flood plain permits.

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.




\_\_\_\_\_ 6-22-09 \_\_\_\_\_ 6/22/09  
 SIGNATURE OF APPLICANT                      DATE                      SIGNATURE OF AGENT                      DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.  
 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, factitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

# Non-reporting Nationwide Permit 3

## U.S. Army Corp of Engineers South Pacific Division



### Nationwide Permit Pre-Construction Notification (PCN) Form

This form integrates requirements of the Nationwide Permit Program within SPD, including General and Regional Conditions. Please consult instructions prior to completing this form.

<b>Box 1 Project Name</b> Humboldt-299-PM 8.00/22.66-State Route 299 Culvert Rehabilitation Project		<b>Applicant Name</b> Richard Mullen	
<b>Applicant Title</b> Project Manager		<b>Applicant Company, Agency, etc.</b> California Department of Transportation	
<b>Mailing Address</b> 1656 Union Street Eureka, CA 95501		<b>Applicant's internal tracking number (if any)</b> EA 01-43980	
<b>Work Phone</b> <small>with area code</small> (707) 441-5877	<b>Home Phone</b> <small>with area code</small>	<b>Fax #</b> (707) 441-5733	<b>E-mail Address</b> richard_mullen@dot.ca.gov
<b>Relationship of applicant to property:</b> <input type="checkbox"/> Owner <input type="checkbox"/> Purchaser <input type="checkbox"/> Lessee <input checked="" type="checkbox"/> Other: Caltrans Project Manager			
Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a Corps nationwide permit or permits as described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I hereby grant to the agency to which this application is made, the right to enter the above-described location to inspect the proposed, in-progress or completed work. I agree to start work <u>only</u> after all necessary permits have been received.			
<b>Signature of applicant</b> <i>Richard Mullen</i>		<b>Date (m/d/yyyy)</b> 06/22/09	
<b>Box 2 Authorized Agent/Operator Name and Signature (If an agent is acting for the applicant during the permit process)</b> Allison Kunz			
<b>Agent/Operator Title</b> Project Biologist		<b>Agent/Operator Company, Agency, etc.</b> California Department of Transportation	
<b>Mailing Address</b> 703 B Street (Mail - P.O. Box 911), Marysville, CA 95901			
<b>E-mail Address</b> allison_kunz@dot.ca.gov			
<b>Work Phone</b> <small>with area code</small> (530) 741-4103	<b>Home Phone</b> <small>with area code</small>	<b>Fax #</b> (530) 741-4457	<b>Cell Phone #</b>
I hereby authorize the above named authorized agent to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application. I understand that I am bound by the actions of my agent and I understand that if a federal or state permit is issued, I, or my agent, must sign the permit.			
<b>Signature of applicant</b> <i>Allison Kunz</i>		<b>Date (m/d/yyyy)</b> 06/22/09	
I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief, such information is true, complete, and accurate.			

<b>Signature of authorized agent</b> <i>Allison Kury</i>	<b>Date (m/d/yyyy)</b> <i>6/22/09</i>
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<b>Box 3</b> Name of property owners(s), if other than applicant: <i>All work will be done within Caltrans right-of-way.</i>	
Owner Title	Owner Company, Agency etc.
Mailing Address	
Work Phone	Home Phone

<b>Box 4</b> Name of contractor(s) (if known): <i>The contractor is unknown at this time.</i>	
Contractor Title	Contractor Company, Agency, etc.
Mailing Address	
Work Phone	Home Phone

Include multiple copies of Box 5 for separate sites.

<b>Box 5</b> Site Number <u>1</u> of <u>1</u> . Project location(s), including street address, city, county, state, zip code where proposed activity will occur: <i>State Route (SR) 299, Highway Post Mile 8.00/22.66, approximately two miles east of the town of Blue Lake, in Humboldt County.</i>	
Waterbody (if known, otherwise enter "an unnamed tributary to"): <i>unnamed tributary to</i> Tributary to what known, downstream waterbody: <i>Mad River</i>	
Latitude & longitude (D/M/S, DD, or UTM):	Zoning Designation (no codes or abbreviations):
<i>Loc 1 – 40.88574                      -123.95124</i>	
<i>Loc 2 – 40.89974                      -123.9209</i>	
<i>Loc 3 – 40.90722                      -123.91671</i>	
<i>Loc 4 – 40.92123                      -123.91041</i>	
<i>Loc 5 – 40.90328                      -123.80537</i>	
Assessors parcel number: <i>All work will be done within Caltrans right-of-way.</i>	Section, Township, Range: <i>Township 06N, Range 02E, Sections 21, 22, 14, &amp; 11, &amp; Township 06N, Range 03E, Section 14</i>
USGS Quad map name: <i>Blue Lake and Lord-Ellis Summit</i>	
Watershed and other location descriptions, if known: <i>Redwood Creek Hydrologic Unit No. 107.00 and Mad River Hydrologic Unit No. 109.00.</i>	
Directions to the project location: <i>From San Francisco: U. S. 101 north to SR 299. From State Route 299 starting at Post Mile (PM) 8.00.</i>	
<b>Nature of Activity</b> (Description of project, include all features, see instructions): <i>The California Department of Transportation is proposing a project to repair and rehabilitate drainage culverts at five locations along State Route (SR) 299 in Humboldt County. The culverts</i>	

need rehabilitation due to deterioration and invert attrition. The purpose and objective of the project is to repair and upgrade the culverts and downdrains to protect the roadway from erosion related structural failures. All work will be done within Caltrans right-of-way.

SR 299 traverses the width of California from SR 101 at Arcata, through Redding and onto the Nevada border. SR 299 passes through mountainous terrain with steep grades and generally follows major river channels. The existing pavement within the project limits consists of a 2-lane highway with 12 ft lanes and 4 ft shoulders and includes a few passing lane segments. Land use adjacent to SR 299 is primarily forest products related with some agricultural land.

Culvert Layout:

**Location # 1, PM 8.00**

Remove existing Steel Flared End Section (FES), place new headwall, 42" cross culvert, down-drain, and rock slope protection (RSP) at outlet. Abandon existing culvert.

**Location # 2, PM 9.94**

Remove existing Drainage Inlet (DI) and install a G2 DI. Remove and replace culvert and abandon and replace downdrain (DD).

**Location # 3 PM 10.58**

Replace Steel FES, line existing culvert with plastic pipe liner. Place 299 cubic feet of RSP to backfill hole with 1/2 ton and 1/4 ton RSP at outlet. Remove separated DD.

**Location # 4 PM 11.66**

Remove and replace headwall, cross culvert, and DD. Abandon 26 ft of existing culvert and raise metal beam guardrail (MBGR) to standard height. Replace RSP at outlet.

**Location # 5 PM 22.66**

Place RSP in scour hole at baffle wall at inlet. Repair/Replace damaged steel invert planks and plates, pave invert of culvert.

Construction of the project is currently scheduled to begin in Summer 2010, and be complete by Fall 2010. The project is expected to take 55 days to complete. In-water work (work below the ordinary high water mark of the unnamed seasonal tributary) will be restricted to the dry/low flow season (May 15 to October 15).

**Project Purpose** (Describe the reason or purpose of the project, see instructions):

The project proposes to replace and/or rehabilitate the existing culverts as a result of exceeding their service life. Corrosion has penetrated the culvert walls, inverts and inlet structures. Consequently, the flow of water infiltrates the corroded areas and causes scour and erosion to the surrounding soil. Eventually, the erosion may deteriorate the integrity of the roadway base and sub-base sections. Along with the corroded inverts and walls, other problems exist at these locations e.g. damaged culverts, inadequate/absent end treatments, and separated culvert joints.

Use Box 6 if dredged and/or fill material is to be discharged:

**Box 6 Reason(s) for Discharge into waters of the United States:**

Caltrans is proposing a project to repair and rehabilitate drainage culverts at five locations along State Route 299 in Humboldt County due to deterioration and invert attrition. The purpose and objective of the project is to repair and upgrade the culverts and downdrains to protect the roadway from erosion related structural failures.

**Type(s) of material being discharged and the amount of each type in cubic yards:**

For the 5 drainage culverts: Loc. #1 – 19.5 cubic yards for rock slope protection (RSP), Loc. # 2 – None, Loc. #3 – 157 cubic yards for RSP, Loc. #4 – 6.0 cubic yards for RSP, and Loc. #5 – 10.2 cubic yards for RSP.

Total surface area in acres of wetlands or other waters of the U.S. filled (see instructions):

0.018 acres of other waters of the U. S. will be filled by the placement of the RSP.

Indicate in ACRES and LINEAR FEET (where appropriate) the proposed impacts to **waters of the United States**, and identify the impact(s) as permanent and/or temporary for each water body type listed below:

Water Body Type	Permanent		Temporary	
	Acres	Linear Feet	Acres	Linear Feet
Wetland				
Riparian streambed				
Unveg. Streambed	0.003		0.018	
Lake				
Ocean				
Other				
Total:	0.003		0.018	

Potential indirect and/or cumulative impacts of proposed discharge (if any):

A potential indirect impact to waters of the U. S. associated with the project could include a temporary degradation of water quality. In order to avoid potential impacts to water quality, erosion control and soil stabilization measures will be implemented in accordance with Caltrans' Best Management Practices (BMPs). These BMPs could include, but are not limited to, the use of silt fences, fiber rolls, and the application of fiber matrix on unfinished slopes. Disturbed soils will also be treated with an erosion control seed mixture.

To protect water quality, in-water work (work below the ordinary high water mark of the unnamed seasonal tributary) will be restricted to the dry/low flow season (May 15 to October 15).

Required drawings (see instructions):

Vicinity map:  Attached (or mail copy separately if applying electronically)

To-scale Plan view drawing(s):  Attached (or mail copy separately if applying electronically)

To-scale elevation and/or Cross Section drawing(s):  Attached (or mail copy separately if applying electronically)

Has a wetland/waters of the U.S. delineation been completed?

Yes, Attached (or mail copy separately if applying electronically)  No

If a delineation has been completed, has it been verified in writing by the Corps?

Yes, Date of approved jurisdictional determination (m/d/yyyy): \_\_\_\_\_ Corps file number: \_\_\_\_\_  No

Please attach<sup>1</sup> one or more color photographs of the existing conditions (aerials if possible).

<sup>1</sup>or mail copy separately if applying electronically

Project photographs are attached.

Dredge Volume: Indicate in CUBIC YARDS the quantity of material to be dredged or used as fill:

Not applicable – the project will not place dredged material in waters of the U. S.

Indicate type(s) of material proposed to be discharged in waters of the United States:

Not applicable – the project will not place dredged material in waters of the U. S.

For proposed discharges of dredged material into waters of the U.S. (including beach nourishment), please attach<sup>2</sup> a proposed Sampling and Analysis Plan (SAP) prepared according to Inland Testing Manual (ITM) guidelines (including Tier I information, if available).  
<sup>2</sup>or mail copy separately if applying electronically

Is any portion of the work already complete?  YES  NO

If yes, describe the work:

Not applicable

**Box 7** Intended NWP permit number<sup>3</sup>: 3 (Maintenance Projects) – non-reporting

Intended NWP permit number (2<sup>nd</sup>):

Intended NWP permit number (3<sup>rd</sup>):

<sup>3</sup>Enter the intended permit type(s). See NWP regulations for permit types and qualification information ([http://www.usace.army.mil/inet/functions/cw/cecwo/req/nationwide\\_permits.htm](http://www.usace.army.mil/inet/functions/cw/cecwo/req/nationwide_permits.htm)).

**Box 8** Authority:

Is Section 10 of the Rivers and Harbors Act applicable?:  YES  NO

Is Section 404 of the Clean Water Act applicable?:  YES  NO

**Box 9** Is the discharge of fill or dredged material for which Section 10/404 authorization is sought part of a larger plan of development?:  YES  NO

If discharge of fill or dredged material is part of development, name and proposed schedule for that larger development (start-up, duration, and completion dates):

Not applicable

Location of larger development (If discharge of fill or dredged material is part of a plan of development, a map of suitable quality and detail of the entire project site should be included):

Not applicable

Total: area in acres of entire project area (including larger plan of development, where applicable):

1.25 acres

**Box 10** Threatened or Endangered Species

Please list any federally-listed (or proposed) threatened or endangered species or critical habitat within the project area (use scientific names (e.g., Genus species), if known):

a. None. Please see the Natural Environment Study for information regarding species considered during studies for this project.

b.

c.

d.

e.

f.

Have surveys, using U.S. Fish and Wildlife Service/NOAA Fisheries protocols, been conducted?

Yes, Report attached (or mail copy separately if applying electronically)  No

If a federal-listed species would be impacted, please provide a description and a biological evaluation.

Yes, Report attached (or mail copy separately if applying electronically)  Not attached

Has the USFWS/NOAA Fisheries issued a Biological Opinion?

Yes, Attached (or mail copy separately if applying electronically)  No

If yes, list date Opinion was issued (m/d/yyyy):

Has Section 7 consultation been initiated by another federal agency?

Yes, Initiation letter attached (or mail copy separately if applying electronically)  No

Has Section 10 consultation been initiated for the proposed project?

Yes, Initiation letter attached (or mail copy separately if applying electronically)  No

**Box 11** Historic properties and cultural resources:

Please list any historic properties listed (or eligible to be listed) on the National Register of Historic Places:

- a. None. b.  
c. d.  
e. f.

Are any cultural resources of any type known to exist on-site?

Yes  No

Has an archaeological records search been conducted?

Yes, Report attached (or mail copy separately if applying electronically)  No

Has an archaeological pedestrian survey been conducted for the site?

Yes, Report attached (or mail copy separately if applying electronically)  No

Has a Section 106 MOA been signed by another federal agency and the SHPO?

Yes, Attached (or mail copy separately if applying electronically)  No

If yes, list date MOA was signed (m/d/yyyy):

Has Section 106 consultation been initiated by another federal agency?

Yes, Initiation letter attached (or mail copy separately if applying electronically)  No

**Box 12** Measures taken to avoid and minimize impacts to waters of the United States (if any):

In order to avoid potential impacts to water quality, erosion control and soil stabilization measures will be implemented in accordance with Caltrans' BMPs. These BMPs could include, but are not limited to, the use of silt fences, fiber rolls, and the application of fiber matrix on unfinished slopes. Disturbed soils will also be treated with an erosion control seed mixture.

To protect water quality, in-water work (work below the ordinary high water mark) will be restricted to the dry/low flow season (May 15 to October 15).

Include multiple copies of Box 13 for separate sites.

**Box 13** Proposed Compensatory Mitigation (site 1 of 1) related to fill/excavation and dredge activities.

Indicate in ACRES and LINEAR FEET (where appropriate) the total quantity of waters of the United States proposed to be created, restored, enhanced and/or preserved for purposes of providing compensatory mitigation. Indicate water body type (wetland, riparian streambed, unvegetated streambed, lake, ocean, other) or non-jurisdiction (uplands\*). Indicate mitigation type (on-or off-site by applicant, mitigation bank, in-lieu fee program):

Water Body Type	Created	Restored	Enhanced	Preserved	Mitigation type
Unveg. Streambed (riverbank)		0.018			On-site restoration of temporarily disturbed areas
Totals:		0.018			

\*For uplands, please indicate if designed as an upland buffer.

If no mitigation is proposed, provide detailed explanation of why no mitigation would be necessary:

Not Applicable.

Has a draft/conceptual mitigation plan been prepared in accordance with the Army Corps of Engineers District guidelines? <input type="checkbox"/> Yes, Attached (or mail copy separately if applying electronically) <input checked="" type="checkbox"/> No	
Mitigation site latitude & longitude (D/M/S, DD, or UTM):	USGS Quad map name:
Assessors parcel number: (For any proposed off-site mitigation)	Section, Township, Range:
Other location descriptions, if known:	
Directions to the mitigation location:	

**Box 14 Water Quality Certification** (see instructions):  
 Applying for certification?  Yes, Attached (or mail copy separately if applying electronically)  No  
 Certification issued?  Yes, Attached (or mail copy separately if applying electronically)  No  
 Exempt?  Yes  No  
 If exempt, state why: \_\_\_\_\_ Agency concurrence?  Yes, Attached  No

**Box 15 Coastal Zone Management Act** (see instructions):  
 Is the project located within the Coastal Zone?  Yes  No  
 If yes, applying for a coastal commission-approved Coastal Development Permit?  
 Yes, Attached (or mail copy separately if applying electronically)  No  
 If no, applying for separate CZMA-consistency certification?  
 Yes, Attached (or mail copy separately if applying electronically)  No  
 Permit/Consistency issued?  Yes, Attached (or mail copy separately if applying electronically)  No  
 Exempt?  Yes  No  
 If exempt, state why: \_\_\_\_\_

**Box 16 List of other certification or approval/denials received from other federal, state, or local agencies for work described in this application:**

Agency	Type Approval*	Identification No.	Date Applied	Date Approved	Date Denied
NCRWQCB	401 Certification	1B08109WNHU	Feb. 2009	June 2009	
CDFG	1602 LSA Agreement	R1-09-0082	Feb. 2009	Pending	

\*Would include but is not restricted to zoning, building, and flood plain permits

## NWP General Conditions (GC) checklist (2007 version):

1. **Navigation:**

Project would be in compliance with GC?  Yes  No

The project is located adjacent to a navigable water body (Mad River), but will have no effect on navigation.

2. **Aquatic Life Movements:**

Project would be in compliance with GC?  Yes  No

The project will not disrupt the life cycle movements of aquatic life.

3. **Spawning Areas:**

Spawning areas present?  Yes  No

Project would be in compliance with GC?  Yes  No

This project will not affect spawning areas.

4. **Migratory Bird Breeding Areas:**

Waterfowl breeding areas present:  Yes  No

Project would be in compliance with GC?  Yes  No

The project will not affect migratory waterfowl breeding areas.

5. **Shellfish Beds:**

Shellfish beds present:  Yes  No

Project would be in compliance with GC?  Yes  No

The project will not occur in areas of concentrated shellfish populations.

6. **Suitable Material:**

Project would be in compliance with GC?  Yes  No

All materials used for the construction of the project will comply with Caltrans materials standards.

7. **Water Supply Intakes:**

Project would be in compliance with GC?  Yes  No

The project will not occur in the proximity of a public water supply intake.

8. **Adverse Effects From Impoundments:**

Project would be in compliance with GC?  Yes  No

The project will not result in the impoundment of water.

9. **Management of Water Flows:**

Project would be in compliance with GC?  Yes  No

The project will maintain pre-construction flow conditions. The project will not permanently restrict or impede the passage of normal or expected high flows, and will withstand expected high flows.

10. **Fills within 100-Year Floodplains:**

Project would be within 100-year floodplains?  Yes  No

If yes, project would be in compliance with restrictions a) and b) below?  Yes  No

a) Discharges Below Headwaters (*below point of 5 cfs*) resulting in permanent above-grade fills:

NWP 29, 39, 40, 42, 43, and 44: No NWP can be issued.

NWP 12 and 14: Notification required

b) Discharges in Headwaters (*above point of 5 cfs*) resulting in permanent above-grade fills:

*Flood Fringe*

NWP 12, 14, 29, 39, 40, 42, 43, and 44: Notification required

*Floodway*

NWP 29, 39, 40, 42, 43, and 44: No NWP can be issued.

NWP 12 and 14: Notification required

**11. Equipment:**

Project would be in compliance with GC?  Yes  No

The contractor will take measures to minimize soil disturbance by heavy equipment during construction.

**12. Soil Erosion and Siltation Controls:**

Project would be in compliance with GC?  Yes  No

Appropriate soil erosion and sediment controls will be used and maintained during construction. Exposed soils and areas of work below the ordinary high water mark will be stabilized at the earliest possible date. Project activities below the ordinary high water mark of the unnamed tributary to the Mad River will be restricted to the dry/low flow season (May 15 to October 15).

**13. Removal of Temporary Fills:**

Project would be in compliance with GC?  Yes  No

Temporary fills are not expected to be needed during the construction of this project, but if they become necessary they will be removed in their entirety upon project completion. The affected areas will be returned to their preexisting elevation and reseeded with native species as appropriate.

**14. Proper Maintenance:**

Project would be in compliance with GC?  Yes  No

The project will be constructed in accordance with Caltrans codes and standards, and will be properly maintained by Caltrans Maintenance.

**15. Wild and Scenic Rivers:**

Project would be in compliance with GC?  Yes  No

The project will not result in impacts to Wild and Scenic Rivers.

**16. Tribal Rights:**

Project would be in compliance with GC?  Yes  No

The construction of this project will not impair reserved tribal rights.

**17. Endangered Species:** see Box 10 above.

**18. Historic properties:** see Box 11 above.

**19. Designated Critical Resource Waters** (*check those that apply*)

Includes:

- 1)  NOAA designated marine sanctuaries,
- 2)  National Wild and Scenic Rivers,
- 3)  Critical habitat for Federally listed species,
- 4)  Coral reefs,
- 5)  State natural heritage sites,
- 6)  Officially designated waters

Applicant is aware of the restrictions a) and b) below?  Yes  No

- a) NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44: No NWP can be issued (except in certain cases described in full text of GC #19).
- b) NWP 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38: Notification required.

**20. Mitigation:**

Project would be in compliance with GC?  Yes  No

In order to avoid potential impacts to water quality, erosion control and soil stabilization measures will be implemented in accordance with Caltrans' BMPs. These BMPs could include, but are not limited to, the use of silt fences, fiber rolls, and the application of fiber matrix on unfinished slopes. Disturbed soils will also be treated with an erosion control seed mixture.

21. **Water Quality** (401 Certification): see Box 14 above.

22. **Coastal Zone Management:** see Box 15 above.

**23. Regional and Case-by Case Conditions:**

Complete the Regional Conditions checklist below.

Project would be in compliance with any Case-by-case conditions?  Yes  No

**24. Use of Multiple Nationwide Permits:**

Applicant is aware that if total proposed acreage of impact exceeds acreage limit of NWP with highest specified acreage, no NWP can be issued?  Yes  No

**25. Transfer of Nationwide Permit Verifications**

**26. Compliance Certification:**

Applicant is aware of this post-construction requirement?  Yes  No

**27. Pre-Construction Notification** (*Check mark and provide those that apply*)

NWP 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43: Delineation of wetlands and other waters of the U.S.

NWP 7: Original Design Capacity & Configurations

NWP 14: Compensatory Mitigation Proposal & written statement describing how temporary losses will be minimized to the maximum extent possible

NWP 21: Office of Surface Mining or State-approved mitigation Plan

NWP 27: Documentation of Prior Condition of Site

- NWP 29: Past use of NWP, statement of personal residence, parcel size description, land description
- NWP 31 (for repeat use): 5 year Maintenance Plan, baseline channel information, delineation, and disposal site information
- NWP 33: Restoration Plan
- NWP 39,43, and 44: Written Statement on Avoidance and Minimization Measures
- NWP 39 and 42: Compensatory Mitigation Plan/Justifications of no plan
- NWP 40: Compensatory Mitigation Proposal
- NWP 43: Maintenance Plan (for new construction) and compensatory mitigation proposal
- NWP 44: Description of affected waters, minimization measures and reclamation plan
- NWPs 12, 14, 29, 39, 40, 42, 43, and 44: FEMA map, FEMA construction requirements and demonstration of FEMA compliance

**NWP-specific requirements checklist:**

**1. Nationwide 03 (case iii):**

Evidence of damage (due to storm, flood, etc.) such as recent topographic surveys or photographs attached?  Yes  No

**2. Nationwide 07:**

NPDES permit or other proof of CWA Section 402 compliance attached?  Yes  No

**3. Nationwides 13, 14, 18, 29, 39, 40, 42, 43, 44:**

Activity/crossing must be part of a single and complete project.

Project would be in compliance with this requirement?  Yes  No

**4. Nationwide 31:**

As-built or approved engineering drawings for each structure attached?  Yes  No

**5. Nationwide 40:**

Documentation of an NRCS exemption, a NRCS-certified wetland delineation, and a NRCS- approved compensatory mitigation plan attached?  Yes  No

**NWP Regional Conditions (RC) checklist:**

**I. Los Angeles District (SPL) in Arizona and California:**

Not Applicable

**II. Sacramento District (SPK) in California, Colorado, Nevada, and Utah:**

Not Applicable

**III. Albuquerque District (SPA) in Colorado, New Mexico, and Texas:**

Not Applicable

**IV. San Francisco District (SPN):**

A SPN Regional Condition Checklist is currently available. Please refer to original text of SPN regional conditions.

**End of form**

\*\*\*\*\*



U S Army Corps of  
Engineers  
Sacramento District

# Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide Permits - March 19, 2007 includes corrections of May 8, 2007 and addition of regional conditions December 2007

### 3. Maintenance.

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. 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.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

**Notification:** For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

*Note:* This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

#### A. Nationwide Permit General Conditions

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.

##### 1. Navigation.

- (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. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

**3 Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48.

**6. 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. Water Supply Intakes.** 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. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** 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. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** 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. Removal of Temporary Fills.** 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. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

**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 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 in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**16. 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.

**17. Endangered Species.**

(a) No activity is authorized under any NWP 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 (ESA), or which will 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.

(c) Non-federal permittees shall notify 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 may be affected by the proposed work or that utilize the designated critical habitat that may 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.

(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 NWP.

(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, both lethal and non-lethal “takes” of protected species are in violation of the ESA. 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/> and <http://www.noaa.gov/fisheries.html> respectively.

#### 18. Historic Properties.

(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.

(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, 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)). 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 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.

(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, explaining 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.

19. **Designated Critical Resource Waters.** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for 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, and

50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP 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 27, 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.

**20 Mitigation.** 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) 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 some other form of mitigation would be more environmentally appropriate 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. 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.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, 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 is provided that replaces or restores some of the lost waters. However, 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 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. 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 arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(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.

**21. Water Quality.** 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.

**22. Coastal Zone Management.** 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.

**23. Regional and Case-By-Case Conditions.** 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.

**24. Use of Multiple Nationwide Permits.** 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.

**25. Transfer of Nationwide Permit Verifications.** 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)

**26. Compliance Certification.** Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**27. Pre-Construction Notification.**

(a) **Timing.** 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, as a general rule, 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) Forty-five 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 17 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 18 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 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)) is 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 cannot 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) Contents of Pre-Construction Notification: 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; 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 result in a quicker decision.);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States 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 of the United States, 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, where 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. 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) Form of Pre-Construction Notification: 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) Agency Coordination:

(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 NWP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile

transmission, overnight mail, or other expeditious manner) a copy of the 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 then 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. 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, but 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 multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and

conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

(a) **28. Single and Complete Project.** 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.

## **B. Regional Conditions:**

### **I. Sacramento District (All States, except Colorado)**

1. When pre-construction notification (PCN) is required, the prospective permittee shall notify the Sacramento District in accordance with General Condition 27 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a completed application form (ENG Form 4345). In addition, the PCN shall include:

a. A written statement explaining 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. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and size (in acreage) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the high tide line should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation; and

c. Pre-project color photographs of the project site taken from designated locations documented on the plan drawing.

2. The permittee shall complete compensatory mitigation required by special conditions of the NWP verification before or concurrent with construction of the authorized activity, except when specifically determined to be impracticable by the Sacramento District. When project mitigation involves use of a mitigation bank or in-lieu fee program, payment shall be made before commencing construction.

3. The permittee shall record the NWP verification with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property against areas (1) designated to be preserved as part of mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where structures such as boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed in or adjacent to navigable waters (Section 10 and Section 404). The recordation shall also include a map showing the surveyed location of the authorized structure and any associated areas preserved to minimize or compensate for project impacts.

4. The permittee shall place wetlands, other aquatic areas, and any vegetative buffers preserved as part of mitigation for impacts into a separate "preserve" parcel prior to discharging dredged or fill material into waters of the United States, except where specifically determined to be impracticable by the Sacramento District. Permanent legal protection shall be established for all preserve parcels, following Sacramento District approval of the legal instrument.

5. The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.

6. For NWPs 29, 39, 40, 42, 43, 44, and 46, requests to waive the 300 linear foot limitation for intermittent or ephemeral waters of the U.S. shall include an evaluation of functions and services provided by the waterbody taking into account the watershed, measures to be implemented to avoid and minimize impacts, other measures to avoid and minimize that were found to be impracticable, and a mitigation plan for offsetting impacts.

7. Road crossings shall be designed to ensure fish passage, especially for anadromous fisheries. Permittees shall employ bridge designs that span the stream or river, utilize pier or pile supported structures, or involve large bottomless culverts with a natural streambed, where the substrate and streamflow

conditions approximate existing channel conditions. Approach fills in waters of the United States below the ordinary high water mark are not authorized under the NWP, except where avoidance has specifically been determined to be impracticable by the Sacramento District.

8. For NWP 12, clay blocks, bentonite, or other suitable material shall be used to seal the trench to prevent the utility line from draining waters of the United States, including wetlands.

9. For NWP 13, bank stabilization shall include the use of vegetation or other biotechnical design to the maximum extent practicable. Activities involving hard-armoring of the bank toe or slope requires submission of a PCN per General Condition 27.

10. For NWP 23, the PCN shall include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act, Essential Fish Habitat under the Magnusson-Stevens Act, and Section 106 of the National Historic Preservation Act.

11. For NWP 44, the discharge shall not cause the loss of more than 300 linear feet of streambed. For intermittent and ephemeral streams, the 300 linear foot limit may be waived in writing by the Sacramento District. This NWP does not authorize discharges in waters of the United States supporting anadromous fisheries.

12. For NWPs 29 and 39, channelization or relocation of intermittent or perennial drainage, is not authorized, except when, as determined by the Sacramento District, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

13. For NWP 33, temporary fills for construction access in waters of the United States supporting fisheries shall be accomplished with clean, washed spawning quality gravels where practicable as determined by the Sacramento District, in consultation with appropriate federal and state wildlife agencies.

14. For NWP 46, the discharge shall not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch, unless this 300 foot linear foot limit is waived in writing by the Sacramento District.

15. For NWPs 29, 39, 40, 42, and 43, upland vegetated buffers shall be established and maintained in perpetuity, to the maximum extent practicable, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 20. Except in unusual circumstances, vegetated buffers shall be at least 50 feet in width.

16. All NWPs except 3, 6, 20, 27, 32, 38, and 47, are revoked for activities in histosols and fens and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions. For NWPs 3, 6, 20, 27, 32, and 38, prospective permittees shall submit a PCN to the Sacramento District in accordance with General Condition 27.

17. For all NWPs, when activities are proposed within 100 feet of the point of groundwater discharge of a natural spring, prospective permittees shall submit a PCN to the Sacramento

District in accordance with General Condition 27. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition, springs do not include seeps or other discharges which lack a defined channel.

## **II. California Only**

1. In the Lake Tahoe Basin, all NWPs are revoked. Activities in this area shall be authorized under Regional General Permit 16 or through an individual permit.

2. In the Primary and Secondary Zones of the Legal Delta, NWPs 29 and 39 are revoked. New development activities in the Legal Delta will be reviewed through the Corps' standard permit process.

## **III. Nevada Only**

1. In the Lake Tahoe Basin, all NWPs are revoked. Activities in this area shall be authorized under Regional General Permit 16 or through an individual permit.

## **IV. Utah Only**

1. For all NWPs, except NWP 47, prospective permittees shall submit a PCN in accordance with General Condition 27 for any activity, in waters of the United States, below 4217 feet mean sea level (msl) adjacent to the Great Salt Lake and below 4500 feet msl adjacent to Utah Lake.

2. A PCN is required for all bank stabilization activities in a perennial stream that would affect more than 100 linear feet of stream

3. For NWP 27, facilities for controlling stormwater runoff, construction of water parks such as kayak courses, and use of grout or concrete to construct in-stream structures are not authorized. A PCN is required for all projects exceeding 1500 linear feet as measured on the stream thalweg, using in stream structures exceeding 50 cubic yards per structure and/or incorporating grade control structures exceeding 1 foot vertical drop. For any stream restoration project, the post project stream sinuosity shall be appropriate to the geomorphology of the surrounding area and shall be equal to, or greater than, pre project sinuosity. Sinuosity is defined as the ratio of stream length to project reach length. Structures shall allow the passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the District Engineer.

## **V. Colorado Only**

1. Final Regional Conditions Applicable to Specific Nationwide Permits within Colorado.

a. Nationwide Permit Nos. 12 and 14, Utility Line Activities and Linear Transportation Projects. In the Colorado River Basin, utility line and road activities crossing perennial water or special aquatic sites require notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification).

b. Nationwide Permit No. 13 Bank Stabilization. In Colorado, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) are limited to the placement of no more than 1/4

cubic yard of suitable fill\* material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard may be authorized if the permittee notifies the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) and the Corps determines the adverse environmental effects are minimal. [\* See (g) for definition of Suitable Fill]

c. Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

(1) For activities that include a fishery enhancement component, the Corps will send the Pre-Construction Notification to the Colorado Division of Wildlife (CDOW) for review. In accordance with General Condition 27 (Pre-Construction Notification), CDOW will have 10 days from the receipt of Corps notification to indicate that they will be commenting on the proposed project. CDOW will then have an additional 15 days after the initial 10-day period to provide those comments. If CDOW raises concerns, the applicant may either modify their plan, in coordination with CDOW, or apply for a standard individual permit.

(2) For activities involving the length of a stream, the post-project stream sinuosity will not be significantly reduced, unless it is demonstrated that the reduction in sinuosity is consistent with the natural morphological evolution of the stream (sinuosity is the ratio of stream length to project reach length).

(3) Structures will allow the upstream and downstream passage of aquatic organisms, including fish native to the reach, as well as recreational water craft or other navigational activities, unless specifically waived in writing by the District Engineer. The use of grout and/or concrete in building structures is not authorized by this nationwide permit.

(4) The construction of water parks (i.e., kayak courses) and flood control projects are not authorized by this nationwide permit.

d. Nationwide Permits Nos. 29 and 39; Residential Developments and Commercial and Institutional Developments. A copy of the existing FEMA/locally-approved floodplain map must be submitted with the Pre-Construction Notification. When reviewing proposed developments, the Corps will utilize the most accurate and reliable FEMA/locally-approved pre-project floodplain mapping, not post-project floodplain mapping based on a CLOMR or LOMR. However, the Corps will accept revisions to existing floodplain mapping if the revisions resolve inaccuracies in the original floodplain mapping and if the revisions accurately reflect pre-project conditions.

2. Final Regional Conditions Applicable to All Nationwide Permits within Colorado

e. Removal of Temporary Fills. General Condition 13 (Removal of Temporary Fills) is amended by adding the

following: When temporary fills are placed in wetlands in Colorado, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction.

f. Spawning Areas. General Condition 3 (Spawning Areas) is amended by adding the following: In Colorado, all Designated Critical Resource Waters (see enclosure 1) are considered important spawning areas. Therefore, In accordance with General Condition 19 (Designated Critical Resource Waters), the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters: NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50. In addition, in accordance with General Condition 27 (Pre-Construction Notification), notification to the District Engineer is required for use of the following nationwide permits in these waters: NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38”.

g. Suitable Fill. In Colorado, use of broken concrete as fill material requires notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification). Permittees must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to cost, existing technology, and logistics), before broken concrete is allowed as suitable fill. Use of broken concrete with exposed rebar is prohibited in perennial waters and special aquatic sites.

h. Invasive Aquatic Species. General Condition 11 is amended by adding the following condition for work in perennial or intermittent waters of the United States: If heavy equipment is used for the subject project that was previously working in another stream, river, lake, pond, or wetland within 10 days of initiating work, one the following procedures is necessary to prevent the spread of New Zealand Mud Snails and other aquatic hitchhikers:

(1) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and keep the equipment dry for 10 days. OR

(2) Remove all mud and debris from Equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with either a 1:1 solution of Formula 409 Household Cleaner and water, or a solution of Sparquat 256 (5 ounces Sparquat per gallon of water). Treated equipment must be kept moist for at least 10 minutes. OR

(3) Remove all mud and debris from equipment (tracks, turrets, buckets, drags, teeth, etc.) and spray/soak equipment with water greater than 120 degrees F for at least 10 minutes.

3. Final Regional Conditions for Revocation/Special Notification Specific to Certain Geographic Areas

i. Fens: All Nationwide permits, except permit Nos. 3, 6, 20, 27, 32, 38 and 47, are revoked in fens and wetlands adjacent to fens. Use of nationwide permit Nos. 3, 20, 27 and 38, requires notification to the District Engineer, in accordance with General Condition 27 (Pre-Construction

Notification), and the permittee may not begin the activity until the Corps determines the adverse environmental effects are minimal. The following defines a fen:

Fen soils (histosols) are normally saturated throughout the growing season, although they may not be during drought conditions. The primary source of hydrology for fens is groundwater. Histosols are defined in accordance with the U.S. Department of Agriculture, Natural Resources Conservation Service publications on Keys to Soil Taxonomy and Field Indicators of Hydric Soils in the United States (<http://soils.usda.gov/technical/classification/taxonomy>).

j. Springs: Within the state of Colorado, all NWP, except permit 47 (original 'C'), require preconstruction notification pursuant to General Condition 27 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where groundwater emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel.

#### 4. Additional Information

The following provides additional information regarding minimization of impacts and compliance with existing general Conditions:

a. Permittees are reminded of the existing General Condition No. 6 which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, and trash are not suitable material. Also, General Condition 12 requires appropriate erosion and sediment controls (i.e. all fills must be permanently stabilized to prevent erosion and siltation into waters and wetlands at the earliest practicable date). Streambed material or other small aggregate material placed along a bank as stabilization will not meet General Condition 12. Also, use of erosion control mats that contain plastic netting may not meet General Condition 12 if deemed harmful to wildlife.

b. Designated Critical Resource Waters in Colorado. In Colorado, a list of designated Critical Resource Waters has been published in accordance with General Condition 19 (Designated Critical Resource Waters). This list will be published on the Albuquerque District Regulatory home page (<http://www.spa.usace.army.mil/reg/>)

c. Federally-Listed Threatened and Endangered Species. General condition 17 requires that non-federal permittees notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project. Information on such species, to include occurrence by county in Colorado, may be found at the following U.S. Fish and Wildlife Service website: [http://www.fws.gov/mountain%2Dprairie/endspp/name\\_county\\_search.htm](http://www.fws.gov/mountain%2Dprairie/endspp/name_county_search.htm)

#### .C. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

#### D. Definitions

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

**Compensatory mitigation:** The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Currently serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Discharge:** The term "discharge" means any discharge of dredged or fill material.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Ephemeral stream:** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the

project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular

activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete project:** The term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or

partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a “single and complete project” is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:** The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

**Vegetated shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** For purposes of the NWP’s, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

SAN FRANCISCO DISTRICT  
CORPS OF ENGINEERS  
REGIONAL CONDITIONS FOR NATIONWIDE PERMITS

**A. General Regional Conditions that apply to all NWP's in the San Francisco District:**

1. Notification to the Corps (in accordance with General Condition No. 27) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **San Francisco Bay diked baylands** (undeveloped areas currently behind levees that are within the historic margin of the Bay. Diked historic baylands are those areas on the Nichols and Wright map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R., and N. A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map)). The notification shall explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable (see General Condition 20(a)).
2. Notification to the Corps (in accordance with General Condition No. 27) is required for any activity permitted by NWP if it will take place in waters or wetlands of the U.S. that are within the **Santa Rosa Plain** (see figure 1). The notification will explain how avoidance and minimization of losses of waters or wetlands are taken into consideration to the maximum extent practicable in accordance with General Condition No. 20(a).
3. Notification to the Corps (in accordance with General Condition No. 27), including a compensatory mitigation plan, habitat assessment, and extent of proposed-project impacts to Eelgrass Beds are required for any activity permitted by NWP if it will take place within or adjacent to **Eelgrass Beds**.
4. Notification to the Corps (in accordance with General Condition No. 27) is required for any activity permitted by NWP in **Essential Fish Habitat** (EFH) designated by the Pacific Fishery Management Council (examples of designated EFH are, but not limited to: the Pacific Ocean, estuaries like Tomales, San Francisco and Humboldt Bays, and watersheds utilized by coho and chinook salmon). Notification shall include a habitat assessment and extent of proposed-project impacts to EFH. Notification under this regional condition is not required if another federal agency has completed consultation with the National Marine Fisheries Service on EFH, and the project is either authorized by a non-reporting NWP or does not require notification by another regional condition.
5. Mitigation that is required by special condition to the permitted activity shall be completed before or concurrent with project construction. Where project mitigation involves the use of a mitigation bank, the required payment must be made before commencing construction of the permitted activity. If the permittee cannot comply with this condition, the permittee shall provide the Corps with sound reasoning why this condition cannot be met, and shall propose reasonable alternatives to ensure the required mitigation will be fully met and completed in a timely manner.
6. Any request to waive the 300 linear foot limitation for intermittent and ephemeral streams must include the following:
  - a) an analysis of the impacts to the stream environment;
  - b) measures taken to avoid and minimize losses;
  - c) other project alternatives that would be considered but were found not to be practicable;
  - d) a mitigation plan as to how the unavoidable losses will be offset.

7. Notification to the Corps (in accordance with General Condition No. 27) shall include: Accurate drawings are **always** required. The drawings can be schematic but should contain, at minimum, an appropriate title block, legends and scales, amount (in cubic yards) and size (in acreage or fraction thereof) of fill or activity in Corps jurisdiction, including both permanent and temporary fills/structures. If a waterbody is involved, the ordinary high water mark, estimated highest tide line, or mean high water mark should be shown (in feet); if possible, based on NGVD or other appropriate referenced elevation. The drawings should clearly depict the project location, and include plan and cross-section views.

**B. Regional Conditions that apply to specific nationwide permits:**

**3. MAINTENANCE:**

1. To the extent practicable, excavation equipment shall work from an upland site (e.g., from the top of the bank, the road bed of the bridge, or culverted road crossing) to minimize adding fill into waters of the U.S. If it is not practicable to work from an upland site, or if working from the upland site would cause more environmental damage than working in the stream channel, the excavation equipment can be located within the stream channel but it must minimize disturbance to the channel (other than the removal of accumulated sediments or debris). As part of the notification to the Corps (in accordance with General Condition No. 27), an explanation as to the need to place excavation equipment in waters of the U.S. is required, as well as a statement of any additional necessary fill (e.g., cofferdams, access road, fill below the OHW mark for a staging area, etc.).
2. If the activity is proposed in a special aquatic site, the notification to the Corps (in accordance with General Condition No. 27) shall include an explanation of why the special aquatic site cannot be avoided, and the measures to be taken to minimize impacts to the special aquatic site.
3. To the maximum extent practicable, any new or additional bank stabilization must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable.

**11. TEMPORARY RECREATIONAL STRUCTURES:**

1. Notification to the Corps (in accordance with General Condition No. 27) is required if any temporary structures are proposed in wetlands or vegetated shallow water areas (e.g. in eelgrass beds). The notification shall include the type of habitat and areal extent affected by the structures.

**12. UTILITY LINE ACTIVITIES:**

1. Excess material removed from the trench shall be disposed of at an upland site away from any wetlands or other waters of the U.S. so as to prevent this material from being washed into aquatic areas.
2. This NWP permit does not authorize the construction of substation facilities. Utility line substations can usually be constructed in uplands.

**13. BANK STABILIZATION:**

1. Notification to the Corps (in accordance with General Condition No. 27) is required for all activities stabilizing greater than 300 linear feet of channel. Where the removal of wetland vegetation (including riparian wetland trees, shrubs and other plants) or submerged, rooted, aquatic plants over a cumulative area greater than 1/10 acre or 300 linear feet is proposed, the Corps shall be notified (in accordance with General Condition No. 27). The notification shall include the type of vegetation and extent (e.g., areal dimension or number of trees) of the proposed removal.

2. This permit allows excavating a toe trench in waters of the U.S., and, if necessary, to use the material for backfill behind the stabilizing structure. Excess material is to be disposed of in a manner that will have only minimal impacts to the aquatic environment. The notification to the Corps (in accordance with General Condition No. 27) shall include location of the disposal site.
3. For man-made banks, roads, or levees damaged by storms or high flows, the one cubic yard per running foot limit is counted only for that additional fill which encroaches (extends) beyond the pre-flood or pre-storm shoreline condition of the waterway. It is not counted for the fill that would be placed to reconstruct the original dimensions of the eroded, man-made shoreline.
4. For natural berms and banks, the one cubic yard per running foot limit applies to any added armoring.
5. To the maximum extent practicable, any new or additional bank stabilization must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable.
6. As part of the notification to the Corps (in accordance with General Condition No. 27) requirement for bank stabilization activities in excess of 300 feet in length, the project proponent shall address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.

#### **14. LINEAR TRANSPORTATION PROJECTS:**

1. Notification to the Corps (in accordance with General Condition No. 27) is required for all projects filling greater than 300 linear feet of channel.
2. This permit does not authorize construction of new airport runways and taxiways.
3. To the maximum extent practicable, any new or additional bank stabilization required for the crossing must incorporate structures or modifications beneficial to fish and wildlife (e.g., soil bioengineering or biotechnical design, root wads, large woody debris, etc.). Where these structures or modifications are not used, the applicant shall demonstrate why they were not considered practicable. Bottomless and embedded culverts are encouraged over traditional culvert stream crossings.
4. As part of the notification to the Corps (in accordance with General Condition No. 27) requirement for stream crossing activities filling an excess of 300 feet in length, the project proponent shall address the effect of the bank stabilization on the stability of the opposite side of the streambank (if it is not part of the stabilization activity), and on adjacent property upstream and downstream of the activity.

#### **23. APPROVED CATEGORICAL EXCLUSIONS:**

1. Use of this NWP requires notification to the Corps (in accordance with General Condition No. 27). The notification shall include the following:
  - a) A copy of the Federal Categorical Exclusion (Cat/Ex) document signed by the appropriate federal agency. If the Cat/Ex is signed by a state or local agency representative instead of by a federal agency representative, then copies of all documentation authorizing alternative agency signature shall be provided.

- b) Written description of Corps authority (e.g., Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act.);
  - c) a list of conditions described in the Cat/Ex and/or attachments outlining measures that must be taken prior to, during, or after project construction to minimize impacts to the aquatic environment;
  - d) a copy of the jurisdictional delineation performed by qualified specialists showing the project limits and the location (delineated boundaries) of Corps jurisdiction within the overall project limits;
  - e) map(s) showing the locations of potentially permanent and temporary project impacts to areas within Corps jurisdiction;
  - f) a clear and concise description of all project impacts including, but not necessarily limited to:
    - a) quantification and description of permanent project impacts to areas within Corps jurisdiction,
    - b) quantification and description of temporary impacts to areas within Corps jurisdiction, and
    - c) linear extent of Corps jurisdiction affected by the project;
  - g) a general description of activities covered by the Cat/Ex that do not require Corps authorization but are connected or related to the activities in Corps jurisdiction;
  - h) a complete description of any proposed mitigation and/or restoration including, but not necessarily limited to, locations of any proposed planting, short- and long-term maintenance, proposed monitoring, success criteria and contingency plans;
  - i) written justification of how the project complies with the Nationwide Permit Program including less than minimal impact to the aquatic environment and compliance with the General Conditions.
  - j) For Federal Highway Administration (FHWA) Cat/Ex projects, the notification should describe how activities described in the Cat/Ex meet the description of the Cat/Ex project published in the August 28, 1987 Federal Register part 771.117 (a)(b)(c) and (d) (Volume 52, No. 167) or any updated version published in the Federal Register.
2. Only activities specifically described in the Cat/Ex project description will be covered by the NWP 23 authorization. If other activities not described in the Cat/Ex project description will be performed (e.g., dewatering, slope protection, etc.), these activities must receive separate NWP authorizations.
  3. Notification to the Corps (in accordance with General Condition 27) must include a copy of the signed Cat/Ex document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act (ESA), Essential Fish Habitat (EFH) under the Magnusson-Stevens Act, and Section 106 of the National Historic Preservation Act.

### **33. TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING:**

1. Access roads shall be designed to be the minimum width necessary and shall be designed to minimize changes to the hydraulic flow characteristics of the stream and degradation of water quality (in accordance with General Conditions 9 and 21).
  - a) The road shall be properly stabilized and maintained during and following construction to prevent erosion.

b) Construction of the road fill shall occur in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself.

2. Vegetative disturbance in the waters of the U.S. shall be kept to a minimum.

3. Borrow material shall be taken from upland sources whenever feasible.

4. Stream channelization is not authorized by this NWP.

### **35. MAINTENANCE DREDGING OF EXISTING BASINS:**

1. Use of this NWP will require notification to the Corps (in accordance with General Condition No. 27). The notification information should be provided on the Consolidated Dredging-Dredged Material Reuse/Disposal Application. This application and instructions for its completion can be found on our web site at: <http://www.spn.usace.army.mil/conops/applications.html>. The information must include the location of the proposed upland disposal site. A jurisdictional delineation of the proposed upland disposal site prepared in accordance with the current method required by the Corps may also be required.
2. The U.S. Coast Guard will be notified by the permittee at least 14 days before dredging commences if the activity occurs in navigable waters of the U.S. (Section 10 waters).
3. The permittee will be required to provide the following information to the Corps:
  - a) Dredge Operation Plan: Submit, for approval by this office, no earlier than 60 calendar days and no later than 20 calendar days before the proposed commencement of dredging, a plan which includes the following: **Corps file number**, a copy of the dredging contract or description of the work under which the contractor will do the permitted work; name and telephone numbers of the dredging contractor's representative on site; proposed dredging start and completion dates; quantity of material to be removed; dredging design depth and typical cross section including overdepth; and date of last dredging episode and design depth. The Dredge Operational Plan shall also provide the following information: The controls being established to insure that dredging operations occur within the limits defined by the basin or channel dimensions and typical channel section.
  - b) Pre-Dredge Survey: Submit no earlier than 60 calendar days and no later than 20 calendar days before commencement of dredging, a survey with accuracy to one-tenth foot that delineates and labels the following: areas to be dredged with overdepth allowances; existing depths; estimated quantities to be dredged to the design depth; and estimated quantities for overdepth dredging. **All surveys shall be signed by the permittee to certify their accuracy. Please include the Corps file number.**
  - c) Solid Debris Management Plan: Submit no earlier than 60 calendar days and no later than 20 calendar days before commencement of work, a plan which describes measures to ensure that solid debris generated during any dredging operation is retained and properly disposed in areas not under Corps jurisdiction. **At a minimum, the plan shall include the following: source and expected type of debris; debris retrieval method; Corps file number; disposal method and site; schedule of disposal operations; and debris containment method to be used, if floatable debris is involved. (Please note that failure to provide all of the information requested in a, b, and c above may result in delays to your project. When your Dredge Operation Plan has been approved, you will receive a written authorization to commence with your project.)**
  - d) Post-Dredge Survey: Submit, **within 30 days of the last disposal activity** ("last" is defined as that activity after which no further activity occurs for 15 calendar days), a

survey with accuracy to one-tenth foot that delineates and labels the areas dredged and provides the dredged depths. **Also, include the Corps file number, actual dates of dredging commencement and completion, actual quantities dredged for the project to the design depth, and actual quantities of overdepth.** The permittee shall substantiate the total quantity dredged by including calculations used to determine the volume difference (in cubic yards) between the Pre- and Post-Dredge Surveys and **explain any variation in quantities greater than 15% beyond estimated quantities or dredging deeper than is permitted (design plus overdepth allowance).** **All surveys shall be accomplished by a licensed surveyor and signed by the permittee to certify their accuracy.** A copy of the post dredge survey should be sent to the National Ocean Service for chart updating:

NOAA/National Ocean Service,  
Nautical Data Branch  
N/CS26, SSMC3, Room 7230  
1315 East-West Highway  
Silver Spring, Maryland 20910-3282.

- e) **The permittee or dredge contractor shall inform this office when: 1) a dredge episode actually commences, 2) when dredging is suspended (suspension is when the dredge contractor leaves the dredge site for more than 48 hours for reasons other than equipment maintenance), 3) when dredging is restarted, and 4) when dredging is complete. Each notification should include the Corps file number.** Details for submitting these notifications will be provided in the verification letter (to whom and how).

#### **40. AGRICULTURAL ACTIVITIES:**

1. This NWP does not authorize discharge of fill into the channel of a perennial or intermittent watercourse that could impede high flows. This limitation does not apply to watercourses that flow only when there is an irregular, extraordinary flood event.

#### **41. RESHAPING EXISTING DRAINAGE DITCHES:**

1. Compensatory mitigation may be required if the Corps determines there will be a detrimental impact to aquatic habitat.
2. Notification to the Corps (in accordance with General Condition 27) is required if the applicant proposes to re-grade, discharge, install channel lining, or redeposit fill material.
3. The notification to the Corps (in accordance with General Condition 27) shall include an explanation of the project's benefit to water quality.

#### **42. RECREATIONAL FACILITIES:**

1. If buildings are proposed to be built in waters of the United States, including wetlands, the applicant must demonstrate that there is no on-site practicable alternative that is less environmentally damaging as defined by the Section 404(b)(1) guidelines.

#### **44. MINING ACTIVITIES:**

1. This NWP is revoked for mining activities in Humboldt and Del Norte Counties.



California Natural Resources Agency  
DEPARTMENT OF FISH AND GAME

ARNOLD SCHWARZENEGGER, Governor  
DONALD KOCH, Director



<http://www.dfg.ca.gov>  
Northern Region  
601 Locust Street  
Redding, California 96001  
(530) 225-2367

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D. E. G. - EUREKA

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NOTIFICATION NO. R1-09-0082  
(6 encroachments)

### AGREEMENT REGARDING PROPOSED LAKE OR STREAMBED ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called DFG, and Mr. Richard Mullen, representing California Department of Transportation (Caltrans), hereinafter jointly and severally called the Entity (Responsible Party), is as follows:

WHEREAS, pursuant to Division 2, Chapter 6 of California Fish and Game Code (Code), the Responsible Party, on April 10, 2009, notified DFG of the intention to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed of, the following waters: unnamed tributaries to North Fork Mad River, Long Prairie Creek, and Redwood Creek, in the County of Humboldt. These waters are located in sections 11, 14, 21, and 22, Township 6 North, Range 2 East; and Section 14, Township 6 North, Range 3 East, Humboldt Base and Meridian, in the Blue Lake and Lord-Ellis Summit U.S. Geological Survey 7.5-minute quadrangles.

WHEREAS, DFG has determined that without implementation of the conditions contained within this Agreement, such operations may substantially adversely affect existing fish and wildlife resources including, but not limited to: Chinook salmon (*Oncorhynchus tshawytscha*), coho salmon (*O. kisutch*), steelhead (*O. mykiss*), coastal cutthroat trout (*O. clarki clarki*), other non-game and game fishes, amphibians, reptiles, aquatic invertebrates, mammals, birds, and other aquatic and riparian species.

THEREFORE, DFG hereby proposes measures to protect fish and wildlife resources during the Responsible Party's work. The Responsible Party hereby agrees to accept and conduct all activities in accordance with the following:

#### ADMINISTRATIVE PROVISIONS:

- 1) If the Responsible Party's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to DFG. Failure to comply with the provisions of this Agreement and with other pertinent Code sections, including but not limited to Code sections 5650, 5652, 5901, 5937, and 5948, may result in prosecution.
- 2) Nothing in this Agreement authorizes the Responsible Party to trespass on any land or property, nor does it relieve the Responsible Party of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute DFG endorsement of the proposed operation, or assure DFG's concurrence with permits required from other agencies.

- 3) The provisions contained in this Agreement constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Responsible Party is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Code sections 1600 *et seq.*
- 4) In accordance with Code section 1605, the Responsible Party may request one extension of this Agreement, provided that the request is made in writing prior to the expiration of its original term. DFG shall grant the extension if the appropriate extension fee is paid unless it determines that the Agreement requires modification because the measures contained in the Agreement no longer protect the fish and wildlife resources that the activity may substantially adversely affect. If the Responsible Party fails to request the extension prior to the Agreement's termination then the Responsible Party shall submit a new notification with fees and required information to DFG. Any activity conducted under an expired Agreement is a violation of Code section 1600 *et seq.*
- 5) The Responsible Party shall provide a copy of this Agreement to all contractors, subcontractors, and the Responsible Party's project supervisors. Copies of the Agreement and any amendment thereto shall be readily available at work sites at all times during periods of active work and must be presented to any DFG personnel, or personnel from another agency upon demand.
- 6) DFG reserves the right to enter the project site at any time to ensure compliance with measures and/or monitoring of this agreement, provided DFG: a) provides 24 hours advance notice; and b) allows the Responsible Party or representatives to participate in the inspection and/or monitoring. This condition does not apply to DFG enforcement personnel.
- 7) All provisions of this Agreement remain in force throughout the term of the Agreement. Any provisions of the Agreement may be amended or the Agreement may be terminated at any time provided such amendment and/or termination are agreed to in writing by both parties. Mutually-approved amendments become part of the original Agreement and are subject to all previously negotiated provisions.
- 8) It is understood DFG will enter into this Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Responsible Party. It is further agreed all liability and/or incurred cost related to or arising out of the Responsible Party's project and the fish and wildlife protective measures of this Agreement, remain the sole responsibility of the Responsible Party. The Responsible Party agrees to hold harmless the State of California and DFG against any related claim made by any party or parties for personal injury or any other damages.
- 9) This Agreement is not intended as an approval of a project or of specific project features by DFG. Independent review and recommendations will be provided by DFG as appropriate on those projects where local, state, or federal permits or other environmental reports are required.
- 10) Suspension and Cancellation. DFG may suspend or cancel this Agreement if DFG determines that circumstances warrant suspension or cancellation. The circumstances that might warrant suspension or cancellation include, but are not limited to, the following:

- a) Failure by the Responsible Party, or his/her employees, agents, representatives, contractors, and/or subcontractors, to comply with any of the terms and measures of this Agreement.
- b) DFG determines that the information the Responsible Party provided to DFG to develop this Agreement, or the information contained in a notification, is incomplete or inaccurate.
- c) DFG obtains new information that shows the work authorized by this Agreement could substantially adversely affect fish and wildlife resources, notwithstanding Responsible Party's compliance with the Agreement.
- d) DFG determines that measures to protect fish and wildlife resources different from those included in this Agreement are necessary to protect those resources.
- e) There is a substantial change in conditions. For purposes of this Agreement, "substantial change in conditions" shall mean one or more of the following: 1) the work described in this Agreement is substantially changed; 2) conditions affecting fish and wildlife resources substantially change; and/or 3) the work conducted under this Agreement have adversely affected, or will adversely affect, fish and wildlife resources, notwithstanding that Responsible Party has complied, or will comply with, the terms and measures of this Agreement.

Scope of Suspension. At the discretion of DFG, any action to suspend this Agreement may be limited in scope to address the specific problem or problems resulting in the suspension. Hence, DFG may limit the suspension to specified work or specified areas. DFG shall notify Responsible Party of any suspension of the Agreement, or any part thereof, in writing. Any suspension shall take effect immediately upon receipt of such notice by Responsible Party, or in accordance with the instructions contained in the notice. Such notice will identify the reason or reasons for the suspension, the actions necessary to correct the problem, and the scope of the suspension.

Reinstatement Following Suspension. DFG may lift any suspension when it has determined that Responsible Party has adequately addressed the problem or problems resulting in the suspension and that reinstatement of the Agreement will not cause harm to fish and wildlife resources.

Other Laws Regarding Habitat and Species Protection.

11) No direct or indirect impacts shall occur to any threatened or endangered species as a result of implementing the project or the project's activities. If any threatened or endangered species could be impacted by the work proposed, the Responsible Party shall obtain the required state and federal permits. This Agreement does not authorize the take of any federal or state threatened or endangered species.

12) The California Endangered Species Act (CESA) (Code Sections 2050 to 2097) is administered by DFG and prohibits the take of plant and animal species designated by the Fish and Game Commission as either threatened or endangered in the state of California.

13) If the project could result in the "take" of a state listed threatened or endangered species, the Responsible Party has the responsibility to obtain from DFG, a California Endangered Species

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Act Permit (CESA 2081 Permit). DFG may formulate a management plan that will avoid or mitigate take. If appropriate, contact the DFG CESA coordinator at (530) 225-2300.

14) The U.S. Army Corps of Engineers (Corps) has permitting requirements for certain instream projects under Section 404 of the Federal Clean Water Act. If this project features the placement of dredged or fill materials into the channels of streams (below the ordinary high water mark) that are waters of the United States, a permit may be required by the Corps. If your project needs a permit from the Corps, you will also need to obtain a Water Quality Certification pursuant to Section 404 of the Federal Clean Water Act from the Regional Water Quality Control Board (Regional Water Board). In addition, if your project will involve disturbance within or discharges of pollutants to waters of the State of California, the Regional Water Boards may require a permit, whether or not the Corps requires a permit. If there is any question regarding the possibility of the project meeting the above limitations, the Responsible Party should contact the Corps and the Regional Water Board prior to beginning work. This Agreement in no way represents permitting requirements by the Corps or the Regional Water Board. It is the responsibility of the Responsible Party to contact the Corps, and to comply with the provisions of any Section 404 permit issued, if required by the Corps. Similarly, it is the responsibility of the Responsible Party to contact the Regional Water Board and to comply with the provisions of any Section 401 Certification, Regional Water Board Waste Discharge Requirements or waiver of Waste Discharge Requirements issued by the Regional Water Board.

15) The Responsible Party may have certain other responsibilities pursuant to the Federal Endangered Species Act resulting in mitigative project features required by the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.

16) The Responsible Party shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the Responsible Party to ensure compliance.

### OPERATIONAL PROVISIONS

#### NOTIFICATION MATERIALS AND PROJECT DESCRIPTION:

17) The Responsible Party's notification (notification of lake or streambed alteration, received March 13, 2009) together with all maps, plans, photographs, drawings, and all other supporting documents submitted with notification to describe the activity, are hereby incorporated by reference into this Agreement. Responsible Party shall conduct project activities within the work areas and using the mitigative features described in the notification and supporting documents, unless such project activities, work areas or mitigative features are modified by the provisions of this Agreement, in which case the activities shall be conducted as described in this Agreement.

18) The work under this Agreement is limited to <sup>RM</sup> culvert maintenance activities at six locations on State Route 299, including post miles 8.00, ~~8.59~~, 9.94, 10.58, 11.66, and 22.66. Proposed work includes installation of a concrete headwall, invert paving, line a culvert with a plastic liner, replacement of culverts, placement of rock slope protection and energy dissipaters, and installation of culvert downdrains.

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PROJECT TIMING AND COORDINATION:

19) The Responsible Party shall contact DFG within the 7-day period preceding the beginning of work permitted by this Agreement. Information to be disclosed shall include Agreement number, and the anticipated start date. The Responsible Party shall contact DFG within thirty days of completion of the work permitted by this Agreement. Information to be disclosed shall include Agreement number.

20) The usual June 1 – October 31 work period is site-specifically modified as follows: the culvert repair work at Post Mile 22.66 shall not begin until July 1 in any given work season.

GENERAL CONDITIONS FOR ALL ENCROACHMENTS

21) Equipment shall not operate in a live (flowing) stream or wetted channel except as may be necessary to construct and remove in-stream structures to catch and contain water (i.e. cofferdams) to divert stream flow and isolate the work site, or as otherwise specifically provided for in this Agreement.

22) No fill material shall be placed within a stream except as specified in this Agreement. Any fill material used shall be placed and/or removed in such a manner that it shall cause no sediment discharge or siltation in the stream.

23) All heavy equipment that will be entering the live stream shall be cleaned of materials deleterious to aquatic life including oil, grease, hydraulic fluid, soil and other debris. Cleaning of equipment shall take place outside of the riparian area and prior to entering the water.

24) Adequate and effective erosion and siltation control measures shall be used to prevent sediment or turbid or silt-laden water from entering streams. Where needed, the Responsible Party shall use native vegetation or other treatments including jute netting, straw wattles, and geotextiles to protect and stabilize soils. Geotextiles, fiber rolls, and other erosion control treatments shall not contain plastic mesh netting.

25) All bare mineral soil exposed in conjunction with crossing construction, deconstruction, maintenance or repair, shall be treated for erosion prior to the onset of precipitation capable of generating run-off or the end of the yearly work period, whichever comes first. Restoration shall include the seeding and mulching of all bare mineral soil exposed in conjunction with encroachment work. Erosion control shall consist of at least 2 to 4 inches straw mulch and 100 lbs/acre equivalent barley seed. No annual, or Italian, ryegrass (*Lolium multiflorum*) shall be used.

26) Encroachments and associated structures, fills, and other exposed soils shall be armored as needed to protect fill, abutments, and the stream channel and banks from erosion. Armoring shall be comprised of rock riprap, large woody debris (LWD), or other non-polluting materials and shall be constructed to remain in place during periods of high flow events. When used on permanent culverts, armoring shall extend at least as high as the top of the culvert, and shall prevent bank erosion by extending a sufficient distance upstream and downstream along the banks.

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- 27) Encroachments shall be constructed, deconstructed, and maintained in a manner that minimizes to the extent feasible headcutting or downcutting of the stream channel by installing grade control such as riprap, woody debris, or through other effective measures.
- 28) Disturbance or removal of vegetation shall not exceed the minimum necessary to complete operations.
- 29) The Responsible Party shall provide site maintenance including, but not limited to, re-applying erosion control to minimize surface erosion and ensuring drainage structures, streambeds and banks remain sufficiently armored and/or stable.
- 30) Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the ordinary high water mark before such flows occur or the end of the yearly work period, whichever comes first.
- 31) Refueling of equipment and vehicles and storing, adding or draining lubricants, coolants or hydraulic fluids shall not take place within riparian areas or within stream beds, banks or channels. All such fluids and containers shall be disposed of properly. Heavy equipment including water drafting trucks parked within riparian areas or streambeds, banks or channels shall use drip pans or other devices (i.e., absorbent blankets, sheet barriers or other materials) as needed to prevent soil and water contamination.
- 32) No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any logging, construction, or associated activity of whatever nature shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into Waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.

#### SITE-SPECIFIC CONDITIONS

- 33) Bituminous coated culvert pipes shall not be used on any stream in the proposed project.
- 34) If a water diversion is deemed necessary at any site during construction, water shall be diverted as close to the culvert inlet as feasible to prevent dewatering of the stream channel. Water shall also be returned to the stream channel as close to the culvert outlet as feasible.
- 35) At Post Mile 8.00, the eroding streambank (left bank looking downstream) immediately upstream of the culvert inlet shall be armored with appropriately sized rock. Rock armor shall begin adjacent to the first large alder growing next to the stream, and continue downstream approximately 15-feet. The large Big leaf Maple leaning toward the road upstream of the culvert inlet shall be retained. Limbing of the maple may be undertaken to improve access to the work area.
- ~~36) At Post Mile 8.53, a downspout and appropriately sized rock energy dissipater shall be installed below the outfall to effectively control erosion within one year of the effective date of the Agreement. In addition, Caltrans shall notify DFG, pursuant to Section 1600 of the Fish and Game Code, within one year of the effective date of this Agreement with a plan to address serious erosion issues at the site. The notification shall include a detailed description of how future~~

~~sedimentation of critical North Fork Mad River salmonid spawning and rearing habitat will be prevented at this site.~~ RM WMC 10/22/09

37) At Post Mile 10.58, the large redwood trees on the right bank immediately downstream from the perched culvert outlet shall be retained. If the trees cannot be retained, DFG shall be contacted at least 14 days prior to removal. The trees shall be stockpiled for use by DFG for instream fish habitat restoration activities in the Mad River watershed. Where feasible, tree removal shall be undertaken with heavy equipment to help retain rootwads. Trees shall be left as long as possible and cut into lengths no shorter than 30 feet. If DFG does not remove said conifers within 60 days of written notification by Caltrans, this condition will expire.

38) At Post Mile 22.66, the eroding gully adjacent to the culvert inlet (right bank looking downstream) shall be armored with appropriately sized rock. Armor shall extend from the edge of the existing rock wall upstream approximately 25-feet.

**This Agreement becomes effective on the date of DFG's signature and terminates 2 years from the effective date.**

CONCURRENCE

RESPONSIBLE PARTY

CALIFORNIA DEPARTMENT OF FISH AND GAME

Richard Mullen  
(Signature)

Kenneth C. Moore  
Kenneth C. Moore  
Habitat Conservation Program Manager  
Northern Region

RICHARD MULLEN  
(Print Name)

10/22/09  
(Date)

PROJECT MANAGER / CALTRANS  
(Title/Organization)

9-21-09  
(Date)