

# **INFORMATION HANDOUT**

**For Contract No. 03-2F4004**

**At 03-ED-49-20.3**

**Identified by**

**Project ID 0312000233**

## **PERMITS**

California Department of Fish and Wildlife

United States Army Corps of Engineers

Non-Reporting Nationwide 404

## **WATER QUALITY**

California Regional Water Quality Control Board

Central Valley Region

Technically Conditioned Water Quality Certification (WDID #5A09CR00147)



State of California – The Natural Resources Agency  
**DEPARTMENT OF FISH AND WILDLIFE**  
North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670-4599  
916-358-2900  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

*EDMUND G. BROWN, Jr. Governor*  
*Charlton H. Bonham, Director*



MAR 20 2015

Date

Rex Harvey  
California Department of Transportation  
703 B St.  
Marysville, CA 95901

Subject: Final Lake or Streambed Alteration Agreement  
Notification No. 1600-2014-0298-R2

Dear Mr. Harvey:

Enclosed is the final Streambed Alteration Agreement (Agreement) for the State Route 49 Drainage Improvement Project. Before the California Department of Fish and Wildlife (Department) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, the Department, acting as a responsible agency, filed a notice of determination (NOD) on the same date it signed the Agreement. The NOD was based on information contained in the Mitigated Negative Declaration the lead agency prepared for the Project.

Under CEQA, filing a NOD starts a 30-day period within which a party may challenge the filing agency's approval of the Project. You may begin your Project before the 30-day period expires if you have obtained all necessary local, State, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this matter, please contact Juan Lopez Torres, Senior Environmental Scientist (Specialist) at (916) 358-2951 or [juan.torres@wildlife.ca.gov](mailto:juan.torres@wildlife.ca.gov).

Sincerely,

*Tina Bartlett*  
Regional Manager

ec: Juan Lopez Torres, Senior Environmental Scientist (Specialist),  
[juan.torres@wildlife.ca.gov](mailto:juan.torres@wildlife.ca.gov).

**CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE**  
NORTH CENTRAL REGION  
1701 NIMBUS ROAD, SUITE A  
RANCHO CORDOVA, CA 95670



**STREAMBED ALTERATION AGREEMENT**  
NOTIFICATION NO. 1600-2014-0298-R2 (REVISION 1)

CALIFORNIA DEPARTMENT OF TRANSPORTATION  
STATE ROUTE 49 DRAINAGE IMPROVEMENTS

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (Department) and California Department of Transportation (Permittee) as represented by Rex Hervey.

#### **RECITALS**

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified the Department on December 10, 2014, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, the Department has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

#### **PROJECT LOCATION**

The project is located at State Route 49 from post mile (PM) 20.2 to PM 20.4, within an unnamed tributaries to Indian Creek in the County of El Dorado, State of California; Section 28, Township 11N, Range 13E; Garden Valley, California U.S. Geological Survey (USGS) 7.5-minute quadrangle map, at Latitude 38.7709, Longitude -120.8649.

**Exhibit A** includes Figure 1 depicting the project location.

#### **PROJECT DESCRIPTION**

The project will install 394 linear feet (LF) of reinforced concrete pipe (RCP), three new drainage inlets (DI's), and construct new asphalt curb and gutters to direct water flow. All work will be performed within Caltrans existing right-of-way. The RCP inlet will be at the southern extent of the project area where water will be directed into a 30" RCP that

will pass through one DI. At this DI the RCP will increase to a 29" by 45" oval RCP that will then pass through the second DI and terminate at the third DI. The DIs will also tie in three cross culverts that cross under the highway, carrying runoff from west to east. Asphalt gutter will be placed from the highway shoulder over the new RCP.

The construction of the project will result in 0.018 acres of impacts to CDFW jurisdictional areas consisting of 0.010 acres of riparian habitat, and 0.008 acres of unvegetated stream.

Construction equipment would include, but would not be limited to backhoes, front end loaders, road graders, dozers, and dump trucks.

### **PROJECT IMPACTS**

Existing fish or wildlife resources the project could substantially adversely affect include: nesting birds and aquatic and terrestrial plant and wildlife species.

The adverse effects the project could have on the fish or wildlife resources identified above include: disruption to nesting birds, disruption to aquatic or terrestrial plant and wildlife species, change in contour of channel or bank, soil compaction or other disturbance.

### **MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES**

#### **1. Administrative Measures**

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to Department personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall ensure that all persons employed or otherwise working on the project site read the Agreement and any extensions and amendments to the Agreement prior to performing any work on-site. Upon review of the Agreement, employees shall sign a form stating that they understand all measures. Interpretation shall be provided for non-English speaking workers, and the same instruction shall be provided for any new workers prior to their performing work on-site. These forms shall be readily available at the project site at all times and shall be presented to Department personnel or personnel from another state, federal, or local agency upon request.

- 1.3 **Notification of Conflicting Provisions.** Permittee shall notify the Department if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, the Department shall contact Permittee to resolve any conflict.
- 1.4 **Project Site Entry.** Permittee agrees that CDFW personnel may, with notification of the Resident Engineer, enter the project site at any time to verify compliance with the Agreement.
- 1.5 **Does Not Authorize "Take."** This Agreement does not authorize "take" of any listed species. Take is defined as hunt, pursue, catch, capture or kill or attempt to hunt, pursue, catch, capture, or kill. If there is potential for take of any listed species to occur, the Permittee shall consult with the Department as outlined in FGC Section 2081 and shall obtain the required state and federal threatened and endangered species permits.

## **2. Avoidance and Minimization Measures**

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

- 2.1 **Work Period.** Work shall be timed during the driest time within the channel. If water is present at the time of construction, water shall be diverted around the work area and work shall begin after the site is dry. The time period for completing the work within the flowing or standing water of the watercourses shall be confined to the period between July 15<sup>th</sup> and October 15<sup>th</sup> of the same calendar year during the term of this Agreement. Work within the dry portion of the stream shall be timed with awareness of precipitation forecasts and likely increases in stream flow. Construction activities within the stream shall cease until all reasonable erosion control measures, have been implemented prior to all storm events. Construction equipment and material shall be removed from the floodplain if inundation is likely. Revegetation, restoration and erosion control work is not confined to this time period.
- 2.2 **California Red-legged Frog Surveys.** Prior to the initiation of any project activities, Permittee shall perform preconstruction surveys for California red-legged frog (*Rana draytonii*) within all Department jurisdictional areas where potential habitat for this species is present. Documentation of surveys and findings shall be received by the Department prior to conducting project activities.
- 2.3 **Nesting Birds.** If Permittee begins project activities during the nesting period for birds (February 1 to September 1), then the Permittee shall initiate pre-commencement surveys to avoid impacts to nesting birds. These surveys shall include the areas within 500 feet of the edge of the proposed impact area(s) or within the extension of Caltrans right of way. If active nests are found, a temporary no-disturbance buffer as approved by the Department shall be created to protect

the nest and the birds. No habitat removal or any other work shall occur within the temporary disturbance buffer (even if the nest continues active beyond September 1<sup>st</sup>) until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. Vegetation clearing may occur other than as described above if Department-approved avoidance measures are in place to ensure no impacts to nesting birds may occur and the Permittee receives confirmation from the Department that the vegetation removal at a specific site is allowed on a specified date. Permittee shall submit the mapped survey results to the Department for review and approval prior to vegetation removal to ensure full avoidance measures are in place.

- 2.4 Demarcate Work Area and Access Boundaries. In consultation with the designated Biologist and approved by the Department, the Permittee or Designated Representative shall demarcate the boundaries of the confirmed disturbance area within the stream or streambed. All forms of markings shall be in place prior to and during periods of operation. All persons employed or otherwise working on the project site shall be instructed by Permittee or Designated Representative about the restrictions that the flagging represents. The work area and access boundaries shall be clearly shown on all engineering drawings for the project.
- 2.4.1 Construction Fencing. Permittee or Designated Representative shall install temporary construction fencing to designate the work area. The protective fencing shall be placed at a distance no greater than five (5) feet upstream and five (5) feet downstream from outer edges of the work area.
- 2.4.2 Demarcate Work Area to Avoid Vegetation. Demarcation of the work area shall consider and avoid vegetation to the greater extent possible. Vegetation shall not be removed or damaged beyond the work area. If vegetation bordering the demarcated area proves to be an obstruction to project operations as described in the project notification then the Permittee shall request approval from the Department prior to trimming vegetation.
- 2.5 Best Management Practices. Permittee shall actively implement best management practices (BMPs) to prevent erosion and the discharge of sediment in to streams and lakes during project activities. BMPs shall be monitored daily and repaired if necessary to ensure maximum erosion and sediment control. All fiber rolls, straw waddles, and/or hay bales utilized within and adjacent to the project site shall be free of nonnative plant materials. Fiber rolls or erosion control mesh shall be made of loose-weave mesh that is not fused at the intersections of the weave, such as jute, or coconut (coir) fiber, or other products without welded weaves. Non-welded weaves reduce entanglement risks to wildlife by allowing animals to push through the weave, which expands when spread.
- 2.6 Pollution and Litter. Permittee 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 Permittee to ensure compliance.

- 2.6.1 Spoil sites shall not be located within a lake, streambed, or flowing stream or locations that may be subjected to high storm flows, where spoil shall be washed back into a lake, streambed, or flowing stream where it will impact streambed habitat and aquatic or riparian vegetation.
- 2.6.2 Raw cement/concrete or washings thereof, asphalt, paint, or other coating material, oil or other petroleum products, or any other substances which could be hazardous to fish and wildlife resources resulting from project related activities shall be prevented from contaminating the soil and/or entering the waters of the State. These materials, placed within or where they may enter a lake, streambed, or flowing stream by Permittee or any party working under contract or with the permission of Permittee, shall be removed immediately.
- 2.6.3 No broken concrete, cement, debris, soil, silt, sand, bark, slash, sawdust, rubbish, or washings thereof, oil or petroleum products, or other organic or earthen material from any 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. No rubbish shall be deposited within 100 feet of the high water mark of any lake, streambed, or flowing stream.
- 2.6.4 No equipment maintenance or fueling shall be done within or near any lake, streambed, or flowing stream where petroleum products or other pollutants from the equipment may enter these areas under any flow.
- 2.7 Inspection of Project Equipment. Permittee shall inspect all vehicles, watercraft, tools, waders and boots, and other project-related equipment and remove all visible soil/mud, plant materials, and animal remnants prior to entering and exiting the project site.
- 2.8 Operating Equipment and Vehicle Leaks. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily to prevent leaks of materials that could be deleterious to aquatic and terrestrial life or riparian habitat.
- 2.9 Stationary Equipment Leaks. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.
- 2.10 Minimize Vehicle Parking. Vehicles may enter and exit the work area as necessary for project activities, but may not be parked overnight within ten (10) feet of the drip

line of any trees within the Department jurisdiction; nor shall vehicles be parked where mechanical fluid leaks may potentially enter the waters of the state.

- 2.11 **Leave Wildlife Unharm**. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed. If any listed wildlife is encountered, the Permittee shall contact the Department immediately or proceed as described in the Incidental Take Permit for the project.
- 2.12 **Disturbed Soils**. Permittee shall stabilize all disturbed soils within the Project site to reduce erosion potential, both during and following construction. Planting, seeding with native species, sterile seed mix, and mulching is acceptable. Where suitable vegetation cannot reasonably be expected to become established, non-erodible materials, such as coconut fiber matting, shall be used for such stabilization.
- 2.13 **Sediment Control**. Precautions to minimize turbidity/siltation shall be taken into account during project planning and implementation. This may require the placement of silt fencing, coir logs, coir rolls, straw bale dikes, or other siltation barriers so that silt and/or other deleterious materials are not allowed to pass to downstream reaches. **Products with plastic monofilament or cross joints in the netting that are bound/stitched (such as found in straw wattles/fiber rolls and some erosion control blankets) which may cause entrapment of wildlife, shall not be allowed.**

Passage of sediment beyond the sediment barrier(s) is prohibited. If any sediment barrier fails to retain sediment, corrective measures shall be taken. The sediment barrier(s) shall be maintained in good operating condition throughout the construction period and the following rainy season. Maintenance includes, but is not limited to, removal of accumulated silt and/or replacement of damaged silt fencing, coir logs, coir rolls, and/or straw bale dikes. Upon the Department's determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective Department approved control devices are installed or abatement procedures are initiated.

### **3. Compensatory Measures**

- 3.1 **Habitat Mitigation and Monitoring Plan (HMMP)**. No later than 60 days prior to commencing construction activities, Permittee shall submit to the Department for review and approval a HMMP for the off-site restoration/creation of 0.010 acres of riparian habitat, and 0.008 acres of unvegetated stream. At a minimum, the HMMP shall include the following information: (a) a description of the existing physical conditions of the proposed creation or restoration site, including water resources and habitat types, and a map that identifies the location of the site; (b) a plan for the preparation of the creation or restoration site, including the removal of nonnative plant species, non-wetland/riparian plant species, and grading; (c) a

local California native plant palette; (d) a planting plan, including monitoring and maintenance measures and a timeline; (e) an irrigation plan; (f) procedures to ensure that nonnative plants are not introduced or allowed to sustain within the creation or restoration site and a nonnative plant removal plan; and (g) success standards with contingency measures. Monitoring and maintenance of the creation or restoration site shall be conducted annually for a minimum of five years, or until the Department determines the mitigation site is successful.

**3.2 Habitat Restoration/Creation.** Permittee shall restore/create 0.010 acres of riparian habitat, and 0.008 acres of unvegetated stream. This habitat restoration/creation shall occur off-site at the Permittee's Hanley mitigation property. The habitat creation/enhancement shall follow the HMMP stipulations and conditions listed in Section 3.1 of this Agreement.

**3.3 Conservation Easement.** **Within seven years of the execution of this Agreement,** Permittee shall place a conservation easement on the habitat created/restored pursuant to condition 3.2, in favor of a Department approved local conservation entity. Permittee shall obtain Department approval of the site prior to placing the conservation easement. The Permittee shall be responsible for all costs in recording and funding the conservation easement. The Permittee shall provide sufficient funds to manage the area in perpetuity.

#### **4. Reporting Measures**

Permittee shall meet each reporting requirement described below.

**4.1 Notification of Project Initiation.** The Permittee shall notify the Department two (2) working days prior to beginning work within the riparian areas or unvegetated stream. Notification shall be submitted as instructed in Contact Information section below. Email notification is preferred.

**4.2 Notification of Project Completion.** Upon completion of the project activities described in this agreement, the project activities within the watercourse work area shall be digitally photographed. Photographs shall be submitted to the Department **within fifteen (15) days of completion.** Photographs and project commencement notification shall be submitted as instructed in Contact Information section below. Email submittal is preferred.

**4.3 Annual Monitoring.** Permittee shall submit an annual monitoring report to the **Department** for five (5) years after completion of the construction project. The report shall discuss the mitigation performance as it relates to the success criteria. The report shall include the success of natural revegetation establishment, survival, percent cover, and height of both tree and shrub species. The number by species of plants replaced (if applicable), an overview of the revegetation effort, and the method used to assess these parameters shall also be included. The report shall include photos from designated photo stations and other relevant

information including: a summary of invasive species control, methods used to remove non-native plants, and a list of wildlife observed on site.

## **CONTACT INFORMATION**

Any communication that Permittee or the Department submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or the Department specifies by written notice to the other.

### To Permittee:

California Department of Transportation  
Rex Hervey  
703 B Street  
Marysville, CA 95901  
Phone: 530-741-5448  
Email: [Rex.Hervey@dot.ca.gov](mailto:Rex.Hervey@dot.ca.gov)

### *Contact person:*

Cassandra Evenson  
703 B Street  
Marysville, CA 95901  
Phone: 530-740-4906  
Email: [Cassandra.Evenson@dot.ca.gov](mailto:Cassandra.Evenson@dot.ca.gov)

### To The Department:

Department of Fish and Wildlife  
North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670  
Attn: Lake and Streambed Alteration Program  
Notification #: 1600-2014-0298-R2  
Phone: 916-358-2885  
Fax: 916-358-2912  
Email: [R2LSA@wildlife.ca.gov](mailto:R2LSA@wildlife.ca.gov)

## **LIABILITY**

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute the Department's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

## **SUSPENSION AND REVOCATION**

The Department may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before the Department suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before the Department suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused the Department to issue the notice.

## **ENFORCEMENT**

Nothing in the Agreement precludes the Department from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects the Department's enforcement authority or that of its enforcement personnel.

## **OTHER LEGAL OBLIGATIONS**

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 *et seq.* (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

## **AMENDMENT**

The Department may amend the Agreement at any time during its term if the Department determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by the Department and Permittee. To request an amendment, Permittee shall submit to the Department a completed Department "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in the Department's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **TRANSFER AND ASSIGNMENT**

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter the Department approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to the Department a completed Department "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in the Department's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

## **EXTENSIONS**

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to the Department a completed Department "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in the Department's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). The Department shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (FGC § 1605, subd. (f)).

## **EFFECTIVE DATE**

The Agreement becomes effective on the date of the Department's signature, which shall be: 1) after Permittee's signature; 2) after the Department complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3)

after payment of the applicable FGC section 711.4 filing fee listed at [http://www.dfg.ca.gov/habcon/ceqa/ceqa\\_changes.html](http://www.dfg.ca.gov/habcon/ceqa/ceqa_changes.html).

## **TERM**

This Agreement shall expire **November 1, 2016**, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

## **EXHIBITS**

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. Figure 1 – Project Location
- Figure 2 – Impact Map

**AUTHORITY**

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

**AUTHORIZATION**

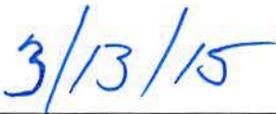
This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify the Department in accordance with FGC section 1602.

**CONCURRENCE**

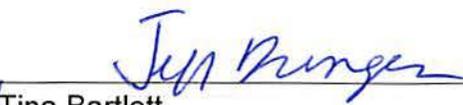
The undersigned accepts and agrees to comply with all provisions contained herein.

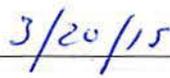
**FOR PERMITTEE**

  
\_\_\_\_\_  
Rex Hervey  
Project Manager

  
\_\_\_\_\_  
Date

**FOR DEPARTMENT OF FISH AND WILDLIFE**

  
\_\_\_\_\_  
Tina Bartlett  
Regional Manager

  
\_\_\_\_\_  
Date

Prepared by: Juan Lopez Torres  
Senior Environmental Scientist (Specialist)

**Exhibit A**  
**Figure 1 – Project Location**

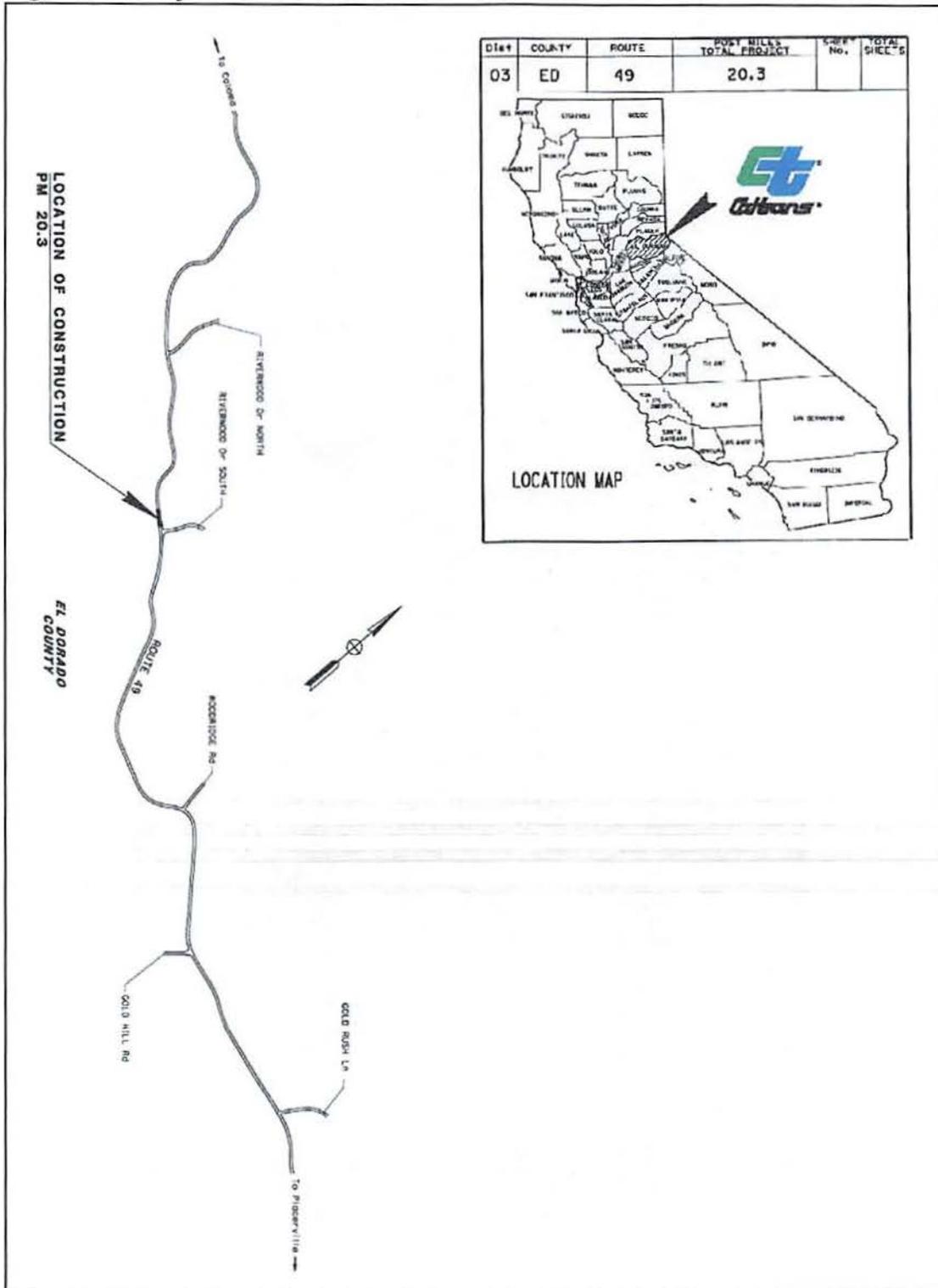
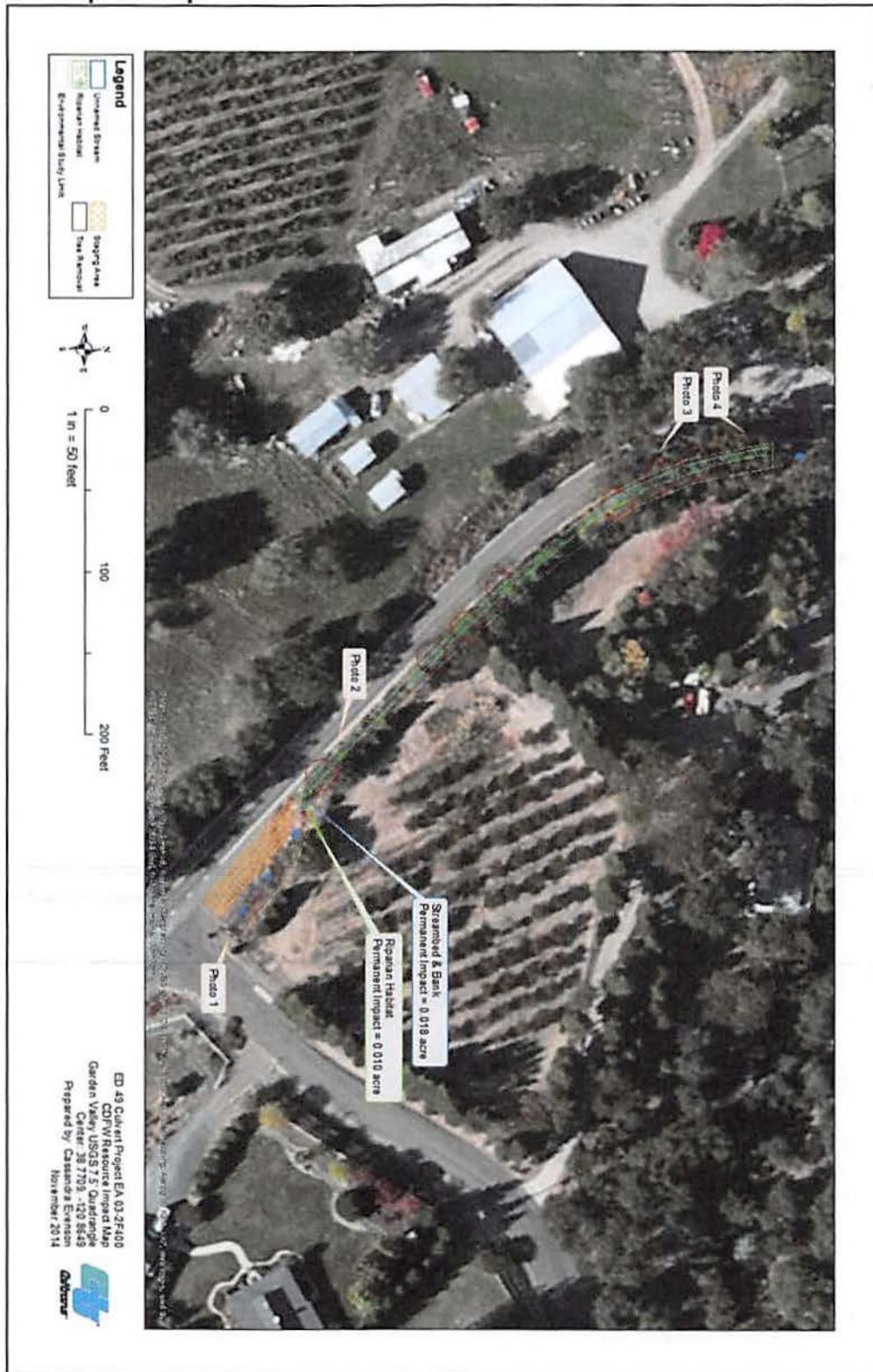


Figure 2 – Impact Map



NON REPORTING

U. S. Army Corps of Engineers  
South Pacific Division



Nationwide Permit Pre-Construction Notification (PCN) Form

This form integrates requirements of the U. S. Army Corps of Engineers Nationwide Permit Program within the South Pacific Division (SPD), including General and Regional Conditions. You MUST fill out all boxes related to the work being done. Fillable boxes in this form expand if additional space is needed.

<b>Box 1 Project Name</b> ED-49 Drainage Improvement Project			
<b>Applicant Name</b> Rex Hervey		<b>Applicant Title</b> Project Manager	
<b>Applicant Company, Agency, etc.</b> California Department of Transportation		<b>Applicant's internal tracking number</b> (if any) EA 03-2F400; EFIS 0312000233	
<b>Mailing Address</b> 703 B Street, Marysville CA 95901			
Work Phone with area code (530)741-4018	Mobile Phone with area code	Home Phone with area code	Fax # with area code
E-mail Address Rex.Hervey@dot.ca.gov	Relationship of applicant to property: <input checked="" type="checkbox"/> Owner <input type="checkbox"/> Purchaser <input type="checkbox"/> Lessee <input type="checkbox"/> Other:		
Application is hereby made for verification that subject regulated activities associated with subject project qualify for authorization under a U.S. Army Corps of Engineers 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 and to comply with all terms and conditions of the authorization.			
<b>Signature of applicant</b> <i>Rex P. Hervey</i>			Date (m/d/yyyy) 12/3/14

If anyone other than the person named as the Applicant will be in contact with the U. S. Army Corps of Engineers representing the Applicant regarding this project during the permit process, Box 2 MUST be filled out.

<b>Box 2 Authorized Agent/Operator Name</b> Cassandra Evenson		<b>Agent/Operator Title</b> District Biologist	
<b>Agent/Operator Company, Agency, etc.</b> California Department of Transportation		E-mail Address Cassandra.Evenson@dot.ca.gov	
Mailing Address 703 B Street, Marysville CA 95901			
Work Phone with area code (530)740-4906	Mobile Phone with area code	Home Phone with area code	Fax # with area code
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>Rex P. Hervey</i>			Date (m/d/yyyy) 12/3/14
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>Cassandra Evenson</i>			Date (m/d/yyyy) 11/24/14

<b>Box 3 Name of property owners(s), if other than applicant:</b>		
<b>Owner Title</b>	<b>Owner Company, Agency etc.</b>	
Mailing Address		
Work Phone with area code	Mobile Phone with area code	Home Phone with area code

<b>Box 4 Name of contractor(s) (if known):</b> TBD		
<b>Contractor Title</b>	<b>Contractor Company, Agency, etc.</b>	
Mailing Address		
Work Phone with area code	Mobile Phone with area code	Home Phone with area code

<b>Box 5 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:</b>	
<b>Waterbody</b> (if known, otherwise enter "an unnamed tributary to"): Unnamed tributary to Tributary to what known, downstream waterbody: Indian Creek	
Latitude & Longitude (D/M/S, DD, or UTM with Zone): 38.7709, -120.8649	Section, Township, Range: 28, 11N, 13E
County Assessor parcel number (include county name):	USGS Quadrangle map name: Garden Valley
Watershed (HUC and watershed name <sup>1</sup> ): 18020129 South Fork American Watershed <sup>1</sup> <a href="http://water.usgs.gov/GIS/regions.html">http://water.usgs.gov/GIS/regions.html</a>	Size of permit area or project boundary: 0.018 acres                      394 linear feet
Directions to the project location and other location descriptions, if known: From Placerville, travel north on highway 49 for 5 miles. Project begins on east side of highway 49 near the south entrance to Riverwood Drive and extends north for about 400 linear feet, ending at private driveway. From Auburn, travel south on highway 49 for 20 miles.	
<b>Nature of Activity</b> (Description of project, include all features): Install reinforced concrete pipe (RCP) and three drainage inlets (DI).	
<b>Project Purpose</b> (Description of the reason or purpose of the project): Rehabilitate roadside drainage (unnamed stream) to stop erosion that is undermining the highway pavement through the curve.	

**Box 6 Reason(s) for discharge into Waters of the United States** (Description of why dredged and/or fill material needs to be placed in Waters of the United States):

The existing stream flow is eroding the highway pavement and must be redirected through a concrete pipe to stop the erosion and permanently repair the highway.

**Proposed discharge of dredge and/or fill material.** Indicate total surface area in **acres** and **linear feet** (where appropriate) of the proposed impacts to Waters of the United States, indicate water body type (tidal wetland, non-tidal wetland, riparian wetland, ephemeral stream/river, intermittent stream/river, perennial stream/river, pond/lake, vegetated shallows, bay/harbor, lagoon, ocean, etc.), and identify the impact(s) as permanent and/or temporary for each requested Nationwide Permit<sup>1</sup>:

<sup>1</sup>Enter the intended permit number(s). See Nationwide Permit regulations for permit numbers and qualification information: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>

Water Body Type	Requested NWP Number: 14				Requested NWP Number:				Requested NWP Number:			
	Permanent		Temporary		Permanent		Temporary		Permanent		Temporary	
	Area	Length	Area	Length	Area	Length	Area	Length	Area	Length	Area	Length
Intermittent stream	0.018	394										
<b>Total:</b>	<b>0.018</b>	<b>394</b>										

Total volume (in cubic yards) and type(s) of material proposed to be dredged from or discharged into Waters of the United States:

Material Type	Total Volume Dredged	Total Volume Discharged
Rock Slope Protection (RSP)		
Clean spawning gravel		
River rock		
Soil/Dirt/Silt/Sand/Mud		
Concrete		7.29 cy
Structure		
Stumps/Root wads		
Other:		
<b>Total:</b>		

Activity requires a written waiver to exceed specified limits of the Nationwide Permit?  YES  NO  
 If yes, provide Nationwide Permit number and name, limit to be exceeded, and rationale for each requested waiver:

Activity will result in the loss of greater than ½-acre of Waters of the United States?  YES  NO  
 If yes, provide an electronic copy (compact disc) or multiple hard copies (7) of the complete PCN for appropriate Federal and State Pre-discharge Notification (See General Condition #31, Pre-construction Notification, Agency Coordination, Section 2 and 4):

Describe direct and indirect effects caused by the activity and how the activity has been designed (or modified) to have minimal adverse effects on the aquatic environment (See General Condition #31, Pre-construction Notification, District Engineer's Decision, Section 1): Installation of RCP and DI's will permanently fill 394 LF of the unnamed intermittent stream (roadside ditch). In-stream work window will be limited to dry season during late summer through fall.

Potential cumulative impacts of proposed activity (if any): none

Required drawings and figures (see each U. S. Army Corps of Engineers District's Minimum Standards Guidance):

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 Drawings(s):  Attached (or mail copy separately if applying electronically)

Numbered and dated pre-project color photographs:  Attached (or mail copy separately if applying electronically)

Sketch drawing(s) or map(s):  Attached (or mail copy separately if applying electronically)

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

Yes, Attached<sup>2</sup> (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

<sup>2</sup>If available, provide ESRI shapefiles (NAD83) for delineated waters

For proposed discharges of dredged material resulting from navigation dredging into inland or near-shore waters of the U.S. (including beach nourishment), please attach<sup>3</sup> a proposed Sampling and Analysis Plan (SAP) prepared according to Inland Testing Manual (ITM) guidelines (including Tier I information, if available), or if disposed offshore, a proposed SAP prepared according to the Ocean Disposal Manual.

<sup>3</sup>Or mail copy separately if applying electronically

Is any portion of the work already complete?  YES  NO

If yes, describe the work:

### Box 7 Authority

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

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

Is the project located in U. S. Army Corps of Engineers property or easement?:  YES  NO

If yes, has Section 408 process been initiated?:  YES  NO

Would the project affect a U. S. Army Corps of Engineers structure?:  YES  NO

If yes, has Section 408 process been initiated?:  YES  NO

Is the project located on other Federal Lands (USFS, BLM, etc.)?:  YES  NO

Is the project located on Tribal Lands?:  YES  NO

**Box 8** 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):

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):

**Box 9 Measures taken to avoid and minimize impacts to waters of the United States:**

A work window during the dry season will be established to minimize impacts to surface waters. Additional avoidance and minimization measures include installation of Caltrans BMP's.

**Box 10 Proposed Compensatory Mitigation** 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 (tidal wetland, non-tidal wetland, riparian wetland, ephemeral stream/river, intermittent stream/river, perennial stream/river, pond/lake, vegetated shallows, bay/harbor, lagoon, ocean, etc.) or non-jurisdictional (uplands<sup>1</sup>). Indicate mitigation type (permittee-responsible on-site/off-site, mitigation bank, or in-lieu fee program). If the mitigation is purchase of credits from a mitigation bank, indicate the bank to be used, if known:

<sup>1</sup> For uplands, please indicate if designed as an upland buffer.

Site Number	Water Body Type	Created		Restored		Enhanced		Preserved		Mitigation Type
		Area	Length	Area	Length	Area	Length	Area	Length	
Total:										

If no mitigation is proposed, provide detailed explanation of why no mitigation would be necessary: No impacts to special aquatic sites i.e. wetlands and less than 1/10 acre of permanent fill BOWHM.

If permittee-responsible mitigation is proposed, provide justification for not utilizing a Corps-approved mitigation bank or in-lieu fee program:

Has a draft/conceptual mitigation plan been prepared in accordance with the April 10, 2008 Final Mitigation Rule<sup>2</sup> and District Guidelines?

<sup>2</sup>[http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitig\\_info.aspx](http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitig_info.aspx)

<sup>3</sup>**Sacramento and San Francisco Districts**-[http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/pdf/Mitigation\\_Monitoring\\_Guidelines.pdf](http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/pdf/Mitigation_Monitoring_Guidelines.pdf)

<sup>4</sup>**Los Angeles District**-[http://www.spl.usace.army.mil/regulatory/mmg\\_2004.pdf](http://www.spl.usace.army.mil/regulatory/mmg_2004.pdf)

<sup>5</sup>**Albuquerque District**-[http://www.spa.usace.army.mil/reg/mitigation/SPA%20Final%20Mitigation%20Guidelines\\_OLD.pdf](http://www.spa.usace.army.mil/reg/mitigation/SPA%20Final%20Mitigation%20Guidelines_OLD.pdf)

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

If no, a mitigation plan must be prepared and submitted, if applicable.

Mitigation site(s) Latitude & Longitude (D/M/S, DD, or UTM with Zone):	USGS Quadrangle map name(s):
--	------------------------------

Assessor Parcel Number(s):	Section(s), Township(s), Range(s):
----------------------------	------------------------------------

Other location descriptions, if known:

Directions to the mitigation location(s):

**Box 11 Threatened or Endangered Species**

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

- a. California red-legged frog (*Rana draytonii*)
- 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 of the impact and a biological evaluation, if available

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

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

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):

**Box 12 Historic properties and cultural resources**

Are any cultural resources of any type known to exist on-site?  YES  NO

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

- a.
- b.
- c.
- d.
- e.
- f.

Has a cultural resource records search been conducted?

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

Has a cultural resource pedestrian survey been conducted for the site?

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

Has another federal agency been designated the lead federal agency for Section 106 consultation?

Yes, Designation letter/email attached (or mail copy separately if applying electronically)  No

Has Section 106 consultation been initiated by another federal agency?

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

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

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

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

**Box 13 Section 401 Water Quality Certification:**

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

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

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

Exempted Activity?  Yes  No

Agency concurrence?  Yes, Attached  No

If exempt, state why:

**Box 14 Coastal Zone Management Act**

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

Agency concurrence?  Yes, Attached  No

If exempt, state why:

**Box 15** List of other certification or approval/denials received from other federal, state, or local agencies for work described in this application:

Agency	Type Approval <sup>4</sup>	Identification Number	Date Applied	Dated Approved	Date Denied
RWQCB	401		11/24/14		
CDFW	1602		11/24/14		

<sup>4</sup>Would include but is not restricted to zoning, building, and flood plain permits

## Nationwide Permit General Conditions (GC) checklist:

(<http://www.gpo.gov/fdsys/pkg/FR-2012-02-21/pdf/2012-3687.pdf>)

Check	General Condition	Rationale for compliance with General Condition
<input checked="" type="checkbox"/>	1. Navigation	The proposed project will not have an adverse effect on navigation.
<input checked="" type="checkbox"/>	2. Aquatic Life Movements	The proposed project will not disrupt life cycle movements of aquatic species.
<input checked="" type="checkbox"/>	3. Spawning Areas	There are no spawning areas within the project limits.
<input checked="" type="checkbox"/>	4. Migratory Bird Breeding Areas	The waters within the proposed project do not provide habitat for breeding migratory birds.
<input checked="" type="checkbox"/>	5. Shellfish Beds	There are no concentrated shellfish populations within the project limits.
<input checked="" type="checkbox"/>	6. Suitable Material	No trash, debris, car bodies, asphalt, or other unsuitable material will be placed in waters of the U.S., and all fill material will be free from toxic pollutants in toxic amounts.
<input checked="" type="checkbox"/>	7. Water Supply Intakes	There is no public water supply intake in or near the project area.
<input checked="" type="checkbox"/>	8. Adverse Effects from Impoundments	The proposed project will not cause the impoundment of water.
<input checked="" type="checkbox"/>	9. Management of Water Flows	The proposed project will not alter the pre-construction course, condition, capacity, or location of open waters. The project has been designed to withstand expected high flows and will not impede the passage of normal or high flows.
<input checked="" type="checkbox"/>	10. Fills Within 100-Year Floodplains	The activity will comply with applicable FEMA-approved state local floodplain management requirements.
<input checked="" type="checkbox"/>	11. Equipment	The proposed project will not require use of heavy equipment in wetlands or mudflats.
<input checked="" type="checkbox"/>	12. Soil Erosion and Sediment Controls	Appropriate soil erosion and sediment controls will be used and maintained during construction.
<input checked="" type="checkbox"/>	13. Removal of Temporary Fills	Temporary fills will be removed and the project area returned to pre-project conditions.
<input checked="" type="checkbox"/>	14. Proper Maintenance	Any authorized fill will be properly maintained.
<input checked="" type="checkbox"/>	15. Single and Complete Project	The activity is a single and complete project.
<input checked="" type="checkbox"/>	16. Wild and Scenic Rivers	There are no National Wild or Scenic Rivers, nor any rivers officially designated by Congress as study river and currently in official study status, within the limits of construction.
<input checked="" type="checkbox"/>	17. Tribal Rights	There are no tribal rights reserved in the project area and no tribal rights will be impaired.
<input checked="" type="checkbox"/>	18. Endangered Species	See Box 11 above
<input checked="" type="checkbox"/>	19. Migratory Bird and Bald and Golden Eagle Permits	The proposed project will not result in the take of any migratory birds, bald or golden eagles.
<input checked="" type="checkbox"/>	20. Historic Properties	See Box 12 above
<input checked="" type="checkbox"/>	21. Discovery of Previously Unknown Remains and Artifacts	The Corps will be immediately notified if any previously unknown remains or artifacts are discovered.
<input checked="" type="checkbox"/>	22. Designated Critical Resource Waters	The project does not contain any designated Critical Resource Waters.
<input checked="" type="checkbox"/>	23. Mitigation	See Box 10 above
<input checked="" type="checkbox"/>	24. Safety of Impoundment Structures	The project does not include water impoundment structures.
<input checked="" type="checkbox"/>	25. Water Quality	See Box 13 above

<input checked="" type="checkbox"/>	26. Coastal Zone Management	See Box 14 above
<input checked="" type="checkbox"/>	27. Regional and Case-by-Case Conditions	Caltrans will comply with any Regional or Case-by-Case conditions added by the Corps.
<input checked="" type="checkbox"/>	28. Use of Multiple Nationwide Permits	The proposed project will not require multiple NWPs.
<input checked="" type="checkbox"/>	29. Transfer of Nationwide Permit Verifications	Caltrans will retain ownership of the property on which the proposed project will be built.
<input checked="" type="checkbox"/>	30. Compliance Certification	Caltrans will submit to the Corps a signed compliance certification upon completion of the project and any compensatory mitigation.
<input checked="" type="checkbox"/>	31. Pre-Construction Notification	This PCN complies with GC 31.

## Final Sacramento District NWP Regional Conditions (RC) for CA checklist:

[http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012\\_nwps/2012-NWP-RC-CA.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-CA.pdf)

Check	Regional Condition	Rationale for compliance with Regional Condition
<input checked="" type="checkbox"/>	1. <u>Pre-construction Notification</u> : The PCN shall also include: <input checked="" type="checkbox"/> a. Written statement regarding avoidance and minimization; <input checked="" type="checkbox"/> b. Drawings which include delineated WOTUS and OHWM, in accordance with the August 6, 2012 Special Public Notice: Final Map and Drawing Standards for the South Pacific Division Regulatory Program; and <input checked="" type="checkbox"/> c. Pre-project photos on a plan-view drawing.	This PCN includes all elements required by General Condition 31 and Regional Condition 1. This project qualifies as non-reporting and does not require a PCN to be submitted.
<input checked="" type="checkbox"/>	2. <u>Pre-construction Notification</u> : A PCN shall be submitted for; <input type="checkbox"/> a. All activities in a vernal pool <input type="checkbox"/> b. All activities in the Primary and Secondary Zones of the Legal Delta, Sacramento River, and San Joaquin River, and immediate tributaries of these waters. <input type="checkbox"/> c. All crossings of perennial and/or intermittent waters. <input type="checkbox"/> d. All activities proposed within 100 feet of a known natural spring. <input type="checkbox"/> e. All activities located in areas designated as EFH.	A PCN is not required because the project does not include crossings or any of the activities listed in Regional Condition 2.
<input checked="" type="checkbox"/>	3. <u>Recordation</u> : The permittee shall record the NWP verification with the Register of Deeds.	The proposed project does not involve the designation of a preserve in navigable waters.
<input checked="" type="checkbox"/>	4. <u>Avoided Waters</u> : *Unless determined impracticable by the Corps, the permittee shall: <input checked="" type="checkbox"/> a. Establish and maintain, in perpetuity, a preserve containing all avoided waters of the U.S.; <input checked="" type="checkbox"/> b. Place all avoided waters of the U.S. and upland buffers into a separate parcel; and <input checked="" type="checkbox"/> c. Establish permanent legal protection for all preserve parcels.  *If the Corps determines that it is impracticable to require permanent preservation of the avoided waters, additional mitigation may be required.	All avoided waters will be protected by establishing Environmentally Sensitive areas and will be appropriately fenced.
<input checked="" type="checkbox"/>	5. <u>Temporary Fill</u> : The PCN shall include:	The project does not include any temporary fill.

	<input type="checkbox"/> Why avoidance of temporary impacts is not practicable; <input type="checkbox"/> A description of the proposed temporary fill; <input type="checkbox"/> A proposed plan for restoration, including a plan for the revegetation, if necessary. For all activities resulting in temporary fill within waters of the U.S., the permittee shall: <input type="checkbox"/> a. Utilize material consisting of clean and washed gravel; <input type="checkbox"/> b. Place a horizontal marker; and <input type="checkbox"/> c. Remove all temporary fill within 30 days.	
<input checked="" type="checkbox"/>	6. <u>Stream Crossings</u> : Unless determined to be impracticable by the Corps, the following criteria shall apply: <input checked="" type="checkbox"/> a. Employ bridge designs that span the stream or river, or designs that use a bottomless arch culvert with a natural stream bed; <input checked="" type="checkbox"/> b. Ensure that no more than minor impacts would occur to fish and wildlife passage or expected high flows; <input checked="" type="checkbox"/> c. No construction activities shall occur within standing or flowing waters. Any proposed dewatering plans must be approved, in writing, by the Corps; and <input checked="" type="checkbox"/> d. All bank stabilization activities associated with a road crossing shall comply with Regional Condition 19.	There are no stream crossings in the project. No work will be done within standing or flowing waters. Dewatering is not required.
<input checked="" type="checkbox"/>	7. <u>Lead Federal Agency</u> : The lead Federal agency shall provide all documentation demonstrating previous consultation efforts.	Caltrans has included consultation documentation.
<input checked="" type="checkbox"/>	8. <u>Compliance Certificate</u> : The permittee shall submit the following additional information: <input checked="" type="checkbox"/> a. As-built drawings. <input checked="" type="checkbox"/> b. Post-construction photos on a plan-view drawing.	Information as required under General Condition 30 and Regional Condition 8 will be submitted with the compliance certification.
<input checked="" type="checkbox"/>	9. <u>Permittee Responsible Mitigation</u> : Permittee shall submit a final comprehensive mitigation and monitoring plan prior to commencement of construction activities.	No permittee responsible mitigation proposed.
<input checked="" type="checkbox"/>	10. <u>Mitigation</u> : Permittee shall complete construction of mitigation before or concurrent with commencement of project construction. Permittee shall submit proof of mitigation bank or ILF payment to the Corps prior to commencement of project construction.	No mitigation proposed.
<input checked="" type="checkbox"/>	11. <u>Contractor Awareness</u> : Permittee is responsible for contractor/worker awareness and shall ensure that a copy of the permit authorization and associated drawings are available and visible at the site until completion of construction.	A copy of the permit and drawings will be available for review at the project site.
<input checked="" type="checkbox"/>	12. <u>Limits of Disturbance</u> : Permittee shall clearly identify the limits of disturbance in the field with highly visible markers.	The project limits have been clearly identified in the field.
<input checked="" type="checkbox"/>	13. <u>Notification</u> : Permittee shall notify the Corps 10 days prior to initiation of project construction.	The Corps will be notified 10 days prior to initiation of project construction when PCN is required. This project

		qualifies as non-reporting and does not require a PCN to be submitted.
<input checked="" type="checkbox"/>	14. <u>Inspections</u> : Permittee shall allow the Corps to inspect the authorized activity(s).	Corps representatives may inspect the project and any avoidance/mitigation areas for compliance with the NWP at any time.
<input checked="" type="checkbox"/>	15. <u>Mather Core Recovery Area (Sacramento County)</u> : NWP's (see list) revoked from use in vernal pools.	The activity is not located within the Mather Core Recovery Area.
<input checked="" type="checkbox"/>	16. <u>Legal Delta</u> : NWP's (see list) revoked.	The activity is not located within the Legal Delta.
<input checked="" type="checkbox"/>	17. <u>Secondary Zone</u> : Mitigation required in Secondary Zone of the Legal Delta.	The activity is not located within the Secondary Zone of the Legal Delta.
<input checked="" type="checkbox"/>	18. <u>NWP 12</u> : <input type="checkbox"/> Shall not result in the draining of any wetland or WOTUS. <input type="checkbox"/> Permittee shall remove and stockpile top 6-12" of topsoil. <input type="checkbox"/> Permittee shall replace the topsoil and seed w/native vegetation.	The activity does not involve use of NWP 12.
<input checked="" type="checkbox"/>	A PCN shall be submitted when: <input type="checkbox"/> a. result in a discharge of fill into perennial or intermittent waters, wetlands, mudflats, vegetated shallows, riffle & pool complexes, sanctuaries, refuges, or coral reefs; <input type="checkbox"/> b. result in a discharge of fill into greater than 100 linear feet of ephemeral WOTUS; <input type="checkbox"/> c. includes the construction of a temporary or permanent access road, substation or foundation within WOTUS; or <input type="checkbox"/> d. activity would not involve the restoration of all utility line trenches to pre-project contours and conditions.	
<input checked="" type="checkbox"/>	19. <u>NWP's 13 and 14</u> : <input checked="" type="checkbox"/> Shall involve either the sole use of native vegetation or other bioengineering design techniques, or a combination of. <u>PCN shall be submitted when</u> : <input checked="" type="checkbox"/> Bank stabilization involves hard-armoring or non-vegetated/non-bioengineered technique below the OHWM.	The activities do not involve bank stabilization activities such as hard-armoring or non-vegetated/non-bioengineered techniques. This project qualifies as non-reporting and does not require a PCN to be submitted.
<input checked="" type="checkbox"/>	20. <u>NWP 23</u> : Permittee shall submit a PCN for all activities, and must include a copy of the CE document and final agency determinations regarding compliance with ESA, EFH, and NHPA.	The activity does not involve the use of NWP 23.
<input checked="" type="checkbox"/>	21. <u>NWP 27</u> : Permittee shall submit it a PCN when: <input type="checkbox"/> Activity would result in a discharge of fill into perennial or intermittent waters, wetlands, mudflats, vegetated shallows, riffle & pool complexes, sanctuaries, refuges, or coral reefs; or <input type="checkbox"/> Activity would result in a discharge of fill into greater than 100 linear feet of ephemeral WOTUS.	The activity does not involve use of NWP 27.
<input checked="" type="checkbox"/>	22. <u>NWP's 29 and 39</u> : Channelization or relocation of intermittent or perennial drainages is not authorized, except when relocation would	The activity does not involve use of NWPs 29 or 39.

	result in a net increase in functions.	
<input checked="" type="checkbox"/>	<p>23. <u>Waivers</u>: 300 and 500 linear foot waivers must include:</p> <p><input type="checkbox"/> a. A narrative description of the stream describing adjacent vegetation community, wetland status, surrounding land use, water quality, cumulative impacts in the watershed, etc.;</p> <p><input type="checkbox"/> b. An analysis of the proposed impacts to the waterbody;</p> <p><input type="checkbox"/> c. Measures taken to avoid and minimize losses to WOTUS; and</p> <p><input type="checkbox"/> d. A compensatory mitigation plan.</p>	The activity does not require a 300 or 500 linear foot waiver.
<input checked="" type="checkbox"/>	24. <u>NWP's 29, 39, 40, 42, and 43</u> : The permittee shall establish and maintain upland vegetated buffers, at least 50' in width, in perpetuity.	The activity does not involve use of NWPs 29, 39, 40, 42, or 43.
<input checked="" type="checkbox"/>	25. <u>NWP 46</u> : Discharge shall not cause the loss of greater than 0.5 acres of WOTUS or the loss of more than 300 linear feet of ditch.	The activity does not involve use of NWP 46.
<input checked="" type="checkbox"/>	26. <u>All NWP's</u> : All NWP's except (see list) are revoked for activities in histosols, fens, bogs and peatlands, and in wetlands contiguous with fens.	The project does not involve activities in histosols, fens, bogs and peatlands, or in wetlands contiguous with fens.



U S Army Corps of  
Engineers  
Sacramento District

# Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide  
Permits – March 19, 2012

**14. Linear Transportation Projects.** Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

This NWP also authorizes temporary structures, fills, and work necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 31.) (Sections 10 and 404)

**Note:** Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

## A. Regional Conditions

### 1. Regional Conditions for California, excluding the Tahoe Basin

[http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012\\_nwps/2012-NWP-RC-CA.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-CA.pdf)

### 2. Regional Conditions for Nevada, including the Tahoe Basin

[http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012\\_nwps/2012-NWP-RC-NV.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-NV.pdf)

### 3. Regional Conditions for Utah

[http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012\\_nwps/2012-NWP-RC-UT.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-UT.pdf)

### 4. Regional Conditions for Colorado.

[http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012\\_nwps/2012-NWP-RC-CO.pdf](http://www.spk.usace.army.mil/Portals/12/documents/regulatory/nwp/2012_nwps/2012-NWP-RC-CO.pdf)

## B. Nationwide Permit General Conditions

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, 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. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR §§ 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR § 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

### 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,

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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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
- 3. **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, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.
- 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 and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.
- 15. **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.
- 16. **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 responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
- 17. **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.
- 18. **Endangered Species.**
  - (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
  - (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to

demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

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

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the 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, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

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

19. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.

20. **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. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified

historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

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

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

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

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or

ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

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

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

**23. 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 for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

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

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

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

- (3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).
- (4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.
- (5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.
- (d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- (e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation 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 restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
- (g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.
- (h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.
- 24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
- 25. 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.
- 26. 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.
- 27. 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.

**28. 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.

**29. 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.”

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(Transferee)

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(Date)

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

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**31. 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, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

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

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

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property

may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: he 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 NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

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

there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

### C. District Engineer's Decision

1. 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. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

2. 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 activity 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 activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. 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 proposed compensatory mitigation 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, including any activity-specific conditions added to the NWP authorization by the district engineer.

3. 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: (a) 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; (b) 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 (c) 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, with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed 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 or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### D. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWP's do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWP's do not grant any property rights or exclusive privileges.
4. NWP's do not authorize any injury to the property or rights of others.
5. NWP's do not authorize interference with any existing or proposed Federal project.

#### E. 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 (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting 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.

**Direct effects:** Effects that are caused by the activity and occur at the same time and place.

**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.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in

which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**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 non-linear 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.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**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 NWP, 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 and functions.

**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 riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**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 linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes 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 or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. 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.

**Single and complete non-linear project:** For non-linear projects, 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 non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

**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, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), 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.

**Final Sacramento District Nationwide Permit**  
**Regional Conditions for California, excluding the Lake Tahoe Basin**  
*(Effective March 19, 2012 until March 18, 2017)*

**1.\*** When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, Sacramento District (Corps) in accordance with General Condition 31 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or a signed application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:

a. A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States;

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Los Angeles District shall comply with the September 15, 2010 Special Public Notice: *Map and Drawing Standards for the Los Angeles District Regulatory Division*, (available on the Los Angeles District Regulatory Division website at: [www.spl.usace.army.mil/regulatory/](http://www.spl.usace.army.mil/regulatory/)); and

c. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s) required in subpart b of this Regional Condition.

**2.** For all Nationwide Permits (NWP), the permittee shall submit a PCN in accordance with General Condition 31 and Regional Condition 1, in the following circumstances:

a. For all activities that would result in the discharge of fill material into any vernal pool;

b. For any activity in the Primary and Secondary Zones of the Legal Delta, the Sacramento River, the San Joaquin River, and the immediate tributaries of these waters;

c. For all crossings of perennial waters and intermittent waters;

d. For all activities proposed within 100 feet of the point of discharge of a known natural spring source, which is any location where ground water emanates from a point in the ground excluding seeps or other discharges which lack a defined channel; and

e.\* For all activities located in areas designated as Essential Fish Habitat (EFH) by the Pacific Fishery Management Council (i.e., all tidally influenced areas - Federal Register dated March 12, 2007 (72 FR 11092)), in which case the PCN shall include an EFH assessment and extent of proposed impacts to EFH. Examples of EFH habitat assessments can be found at: <http://www.swr.noaa.gov/efh.htm>.

**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 for areas (1) designated to be preserved as part of compensatory mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed or placed in or adjacent to navigable waters. The recordation shall also include a map showing the surveyed location of the preserved area or authorized structure.

\* Regional Condition developed jointly between Sacramento District, Los Angeles District, and San Francisco District.

**4.** For all waters of the U.S. proposed to be avoided on a site, unless determined to be impracticable by the Corps, the permittee shall:

a. Establish and maintain, in perpetuity, a preserve containing all avoided waters of the U.S. to ensure that the functions of the aquatic environment are protected;

b. Place all avoided waters of the U.S. and any upland buffers into a separate parcel prior to discharging dredge or fill material into waters of the U.S., and

c. Establish permanent legal protection for all preserve parcels, following Corps approval of the legal instrument;

If the Corps determines that it is impracticable to require permanent preservation of the avoided waters, additional mitigation may be required in order to compensate for indirect impacts to the waters of the U.S.

**5.** For all temporary fills, the PCN shall include a description of the proposed temporary fill, including the type and amount of material to be placed, the area proposed to be impacted, and the proposed plan for restoration of the temporary fill area to pre-project contours and conditions, including a plan for the re-vegetation of the temporary fill area, if necessary. In addition, the PCN shall include the reason(s) why avoidance of temporary impacts is not practicable.

In addition, for all activities resulting in temporary fill within waters of the U.S., the permittee shall:

a. Utilize material consisting of clean and washed gravel. For temporary fills within waters of the U.S. supporting anadromous fisheries, spawning quality gravel shall be used, where practicable, as determined by the Corps, after consultation with appropriate Federal and state fish and wildlife agencies;

b. Place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing ground elevation of the waters temporarily filled during construction; and

c. Remove all temporary fill within 30 days following completion of construction activities.

**6.** In addition to the requirements of General Condition 2, unless determined to be impracticable by the Corps, the following criteria shall apply to all road crossings:

a.\* For all activities in waters of the U.S. that are suitable habitat for Federally-listed fish species, the permittee shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river, including pier- or pile-supported spans, or designs that use a bottomless arch culvert with a natural stream bed;

b. Road crossings shall be designed to ensure that no more than minor impacts would occur to fish and wildlife passage or expected high flows, following the criteria listed in Regional Condition 6(a). Culverted crossings that do not utilize a bottomless arch culvert with a natural stream bed may be authorized for waters that do not contain suitable habitat for Federally listed fish species, if it can be demonstrated and is specifically determined by the Corps, that such crossing will result in no more than minor impacts to fish and wildlife passage or expected high flows;

c. No construction activities shall occur within standing or flowing waters. For ephemeral or intermittent streams, this may be accomplished through construction during the dry season. In perennial streams, this may be accomplished through dewatering of the work area. Any proposed dewatering plans must be approved, in writing, by the Corps prior to commencement of construction activities; and

\* Regional Condition developed jointly between Sacramento District, Los Angeles District, and San Francisco District.

d. All bank stabilization activities associated with a road crossing shall comply with Regional Condition 19.

In no case shall stream crossings result in a reduction in the pre-construction bankfull width or depth of perennial streams or negatively alter the flood control capacity of perennial streams.

**7.\*** For activities in which the Corps designates another Federal agency as the lead for compliance with Section 7 of the Endangered Species Act (ESA) of 1973 as amended, pursuant to 50 CFR Part 402.07, Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (EFH), pursuant to 50 CFR 600.920(b) and/or Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, pursuant to 36 CFR 800.2(a)(2), the lead Federal agency shall provide all relevant documentation to the Corps demonstrating any previous consultation efforts, as it pertains to the Corps Regulatory permit area (for Section 7 and EFH compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance). For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

**8.** For all NWP's which require a PCN, the permittee shall submit the following additional information with the compliance certificate required under General Condition 30:

a. As-built drawings of the work conducted on the project site and any on-site and/or off-site compensatory mitigation, preservation, and/or avoidance area(s). The as-builts shall include a plan-view drawing of the location of the authorized work footprint (as shown on the permit drawings), with an overlay of the work as constructed in the same scale as the permit drawings. The drawing shall show all areas of ground disturbance, wetland impacts, structures, and the boundaries of any on-site and/or off-site mitigation or avoidance areas. Please note that any deviations from the work as authorized, which result in additional impacts to waters of the U.S., must be coordinated with the appropriate Corps office prior to impacts; and

b. Numbered and dated post-construction color photographs of the work conducted within a representative sample of the impacted waters of the U.S., and within all avoided waters of the U.S. on and immediately adjacent to the proposed project area. The compass angle and position of all photographs shall be similar to the pre-construction color photographs required in Regional Condition 1(c) and shall be identified on the plan-view drawing(s) required in subpart a of this Regional Condition.

**9.** For all activities requiring permittee responsible mitigation, the permittee shall develop and submit to the Corps for review and approval, a final comprehensive mitigation and monitoring plan for all permittee responsible mitigation prior to commencement of construction activities within waters of the U.S. The plan shall include the mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, presented in the format of the *Sacramento District's Habitat Mitigation and Monitoring Proposal Guidelines*, dated December 30, 2004, and in compliance with the requirements of 33 CFR 332.

**10.\*** The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of payment to the Corps prior to commencement of construction of the authorized activity.

**11.** The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of the permit authorization. The permittee shall ensure

that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all construction activities are completed.

**12.** The permittee shall clearly identify the limits of disturbance in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of construction activities within waters of the U.S. The permittee shall maintain such identification properly until construction is completed and the soils have been stabilized. The permittee is prohibited from any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits (as shown on the permit drawings).

**13.** For all activities in which a PCN is required, the permittee shall notify the appropriate district office of the start date for the authorized work within 10 days prior to initiation of construction activities.

**14.** 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.

**15.** For all activities located in the Mather Core Recovery Area in Sacramento County, as identified in the U.S. Fish and Wildlife Service's *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* dated December 15, 2005, NWPs 14, 18, 23, 29, 39, 40, 42, 43 and 44 are revoked from use in vernal pools that may contain habitat for Federally-listed threatened and/or endangered vernal pool species.

**16.** For activities located in the Primary or Secondary Zone of the Legal Delta, NWPs 29 and 39 are revoked.

**17.** For all activities within the Secondary Zone of the Legal Delta, the permittee shall conduct compensatory mitigation for unavoidable impacts within the Secondary Zone of the Legal Delta.

**18.** For NWP 12: Permittees shall ensure the construction of utility lines does not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by the Corps) to seal the trench. For utility line trenches, during construction, the permittee shall remove and stockpile, separately, the top 6 – 12 inches of topsoil. Following installation of the utility line(s), the permittee shall replace the stockpiled topsoil on top and seed the area with native vegetation. The permittee shall submit a PCN for utility line activities in the following circumstances:

a. The utility line crossing would result in a discharge of dredged and/or fill material into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs;

b. The utility line activity would result in a discharge of dredged and/or fill material into greater than 100 linear feet of ephemeral waters of the U.S.;

c. The utility line installation would include the construction of a temporary or permanent access road, substation or foundation within waters of the U.S.; or

d. The proposed activity would not involve the restoration of all utility line trenches to pre-project contours and conditions within 30 days following completion of construction activities.

**19.** For NWP 13 and 14: All bank stabilization activities shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g. rip-rap) and native vegetation or bioengineered design

techniques, unless specifically determined to be impracticable by the Corps. The permittee shall submit a PCN for any bank stabilization activity that involves hard-armoring or the placement of any non-vegetated or non-bioengineered technique below the ordinary high water mark or, if tidal waters, the high tide line of waters of the U.S. The request to utilize non-vegetated techniques must include information on why the sole use of vegetated techniques is not practicable.

**20.** For NWP 23: The permittee shall submit a PCN for all activities proposed for this NWP, in accordance with General Condition 31 and Regional Condition 1. The PCN shall include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with ESA, EFH and NHPA, in accordance with General Conditions 18 and 20 and Regional Condition 7.

**21.** For NWP 27: The permittee shall submit a PCN for aquatic habitat restoration, establishment, and enhancement activities in the following circumstances:

a. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs; or

b. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into greater than 100 linear feet of ephemeral waters of the U.S.

**22.** For NWPs 29 and 39: The channelization or relocation of intermittent or perennial drainages is not authorized, except when, as determined by the Corps, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

**23.\*** Any requests to waive the 300 linear foot limitation for intermittent and ephemeral streams for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51 and 52, or to waive the 500 linear foot limitation along the bank for NWP 13, must include the following:

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

b. An analysis of the proposed impacts to the waterbody, in accordance with General Condition 31 and Regional Condition 1;

c. Measures taken to avoid and minimize losses to waters of the U.S., including other methods of constructing the proposed activity(s); and

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

**24.** For NWPs 29, 39, 40, 42, and 43: The permittee shall establish and maintain upland vegetated buffers in perpetuity, unless specifically determined to be impracticable by the Corps, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 23(f). Except in unusual circumstances, as determined by the Corps, vegetated buffers shall be at least 50 feet in width.

**25.** 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 specifically waived in writing by the Corps.

**26.** All NWPs except 3, 6, 20, 27, 32, and 38 are revoked for activities in histosols, fens, bogs and peatlands 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, the permittee shall submit a PCN to the Corps in accordance with General Condition 31 and Regional Condition 1. This condition does not apply to NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35 or 36, as these NWPs either apply to Section 10 only activities or do not authorize impacts to special aquatic sites.

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## Central Valley Regional Water Quality Control Board

28 April 2015

Mr. Rex Hervey  
California Department of Transportation  
703 B Street  
Marysville, CA 95901

### **CLEAN WATER ACT §401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION; CALIFORNIA DEPARTMENT OF TRANSPORTATION, ED-49 DRAINAGE IMPROVEMENT PROJECT (WDID #5A09CR00147), EL DORADO COUNTY**

#### **ACTION:**

1.  Order for Standard Certification
2.  Order for Technically-conditioned Certification
3.  Order for Denial of Certification

#### **WATER QUALITY CERTIFICATION STANDARD CONDITIONS:**

1. This Order serves as a Water Quality Certification (Certification) action that is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to § 13330 of the California Water Code and § 3867 of the California Code of Regulations (CCR).
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 23 CCR § 3855(b) of the California Code of Regulations, 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 non-denial certification action shall be conditioned upon total payment of the full fee required § 3833 of the California Code of Regulations.

4. This Certification is no longer valid if the project (as described) is modified, or coverage under § 404 of the Clean Water Act has expired. The California Department of Transportation shall notify the Central Valley Water Board within 7 days of the project completion.

#### **TECHNICAL CERTIFICATION CONDITIONS:**

In addition to the above standard conditions, the California Department of Transportation shall satisfy the following:

1. The California Department of Transportation shall notify the Central Valley Regional Water Quality Control Board (Central Valley Water Board) in writing at least **seven (7) days** in advance of the start of any work within waters of the State. The notification shall include the name of the project and the WDID number, and shall be sent to the Central Valley Water Board Contact indicated in this Certification.
2. Except for activities permitted by the U.S. Army Corps under §404 of the Clean Water Act, soil, silt, or other organic materials shall not be placed where such materials could pass into surface water or surface water drainage courses.
3. The California Department of Transportation shall maintain a copy of this Certification and supporting documentation (Project Information Sheet) at the Project site during construction for review by site personnel and agencies. All personnel (employees, contractors, and subcontractors) performing work on the proposed Project shall be adequately informed and trained regarding the conditions of this Certification.
4. The California Department of Transportation shall perform surface water sampling:
  - a) when performing any in-water work;
  - b) in the event that project activities result in any materials reaching surface waters; or
  - c) when any activities result in the creation of a visible plume in surface waters.

The monitoring requirements in Table 1 shall be conducted upstream out of the influence of the Project, and approximately 300 feet downstream of the work area. The sampling frequency may be modified for certain projects with written approval from Central Valley Water Board staff.

**Table 1:**

Parameter	Unit	Type of Sample	Minimum Sampling Frequency	Required Analytical Test Method
Turbidity	NTU	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2,3)
Settleable Material	mL/L	Grab <sup>(1)</sup>	Every 4 hours during in-water work	(2)
Visible construction related pollutants	Observations	Visual Inspections	Continuous throughout the construction period	—

<sup>(1)</sup> Pollutants shall be analyzed using the analytical methods described in 40 Code of Federal Regulations Part 136; where no methods are specified for a given pollutant.

<sup>(2)</sup> Visible construction-related pollutants include oil, grease, foam, fuel, petroleum products, and construction-related, excavated, organic or earthen materials.

<sup>(3)</sup> A hand-held field meter may be used, provided that the meter utilizes a USEPA-approved algorithm/method and is calibrated and maintained in accordance with the manufacturer's instructions. A calibration and maintenance log for each meter used for monitoring required by this Certification shall be maintained at the Project site.

As appropriate, surface water monitoring shall occur at mid-depth. A surface water monitoring report shall be submitted to the Central Valley Water Board Contact indicated in this Certification within two weeks of initiation of sampling and every two weeks thereafter. In reporting the monitoring data, the California Department of Transportation shall arrange the data in tabular form so that the sampling locations, date, constituents, and concentrations are readily discernible. The data shall be summarized in such a manner to illustrate clearly whether the Project complies with Certification requirements. The report shall include surface water sampling results, visual observations, and identification of the turbidity increase in the receiving water applicable to the natural turbidity conditions specified in the turbidity criteria below.

If no monitoring is conducted, the California Department of Transportation shall submit a written statement to the Central Valley Water Board Contact indicated in the Certification stating, "No monitoring was required." with the Notice of Completion.

5. The Central Valley Water Board adopted a *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011 or *Water Quality Control Plan for the Tulare Lake Basin, 2nd Edition (Basin Plan)* that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Turbidity and settleable matter limits are based on water quality objectives contained in the Basin Plan and are part of this Certification as follows:

- a) Activities shall not cause turbidity increases in surface water to exceed:
  - i. where natural turbidity is less than 1 Nephelometric Turbidity Units (NTUs), controllable factors shall not cause downstream turbidity to exceed 2 NTU;

- ii. where natural turbidity is between 1 and 5 NTUs, increases shall not exceed 1 NTU;
- iii. where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
- iv. where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs;
- v. where natural turbidity is greater than 100 NTUs, increases shall not exceed 10 percent.

Except that these limits will be eased during in-water working periods to allow a turbidity increase of 15 NTUs over background turbidity as measures in surface waters 300 feet downstream from the working area. In determining compliance with the above limits, appropriate averaging periods may be applied provided that beneficial uses will be fully protected. Averaging periods may only be used with prior approval of the Central Valley Water Board staff.

- b) Activities shall not cause settleable matter to exceed 0.1 mL/L in surface waters as measured in surface waters within approximately 300 feet downstream of the Project.
6. The California Department of Transportation shall notify the Central Valley Water Board immediately if the above criteria for turbidity, settleable matter, or other water quality objectives are exceeded.
  7. The California Department of Transportation shall develop and maintain onsite a project-specific Spill Prevention, Containment and Cleanup Plan outlining the practices to prevent, minimize, and/or clean up potential spills during construction of the Project. The Plan must detail the Project elements, construction equipment types and location, access and staging and construction sequence. The Plan must also address the potential of responding to a spill or prevention of spills occurring within the Project site.
  8. An effective combination of erosion and sediment control Best Management Practices (BMPs) shall be implemented and adequately working during all phases of construction.
  9. All areas disturbed by Project activities shall be protected from washout or erosion.
  10. All temporarily affected areas shall be restored to pre-construction contours and conditions upon completion of construction activities.
  11. If temporary surface water diversions and/or dewatering are anticipated, the California Department of Transportation shall develop and maintain on-site a Surface Water Diversion and/or Dewatering Plan(s). The Plan(s) shall include the proposed method and duration of diversion activities. The Surface Water Diversion and/or Dewatering Plan(s) must be consistent with this Certification.

12. When work in a flowing stream is unavoidable and any dam or other artificial obstruction is being constructed, maintained, or placed in operation, sufficient water shall at all times be allowed to pass downstream, to maintain beneficial uses of waters of the State below the dam. Construction, dewatering, and removal of temporary cofferdams shall not violate Technical Certification Condition 5 of this Certification.
13. Any temporary dam or other artificial obstruction constructed shall only be built from clean materials such as sandbags, gravel bags, water dams, or clean/washed gravel which will cause little or no siltation. Stream flow shall be temporarily diverted using gravity flow through temporary culverts/pipes or pumped around the work site with the use of hoses.
14. The discharge of petroleum products or other excavated materials to surface water is prohibited. Activities shall not cause visible oil, grease, or foam in the receiving water. The California Department of Transportation shall notify the Central Valley Water Board as soon as practicable of any spill of petroleum products or other organic or earthen materials with written follow up within 5 days.
15. The California Department of Transportation shall apply for a name change or amendment to this Certification should any of the following occur:
  - a) a change in the ownership of all or any portion of the Project;
  - b) any change in the Project description;
  - c) any change involving discharge amounts, temporary impacts, and/or permanent impacts; and/or
  - d) amendments, modifications, revisions, extensions, and/or changes to the United States Army Corps of Engineers' Nationwide Permit 14, the United States Fish and Wildlife Service decision document(s), and/or the California Department of Fish and Wildlife Streambed Alteration Agreement.
16. The California Department of Transportation shall comply with all California Department of Fish and Wildlife requirements, including but not limited to those requirements described in Lake or Streambed Alteration Agreement No. 1600-2014-0298-R2.
17. The Applicant shall comply with all United States Fish and Wildlife Service requirements, including but not limited to those requirements described in the Letter of Concurrence (08ESMF00-2013-I-0179-1), provided to the California Department of Transportation, dated 18 March 2013.

The Applicant shall comply with all United States Fish and Wildlife Service requirements, including, but not limited to those requirements described in the Letter of Concurrence].
18. The California Department of Transportation shall obtain coverage under an NPDES permit for dewatering activities that result in discharges into surface water and/or shall obtain Waste Discharge Requirements (WDRs) for dewatering activities that result in discharges to land from the Central Valley Water Board.

19. The Conditions in this water quality certification are based on the information contained in the California Department of Transportation's application and in the attached "Project Information Sheet." If the Project, as described in the application and the attached Project Information Sheet, is modified or changed, this Certification is no longer valid until amended by the Central Valley Water Board.
20. The California Department of Transportation shall implement each of the mitigation measures specified in the approved Mitigated Negative Declaration for the Project, as they pertain to biology, hydrology and water quality impacts as required by § 21081.6 of the Public Resource Code and § 15097 of the California Code of Regulations.
21. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under the 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 ensure compliance with water quality standards and other pertinent requirements incorporated into this certification.
  - a) If the California Department of Transportation or a duly authorized representative of the project fails or refuses to furnish technical or monitoring reports, as required under this Order, or falsifies any information provided in the monitoring reports, the California Department of Transportation is subject to civil monetary liabilities, for each day of violation, or criminal liability.
  - b) In response to a suspected violation of any condition of this certification, Central Valley Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Central Valley 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. (Water Code, § 1051, 13165, 13267 and 13383) In response to any violation of the conditions of this certification, the Central Valley Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
  - c) The California Department of Transportation shall allow the staff of the Central Valley Water Board, or an authorized representative(s), upon the presentation of credentials and other documents, as may be required by law, to enter the Project premises for inspection, including taking photographs and securing copies of Project-related records, for the purpose of assuring compliance with this Certification and determining the ecological success of the Project.
22. Staff of the Central Valley Water Board has prepared total maximum daily load (TMDL) allocations that, once approved, would limit methylmercury in storm water discharges to the Sacramento-San Joaquin Delta. The Central Valley Water Board has scheduled these proposed allocations to be considered for adoption. When the Central Valley Water Board adopts the TMDL and once approved by the Environmental Protection Agency, the

discharge of methylmercury may be limited from the proposed project. The purpose of this condition is to provide notice to the California Department of Transportation that methylmercury discharge limitations and monitoring requirements may apply to this project in the future and also to provide notice of the Central Valley Water Board's TMDL process and that elements of the planned construction may be subject to a TMDL allocation.

#### **STORM WATER QUALITY CONDITIONS:**

The California Department of Transportation shall also satisfy the following additional storm water quality conditions:

1. During the construction phase, the California Department of Transportation must employ strategies to minimize erosion and the introduction of pollutants into storm water runoff. These strategies must include the following:
  - a) the Storm Water Pollution Prevention Plan (SWPPP) must be prepared during the project planning and design phases and before construction;
  - b) an effective combination of erosion and sediment control Best Management Practices (BMPs) must be implemented and adequately working prior to the rainy season and during all phases of construction.
2. The California Department of Transportation must minimize the short and long-term impacts on receiving water quality from the Project by implementing the following post-construction storm water management practices:
  - a) minimize the amount of impervious surface;
  - b) reduce peak runoff flows;
  - c) provide treatment BMPs to reduce pollutants in runoff;
  - d) ensure existing waters of the State (e.g., wetlands, vernal pools, or creeks) are not used as pollutant source controls and/or treatment controls;
  - e) preserve and, where possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones;
  - f) limit disturbances of natural water bodies and natural drainage systems caused by development (including development of roads, highways, and bridges);
  - g) use existing drainage master plans or studies to estimate increases in pollutant loads and flows resulting from projected future development and require incorporation of structural and non-structural BMPs to mitigate the projected pollutant load increases in surface water runoff;
  - h) identify and avoid development in areas that are particularly susceptible to erosion and sediment loss, or establish development guidance that protects areas from erosion/ sediment loss;
  - i) control post-development peak storm water run-off discharge rates and velocities to prevent or reduce downstream erosion, and to protect stream habitat.
3. The California Department of Transportation shall provide the Central Valley Water Board Contact indicated in this Certification a Notice of Completion (NOC) no later than 30 days

after the Project completion. The NOC shall demonstrate that the project has been carried out in accordance with the project description in the Certification and in any amendments approved. The NOC shall include a map of the project location(s), including final boundaries of any on-site restoration area(s), if appropriate, and representative pre and post construction photographs. Each photograph shall include a descriptive title, date taken, photographic site, and photographic orientation

**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

George Day, Senior Water Resource Control Engineer  
Central Valley Regional Water Quality Control Board  
364 Knollcrest Drive, Suite 205, Redding, California 96002  
[gday@waterboards.ca.gov](mailto:gday@waterboards.ca.gov)  
(530) 224-4859

**WATER QUALITY CERTIFICATION:**

I hereby issue an Order certifying that any discharge from the California Department of Transportation, ED-49 Drainage Improvement Project (WDID# 5A09CR00147) will comply with the applicable provisions of §301 ("Effluent Limitations"), §302 ("Water Quality Related Effluent Limitations"), §303 ("Water Quality Standards and Implementation Plans"), §306 ("National Standards of Performance"), and §307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under State Water Resources Control Board Water Quality Order No. 2003-0017 DWQ "Statewide General Waste Discharge Requirements For Dredged Or Fill Discharges That Have Received State Water Quality Certification (General WDRs)."

Except insofar as may be modified by any preceding conditions, all Certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in compliance with conditions of this Certification, the California Department of Transportation's application package, and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the *Water Quality Control Plan for the Sacramento River and San Joaquin River*, Fourth Edition, revised October 2011 (Basin Plan).

Any person aggrieved by this action may petition the State Water Quality Control Board to review the action in accordance with California Water Code § 13320 and California Code of Regulations, Title 23, § 2050 and following. The State Water Quality Control Board must receive the petition by 5:00 p.m., 30 days after the date of this action, except that if the thirtieth day following the date of this action falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Quality Control Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

  
(for) PAMELA C. CREEDON  
Executive Officer

DLW:lmw

Enclosure: Water Quality Order No. 2003-0017 DWQ

cc w/o Mr. Peck Ha, U.S. Army Corp of Engineers, Sacramento  
enclosures: Department of Fish and Wildlife, Region 2, Rancho Cordova  
U.S. Fish and Wildlife Service, Sacramento  
Mr. Bill Jennings, CALSPA, Stockton  
Ms. Cassandra Evenson, California Department of Transportation, Marysville

cc w/o  
enclosures  
by email: U.S. EPA, Region 9, San Francisco  
Mr. Bill Orme, SWRCB, Certification Unit, Sacramento

## PROJECT INFORMATION

**Application Date:** 03 December 2014

**Application Complete Date:** 20 April 2015

**Applicant:** California Department of Transportation  
703 B Street  
Marysville, CA 95901

**Project Name:** ED-49 Drainage Improvement Project

**Application Number:** WDID No. 5A09CR00147

**U.S. Army Corps File Number:** Non-Reporting

**Type of Project:** Roadside drainage improvement (culvert installation)

**Project Location:** Section 28, Township 11 North, Range 13 East  
Latitude: 38.771° and Longitude: -120.865°

**County:** El Dorado County

**Receiving Water(s) (hydrologic unit):** Unnamed intermittent stream tributary to Indian Creek, which is tributary to the South Fork American River. American River Hydrologic Unit No.514.30, South Fork American River HA

**Water Body Type:** Streambed

**Designated Beneficial Uses:** The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins*, Fourth Edition, revised October 2011 (Basin Plan) has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include, but are not limited to: Municipal and Domestic Water Supply (MUN); Hydropower Generation (POW); Groundwater Recharge (GWR); Water Contact Recreation (REC-1); Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); Spawning, Reproduction, and/or Early Development (SPWN); and Wildlife Habitat (WILD). A comprehensive and specific list of the beneficial uses applicable for the project area can be found at [http://www.waterboards.ca.gov/centralvalley/water\\_issues/basin\\_plans/index.shtml](http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/index.shtml).

**Project Description (purpose/goal):** The ED-49 Drainage Improvement Project is located in El Dorado County on State Route 49 from mile post 20.2 to 20.4, near Riverwood Drive approximately 4.5 miles north of Route 193/49 separation. The project involves drainage/culvert work, ground disturbance, and minor vegetation removal. The project plans to install 136 linear feet of 30 inch Reinforced Concrete Pipe (RCP), 142 linear feet of 29 inch by 45 inch oval RCP, and three drop inlets. Along with the RCP and drop inlets, an asphalt-concrete gutter will be installed as well. All work will be within the Caltrans right of way. The project will permanently impact 0.018 acre/396 linear feet of waters of the State.

**Preliminary Water Quality Concerns:** Construction activities including soil disturbance, excavation, cutting/filling, and grading activities could result in increased erosion and sedimentation and may impact surface waters with increased turbidity and settleable matter.

**Proposed Mitigation to Address Concerns:** The California Department of Transportation will implement Best Management Practices (BMPs) to control sedimentation and erosion. All temporary affected areas will be restored to pre-construction contours and conditions upon completion of construction activities. The California Department of Transportation will conduct turbidity and settleable matter testing during in-water work, stopping work if Basin Plan criteria are exceeded or are observed.

**Fill/Excavation Area:** Approximately 7.29 cubic yards of clean soil or other type of material will be placed into 0.018 acres of waters of the United States..

**Dredge Volume:** N/A

**California Integrated Water Quality System Impact Data:** The Project will permanently impact 0.018 acre/ 394 linear feet of stream bed from fill/excavation activities.

**Table 1: Impacts from Fill and/or Excavation Activities**

Fill Type	Permanent			Temporary		
	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
Stream Channel						
Stream Total	<b>0.018</b>	<b>394</b>	<b>7.29</b>			
<b>Total Impacts</b>	<b>0.018</b>	<b>394</b>	<b>7.29</b>			

Notes

NA Not Applicable

**United States Army Corps of Engineers Permit Type:** Nationwide Permit #14 (Linear Transportation Projects)

**Department of Fish and Wildlife Lake or Streambed Alteration Agreement:** The California Department of Transportation applied for a Lake or Streambed Alteration Agreement on 03 December 2014. The Lake or Streambed Alteration Agreement number is 1600-2014-0298-R2

**Possible Listed Species:** N/A

**Status of CEQA Compliance:** California Department of Transportation is the Lead Agency responsible for compliance with the California Environmental Quality Act for the [insert name of project] Project pursuant to § 21000 et seq. of the Public Resources Code. The California Department of Transportation approved the Negative Declaration on 13 January 2014. (State Clearinghouse Number **2013112018**).

**Compensatory Mitigation:** The Central Valley Water Board is not requesting compensatory mitigation for the ED-49 Drainage Improvement Project.

**Application Fee Provided:** An application fee of \$5,319 was submitted on 10 December 2014. A total fees of \$5,319) has been submitted to the Central Valley Water Board as required by § 3833(b)(3)(A) and § 2200(a)(3) of the California Code of Regulations.