

CITY OF TURLOCK  
STANISLAUS COUNTY, CALIFORNIA



CONTRACT DOCUMENTS  
FOR  
CONSTRUCTION OF THE  
HARDING DRAIN BYPASS PUMP  
STATION AND PIPELINE PROJECT

**PROJECT NO. WQCF-6859**

MAY 2012

**VOLUME 4**  
Permits

CONFORMED

Principal-In-Charge: Mike Britten, P.E.  
Project Manager: Darren Baune, P.E.





Permits included in this Section were obtained by the OWNER. CONTRACTOR shall obtain all additional permits required to complete the Work as specified in the Contract Documents at no additional cost to the OWNER.

From: California State lands Commission – Reimbursement Administrator  
To: City of Turlock  
Date: April 12, 2011  
Title: Reimbursement Agreement for Staff Costs. Agreement #: R 17910.

From: Department of the Army  
To: City of Turlock  
Date: January 13, 2011  
Title: Nationwide Permit SPK-2007-01970

(Previous Permit)  
From: Department of the Army  
To: City of Turlock – Public Works Department  
Date: February 2, 2009  
Title: Nationwide Permit SPK-2007-01970

From: Central Valley Flood Protection Board  
To: City of Turlock  
Date: December 1, 2010  
Title: Central Valley Flood Protection Board Encroachment Permit

From: State of California State Lands Commission  
To: City of Turlock  
Date: May 28, 2009  
Title: General Lease PRC 8822.9

From: United States Department of the Interior – Fish and Wildlife Service  
To: City of Turlock  
Date: January 23, 2009  
Title: Re-initiation for Formal Consultation on the Harding Drain By-Pass Outfall Installation (Corps File Number SPK-2007-01970), Stanislaus County, California

(Previous Initiation for Formal Consultation)  
From: United States Department of Commerce  
To: City of Turlock  
Date: November 19, 2008  
Title: Initiation for Formal Consultation on the Harding Drain By-Pass Outfall Installation (Corps File Number SPK-2007-01970), Stanislaus County, California

From: California Department of Fish and Game  
To: City of Turlock  
Date: October 14, 2008  
Title: Stream Alteration Agreement No. 2007-0253-R4

From: California Regional Water Quality Control Board  
To: City of Turlock  
Date: July 1, 2008  
Titles: Clean Water Act §401 Technically Conditioned Water Quality Certification For Discharge Of Dredged And/Or Fill Materials For The Harding Drain Bypass Project, (WDID#5B50CR00036) Stanislaus County

From: State Water Resources Control Board  
To: City of Turlock  
Date: July 7, 2006  
Title: Order Approving Change in Point of Discharge of Treated Wastewater Effluent

From: County of Stanislaus  
To: City of Turlock  
Date: March 14, 2006  
Title: Encroachment Agreement

From: California State lands Commission – Reimbursement  
Administrator  
To: City of Turlock  
Date: April 12, 2011  
Title: Reimbursement Agreement for Staff Costs.  
Agreement #: R 17910.



California State Lands Commission  
100 Howe Avenue, Suite 100 South  
Sacramento, California 95825

Date: April 12, 2011

Agreement #: R 17910

To:	City of Turlock, Public Works Department ATTN: Dan Madden 156 S. Broadway, Suite 270 Turlock, CA 95380
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**RECEIVED**  
**APR 13 2011**  
**JSS**

From:	Reimbursement Administrator California State Lands Commission 100 Howe Avenue, Suite-100 South Sacramento, CA 95825-8202
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**Subject: Reimbursement Agreement for Staff Costs**

*Application for a General Lease –Public Agency Use – WP 8822  
San Joaquin River, Stanislaus County*

Enclosed is a fully executed agreement for your records.

Please contact me or Ninette Lee, Project Manager, at (916) 574-1869 if you have any questions.

Enclosure

Lizabeth Pett  
Reimbursement Administrator  
Accounting – Contracts  
Phone: (916) 574-1954  
Fax: (916) 574-1875  
Email: [Beth.Pett@slc.ca.gov](mailto:Beth.Pett@slc.ca.gov)

Copy sent to: Ninette Lee, CSLC-LMD

Downey Brand LLP  
C/O Joseph Schofield, Agent  
621 Capitol Mall Avenue, 18<sup>th</sup> Floor  
Sacramento, CA 95814

**CALIFORNIA STATE LANDS COMMISSION  
APPLICATION PROCESSING REIMBURSEMENT AGREEMENT  
Agreement 17910**

1. **PARTIES.** This Agreement is between City of Turlock, Public Works Department, ATTN: Dan Madden (hereinafter "Applicant") whose mailing address is 156 S. Broadway, Suite 270, Turlock, CA 95380, whose Project Manager is Joseph Schofield, Downey Brand LLP, and the California State Lands Commission (hereinafter "the State") whose Project Officer is Ninette Lee.

2. **AGREEMENT:** Applicant agrees to reimburse the State for services (hereinafter 'the Services') reasonably necessary to process the application submitted by the Applicant, identified in the State's records as WP 8822 (hereinafter "Application") for consideration by the California State Lands Commission for a project described as a General Lease – Public Agency Use within Stanislaus County. The estimated cost will be \$2,000. Applicant agrees to submit a deposit in the amount of the estimated total cost of the Agreement.

**NOTE: If the total deposit has previously been submitted, no further deposit is necessary at this time.**

The State will advise Applicant if such costs exceed the above estimate by ten percent (10%) or more. Costs in excess of the initial deposit shall be invoiced and mailed to the Applicant. Applicant shall notify State within fifteen (15) days of being advised of any estimated cost increase if the Applicant wishes to dispute the costs or terminate the project in accordance with Section 4 of this Agreement. No response shall be deemed agreement to pay the revised estimated costs. No Commission action shall be taken until all amounts due have been paid.

Additional payments shall be mailed to the California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825, within 30 days of receipt of invoice. Should the advance deposits exceed actual costs, a refund will be mailed to the Applicant within sixty (60) days of completion of the transaction, or earlier termination as provided in Section 4 below.

Applicant agrees to indemnify, defend and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting from Applicant's performance of this Agreement.

Applicant understands that by entering into this Agreement, the State is not representing that the Application will be approved by the California State Lands Commission or other state, local or federal permitting agencies.

3. **TERM.** This Agreement shall be effective from 02/02/2011, and shall continue in full force and effect through 02/01/2013, unless terminated earlier pursuant to the provisions contained herein.

4. **TERMINATION.** Either party may elect to terminate this Agreement at any time upon ten (10) days written notice to the other party. Applicant agrees that in the event of termination of this Agreement by either party, it shall reimburse the State upon its written request one hundred percent (100%) of all costs incurred by the State for the performance of its obligations as described in this Agreement through the termination date.

5. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of California.

STATE OF CALIFORNIA

BY: \_\_\_\_\_

David W. Brown

Chief, Fiscal and Information Services

STAFF COUNSEL REVIEW \_\_\_\_\_

APPLICANT

BY: \_\_\_\_\_

Name

Address

City of Turlock  
156 S. Broadway, Ste. 270  
Turlock, CA 95380

3-22-11

(date)

From: Department of the Army  
To: City of Turlock  
Date: January 13, 2011  
Title: Nationwide Permit SPK-2007-01970





REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

RECEIVED  
JAN 25 2011  
JSS

January 13, 2011

Regulatory Division (SPK-2007-01970)

Mr. Dan Madden  
City of Turlock  
Public Works Department  
156 South Broadway, Suite 270  
Turlock, California 95380

Dear Mr. Madden:

We are responding to your December 9, 2010, request for a Department of the Army permit for the Harding Drain Bypass Project. This approximately 5.6-mile pipeline project involves activities, including discharges of dredged or fill material, in waters of the United States to construct a 5.6 mile pipeline to convey and discharge tertiary treated wastewater into the San Joaquin River pursuant to an NPDES permit. The project is located on the San Joaquin River, Township 5 South, Range 8 East, Latitude 37.4635°, Longitude -121.0329°, MDB&M, Stanislaus County, California.

Based on the information you provided, the proposed activity, resulting in the permanent loss of approximately 0.005 acres of the San Joaquin River is authorized by Nationwide Permit Numbers 7 and 12. Your work must comply with the general terms and conditions listed on the Nationwide Permit information sheets and the following special conditions:

#### Special Conditions

1. This Corps permit does not authorize you to take an endangered species, in particular giant garter snake (*Thamnophis gigas*), central valley steelhead (*Oncorhynchus mykiss*), winter-run chinook salmon (*Oncorhynchus tshawytscha*), central valley spring-run chinook salmon (*Oncorhynchus tshawytscha*), green sturgeon (*Acipenser medirostris*), or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion and revision (Numbers 81420-2008-F-1273 and 81420-2008-F-1273-R001, dated April 15, 2008 and January 23, 2009) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinions. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached Biological Opinions, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological

Opinions, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The Fish and Wildlife Service and the National Marine Fisheries Service are the appropriate authority to determine compliance with the terms and conditions of its Biological Opinion, and with the Endangered Species Act. You must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

2. To insure your project complies with the Federal Endangered Species Act, you must implement all of the mitigating measures identified in the enclosed National Marine Fisheries Service letter of concurrence (Number 2007/07794, dated November 19, 2008), including those ascribed to the Corps therein. If you are unable to implement any of these measures, you must immediately notify this office and the National Marine Fisheries Service so we may consult as appropriate, prior to initiating the work, in accordance with Federal law. To insure your project complies with the Magnuson-Stevens Fishery and Consultation Act, you must implement all of the mitigating measures and Essential Fish Habitat Recommendations identified in the above National Marine Fisheries document, including those ascribed to the Corps therein.

3. You must allow representatives from the Corps of Engineers to inspect the authorized activity and any mitigation, preservation, or avoidance areas at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

4. To document pre- and post-project construction conditions, you shall submit pre-construction photos of the project site prior to project implementation and post-construction photos of the project site within 30 days after project completion.

5. All terms and conditions of the July 1, 2008 Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.

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

You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid for two years from the date of this letter or until the Nationwide Permit is modified, reissued, or revoked, whichever comes first. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked, you will have twelve (12) months from the date

of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit. Failure to comply with the General Conditions of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing the customer survey on our website under *Customer Service Survey*.

Please refer to identification number SPK-2007-01970 in any correspondence concerning this project. If you have any questions, please contact Marc Fugler at the U.S. Army Corps of Engineers, California Delta Branch, 1325 J Street, Room 1480, Sacramento, California 95814-2922, email [Marc.A.Fugler@usace.army.mil](mailto:Marc.A.Fugler@usace.army.mil), or telephone 916-557-5255. For more information regarding our program, please visit our website at [www.spk.usace.army.mil/regulatory.html](http://www.spk.usace.army.mil/regulatory.html).

Sincerely,

  
Marc A. Fugler  
Senior Project Manager  
California Delta Branch

Copy furnished

Mr. William Marshall, Storm Water and Water Quality Certification Unit, Central Valley  
Regional Water Quality Control Board, 11020 Sun Center Drive #200, Rancho Cordova,  
California 95670

Mr. Rodney R. McInnis, Acting Regional Administrator, Sacramento Area Office, National  
Marine Fisheries Service, 650 Capitol Mall, Suite 8-300, Sacramento, California 95814-4706

Mr. Peter Cross, U.S. Fish and Wildlife Service, Endangered Species Division, 2800 Cottage  
Way, Suite W2605, Sacramento, California 95825-3901

Mr. Joseph Schofield, Downey Brand Attorneys LLP, 555 Capitol Mall, 10<sup>th</sup> Floor, Sacramento,  
California 95814



(Previous Permit)

From: Department of the Army

To: City of Turlock – Public Works Department

Date: February 2, 2009

Title: Nationwide Permit SPK-2007-01970





DEPARTMENT OF THE ARMY  
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO  
CORPS OF ENGINEERS  
1325 J STREET  
SACRAMENTO CA 95814-2922

REPLY TO  
ATTENTION OF

February 2, 2009

Regulatory Division (SPK-2007-01970)

Mr. Dan Madden  
City of Turlock  
Public Works Department  
156 S. Broadway, Suite 270  
Turlock, California 95380

Dear Mr. Madden:

We are responding to your October 12, 2007 request for a Department of the Army permit for the Harding Drain Bypass project. This approximately 5.6 mile pipeline project involves activities in waters of the United States to construct a 5.6 mile pipeline and outfall. The site is located on or near San Joaquin River and Lateral Drain #5, Township 5 North, Range 8 East, MDB&M, Stanislaus County, California.

Based on the information you provided, the proposed activity in approximately 0.005-acres of the San Joaquin River is authorized by Nationwide Permit Numbers 7 and 12. Your work must comply with the general terms and conditions listed on the enclosed Nationwide Permit information sheets and the following special conditions:

1. This Corps permit does not authorize you to take an endangered species, in particular giant garter snake (*Thamnophis gigas*), central valley steelhead (*Oncorhynchus mykiss*), winter-run chinook salmon (*Oncorhynchus tshawytscha*), central valley spring-run chinook salmon (*Oncorhynchus tshawytscha*), green sturgeon (*Acipenser medirostris*), or designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (e.g., an Endangered Species Act Section 10 permit, or a Biological Opinion under Endangered Species Act Section 7, with "incidental take" provisions with which you must comply). The enclosed Fish and Wildlife Service Biological Opinion and revision (Numbers 81420-2008-F-1273 and 81420-2008-F-1273-R001, dated April 15, 2008 and January 23, 2009) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the Biological Opinions. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with "incidental take" of the attached Biological Opinions, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the Biological Opinions, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The Fish and Wildlife Service and the National Marine Fisheries Service are the appropriate authority to determine compliance

with the terms and conditions of its Biological Opinion, and with the Endangered Species Act. The permittee must comply with all conditions of this Biological Opinion, including those ascribed to the Corps.

2. To insure your project complies with the Federal Endangered Species Act, you must implement all of the mitigating measures identified in the enclosed National Marine Fisheries Service letter of concurrence (Number 2007/07794, dated November 19, 2008), including those ascribed to the Corps therein. If you are unable to implement any of these measures, you must immediately notify this office and the National Marine Fisheries Service so we may consult as appropriate, prior to initiating the work, in accordance with Federal law. To insure your project complies with the Magnuson-Stevens Fishery and Consultation Act, you must implement all of the mitigating measures and Essential Fish Habitat Recommendations identified in the above National Marine Fisheries document, including those ascribed to the Corps therein.

3. You must allow representatives from the Corps of Engineers to inspect the authorized activity and any mitigation, preservation, or avoidance areas at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

4. To document pre- and post-project construction conditions, you shall submit pre-construction photos of the project site prior to project implementation and post-construction photos of the project site within 30 days after project completion.

5. All terms and conditions of the July 1, 2008 Section 401 Water Quality Certification are expressly incorporated as conditions of this permit.

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

You must sign the enclosed Compliance Certification and return it to this office within 30 days after completion of the authorized work.

This verification is valid for two years from the date of this letter or until the Nationwide Permits are modified, reissued, or revoked, whichever comes first. Failure to comply with the General Conditions of this Nationwide Permit, or the project-specific Special Conditions of this authorization, may result in the suspension or revocation of your authorization.

We appreciate your feedback. At your earliest convenience, please tell us how we are doing by completing our customer survey at [http://www.spk.usace.army.mil/customer\\_survey.html](http://www.spk.usace.army.mil/customer_survey.html). Your passcode is "conigliaro".

Please refer to identification number SPK-2007-01970 in any correspondence concerning this project. If you have any questions, please contact Marc Fugler at our California South Branch, email [marc.a.fugler@usace.army.mil](mailto:marc.a.fugler@usace.army.mil), or telephone (916) 557- 5255. You may also use our website: [www.spk.usace.army.mil/regulatory.html](http://www.spk.usace.army.mil/regulatory.html).

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Dadey', with a long horizontal flourish extending to the right.

Kathleen A. Dadey, Ph.D.  
Chief, California South Branch

Enclosure(s)

Copy Furnished without enclosure(s)

Mr. William Marshall, Storm Water and Water Quality Certification Unit, Central Valley  
Regional Water Quality Control Board, 11020 Sun Center Drive #200, Rancho Cordova,  
California 95670

Mr. Rodney R. McInnis, Acting Regional Administrator, Sacramento Area Office, National  
Marine Fisheries Service, 650 Capitol Mall, Suite 8-300, Sacramento, California 95814-4706

Mr. Peter Cross, U.S. Fish and Wildlife Service, Endangered Species Division, 2800 Cottage  
Way, Suite W2605, Sacramento, California 95825-3901

Mr. Joseph Schofield, Downey Brand Attorneys LLP, 555 Capitol Mall, 10<sup>th</sup> Floor, Sacramento,  
California 95814

# COMPLIANCE CERTIFICATION

**Permit File Number:** SPK-2007-01970

**Nationwide Permit Number:** 7 and 12

**Permittee:** Dan Madden, City of Turlock, Public Works Department, 156 S. Broadway, Suite 270,  
Turlock, California 95380

**County:** Stanislaus

**Date of Verification:** February 2, 2009

Within 30 days after completion of the activity authorized by this permit, sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Regulatory Division  
1325 J Street, Room 1480  
Sacramento, California 95814-2922

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with the terms and conditions of the permit your authorization may be suspended, modified, or revoked. If you have any questions about this certification, please contact the Corps of Engineers.

\* \* \* \* \*

*I hereby certify that the work authorized by the above-referenced permit, including all the required mitigation, was completed in accordance with the terms and conditions of the permit verification.*

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date



U S Army Corps of  
Engineers  
Sacramento District

## Nationwide Permit Summary

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

### 7. Outfall Structures and Associated Intake Structures.

Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (Section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

### A. Nationwide Permit General Conditions

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

#### 1. Navigation.

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

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

6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

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

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

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

12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are

encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

**15. Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**16. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**17. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

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

construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

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

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.nmfs.gov/fisheries.html> respectively.

**18. Historic Properties.**

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey.

Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

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

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

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

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

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

**20 Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

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

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NHPs. 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 NHPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required.

Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

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

**21. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**22. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**23. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**24. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP

13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

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

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

-----  
(Transferee)

-----  
(Date)

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

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

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

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

**27. Pre-Construction Notification.**

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under

the NWP with any special conditions imposed by the district or division engineer; or

(2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the

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

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

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

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

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

(d) Agency Coordination:

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

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal

or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

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

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

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

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

(a) **28. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

## **B. Regional Conditions:**

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

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

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

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity. The drawings shall contain a title

- block, legend and scale, amount (in cubic yards) and size (in acreage) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the high tide line should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation; and
- c. Pre-project color photographs of the project site taken from designated locations documented on the plan drawing.
2. The permittee shall complete compensatory mitigation required by special conditions of the NWP verification before or concurrent with construction of the authorized activity, except when specifically determined to be impracticable by the Sacramento District. When project mitigation involves use of a mitigation bank or in-lieu fee program, payment shall be made before commencing construction.
  3. The permittee shall record the NWP verification with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property against areas (1) designated to be preserved as part of mitigation for authorized impacts, including any associated covenants or restrictions, or (2) where structures such as boat ramps or docks, marinas, piers, and permanently moored vessels will be constructed in or adjacent to navigable waters (Section 10 and Section 404). The recordation shall also include a map showing the surveyed location of the authorized structure and any associated areas preserved to minimize or compensate for project impacts.
  4. The permittee shall place wetlands, other aquatic areas, and any vegetative buffers preserved as part of mitigation for impacts into a separate "preserve" parcel prior to discharging dredged or fill material into waters of the United States, except where specifically determined to be impracticable by the Sacramento District. Permanent legal protection shall be established for all preserve parcels, following Sacramento District approval of the legal instrument.
  5. The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified in advance of an inspection.
  6. For NWPs 29, 39, 40, 42, 43, 44, and 46, requests to waive the 300 linear foot limitation for intermittent or ephemeral waters of the U.S. shall include an evaluation of functions and services provided by the waterbody taking into account the watershed, measures to be implemented to avoid and minimize impacts, other measures to avoid and minimize that were found to be impracticable, and a mitigation plan for offsetting impacts.
  7. Road crossings shall be designed to ensure fish passage, especially for anadromous fisheries. Permittees shall employ bridge designs that span the stream or river, utilize pier or pile supported structures, or involve large bottomless culverts with a natural streambed, where the substrate and streamflow conditions approximate existing channel conditions. Approach fills in waters of the United States below the ordinary high water mark are not authorized under the NWPs, except where avoidance has specifically been determined to be impracticable by the Sacramento District.
  8. For NWP 12, clay blocks, bentonite, or other suitable material shall be used to seal the trench to prevent the utility line from draining waters of the United States, including wetlands.
  9. For NWP 13, bank stabilization shall include the use of vegetation or other biotechnical design to the maximum extent practicable. Activities involving hard-armoring of the bank toe or slope requires submission of a PCN per General Condition 27.
  10. For NWP 23, the PCN shall include a copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act, Essential Fish Habitat under the Magnusson-Stevens Act, and Section 106 of the National Historic Preservation Act.
  11. For NWP 44, the discharge shall not cause the loss of more than 300 linear feet of streambed. For intermittent and ephemeral streams, the 300 linear foot limit may be waived in writing by the Sacramento District. This NWP does not authorize discharges in waters of the United States supporting anadromous fisheries.
  12. For NWPs 29 and 39, channelization or relocation of intermittent or perennial drainage, is not authorized, except when, as determined by the Sacramento District, the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.
  13. For NWP 33, temporary fills for construction access in waters of the United States supporting fisheries shall be accomplished with clean, washed spawning quality gravels where practicable as determined by the Sacramento District, in consultation with appropriate federal and state wildlife agencies.
  14. For NWP 46, the discharge shall not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch, unless this 300 foot linear foot limit is waived in writing by the Sacramento District.
  15. For NWPs 29, 39, 40, 42, and 43, upland vegetated buffers shall be established and maintained in perpetuity, to the maximum extent practicable, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 20. Except in unusual circumstances, vegetated buffers shall be at least 50 feet in width.
  16. All NWPs except 3, 6, 20, 27, 32, 38, and 47, are revoked for activities in histosols and fens and in wetlands contiguous with fens. Fens are defined as slope wetlands with a histic epipedon that are hydrologically supported by groundwater. Fens are normally saturated throughout the growing season, although they may not be during drought conditions. For NWPs 3, 6, 20, 27, 32, and 38, prospective permittees shall submit a PCN to the Sacramento District in accordance with General Condition 27.
  17. For all NWPs, when activities are proposed within 100 feet of the point of groundwater discharge of a natural spring, prospective permittees shall submit a PCN to the Sacramento District in accordance with General Condition 27. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition,

springs do not include seeps or other discharges which lack a defined channel.

## II. California Only

1. In the Lake Tahoe Basin, all NWP's are revoked. Activities in this area shall be authorized under Regional General Permit 16 or through an individual permit.
2. In the Primary and Secondary Zones of the Legal Delta, NWP's 29 and 39 are revoked. New development activities in the Legal Delta will be reviewed through the Corps' standard permit process.

## III. Nevada Only

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

## IV. Utah Only

1. For all NWP's, except NWP 47, prospective permittees shall submit a PCN in accordance with General Condition 27 for any activity, in waters of the United States, below 4217 feet mean sea level (msl) adjacent to the Great Salt Lake and below 4500 feet msl adjacent to Utah Lake.
2. A PCN is required for all bank stabilization activities in a perennial stream that would affect more than 100 linear feet of stream.
3. For NWP 27, facilities for controlling stormwater runoff, construction of water parks such as kayak courses, and use of grout or concrete to construct in-stream structures are not authorized. A PCN is required for all projects exceeding 1500 linear feet as measured on the stream thalweg, using in stream structures exceeding 50 cubic yards per structure and/or incorporating grade control structures exceeding 1 foot vertical drop. For any stream restoration project, the post project stream sinuosity shall be appropriate to the geomorphology of the surrounding area and shall be equal to, or greater than, pre project sinuosity. Sinuosity is defined as the ratio of stream length to project reach length. Structures shall allow the passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the District Engineer.

## V. Colorado Only

1. Final Regional Conditions Applicable to Specific Nationwide Permits within Colorado.
  - a. Nationwide Permit Nos. 12 and 14, Utility Line Activities and Linear Transportation Projects. In the Colorado River Basin, utility line and road activities crossing perennial water or special aquatic sites require notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification).
  - b. Nationwide Permit No. 13 Bank Stabilization. In Colorado, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) are limited to the placement of no more than 1/4 cubic yard of suitable fill\* material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard may be authorized if

the permittee notifies the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) and the Corps determines the adverse environmental effects are minimal. [\* See (g) for definition of Suitable Fill]

- c. Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities.
  - (1) For activities that include a fishery enhancement component, the Corps will send the Pre-Construction Notification to the Colorado Division of Wildlife (CDOW) for review. In accordance with General Condition 27 (Pre-Construction Notification), CDOW will have 10 days from the receipt of Corps notification to indicate that they will be commenting on the proposed project. CDOW will then have an additional 15 days after the initial 10-day period to provide those comments. If CDOW raises concerns, the applicant may either modify their plan, in coordination with CDOW, or apply for a standard individual permit.
  - (2) For activities involving the length of a stream, the post-project stream sinuosity will not be significantly reduced, unless it is demonstrated that the reduction in sinuosity is consistent with the natural morphological evolution of the stream (sinuosity is the ratio of stream length to project reach length).
  - (3) Structures will allow the upstream and downstream passage of aquatic organisms, including fish native to the reach, as well as recreational water craft or other navigational activities, unless specifically waived in writing by the District Engineer. The use of grout and/or concrete in building structures is not authorized by this nationwide permit.
  - (4) The construction of water parks (i.e., kayak courses) and flood control projects are not authorized by this nationwide permit.
- d. Nationwide Permits Nos. 29 and 39; Residential Developments and Commercial and Institutional Developments. A copy of the existing FEMA/locally-approved floodplain map must be submitted with the Pre-Construction Notification. When reviewing proposed developments, the Corps will utilize the most accurate and reliable FEMA/locally-approved pre-project floodplain mapping, not post-project floodplain mapping based on a CLOMR or LOMR. However, the Corps will accept revisions to existing floodplain mapping if the revisions resolve inaccuracies in the original floodplain mapping and if the revisions accurately reflect pre-project conditions.
2. Final Regional Conditions Applicable to All Nationwide Permits within Colorado
  - e. Removal of Temporary Fills. General Condition 13 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands in Colorado, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to delineate the existing

ground elevation of wetlands that will be temporarily filled during construction.

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

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

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

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

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

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

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

i. Fens: All Nationwide permits, except permit Nos. 3, 6, 20, 27, 32, 38 and 47, are revoked in fens and wetlands adjacent to fens. Use of nationwide permit Nos. 3, 20, 27 and 38, requires notification to the District Engineer, in accordance with General Condition 27 (Pre-Construction Notification), and the permittee may not begin the activity until the Corps determines the adverse environmental effects are minimal. The following defines a fen:

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

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

### 4. Additional Information

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

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

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

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

### .C. Further Information

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

2. 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.

#### D. Definitions

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

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

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

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

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

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

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

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

**Independent utility:** A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility.

Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

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

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

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

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

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

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

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

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes

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

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

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

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

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

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

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

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

**Single and complete project:** The term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see

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

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

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

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

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

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

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

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

**Waterbody:** For purposes of the NWP, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing

above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.



U S Army Corps of  
Engineers  
Sacramento District

## Nationwide Permit Summary

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

**12. Utility Line Activities.** Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.

**Utility lines:** This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

**Utility line substations:** This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

**Foundations for overhead utility line towers, poles, and anchors:** This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

**Access roads:** This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in

non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

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

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) (Sections 10 and 404)

**Note 1:** Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

**Note 2:** Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

**Note 3:** Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15)

#### A. Nationwide Permit General Conditions

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

##### 1. Navigation.

- (a) No activity may cause more than a minimal adverse effect on navigation.
- (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

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

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

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

6. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. **Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

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

9. **Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

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

12. **Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. **Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. **Wild and Scenic Rivers.** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in

writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**16. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**17. Endangered Species.**

(a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

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

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

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of

separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

**18. Historic Properties.**

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

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

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause

effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

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

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

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

(b) For 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 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**20 Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States

to the maximum extent practicable at the project site (i.e., on site).

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

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

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

**21. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**22. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**23. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**24. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

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

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the

property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

-----  
(Transferee)

-----  
(Date)

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

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

(b) A statement that any required mitigation was completed in accordance with the permit conditions; and

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

**27. Pre-Construction Notification.**

(a) **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see

33 CFR 330.4(f) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWP 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

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

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

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);

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

(5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity

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

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

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

(d) Agency Coordination:

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

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies'

concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

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

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

(e) In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

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

(a) **28. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

## **B. Regional Conditions:**

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

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

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

b. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and size (in acreage) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the high tide line should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation; and

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

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

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

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

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

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

7. Road crossings shall be designed to ensure fish passage, especially for anadromous fisheries. Permittees shall employ bridge designs that span the stream or river, utilize pier or pile supported structures, or involve large bottomless culverts with a natural streambed, where the substrate and streamflow conditions approximate existing channel conditions. Approach fills in waters of the United States below the ordinary high water mark are not authorized under the NWPs, except where avoidance has specifically been determined to be impracticable by the Sacramento District.

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

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

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

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

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

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

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

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

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

17. For all NWPs, when activities are proposed within 100 feet of the point of groundwater discharge of a natural spring, prospective permittees shall submit a PCN to the Sacramento District in accordance with General Condition 27. A spring source is defined as any location where ground water emanates from a point in the ground. For purposes of this condition, springs do not include seeps or other discharges which lack a defined channel.

## **II. California Only**

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

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

## **III. Nevada Only**

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

#### IV. Utah Only

1. For all NWP, except NWP 47, prospective permittees shall submit a PCN in accordance with General Condition 27 for any activity, in waters of the United States, below 4217 feet mean sea level (msl) adjacent to the Great Salt Lake and below 4500 feet msl adjacent to Utah Lake.
2. A PCN is required for all bank stabilization activities in a perennial stream that would affect more than 100 linear feet of stream
3. For NWP 27, facilities for controlling stormwater runoff, construction of water parks such as kayak courses, and use of grout or concrete to construct in-stream structures are not authorized. A PCN is required for all projects exceeding 1500 linear feet as measured on the stream thalweg, using in stream structures exceeding 50 cubic yards per structure and/or incorporating grade control structures exceeding 1 foot vertical drop. For any stream restoration project, the post project stream sinuosity shall be appropriate to the geomorphology of the surrounding area and shall be equal to, or greater than, pre project sinuosity. Sinuosity is defined as the ratio of stream length to project reach length. Structures shall allow the passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the District Engineer.

#### V. Colorado Only

1. Final Regional Conditions Applicable to Specific Nationwide Permits within Colorado.
  - a. Nationwide Permit Nos. 12 and 14, Utility Line Activities and Linear Transportation Projects. In the Colorado River Basin, utility line and road activities crossing perennial water or special aquatic sites require notification to the District Engineer in accordance with General Condition 27 (Pre-Construction Notification).
  - b. Nationwide Permit No. 13 Bank Stabilization. In Colorado, bank stabilization activities necessary for erosion prevention in streams that average less than 20 feet in width (measured between the ordinary high water marks) are limited to the placement of no more than 1/4 cubic yard of suitable fill\* material per running foot below the plane of the ordinary high water mark. Activities greater than 1/4 cubic yard may be authorized if the permittee notifies the District Engineer in accordance with General Condition 27 (Pre-Construction Notification) and the Corps determines the adverse environmental effects are minimal. [\* See (g) for definition of Suitable Fill]
  - c. Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities.
    - (1) For activities that include a fishery enhancement component, the Corps will send the Pre-Construction Notification to the Colorado Division of Wildlife (CDOW) for review. In accordance with General Condition 27 (Pre-Construction Notification), CDOW will have 10 days from the receipt of Corps notification to indicate that they will be commenting on the proposed project. CDOW will then have an additional 15 days after the initial 10-day period to

provide those comments. If CDOW raises concerns, the applicant may either modify their plan, in coordination with CDOW, or apply for a standard individual permit.

- (2) For activities involving the length of a stream, the post-project stream sinuosity will not be significantly reduced, unless it is demonstrated that the reduction in sinuosity is consistent with the natural morphological evolution of the stream (sinuosity is the ratio of stream length to project reach length).
- (3) Structures will allow the upstream and downstream passage of aquatic organisms, including fish native to the reach, as well as recreational water craft or other navigational activities, unless specifically waived in writing by the District Engineer. The use of grout and/or concrete in building structures is not authorized by this nationwide permit.
- (4) The construction of water parks (i.e., kayak courses) and flood control projects are not authorized by this nationwide permit.

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

2. Final Regional Conditions Applicable to All Nationwide Permits within Colorado
  - e. Removal of Temporary Fills. General Condition 13 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands in Colorado, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction.
  - f. Spawning Areas. General Condition 3 (Spawning Areas) is amended by adding the following: In Colorado, all Designated Critical Resource Waters (see enclosure 1) are considered important spawning areas. Therefore, In accordance with General Condition 19 (Designated Critical Resource Waters), the discharge of dredged or fill material is not authorized by the following nationwide permits in these waters: NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50. In addition, in accordance with General Condition 27 (Pre-Construction Notification), notification to the District Engineer is required for use of the following nationwide permits in these waters: NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37 and 38”.

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

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

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

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

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

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

i. **Fens:** All Nationwide permits, except permit Nos. 3, 6, 20, 27, 32, 38 and 47, are revoked in fens and wetlands adjacent to fens. Use of nationwide permit Nos. 3, 20, 27 and 38, requires notification to the District Engineer, in accordance with General Condition 27 (Pre-Construction Notification), and the permittee may not begin the activity until the Corps determines the adverse environmental effects are minimal. The following defines a fen:

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

j. **Springs:** Within the state of Colorado, all NWP, except permit 47 (original 'C'), require preconstruction notification pursuant to General Condition 27 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A

spring source is defined as any location where groundwater emanates from a point in the ground. For purposes of this regional condition, springs do not include seeps or other discharges which do not have a defined channel.

### 4. Additional Information

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

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

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

c. **Federally-Listed Threatened and Endangered Species.** General condition 17 requires that non-federal permittees notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project. Information on such species, to include occurrence by county in Colorado, may be found at the following U.S. Fish and Wildlife Service website: [http://www.fws.gov/mountain%20prairie/endspp/raonic\\_county\\_search.htm](http://www.fws.gov/mountain%20prairie/endspp/raonic_county_search.htm)

### C. Further Information

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

### D. Definitions

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

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

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

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

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

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

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

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

**Independent utility:** A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

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

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to

jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

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

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

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

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

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

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

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

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning

natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

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

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

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

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

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

**Single and complete project:** The term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a “single and complete project” is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

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

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to,

stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

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

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

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

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

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

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

**From: Central Valley Flood Protection Board**  
**To: City of Turlock**  
**Date: December 1, 2010**  
**Title: Central Valley Flood Protection Board Encroachment Permit**



**CENTRAL VALLEY FLOOD PROTECTION BOARD**

3310 El Camino Ave., Rm. 151  
SACRAMENTO, CA 95821  
(916) 574-0609 FAX: (916) 574-0682  
PERMITS: (916) 574-0685 FAX: (916) 574-0682



Permit No. 18385 BD

City of Turlock, Department of Public Works  
156 S Broadway, Suite 270  
Turlock, California 95380

Enclosed is your approved Central Valley Flood Protection Board Encroachment Permit Conditions.

Under the Standard General Condition Four (4) of the permit, you are required to accomplish the work under direction and supervision of the Department of Water Resources; therefore, you must advise the Department at 3310 El Camino Avenue, Sacramento, California 95821, attention Lorraine Pendlebury, telephone (916) 574-0609, at least ten days prior to starting your project. An addressed postcard is enclosed for your convenience.

Please note that the permit grants the work proposed in your application. This permit, in addition to the twelve (12) standard conditions, includes special conditions, which may place limitations on or require modifications to your project. You are advised to read all conditions prior to starting the project. Commencing any work under this permit shall constitute an acceptance of the provisions of the permit and an agreement to perform accordingly. This permit does not relieve you from the responsibility for obtaining authorization from any State, local, or federal agencies for your proposed project.

Please refer to your permit number when communicating with this office. For further information, contact Michael Petersen at (916) 574-0685.

Sincerely,

Gary Lemon, Acting Chief  
Floodway Protection Section  
Central Valley Flood Protection Board

Enclosure

STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
**THE CENTRAL VALLEY FLOOD PROTECTION BOARD**

**PERMIT NO. 18385 BD**

**This Permit is issued to:**

City of Turlock, Department of Public Works  
156 S Broadway, Suite 270  
Turlock, California 95380

To construct an outfall structure, approximately 75 feet long, and place riprap on the right (east) bank; install (trench) a 48-inch-diameter reinforced concrete pipe under the right (east) bank levee of the San Joaquin River. The project is located in Turlock, south and west of the intersection of Harding and Carpenter Roads (Section 36, T5S, R8E, MDB&M, Reclamation District 2063, San Joaquin River, Stanislaus County).

**NOTE:** Special Conditions have been incorporated herein which may place limitations on and/or require modification of your proposed project as described above.

(SEAL)

DEC -1 2010

Dated: \_\_\_\_\_

*Jay S. Penia*

Executive Officer

**GENERAL CONDITIONS:**

**ONE:** This permit is issued under the provisions of Sections 8700 – 8723 of the Water Code.

**TWO:** Only work described in the subject application is authorized hereby.

**THREE:** This permit does not grant a right to use or construct works on land owned by the Sacramento and San Joaquin Drainage District or on any other land.

**FOUR:** The approved work shall be accomplished under the direction and supervision of the State Department of Water Resources, and the permittee shall conform to all requirements of the Department and The Central Valley Flood Protection Board.

**FIVE:** Unless the work herein contemplated shall have been commenced within one year after issuance of this permit, the Board reserves the right to change any conditions in this permit as may be consistent with current flood control standards and policies of The Central Valley Flood Protection Board.

**SIX:** This permit shall remain in effect until revoked. In the event any conditions in this permit are not complied with, it may be revoked on 15 days' notice.

**SEVEN:** It is understood and agreed to by the permittee that the start of any work under this permit shall constitute an acceptance of the conditions in this permit and an agreement to perform work in accordance therewith.

**EIGHT:** This permit does not establish any precedent with respect to any other application received by The Central Valley Flood Protection Board.

**NINE:** The permittee shall, when required by law, secure the written order or consent from all other public agencies having jurisdiction.

**TEN:** The permittee is responsible for all personal liability and property damage which may arise out of failure on the permittee's part to perform the obligations under this permit. If any claim of liability is made against the State of California, or any departments thereof, the United States of America, a local district or other maintaining agencies and the officers, agents or employees thereof, the permittee shall defend and shall hold each of them harmless from each claim.

**ELEVEN:** The permittee shall exercise reasonable care to operate and maintain any work authorized herein to preclude injury to or damage to any works necessary to any plan of flood control adopted by the Board or the Legislature, or interfere with the successful execution, functioning or operation of any plan of flood control adopted by the Board or the Legislature.

**TWELVE:** Should any of the work not conform to the conditions of this permit, the permittee, upon order of The Central Valley Flood Protection Board, shall in the manner prescribed by the Board be responsible for the cost and expense to remove, alter, relocate, or reconstruct all or any part of the work herein approved.

#### **SPECIAL CONDITIONS FOR PERMIT NO. 18385 BD**

**THIRTEEN:** All work approved by this permit shall be in accordance with the submitted drawings and specifications except as modified by special permit conditions herein. No further work, other than that approved by this permit, shall be done in the area without prior approval of the Central Valley Flood Protection Board.

**FOURTEEN:** The permittee is responsible for all liability associated with construction, operation, and maintenance of the permitted facilities and shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California; including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages arising from the project undertaken pursuant to this permit, all to the extent allowed by law. The State expressly reserves the right to supplement or take over its defense, in its sole discretion

**FIFTEEN:** The permittee shall defend, indemnify, and hold the Central Valley Flood Protection Board and the State of California, including its agencies, departments, boards, commissions, and their respective officers, agents, employees, successors and assigns (collectively, the "State"), safe and harmless, of and from all claims and damages related to the Central Valley Flood Protection Board's approval of this permit, including but not limited to claims filed pursuant to the California Environmental Quality Act. The State expressly reserves the right to supplement or take over its defense, in its sole discretion.

**SIXTEEN:** The Central Valley Flood Protection Board, Department of Water Resources, and Reclamation District No. 2063 shall not be held liable for damages to the permitted encroachment(s) resulting from releases of water from reservoirs, flood fight, operation, maintenance, inspection, or emergency repair.

**SEVENTEEN:** The permittee shall be responsible for repair of any damages to the project levee and

other flood control facilities due to construction, operation, or maintenance of the proposed project.

EIGHTEEN: The permittee shall contact the Department of Water Resources by telephone, (916) 574-0609, and submit the enclosed postcard to schedule a preconstruction conference. Failure to do so at least 10 working days prior to start of work may result in delay of the project.

NINETEEN: The permittee shall provide supervision and inspection services acceptable to the Central Valley Flood Protection Board. A professional engineer registered in the State of California shall certify that all work was inspected and performed in accordance with submitted drawings, specifications, and permit conditions.

TWENTY: During construction of the project, any and all anticipated or unanticipated conditions encountered which may impact levee integrity or flood control shall be brought to the attention of the Flood Project Inspector immediately and prior to continuation.

TWENTY-ONE: A temporary bench mark, set to a known datum, shall be placed at the project site during construction.

TWENTY-TWO: Prior to construction the permittee shall install an X, Y, Z axis based coordinate monitoring system to monitor the levee before, during and after all sheet pile driving activities.

TWENTY-THREE: No material stockpiles, temporary buildings, or equipment shall remain in the floodway during the flood season from November 1st to July 15th.

TWENTY-FOUR: Cleared trees and brush shall be completely burned or removed from the floodway, and downed trees or brush shall not remain in the floodway during the flood season from November 1st to July 15th.

TWENTY-FIVE: No excavation shall be made or remain in the levee section during the flood season from November 1st to July 15th without prior written approval from the Central Valley Flood Protection Board.

TWENTY-SIX: Excavations made in the levee section or within 10 feet of the levee toes shall be backfilled in 4- to 6-inch layers with impervious material with 20 percent or more passing the No. 200 sieve, a plasticity index of 8 or more, and a liquid limit of less than 50 and free of lumps or stones exceeding 3 inches in greatest dimension, vegetative matter, or other unsatisfactory material. Backfill material shall be compacted in 4- to 6-inch layers to a minimum of 90 percent relative compaction as measured by ASTM Method D1557-91.

TWENTY-SEVEN: Compaction tests by a certified soils laboratory will be required to verify compaction of backfill within the levee section or within 10 feet of the levee toe.

TWENTY-EIGHT: Excavations below the design flood plane and within the levee section or within 10 feet of the projected waterward and landward levee slopes shall have side slopes no steeper than 1 horizontal to 1 vertical. Flatter slopes may be required to ensure stability of the excavation.

TWENTY-NINE: Pipe installed below the levee section and within 10 feet of the projected levee toes shall be precast reinforced concrete pipe (RCP) that meets ASTM Specification C76-90, or

equivalent.

THIRTY: The RCP within the levee section shall not be less than 6 inches thick.

THIRTY-ONE: The 48-inch diameter RCP shall be installed through the levee section at a right angle to the centerline of the levee.

THIRTY-TWO: The precast RCP shall be encased below the springline in concrete cast against undisturbed earth.

THIRTY-THREE: The discharge pipe shall be placed in the center of an open trench 2 feet wider than the diameter of the pipe or 2 times the diameter, whichever is greater.

THIRTY-FOUR: Precast RCP joints shall be secured with hoop steel and encased in reinforced concrete.

THIRTY-FIVE: A positive-closure device that is readily accessible during periods of high water shall be installed on the waterward side of the levee.

THIRTY-SIX: The pipeline shall be tested and confirmed free of leaks by X-ray, pressure tests, or other approved methods during construction or anytime after construction upon request by the Central Valley Flood Protection Board.

THIRTY-SEVEN: The levee crown shall be surfaced with a minimum of 4 inches of compacted, Class 2, aggregate base (Caltrans Specification 26-1.02A).

THIRTY-EIGHT: In the event existing rock revetment on the levee section is disturbed or displaced during construction, it shall be restored to its preconstruction condition.

THIRTY-NINE: Revetment shall be uniformly placed and properly transitioned into the bank, levee slope, or adjacent revetment and in a manner which avoids segregation.

FORTY: The recommended minimum thickness of revetment, measured perpendicular to the bank or levee slope, is 18 inches below the usual water surface and 12 inches above the usual surface.

FORTY-ONE: Revetment shall be quarry stone and shall meet the following grading:

#### Quarry Stone

Stone Size	Percent Passing
15 inches;	100
8 inches;	80-95
6 inches;	45-80
4 inches;	15-45
2 inches;	0-15

FORTY-TWO: The project area shall be restored to at least the condition that existed prior to commencement of work.

FORTY-THREE: The permittee shall maintain the permitted encroachment(s) and the project works within the utilized area in the manner required and as requested by the authorized representative of the Department of Water Resources or any other agency responsible for maintenance.

FORTY-FOUR: The permitted encroachment(s) shall not interfere with operation and maintenance of the flood control project. If the permitted encroachment(s) are determined by any agency responsible for operation or maintenance of the flood control project to interfere, the permittee shall be required, at permittee's cost and expense, to modify or remove the permitted encroachment(s) under direction of the Central Valley Flood Protection Board or Department of Water Resources. If the permittee does not comply, the Central Valley Flood Protection Board may modify or remove the encroachment(s) at the permittee's expense.

FORTY-FIVE: If the outfall structure results in an adverse hydraulic impact, the permittee shall provide appropriate mitigation measures, to be approved by the Central Valley Flood Protection Board, prior to implementation of mitigation measures.

FORTY-SIX: The permittee may be required, at permittee's cost and expense, to remove, alter, relocate, or reconstruct all or any part of the permitted encroachment(s) if removal, alteration, relocation, or reconstruction is necessary as part of or in conjunction with any present or future flood control plan or project or if damaged by any cause. If the permittee does not comply, the Central Valley Flood Protection Board may remove the encroachment(s) at the permittee's expense.

FORTY-SEVEN: If the project, or any portion thereof, is to be abandoned in the future, the permittee or successor shall abandon the project under direction of the Central Valley Flood Protection Board and Department of Water Resources, at the permittee's or successor's cost and expense.

FORTY-EIGHT: The mitigation measures approved by the CEQA lead agency and the permittee are found in its Mitigation and Monitoring Reporting Program (MMRP) adopted by the CEQA lead agency. The permittee shall implement all such mitigation measures.

FORTY-NINE: The permittee should contact the U.S. Army Corps of Engineers, Sacramento District, Regulatory Branch, 1325 J Street, Sacramento, California 95814, telephone (916) 557-5250, as compliance with Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act may be required.

FIFTY: The permittee shall comply with all conditions set forth in the letter from the Department of the Army dated November 23, 2010, which is attached to this permit as Exhibit A and is incorporated by reference.



**DEPARTMENT OF THE ARMY**  
U.S. Army Engineer District, Sacramento  
Corps of Engineers  
1325 J Street  
Sacramento, California 95814-2922

REPLY TO  
ATTENTION OF

Flood Protection and Navigation Section (18385)

NOV 23 2010

Mr. Jay Punia, Executive Officer  
Central Valley Flood Protection Board  
3310 El Camino Avenue, Room 151  
Sacramento, California 95821

Dear Mr. Punia:

We have reviewed a permit application by the City of Turlock, Department of Public Works (application number 18385). This project includes constructing an outfall structure, approximately 75 feet long, placing riprap on the right (east) bank, installing (trenching) a 48-inch diameter reinforced concrete pipe under the right (east) bank levee of the San Joaquin River. The project is located east of Tupman, south and west of Interstate 5 at 37.4630°N 121.0329°W NAD83, Stanislaus County, California.

The District Engineer has no objection to approval of this application by your Board from a flood control standpoint, subject to the following conditions:

- a. That no excavation shall be made or remain in the project levee and channel during the flood season of November 1 to July 15 unless otherwise approved in writing by your Board.
- b. All cleared vegetation shall be properly grubbed. All roots greater than ½ inch in diameter shall be completely removed and the levee embankment returned to existing lines and grade.
- c. That the proposed pipe crossing shall be designed and constructed in accordance with U.S. Army Corps of Engineers' Engineering Manual (EM) 1110-2-1913, dated April 30, 2000, Design and Construction of Levees; Sacramento District's Levee Design Guidance Standard Operating Procedure #3; and California Code of Regulations Title 23 Waters, Division 1 Reclamation Board.
- d. That the proposed pipe shall be designed and constructed to prevent 1) flotation, 2) scour or embankment erosion, 3) damage from debris, particularly during flood flows, 4) leakage, 5) seepage along the proposed pipes, 6) corrosion, and 7) damage from vehicular loads.
- e. That the proposed pipe shall be equipped with an accessible positive closure valve at the waterside edge of the levee crown.

f. That the applicant shall periodically inspect the positive closure valve to ensure it is functioning properly.

g. That the cut made in the levee section for the installation of the outfall structure shall have stable side slopes. Backfill shall be placed in 4 to 6 inch layers with satisfactory material (CL or SC) and shall be compacted to at least 95% of maximum density as determined by ASTM D 698, at  $\pm 2\%$  of optimum moisture content.

h. That a minimum 12 inch layer of sand shall be placed along the landside 1/3 of the pipe length to the end of the pipe (or along the landside levee slope) to control drainage along the pipe.

i. That the footing for the sluice gate shall be placed directly on native soil (instead of the 12 inch layer of compacted class 2 aggregate base course as shown in applicant drawing RDS-5).

j. That the proposed bank protection shall be properly transitioned into the existing bank.

k. That in the event erosion occurs at the site, the erosion shall be repaired and adequate bank protection shall be placed to prevent future erosion.

l. That the proposed work shall not interfere with the integrity or hydraulic capacity of the flood damage reduction project; easement access; or maintenance, inspection, and flood fighting procedures.

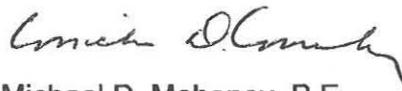
m. That the pipeline shall be clearly marked in the field such that its location and origin can be easily established in a flood event/emergency repair action.

n. That the condition of the pipe shall be verified using video or sonar equipment at least once every five years. The results of the inspection shall be submitted through the Central Valley Flood Protection Board to the Department of Water Resources, Flood Project Integrity and Inspection Branch and this office.

A file (200701970) has been opened because a Section 10 and/or Section 404 permit may be required. Please advise the applicant to contact the U.S. Army Corps of Engineers, Sacramento District, Regulatory Division, 1325 J Street, Sacramento, California 95814, telephone (916) 557-5250.

A copy of this letter is being furnished to Mr. Don Rasmussen, Chief, Flood Project Integrity and Inspection Branch, 3310 El Camino Avenue, Suite LL30, Sacramento, CA 95821.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael D. Mahoney". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Michael D. Mahoney, P.E.  
Chief, Construction-Operations Division

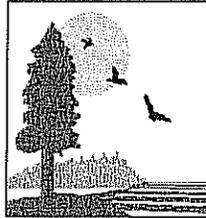


From: State of California State Lands Commission  
To: City of Turlock  
Date: May 28, 2009  
Title: General Lease PRC 8822.9



**CALIFORNIA STATE LANDS COMMISSION**

100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202



MAY 28 2009

**PAUL D. THAYER**, Executive Officer

(916) 574-1800 FAX (916) 574-1810

California Relay Service From TDD Phone 1-800-735-2922  
from Voice Phone 1-800-735-2929

Contact Phone: (916) 574-1869

Contact FAX: (916) 574-1925

File Ref: W26281/PRC 8822.9

Joseph Schofield  
Downey Brand LLP  
555 Capitol Mall Avenue, 10<sup>th</sup> Floor  
Sacramento, CA 95814

Dear Mr. Schofield:

**SUBJECT: City of Turlock - General Lease – Public Agency Use**

Enclosed is the fully executed lease, PRC 8822.9, for the construction, use and maintenance of a slope of gabions to support a new outfall structure, temporary installation of a sheetpile cofferdam, and placement of warning signs and buoys in the bed of the San Joaquin River, near Crows Landing, City of Turlock, Stanislaus County.

The Commission appreciates your cooperation and patience in helping to complete this transaction. Please feel free to write or call if you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Ninette Lee', is positioned above the printed name.

NINETTE LEE

Public Land Management Specialist

Enclosure

cc: Dan Madden  
Municipal Services Director  
City of Turlock  
156 S. Broadway, Suite 270  
Turlock, CA 95380

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED MAIL TO:  
STATE OF CALIFORNIA  
California State Lands Commission  
Attn: Title Unit  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

**STATE OF CALIFORNIA**  
**OFFICIAL BUSINESS**  
Document entitled to free recordation  
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 058-023-028  
County: Stanislaus

W 26281

**LEASE PRC 8822.9**

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 4
Section 3	Description of Lease Premises
Section 4	General Provisions
Exhibit A	Site and Location Map

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**SECTION 1**

**BASIC PROVISIONS**

**THE STATE OF CALIFORNIA**, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise and let to **CITY OF TURLOCK**, hereinafter referred to as Lessee, those certain lands described in Section 3 subject to the reservations, terms, covenants and conditions of this Lease.

**MAILING ADDRESS:** 156 South Broadway, Suite 270  
Turlock, CA 95380

**LEASE TYPE:** General Lease – Public Agency Use

**LAND TYPE:** Sovereign Lands

**LOCATION:** San Joaquin River, adjacent to Assessor Parcel Number 058-023-028,  
near Crows Landing, city of Turlock, Stanislaus County

**LAND USE OR PURPOSE:** Construction, use and maintenance of a slope of gabions to support a new municipal wastewater outfall pipeline, as part of the Harding Drain Bypass Project, and the temporary installation of a sheetpile cofferdam and placement of warning signs and buoys.

**TERM:** 25 years; beginning April 9, 2009; ending April 8, 2034, unless sooner terminated as provided under this Lease.

**CONSIDERATION:** The public use and benefit; subject to modification by Lessor as specified in Paragraph 2(b) of Section 4 - General Provisions.

**AUTHORIZED IMPROVEMENTS:** Portion of a 20-foot by 60-foot 1:1 slope of gabions and the temporary installation of a sheetpile cofferdam and placement of warning signs and buoys.

       **EXISTING:**

  X   **TO BE CONSTRUCTED; CONSTRUCTION MUST BEGIN BY:** June 1, 2010

**AND BE COMPLETED BY:** November 1, 2010

**LIABILITY INSURANCE:** N/A

**SURETY BOND OR OTHER SECURITY:** N/A

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**SECTION 2  
SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED, REVISED OR SUPPLEMENTED AS FOLLOWS:**

1. Lessee acknowledges that the land described in Section 3 of this Lease is subject to the Public Trust and is presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, or other recognized Public Trust uses and that Lessee's proposed construction activities and use of the Lease Premises shall not interfere or limit the Public Trust rights of the public. At least two weeks prior to the start of construction of the outfall structure, Lessee will post signs and publications indicating the tentative dates that the construction will occur. No fill material will be taken from the active river channel and public

navigation will not be interrupted. Warning signs shall be in place, both upstream and downstream of the construction site, at all times during construction in order to provide notice to the public of the construction activities that are taking place in the river and to exercise caution.

2. No activities are authorized and no facilities or improvements shall be constructed on the Lease Premises until Lessee provides a copy to Lessor's staff, of the permit from the California State Reclamation Board.
3. Lessee shall comply with all mitigation measures contained in the Mitigation Monitoring Program prepared and adopted by the city of Turlock on May 24, 2005.
4. Any equipment to be used on the Lease Premises is limited to that which is directly required to perform the authorized use and does not include any equipment that may cause damage to the Lease Premises. "Damage" does not include the installation of the authorized facilities and improvements in the manner authorized by this Lease.
5. All personal property, tools, or equipment taken onto or placed upon the Lease Premises shall remain the property of the Lessee or its contractors. Such personal property shall be promptly removed by the Lessee, at its sole risk and expense upon the completion of the project. Lessor does not accept any responsibility for any damage, including damages to any personal property, including any equipment, tools, or machinery on the Lease Premises.
6. No refueling and/or maintenance of vehicles or equipment shall take place on the Lease Premises.
7. Sixty days prior to start of the construction Lessee shall submit the following:
  - a. A set of final engineering drawings as issued for construction, certified by a California registered Civil/Structural Engineer.
  - b. Copies of all the contractor's submittal, required by the Section 02260- EXCAVATION SUPPORT AND PROTECTION, Section 2240 – DEWATERING and section 2300 – EARTHWORK of the contract specifications. Also, include design details of any temporary structures to be constructed and removed , Certified by a California registered Civil/Structural engineer. All temporary structures ,warning signs and buoys shall be removed immediately after the completion of the construction .
  - c. A copy of the contractor's Hazardous Spill Contingency Plan , with specific designation of the onsite person who will have responsibility for implementing the Plan.
8. 60 days prior to commencement of construction activities on the Lease Premises, Lessee shall provide a copy of the construction contractor's work execution plan that provides the details of the manpower, equipment, construction methods and procedures to be employed for each significant activity, safety procedure, etc. Additionally, Lessee shall provide Lessor with a construction schedule time line chart showing all significant work activities that will take place during the course of the project.

9. Prior to operation of the outfall, Lessee shall provide to Lessor's staff, for review and comment, a copy of the routine operation and maintenance program for regularly inspecting lease facilities.

10. Construction Improvements:

- a. Lessee shall provide a 15-day advance notice to Lessor prior commencement of construction of the authorized improvements.
- b. All construction activities shall be carried out in accordance with all applicable safety regulations, permits, and conditions of all other agencies.

11. Within 90 days of completion of the work, Lessee shall provide to Lessor the following:

- a. A set of "As-Built" drawings certified by a California registered Civil Engineer, showing the final plan and profiles of the pipelines in the lease area, and all changes or other modifications to the plans as originally approved for construction.
- b. A post construction written report confirming completion in accordance with the approved plans, describing any field changes with the justification, any accidents or spills affecting the waterway and corrective measures taken, and any other extraordinary conditions that occurred during the course of the project.
- c. A post construction ROV or diver video survey along the length of the completed outfall structure, with voice overlay to verify the as laid condition.
- d. A post construction river bottom survey of the project area to provide a graphic record of the work accomplished and to confirm river bottom cleanup and site restoration.

12. Lessee agrees that a lease description shall be prepared and submitted, subject to Lessor's staff for review and approval, at receipt of the "As-Built" drawings, and the lease shall be amended in order to authorize the final lease area description.

13. Lessee shall provide, within 30 days after the improvements authorized by this Lease are placed in service, copies of all monitoring compliance reports for all activities associated with construction and placement of outfalls.

14. All future repairs, structural modifications or abandonment/removal of the pipelines within the Lease Premises shall require prior review and approval by Lessor. In the event of an urgent repair requiring immediate action, telephone contact can be made through Lessor's 24-hour emergency response number (562) 590-5201.

In the event of any conflict between the provisions of Section 2 and Section 4 of this Lease, the provisions of Section 2 shall prevail.

SECTION 3

W 26281

LAND DESCRIPTION

A parcel of submerged land in the bed of the San Joaquin River, adjacent to Stanislaus County Swamp and Overflow Survey 227 with a patent date of November 9, 1870, situate in the County of Stanislaus, State of California, described as follows:

COMMENCING at the northeast corner of Section 36, Township 5 South, Range 8 East, Mount Diablo Meridian as shown on the official U.S. Government Township Plat approved February 8, 1869; thence South 89°32'30" West, along the north line of the Northeast Quarter of said Section 36, a distance of 111.28 feet to the westerly right-of-way line of Carpenter Road, as shown on that Right-of-way Acquisition Map dated November 1962, and revised June 1969, and on file with the County Surveyor; thence South 6°40'31" West, along said right-of-way, a distance of 17.07 feet to the south line of an Electrical and Communication Easement granted to T.I.D. per Document No. 2003-0192377; thence South 6°40'31" West, continuing along said right-of-way line of Carpenter Road, a distance of 347.26 feet; thence South 77°55'34" West 235.79 feet to the POINT OF BEGINNING; thence South 12°04'26" East 40.00 feet; thence South 77°55'34" West 105.00 feet; thence North 12°04'26" West 60.00 feet; thence North 77°55'34" East 105.00 feet; thence South 12°04'26" East 20.00 feet to the point of beginning.

EXCEPTING THEREFROM any portion lying landward of the ordinary low water mark on the right bank of the San Joaquin River.

END OF DESCRIPTION



*Richard K. Fullz*

3 - 11 - 09

## SECTION 4

### GENERAL PROVISIONS

#### 1. GENERAL

These provisions are applicable to all leases, permits, rights-of-way, easements, or licenses or other interests in real property conveyed by the State Lands Commission.

#### 2. CONSIDERATION

##### (a) Categories

##### (1) Rental

Lessee shall pay the annual rental as stated in this Lease to Lessor without deduction, delay, or offset, on or before the beginning date of this Lease and on or before each anniversary of its beginning date during each year of the Lease term.

##### (2) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the State Lands Commission, at its sole discretion, determines that such action is in the best interest of the State.

##### (b) Modification

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days notice prior to the effective date.

##### (c) Penalty and Interest

Any installments of rental accruing under this Lease not paid when due shall be subject to a penalty and shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

#### 3. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary claims which may be asserted presently or in the future.

#### 4. LAND USE

##### (a) General

Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later. Lessee shall notify Lessor within ten (10) days after commencing the construction of authorized improvements

and within sixty (60) days after completing them. Lessee's discontinuance of such use for a period of ninety (90) days shall be conclusively presumed to be an abandonment.

##### (b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration.

##### (c) Repairs and Maintenance

Lessee shall, at its own expense, keep and maintain the Lease Premises and all improvements in good order and repair and in safe condition. Lessor shall have no obligation for such repair and maintenance.

##### (d) Additions, Alterations, and Removal

(1) Additions - No improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor.

(2) Alteration or Removal - Except as provided under this Lease, no alteration or removal of improvements on or natural features of the Lease Premises shall be undertaken without the prior written consent of Lessor.

##### (e) Conservation

Lessee shall practice conservation of water, energy, and other natural resources and shall prevent pollution and harm to the environment. Lessee shall not violate any law or regulation whose purpose is to conserve resources or to protect the environment. Violation of this section shall constitute grounds for termination of the Lease. Lessor, by its executive officer, shall notify Lessee, when in his or her opinion, Lessee has violated the provisions of this section and Lessee shall respond and discontinue the conduct or remedy the condition within 30 days.

##### (f) Toxics

Lessee shall not manufacture or generate hazardous wastes on the Lease Premises unless specifically authorized under other terms of this Lease. Lessee shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported on the Lease Premises during the Lease term and shall comply with and be bound by all applicable provisions of such federal, state or local law, regulation or ordinance dealing with such wastes, substances or materials. Lessee shall notify Lessor and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances, or materials.

##### (g) Enjoyment

Subject to the provisions of paragraph 5 (a) (2) below, nothing in this Lease shall preclude Lessee from excluding persons from the Lease Premises when their presence or activity constitutes a material interference with Lessee's use

and enjoyment of the Lease Premises as provided under this Lease.

**(h) Discrimination**

Lessee in its use of the Lease Premises shall not discriminate against any person or class of persons on the basis of race, color, creed, religion, national origin, sex, age, or handicap.

**(i) Residential Use**

No portion of the Lease Premises shall be used as a location for a residence or for the purpose of mooring a structure which is used as a residence. For purposes of this Lease, a residence or floating residence includes but is not limited to boats, barges, houseboats, trailers, cabins, or combinations of such facilities or other such structures which provide overnight accommodations to the Lessee or others.

**5. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY**

**(a) Reservations**

- (1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber and minerals as defined under Public Resources Code Sections 6401 and 6407, as well as the right to grant leases in and over the Lease Premises for the extraction of such natural resources; however, such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (2) Lessor expressly reserves a right to go on the Lease Premises and all improvements for any purpose associated with this Lease or for carrying out any function required by law, or the rules, regulations or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.
- (3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.
- (4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

**(b) Encumbrances**

This Lease may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

**6. RULES, REGULATIONS, AND TAXES**

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any other governmental agency or entity having lawful authority and jurisdiction.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements.

(c) Lessee accepts responsibility for and agrees to pay any and all possessory interest taxes, assessments, user fees or service charges imposed on or associated with the leasehold interest, improvements or the Lease Premises, and such payment shall not reduce rental due Lessor under this Lease and Lessor shall have no liability for such payment.

**7. INDEMNITY**

(a) Lessor shall not be liable and Lessee shall indemnify, hold harmless and, at the option of Lessor, defend Lessor, its officers, agents, and employees against and for any and all liability, claims, damages or injuries of any kind and from any cause, arising out of or connected in any way with the issuance, enjoyment or breach of this Lease or Lessee's use of the Lease Premises except for any such liability, claims, damage or injury solely caused by the negligence of Lessor, its officers, agents and employees.

(b) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

**8. INSURANCE**

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified, insuring Lessee and Lessor against any and all claims or liability arising out of the ownership, use, occupancy, condition or maintenance of the Lease Premises and all improvements.

(b) The insurance policy or policies shall name the State of California, its officers, employees and volunteers as insureds as to the Lease Premises and shall identify the Lease by its assigned number. Lessee shall provide Lessor with a certificate of such insurance and shall keep such certificate current. The policy (or endorsement) must provide that the insurer will not cancel the insured's coverage without thirty (30) days prior written notice to Lessor. Lessor will not be responsible for any premiums or other assessments on the

policy. The coverage provided by the insured (Lessee) shall be primary and non-contributing.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

**9. SURETY BOND**

(a) Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized improvements, alterations or purposes and any modification of consideration.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until all of the Lease Premises have been either accepted as improved, by Lessor, or restored by Lessee as provided elsewhere in this Lease.

**10. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING**

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a corporation, any dissolution, merger, consolidation or other reorganization of Lessee or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, or the sale or other transfer of substantially all the assets of Lessee;

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands, it shall be appurtenant to adjoining littoral or riparian land and Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give prior written notice to Lessor;

(2) Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee. If the proposed assignee, sublessee, or secured third party is a general or limited partnership, or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable;

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from Lessor upon request.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of

or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7,9,11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and unless the trustee or debtor-in-possession has cured all defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

## 11. DEFAULT AND REMEDIES

### (a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a default or breach of the Lease by Lessee:

- (1) Lessee's failure to make any payment of rental, royalty, or other consideration as required under this Lease;
- (2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease;
- (3) Lessee's vacation or abandonment of the Lease Premises (including the covenant for continuous use as provided for in paragraph 4) during the Lease term;
- (4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements;
- (5) Lessee's failure to comply with all applicable provisions of federal, state or local law, regulation or ordinance dealing with hazardous waste, substances or materials as defined under such law;
- (6) Lessee's Failure to commence to construct and to complete construction of the improvements authorized by this Lease within the time limits specified in this Lease; and/or

- (7) Lessee's failure to comply with applicable provisions of federal, state or local laws or ordinances relating to issues of Health and Safety, or whose purpose is to conserve resources or to protect the environment.

(b) Lessee's failure to observe or perform any other term, covenant or condition of this Lease to be observed or performed by the Lessee when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice; however, if the nature of Lessee's default or breach under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default or breach if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

### (c) Remedies

In the event of a default or breach by Lessee and Lessee's failure to cure such default or breach, Lessor may at any time and with or without notice do any one or more of the following:

- (1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises;
- (2) Terminate this Lease and Lessee's right of possession of the Lease Premises. Such termination shall be effective upon Lessor's giving written notice and upon receipt of such notice, Lessee shall immediately surrender possession of the Lease Premises to Lessor;
- (3) Maintain this Lease in full force and effect and recover any rental, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises; and/or
- (4) Exercise any other right or remedy which Lessor may have at law or equity.

## 12. RESTORATION OF LEASE PREMISES

(a) Upon expiration or sooner termination of this Lease, Lessor upon written notice may take title to any or all improvements, including fills, or Lessor may require Lessee to remove all or any such improvements at its sole expense and risk; or Lessor may itself remove or have removed all or any portion of such improvements at Lessee's sole expense. Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such improvements to Lessor free and clear of any liens, mortgages, loans or any other encumbrances.

(b) In removing any such improvements Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to their installation or construction.



STATE OF CALIFORNIA - STATE LANDS COMMISSION

LEASE NO. PRC 8822.9

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE:

CITY OF TURLOCK

By: [Signature]

Title: INTERIM CITY MANAGER

Date: 4/15/09

LESSOR:

STATE OF CALIFORNIA  
STATE LANDS COMMISSION

By: [Signature]  
Title: Chief, Division of Land Management

Date: MAY 28 2009

ACKNOWLEDGEMENT

This Lease was authorized by the  
California State Lands Commission on

April 9, 2009  
(Month Day Year)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Stanislaus

On 4/15/09  
Date

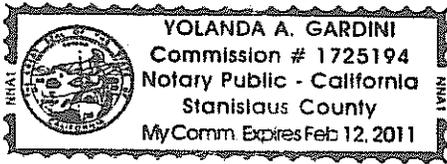
before me, Yolanda A. Gardini  
Here Insert Name and Title of the Officer

personally appeared Gary Ray Hampton  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Yolanda A. Gardini  
Signature of Notary Public

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: General Lease - APN# 058-023-025 Item 5V Council 411-109 *Harding Drain Bypass*

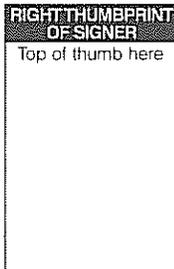
Document Date: 4/15/09 Number of Pages: 12 pgs (203 sec)

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

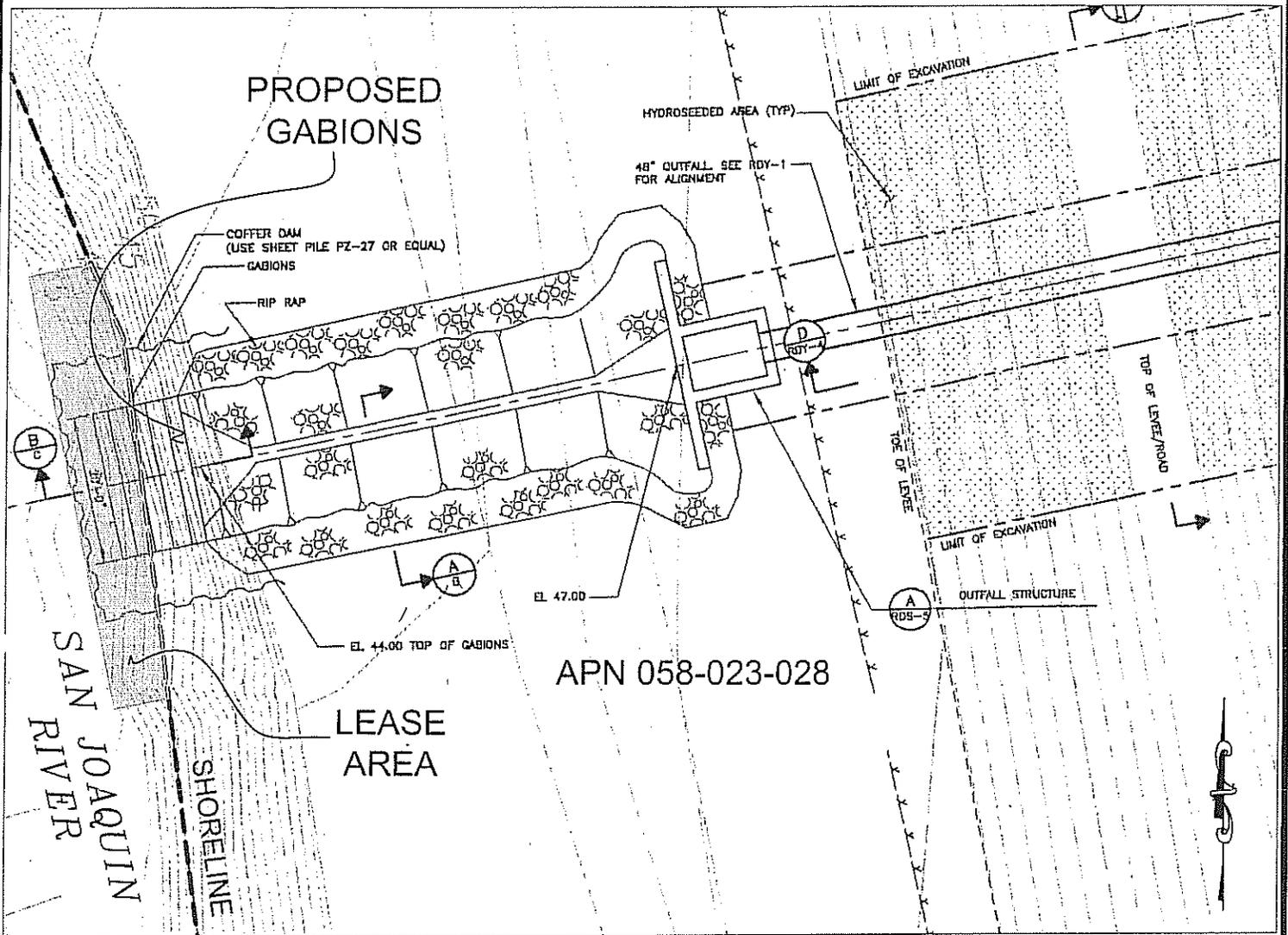
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

NO SCALE

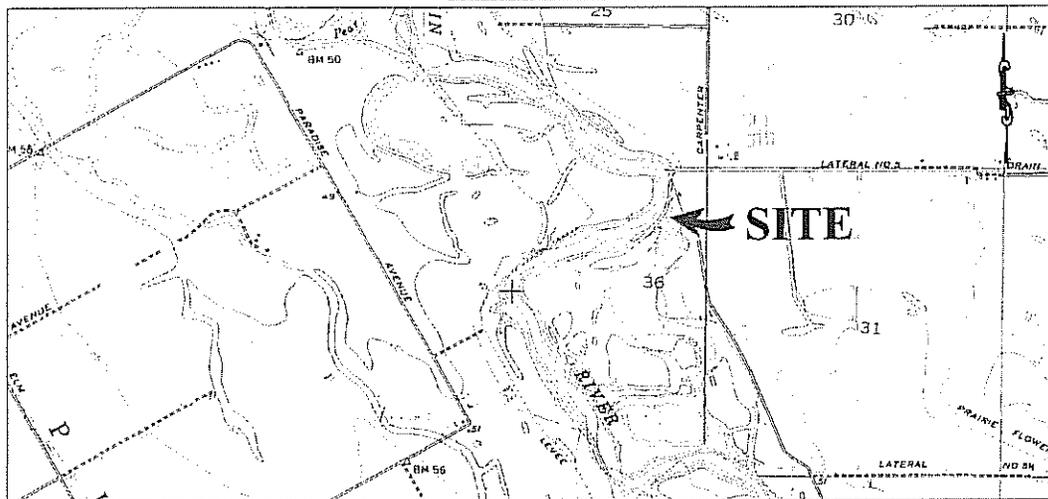
# SITE



## CARPENTER ROAD, CROWS LANDING

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# Exhibit A

WP 26281  
 CITY OF TURLOCK  
 APN 058-023-028  
 GENERAL LEASE -  
 PUBLIC AGENCY USE  
 STANISLAUS COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

From: United States Department of the Interior – Fish and  
Wildlife Service  
To: City of Turlock  
Date: January 23, 2009  
Title: Re-initiation for Formal Consultation on the Harding  
Drain By-Pass Outfall Installation (Corps File Number SPK-  
2007-01970), Stanislaus County, California





# United States Department of the Interior



## FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

In reply refer to:  
81420-2008-F-1273-R001

**JAN 23 2009**

Dr. Kathleen Dadey  
Chief, California Central Valley South/Nevada Section  
U.S. Army Corps of Engineers  
1325 J Street, Room 1480  
Sacramento, California 95814-29922

Subject: Re-initiation for Formal Consultation on the Harding Drain By-Pass  
Outfall Installation (Corps File Number SPK-2007-01970), Stanislaus  
County, California

Dear Dr. Dadey:

This letter responds to your December 10, 2008, request for formal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Harding Drain By-Pass Outfall Installation (proposed project), near the city of Turlock, Stanislaus County, California. We received your request on December 12, 2008. The request is a re-initiation for an original formal consultation that was concluded April 15, 2008 with the Service issuing a biological opinion. The request follows a change in the project description pertaining to the outfall alignment.

The Service has reviewed the biological information submitted by your office describing the effects of the proposed City of Turlock project on the following federally-threatened species: the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) (beetle), the Delta smelt (*Hypomesus transpacificus*), and the giant garter snake (*Thamnophis gigas*) (snake). As before, the proposed slightly altered project occurs beyond the habitat of the Delta smelt and its designated critical habitat; therefore the Delta smelt and its critical habitat are not likely to be adversely affected by the proposed project. The elderberry longhorn beetle is associated with elderberry shrubs (*Sambucus spp.*) during its entire life cycle. Elderberry shrubs often grow along riparian or river corridors. According to the documents and images accompanying and pertaining to the December 10, 2008 request, the proposed realignment for the project site does not include elderberry shrubs. Because no elderberry shrubs exist on site, the beetle is not likely to be adversely affected. The Delta smelt and the valley elderberry longhorn beetle are hence forth not included in this consultation.

The giant garter snake, a highly aquatic snake, may be adversely affected as it may inhabit the areas where the Harding Drain encounters and empties into the San Joaquin River. The effects

TAKE PRIDE  
IN AMERICA 

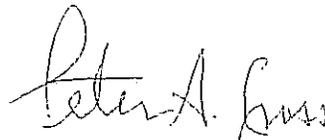
are likely to be minimized if avoidance and minimization measures to which the City of Turlock previously committed, as described in the original April 15, 2008 consultation, are implemented. This response to your consultation request is in accordance with section 7 of the Endangered Species Act of 1973, as amended (U.S.C. 1531 et seq.) (Act).

### **Project Description**

Compared to the original project description, the City of Turlock's 36" force main pipeline is now proposed to impact three additional areas. The new crossings are as follows: Lateral #5 Canal just east of Prairie Flower Road, Harding Drain just west of Central Avenue, and Harding Drain just west of Crow's Landing Road. After reviewing images of these crossing sites and potential giant garter snake habitat at each site, we have concluded that the alteration of the project is not likely to alter the effects previously analyzed. We therefore also conclude that construction activities planned to occur in the giant garter snake's inactive, over-wintering, below ground period at the three crossing sites are unlikely to result in any additional take of the species.

If you have any questions regarding this biological opinion for the proposed altered Harding Drain By-Pass Outfall Installation project, please contact Maryann Owens, staff biologist, or Susan P. Jones, the San Joaquin Valley Branch Chief, at (916) 414-6600.

Sincerely,



Peter A. Cross  
Deputy Assistant Field Supervisor

cc:

California Department of Fish and Game, Fresno, California (Attn: Justin Sloan)  
City of Turlock, Public Works Department, Turlock, California (Attn: Joe Schofield)  
City of Turlock, Municipal Services, Turlock, California (Attn: Dan Madden)

(Previous Initiation for Formal Consultation)  
From: United States Department of Commerce  
To: City of Turlock  
Date: November 19, 2008  
Title: Initiation for Formal Consultation on the Harding Drain  
By-Pass Outfall Installation (Corps File Number SPK-2007-  
01970), Stanislaus County, California





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802-4213

November 19, 2008 In response refer to:  
2007/07794

RECEIVED  
DEC 01 2008  
JSS

Kathleen A. Dadey, Ph.D.  
Chief, California Central Valley South/Nevada Section  
U.S. Army Corps of Engineers  
1325 J Street, Room 1480  
Sacramento, California 95814-29922

Dear Dr. Dadey:

This letter is in response to your letter of December 5, 2007, requesting initiation of consultation under section 7 of the Endangered Species Act (ESA) and requesting concurrence from NOAA's National Marine Fisheries Service (NMFS) that the proposed Harding Drain Bypass Outfall Installation (SPK-2007-01970) may affect but is not likely to adversely affect Federally threatened Central Valley steelhead (*Oncorhynchus mykiss*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), designated critical habitat for these species, and the threatened Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*). Your office has also determined that the proposed project may affect Essential Fish Habitat (EFH) for Pacific Salmon, pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This letter also serves as consultation under the authority of, and in accordance with, the provisions of the Fish and Wildlife Coordination act of 1934 (FWCA), as amended.

### **Consultation History**

NMFS received the U.S. Army Corps of Engineers' (Corps) initiation letter on December 11, 2007. Enclosures furnished with the consultation request included: 1) maps, drawings, and photos of the proposed outfall structure and site; 2) excerpts from the Draft Environmental Impact Report (EIR) and final EIR; 3) the City of Turlock's (COT - applicant) pre-construction notification package for the Corps' Nationwide Permit 12 (Utility Line Activities); and 4) the State Water Resources Control Board Order Approving Change in Point of Discharge of Treated Wastewater Effluent. NMFS reviewed this package on January 14, 2008. NMFS conducted a site visit on February 28, 2008, with Mr. Michael Cooke, COT Regulatory Affairs Manager. On March 17, 2008, NMFS requested effluent and San Joaquin River water quality data at the point of discharge. These data were received by NMFS on March 24, 2008. On May 16, 2008, NMFS received an information packet from Downey Brand (COT representative) which included drawings and photos of proposed pipeline crossings, the Clean Water Act 401 technically conditioned water quality certification for discharge of dredged and/or fill materials for the



Harding Drain Bypass project, from the California Regional Water Quality Control Board, and the U.S. Fish and Wildlife Service's consultation letter.

On June 9, 2008, NMFS requested that the COT prepare an effluent plume analysis to evaluate how the wastewater discharge will affect water quality in the San Joaquin River in the vicinity of the point of discharge. A cursory analysis of wastewater discharge volume compared with San Joaquin River flow was received by NMFS on July 28, 2008. A copy of the California Department of Fish and Game 1602 Streambed Alteration Agreement (No. 2007-0253-R4) for the project was received by NMFS in an email on October 23, 2008.

### **Action Area**

The proposed project is located on the San Joaquin River near the COT. The action area encompasses the lower San Joaquin River, which is not included within the Evolutionary Significant Units (ESU) for Sacramento River winter-run Chinook salmon or Central Valley spring-run Chinook salmon, nor is this area designated as critical habitat for these two listed ESUs. In addition, green sturgeon are not known to occur within the San Joaquin River basin and the recent critical habitat proposal for green sturgeon does not include the San Joaquin River basin. For these reasons, winter-run and spring-run Chinook salmon, and green sturgeon, and their critical habitats will not be considered further in this consultation. The San Joaquin River is included in the Central Valley steelhead ESU and designated as critical habitat for steelhead. Fall-run Chinook salmon (*O. tshawytscha*), a Federal candidate species occupies the San Joaquin River within the action area and most of the San Joaquin River (below the Friant Dam) is designated EFH for Pacific Salmon.

### **Proposed Project**

The proposed project entails construction of a new outfall structure on the west bank of the San Joaquin River just 560 feet upstream of the Harding Drain to accommodate disposal of the COT's Wastewater Treatment Plant's (TWWTP) effluent. After the placement of a 30 x 30-foot sheet-pile cofferdam to dewater the work area, a crane would be used to remove approximately 250 cubic yards of soil and riprap that currently covers the riverbank and an excavator would be used to prepare the soil. Discharge from the outfall consisting of a 48-inch diameter pipe would flow to the river through a V-ditch (20 x 60 feet long) constructed of riprap to a discharge chute constructed of gabions covering a 20-foot wide by 60-foot long area. Short term impacts to steelhead and their habitat may occur from sediment generated during the construction phase of the project.

The COT's National Pollutant Discharge Elimination System (NPDES) permit (#CA0078948) authorizes discharge of tertiary-treated wastewater of up to 20 million gallons (30 cubic feet per second (cfs)) per day. Wastewater is currently discharged into the Harding Drain, which then flows into the San Joaquin River. With the construction of the new outfall structure the wastewater would be discharged directly into the San Joaquin River. A maximum capacity of 30 cfs discharge would constitute approximately 1% of the mean flow in the San Joaquin River during the primary salmonid juvenile migration period from January – May, but could make up approximately 13% of the mean flow in the fall when adult Chinook salmon are migrating

upstream. If water quality constituents in the discharge water exceed the permitted levels, impacts to steelhead and salmon may occur. The following constituents are of particular concern: ammonia, nitrogen, dissolved oxygen, toxic chemicals, chlorine residual, heavy metals, and dissolved copper. Since 2006, the city's discharge has incurred two violations related to chlorine residual. Free chlorine reacts readily with organic matter, including fish gill tissue, causing acute necrosis and asphyxiation in fish. Elevated copper levels in the discharge water during the low flow period in the fall could affect salmon olfaction and impair migration.

### **ESA Section 7 Consultation**

Upon review of the project description, NMFS finds that the project designs and the incorporation of conservation measures reduces the previously mentioned potential impacts to a discountable or insignificant level. In particular, NMFS finds:

- 1) The timing of the outfall construction would occur between June 30 and September 1, the low flow period on the San Joaquin River when salmonids are unlikely to occur within the project area.
- 2) The erection of a coffer dam during construction to separate the site from the river and prevent sediment from entering the river will protect any steelhead that may be present in the project vicinity from exposure to sediment.
- 3) Implementation of post-construction Best Management Practices (BMPs) (*i.e.* straw wattles, revegetation) will minimize future erosion once the construction phase is completed.
- 4) The effluent to be discharged into the action area from the COT's TWWTP over the long term is expected to meet all of the water quality objectives set forth in the State Water Quality Control Board's basin plan and the COT's NPDES permit #CA0078948. Neither the reported effluent levels of controlled/monitored constituents, nor the NPDES permitted effluent levels of these elements for the COT's TWWTP are expected to reach levels known to be acutely or chronically toxic to listed salmonids or other aquatic life.

Therefore, NMFS concurs that the Harding Drain Bypass Outfall Installation project is not likely to adversely affect Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, Central Valley steelhead, and North American green sturgeon or their designated/proposed critical habitats. This determination was based on the following information: 1) discussions between NMFS Fishery Biologist, Erin Strange, and the COT's Regulatory Affairs Manager, Micheal Cooke, during a site visit on February 28, 2008; 2) information included within the initiation package; and 3) additional information verbally requested by NMFS regarding the treatment plant effluent water quality data pre- and post-tertiary treatment; and 4) a cursory effluent plume analysis.

This concludes informal consultation for the proposed action. This concurrence does not provide incidental take authorization pursuant to section 7(b)(4) and section 7(o)(2) of the ESA, as amended. Reinitiation of consultation is required where discretionary Federal agency

involvement or control over the action has been retained (or is authorized by law), and if: (1) new information reveals effects of the action that may affect listed species or critical habitat in a manner or an extent not previously considered; (2) the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered; or (3) a new species is listed or critical habitat designated that may be affected by the action.

### **EFH Consultation**

Based on our review of the project description and conservation and protective measures provided, NMFS finds that the project activities will not adversely affect EFH for Pacific salmon. We find that the project description includes conservation measures that will reduce impacts to EFH for Pacific salmon as described in Amendment 14 of the Pacific Salmon Fishery Management Plan pursuant to MSA. These measures include the inwater work schedule that avoids Pacific salmon presence in the watershed, utilization of a coffer-dam and erosion BMPs during construction, and revegetation of the work area around the outfall structure following completion of the action. To completely eliminate any water quality impairment, such as may occur on a rare occasion during equipment malfunction at the treatment facility, and subsequent potential impacts to EFH for Pacific Salmonids from the discharge of tertiary treated wastewater, NMFS recommends that the COT develop recycled water projects in accordance with State Water Resources Control Board policy.

This concludes EFH consultation for the proposed permit for the Harding Drain Bypass Outfall Installation project. Should additional information reveal that the project may affect EFH and/or impact salmonids in a way not previously considered, or should the action be modified in a way that may cause additional effects to EFH, this determination may be reconsidered.

### **FWCA**

The purpose of the FWCA is to ensure that wildlife conservation receives equal consideration, and is coordinated with other aspects of water resources development [16 U.S.C. 661]. The FWCA establishes a consultation requirement for Federal agencies that undertake any action that proposes to modify any stream or other body of water for any purpose, including navigation and drainage [16 U.S.C. 662(a)]. Consistent with this consultation requirement, NMFS provides recommendations and comments to Federal action agencies for conserving fish and wildlife resources. The FWCA allows the opportunity to offer recommendations for the conservation of species and habitats beyond those currently managed under the ESA and MSA. Because the proposed project is designed to avoid environmental impacts to aquatic habitat within the action area, NMFS has no additional FWCA comments to provide.

Please contact Erin Strange at (916) 930-3653, or via e-mail at [Erin.Strange@noaa.gov](mailto:Erin.Strange@noaa.gov) if you have any questions concerning this project or require additional information.

Sincerely,

  
Rodney R. McInnis  
Regional Administrator

cc: Copy to File ARN: 151422SWR2007SA00551  
NMFS-PRD, Long Beach, CA  
Joe Dillon, NMFS-HCD, Santa Rosa, CA  
William Marshall, Storm Water and Water Quality Certification Unit, Central Valley  
Regional Water Quality Control Board, 11020 Sun Center Drive #200, Rancho  
Cordova, CA 95670  
Kent Smith, California Department of Fish and Game Region 2, 1701 Nimbus Drive,  
Rancho Cordova, CA 95670-4599  
Joseph S. Schofield, Downey Brand Attorney LLP, 555 Capitol Mall, 10<sup>th</sup> Floor,  
Sacramento, CA 95814



From: California Department of Fish and Game  
To: City of Turlock  
Date: October 14, 2008  
Title: Stream Alteration Agreement No. 2007-0253-R4





DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

Central Region  
1234 East Shaw Avenue  
Fresno, CA 93710  
(559) 243-4005



October 14, 2008

Daniel Madden, Water Resources Manager  
City of Turlock, Public Works Department  
156 South Broadway, Suite 120  
Turlock, California 95380

Subject: Stream Alteration Agreement No. 2007-0253-R4  
San Joaquin River - Stanislaus County

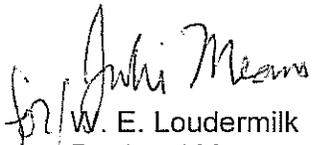
Dear Mr. Madden:

The Department of Fish and Game has completed the agreement process. A Notice of Determination will be filed with the Office of Planning and Research, in accordance with California Environmental Quality Act (CEQA).

Your copy of the signed agreement is enclosed. You may proceed with your Project according to the terms and provisions of your Stream Alteration Agreement, if you have obtained all other permits required by local, other state, and federal agencies. The Department's determination may be legally challenged within 30 days following the filing of the Notice of Determination. As a result, you may wish, but are not required, to delay commencement of your Project until after the 30-day period expires.

If you have any questions regarding this matter, please contact Julie Means, Senior Environmental Scientist at the above letterhead address or by telephone at (559) 243-4014, extension 240. Thank you for your cooperation.

Sincerely,

  
W. E. Loudermilk  
Regional Manager

Enclosure

**NOTICE OF DETERMINATION**

**TO:** Office of Planning and Research  
Post Office Box 3044  
Sacramento, California 95814

**FROM:** California Department of Fish and Game  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710

**SUBJECT:** Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code

**PROJECT TITLE:** Agreement 2007-0253-R4 – Harding Drain Bypass Project

**STATE CLEARINGHOUSE NUMBER:** 2003062002

**LEAD AGENCY:** City of Turlock

**CONTACT:** Michael Cooke, AICP, Planning Manager (209) 668-5542  
Ext 2218

**RESPONSIBLE AGENCY:** California Department of Fish and Game

**CONTACT:** Julie Means, Senior Environmental Scientist (559) 243-4014 ext 240

**PROJECT LOCATION:** Within or adjacent to the San Joaquin River, at the intersection of Harding Road and Prairie Flower Road, in the community of Crows Landing in Stanislaus County (Section 36, Township 5 South, Range 8 East MBD&M).

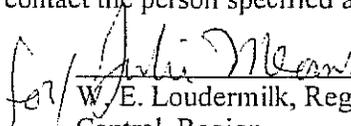
**PROJECT DESCRIPTION:** The California Department of Fish and Game is executing a Lake and Streambed Alteration Agreement pursuant to Section 1602 of the Fish and Game Code to the project applicant, City of Turlock Public Works Department, 156 South Broadway, Turlock California 95380. The project consists of installation of an outfall in the bank of the San Joaquin River for release of tertiary treated wastewater. In addition to this outfall, three open cut crossings will be excavated through Harding Drain, adjacent to the San Joaquin River, to install the pipeline that runs to the outfall. The crossings of Harding Drain will be completed by dewatering the work site through use of cofferdams, trenching, and then installing the pipeline. Both the outfall and crossing work areas will be dewatered using cofferdams, and best management practices implemented to prevent erosion of the work site. Following construction, disturbed areas will be recontoured and revegetated.

This is to advise that the California Department of Fish and Game as a Responsible Agency approved the project described above on 10-14-2008 and has made the following determinations regarding the above described project .

1. The project will not have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures were made a condition of the approval of the project.
4. A Statement of Overriding Considerations was not adopted for this project.
5. Findings were made pursuant to the provisions of CEQA.

This is to certify that a copy of the Mitigated Negative Declaration prepared for this project is available to the general public and may be reviewed at: City of Arroyo Grande, 214 East Branch Street, Arroyo Grande, California 93420. Please contact the person specified above.

Date: 10-14-08

  
\_\_\_\_\_  
W.E. Loudermilk, Regional Manager  
Central Region  
California Department of Fish and Game

Date received for filing at OPR: \_\_\_\_\_



# AGREEMENT

**California Fish and Game Code Section 1602  
Stream Alteration Agreement No. 2007-0253-R4  
San Joaquin River– Stanislaus County**

Parties:

**California Department of Fish and Game**  
Central Region  
1234 East Shaw Avenue  
Fresno, California 93710

**City of Turlock - Public Works Department**  
156 South Broadway, Suite 120  
Turlock, California 95380

1 **WHEREAS:**  
2

3 1. Mr. Joe Schofield, Downey Brand LLP, representing the City of Turlock (referred to as the  
4 "Operator"), on November 20, 2007, notified ("Notification" No. 2007-0253-R4) the Department  
5 of Fish and Game ("Department") of the intent to divert or obstruct the natural flow of, or change  
6 the bed or banks of, or use materials from the San Joaquin River, Stanislaus County, a water over  
7 which the Department asserts jurisdiction pursuant to Division 2, Chapter 6 of the California Fish  
8 and Game Code.  
9

10 2. The Operator may not commence any activity that is subject to Fish and Game Code  
11 Sections 1600 et seq. until the Department has found that such Project shall not substantially  
12 adversely affect an existing fish or wildlife resource or until the Department's proposals, or the  
13 decisions of a panel of arbitrators, have been incorporated into such projects.  
14

15 3. Fish and Game Code Sections 1600 et seq. make provisions for the negotiation of  
16 agreements regarding the delineation and definition of appropriate activities, Project  
17 modifications and/or specific measures necessary to protect fish and wildlife resources.  
18

19 4. The Department has determined that without the protective features identified in this  
20 Agreement, the activities proposed in the Notification could substantially adversely affect fish  
21 and wildlife.

Agreement 2007-0253-R4  
City of Turlock Public Works Department  
San Joaquin River-Stanislaus County

1 **NOW THEREFORE, IT IS AGREED THAT:**

2  
3 1. The receipt of this document ("Agreement"), by the Operator, satisfies the Department's  
4 requirement to notify the Operator of the existence of an existing fish and wildlife resource that  
5 may be substantially adversely affected by the Project that is described in the Notification.

6  
7 2. The contents of this Agreement constitute the Department's proposals as to measures  
8 necessary to protect fish and wildlife resources, and satisfy the Department's requirement to  
9 submit these proposals to the Operator.

10  
11 3. The signature of the Operator's representative on this Agreement constitutes the Operator's  
12 commitment to incorporate the Department's proposals into the Project that is described in the  
13 Notification.

14  
15 4. This Agreement does not exempt the Operator from complying with all other applicable  
16 local, State and Federal law, or other legal obligations.

17  
18 5. This Agreement, alone, does not constitute or imply the approval or endorsement of a  
19 Project, or of specific Project features, by the Department of Fish and Game, beyond the  
20 Department's limited scope of responsibility, established by Fish and Game Code Sections 1600  
21 et seq. This Agreement does not therefore assure concurrence, by the Department, with the  
22 issuance of permits from this or any other agency. Independent review and recommendations  
23 shall be provided by the Department, as appropriate, on those projects where local, State or  
24 Federal permits or environmental reports are required.

25  
26 6. This Agreement does not authorize the "take" (hunt, pursue, catch, capture, or kill, or  
27 attempt to hunt, pursue, catch, capture, or kill) of State-listed threatened or endangered species.  
28 If the Operator, in the performance of the agreed work, discovers the presence of a listed  
29 threatened or endangered species in the Project work area, work shall stop immediately. The  
30 Operator shall not resume activities authorized by this Agreement until such time as valid "take"  
31 permits are obtained from the Department pursuant to Fish and Game Code Sections 2081(a) and  
32 2081(b) as appropriate.

33  
34 7. To the extent that the Provisions of this Agreement provide for the diversion of water, they  
35 are agreed to with the understanding that the Operator possesses the legal right to so divert such  
36 water.

37  
38 8. To the extent that the Provisions of this Agreement provide for activities that require the  
39 Operator to trespass on another owner's property, they are agreed to with the understanding that  
40 the Operator possesses the legal right to so trespass.

41  
42 9. To the extent that the Provisions of this Agreement provide for activities that are subject to  
43 the authority of other public agencies, said activities are agreed to with the understanding that all  
44 appropriate permits and authorizations shall be obtained prior to commencing agreed activities.

1 10. All Provisions of this Agreement remain in force throughout the term of the Agreement.  
2 Any Provision of the Agreement may be amended at any time, provided such amendment is  
3 agreed to in writing by both parties. Mutually approved amendments become part of the original  
4 Agreement and are subject to all previously negotiated Provisions. The Agreement may be  
5 terminated by either party, subject to 30 calendar days written notification.

6  
7 11. The Operator shall provide a copy of this Agreement to the Project supervisors and all  
8 contractors and subcontractors. Copies of this Agreement shall be available at work sites during  
9 all periods of active work and shall be presented to Department personnel upon demand.

10  
11 12. The Operator agrees to provide the Department access to the Project site at any time to  
12 ensure compliance with the terms, conditions, and Provisions of this Agreement.

13  
14 13. The Operator and any contractor or subcontractor, working on activities covered by this  
15 Agreement, are jointly and separately liable for compliance with the Provisions of this  
16 Agreement. Any violation of the Provisions of this Agreement is cause to stop all work  
17 immediately until the problem is reconciled. Failure to comply with the Provisions and  
18 requirements of this Agreement may result in prosecution.

19  
20 14. The Operator assumes responsibility for the restoration of any fish and wildlife habitat  
21 which may be impaired or damaged either directly or, incidental to the Project, as a result of  
22 failure to properly implement or complete the protective features of this Agreement, or from  
23 activities which were not included in the Operator's Notification.

24  
25 15. It is understood that the Department enters into this Agreement for purposes of establishing  
26 protective features for fish and wildlife, in the event that a Project is implemented. The decision  
27 to proceed with the Project is the sole responsibility of the Operator, and is not required by this  
28 Agreement. It is agreed that all liability and/or incurred costs, related to or arising out of the  
29 Operator's Project and the fish and wildlife protective conditions of this Agreement, remain the  
30 sole responsibility of the Operator. The Operator agrees to hold harmless and defend the  
31 Department of Fish and Game against any related claim made by any party or parties for personal  
32 injury or other damage.

33  
34 16. The terms, conditions, and Provisions contained herein constitute the limit of activities  
35 agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the  
36 Operator is precluded from doing other activities at the site. However, activities not specifically  
37 agreed to and resolved by this Agreement are subject to separate notification pursuant to Fish and  
38 Game Code Sections 1600 et seq.

39  
40 **California Environmental Quality Act (CEQA) Compliance:** In approving this Agreement,  
41 the Department is independently required to assess the applicability of CEQA. The features of  
42 this Agreement shall be considered as part of the overall Project description.

1 The Operator's concurrence signature on this Agreement serves as confirmation to the  
2 Department that the activities that will be conducted under the terms of this Agreement are  
3 consistent with the Project described in the Environmental Impact Report prepared by the City of  
4 Turlock for the Harding Drain Bypass Project (State Clearinghouse No. 2003062002) of which  
5 the outfall construction addressed in this Agreement is a part. The Environmental Impact Report  
6 for the subject Project was approved by the City of Turlock on May 24, 2005, and filed with the  
7 Stanislaus County Clerk on May 25, 2005. A copy of the Notice of Determination was provided  
8 with the Section 1602 Notification.

9  
10 The Department, as a CEQA Responsible Agency, shall make findings and submit a Notice of  
11 Determination to the State Clearinghouse upon signing this Agreement.

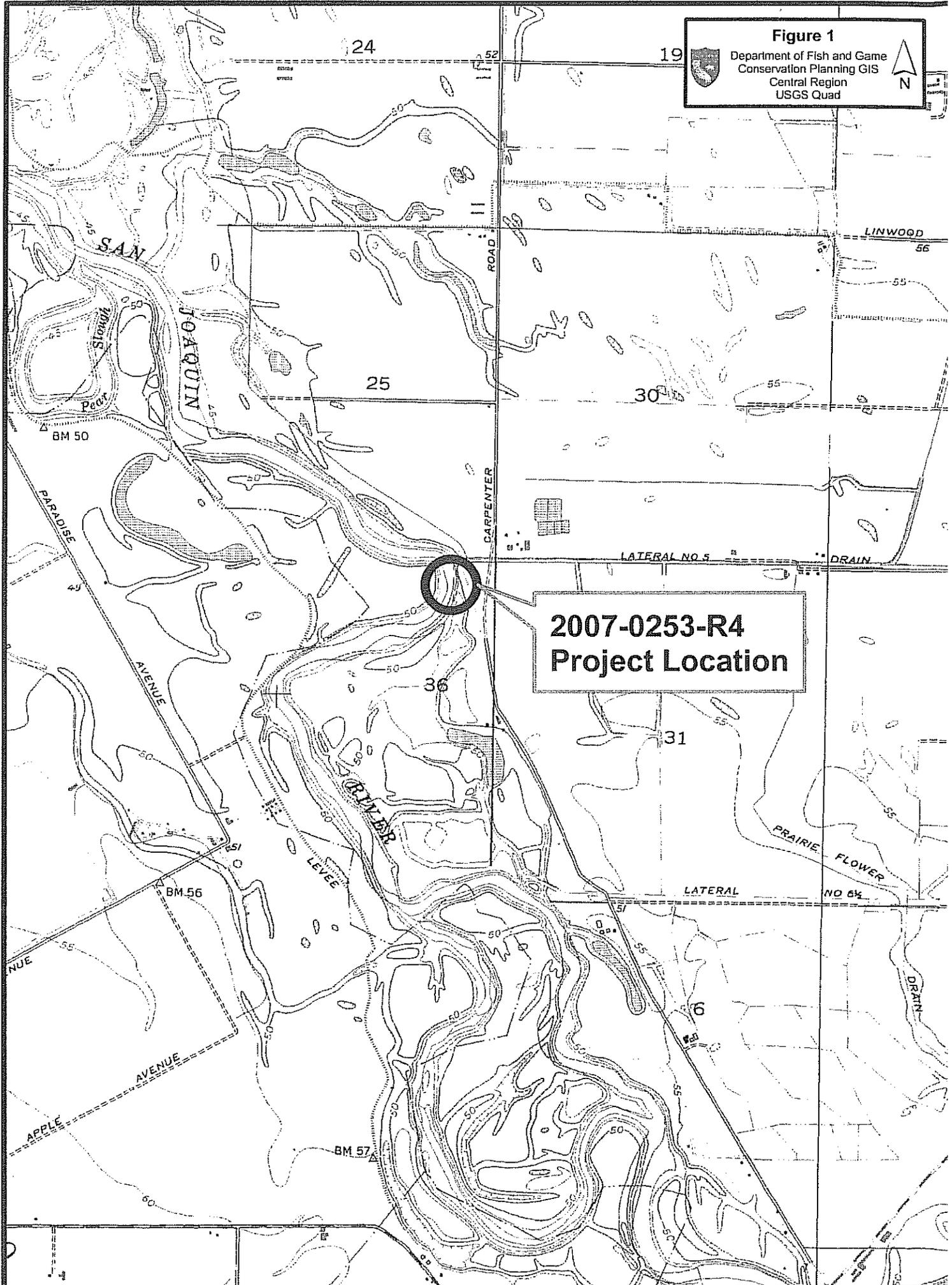
12  
13 A Monitoring and Reporting Program (MRP) is included to incorporate monitoring and reporting  
14 requirements for the activities authorized in this Agreement.

15  
16 **Project Location:** The work authorized by this Agreement will occur within or adjacent to the  
17 San Joaquin River, at the intersection of Harding Road and Prairie Flower Road, in the  
18 community of Crows Landing (Section 36, Township 5 South, Range 8 East MBD&M)  
19 (Figure 1), in Stanislaus County. Unless changes are submitted and approved by the Department,  
20 the Project will commence at this location.

21  
22 **Project Description:** The Operator's Notification includes Fish and Game Notification Form  
23 FG2023, CEQA Notice of Determination, Environmental Impact Report prepared for the Project,  
24 and all documents and Project plans. The Notification comprises the Operator's Project  
25 description, and it is used as the basis for establishing the protective Provisions that are included  
26 in this Agreement. Any changes or additions to the Project as described in the Notification shall  
27 require additional consultation and protective provisions. The Department's CEQA  
28 Determination is based upon the Operator's commitment to full implementation of the Mitigation  
29 Measures in the Environmental Impact Report and the Provisions of this Agreement. The  
30 Operator has proposed the following scope of work:

- 31
- 32 • The Project will consist of installation of an outfall in the bank of the San Joaquin River for  
33 release of tertiary treated wastewater from the City of Turlock's regional wastewater  
34 treatment plant. In addition to this outfall, three open cut crossings will be excavated  
35 through Harding Drain, adjacent to the San Joaquin River, to install the pipeline that  
36 transports water to the outfall.
  - 37
  - 38 • The outfall will be constructed along the riverbank by first installing a sheet-pile cofferdam  
39 (30 feet by 30 feet) to dewater the work area. Within the dewatered area, soil will be  
40 excavated to the required depth. Water will then be pumped from the excavation to the San  
41 Joaquin River, or a settling basin, should the pumped water be turbid.
  - 42
  - 43 • A crane will be used to remove the riprap that currently covers the riverbank, and an  
44 excavator will be used to prepare the soil. Approximately 250 cubic yards of soil, along

**Figure 1**  
Department of Fish and Game  
Conservation Planning GIS  
Central Region  
USGS Quad



1 with existing riprap will be excavated from the river bank to install the outfall. The outfall,  
2 consisting of a 48-inch diameter pipe, will terminate at the edge of the riverbank at an  
3 invert elevation of 47.0 feet. Discharge from the outfall pipe will flow by gravity to the  
4 river water surface via a V-ditch, constructed of riprap. The riprap channel will transition at  
5 the edge of the riverbank to a discharge chute constructed of gabions. The gabions will be  
6 sloped at approximately 1:1. The gabions cover an area of 20 feet wide by approximately  
7 14 feet long. The V-ditch will be approximately 20 feet wide by 60 feet long.

- 8
- 9 • Temporary erosion control measures will be installed for disturbed areas, such as silt  
10 fences, staked straw bales and wattles, silt basins and traps, check dams, geofabric, sandbag  
11 dikes, and temporary revegetation or other ground cover. Silt fences and catch basin will  
12 be placed below all construction activities at the edge of the river to intercept sediment  
13 before it reaches the river, and will be installed prior to any clearing or grading activities.  
14 Disturbed areas will be recontoured and seeded following construction.
- 15

16 The bulleted items listed above comprise the core of activities authorized by this Agreement. In  
17 addition to the core activities, it is mutually beneficial to establish Provisions that shall protect  
18 fish and wildlife resources while the Operator conducts activities within the Project area. It is  
19 anticipated that the core work activities shall be implemented independently over the term of this  
20 Agreement.

21

22 **Plant and Animal Species of Concern:** This Agreement is intended to minimize and mitigate  
23 adverse impacts to the fish and wildlife resources that occupy the area of the San Joaquin River  
24 and the immediate adjacent habitat. Species and habitat types that could potentially be impacted  
25 are Valley elderberry longhorn beetle, giant garter snake, Delta smelt, southwestern or  
26 northwestern pond turtle, Swainson's hawk, San Joaquin whipsnake, western burrowing owl,  
27 native fisheries in the San Joaquin River, and various raptor species, along with other birds,  
28 mammals, fish, reptiles, amphibians, invertebrates and plants that comprise the local ecosystem.  
29 Departmental files contain lists of species that could be subject to potential generated impacts  
30 from this Project.

## 31

### 32 **PROVISIONS:**

#### 33 General

34

35

36 1. Agreed activities within the stream may commence after the Department has signed this  
37 Agreement, and pre-Project protective features are implemented. This Agreement shall remain in  
38 effect for five (5) years beginning on the date signed by the Department. If the Project is not  
39 completed prior to the expiration date defined above, the Operator shall contact the Department  
40 to negotiate a new expiration date and any new requirements.

41

42 2. All work within the San Joaquin River shall be performed between June 1 and August 31,  
43 when the river is dry or in low flow conditions.

1 3. The Operator shall submit a construction/work schedule to the Department (mail, or fax to  
2 (559) 243-4594, with reference to Agreement 2007-0253-R4) prior to beginning any activities  
3 covered by this Agreement. The Operator shall also notify the Department upon the completion  
4 of the activities covered by this Agreement.

5  
6 4. Prior to starting any activity within the stream, all workers shall have received training from  
7 the Operator on the contents of this Agreement, the resources at stake, and the legal  
8 consequences of non-compliance.

9  
10 Flagging/Fencing

11  
12 5. Prior to any activity within the stream, the Operator shall identify the limits of the required  
13 access routes and encroachment into the stream. These "work area" limits shall be identified  
14 with brightly-colored flagging/fencing. Work completed under this Agreement shall be limited  
15 to this defined area only. Flagging/fencing shall be maintained in good repair for the duration of  
16 the Project. All areas beyond the identified work area limits and within the streambed, bank or  
17 channel, shall be considered Environmentally Sensitive Areas and shall not be disturbed.

18  
19 Wildlife

20  
21 6. If any wildlife is encountered during the course of construction, said wildlife shall be  
22 allowed to leave the construction area unharmed.

23  
24 7. To protect nesting birds, no construction or vegetation removal shall be completed from  
25 March 1 through July 31 unless the following surveys are completed by a qualified biologist:

26  
27 Raptors: Survey for nesting activity of raptors within an area of sensitivity around the  
28 Project area shall be conducted. These surveys shall be conducted at appropriate nesting  
29 times, and shall concentrate on mature trees. If any active nests are observed, these nests  
30 and nest trees shall be designated as occurring within a sensitivity area around the nest site.  
31 If nests are identified, a qualified raptor biologist shall determine the area of sensitivity and  
32 shall otherwise mark the area that cannot be disturbed by the Project until such time that the  
33 nesting attempt is completed.

34  
35 Other Avian Species: Survey riparian areas for nesting activity within a 0.25 mile radius of  
36 the defined work area, two (2) to three (3) weeks before construction begins. If any nesting  
37 activity is found, the Operator shall contact the Department and mitigation, specific to each  
38 incident, shall be developed.

39  
40 8. The Operator will implement avoidance and minimization measures to protect giant garter  
41 snake, valley elderberry longhorn beetle, and Delta smelt contained in the United States Fish and  
42 Wildlife Service Biological Opinion dated April 15, 2008, which is hereby incorporated by  
43 reference.

1 9. Burrowing Owls: Pre construction surveys for burrowing owls shall be conducted no more  
2 than 30 days prior to the initiation of construction, using Department of Fish and Game  
3 protocols. If burrowing owls are found within the construction zone, the Department shall be  
4 consulted to develop appropriate avoidance measures, or if avoidance is not possible, to develop  
5 compensation for loss of nest sites.

6  
7 10. No heavy equipment shall operate in the live stream, except as may be necessary to  
8 construct coffer dams to divert stream flow and isolate the work site and to excavate the stored  
9 sediments from the stream channel immediately upstream of the road crossing.

10  
11 11. If any State- or Federal-listed Threatened or Endangered species could be “taken” as a  
12 result of Project activities, the Operator is responsible for obtaining the appropriate permits  
13 required for both intentional (capture and relocation) and “incidental take.”

14  
15 12. This Agreement does not allow for the “take,” or “incidental take,” of any State- or Federal-  
16 listed threatened or endangered species. Liability for any “take,” or “incidental take,” of such  
17 listed species remains the responsibility of the Operator for the duration of the Project. Any  
18 unauthorized “take” of such listed species may result in prosecution and nullify this Agreement.

19  
20 Fish Passage

21  
22 13. When any dam or other artificial obstruction is being constructed, maintained, or placed in  
23 operation, sufficient water shall at all times be allowed to pass downstream to maintain aquatic  
24 life below the dam pursuant to Fish and Game Code Section 5937.

25  
26 Vegetation

27  
28 14. If any woody riparian vegetation with a diameter at breast height (DBH) greater than four  
29 (4) inches is removed or damaged, the Operator shall document the number and species of all  
30 woody-stemmed riparian plants/trees with a DBH of four (4) inches or greater that are to be  
31 removed or damaged. Four inch DBH trees and shrubs will be replaced at a 3:1 ratio (replaced to  
32 lost) and heritage trees greater than 24 inches DBH shall be replaced at a 10:1 ratio. Plantings  
33 shall be monitored so that at least 80 percent of the plantings survive after five (5) years. (See  
34 Restoration below).

35  
36 15. The Operator may remove non-native vegetation [such as giant reed (*arundo*), tree tobacco,  
37 castor bean, pampas grass, eucalyptus, and acacia], including stumps and roots from all  
38 jurisdictional areas. The non-native vegetation shall be removed in a manner so that it does not  
39 promulgate or propagate. If large stands of non-native vegetation will be removed, native plant  
40 species, determined in consultation with the Department, shall be replanted to prevent erosion.

1 Vehicles

2  
3 16. Construction vehicle access to the stream banks and bed shall be limited to the location of  
4 ingress and egress corridors provided in the Notification.

5  
6 17. Vehicles shall not be operated in areas of surface water or in areas where riparian or aquatic  
7 species of plants are present, except as otherwise addressed in this Agreement, without prior  
8 approval by the Department.

9  
10 18. Staging and storage areas for equipment, materials, fuels, lubricants, and solvents shall be  
11 located outside of the stream channel and banks. Stationary equipment such as motors, pumps,  
12 generators, compressors and welders, located within or adjacent to the stream, shall be positioned  
13 over drip-pans. Any equipment or vehicles driven and/or operated within or adjacent to the  
14 stream shall be checked and maintained daily to prevent leaks of materials that, if introduced to  
15 water, could be deleterious to aquatic life. Vehicles shall be moved away from the stream prior  
16 to refueling and lubrication.

17  
18 19. The cleanup of all spills shall begin immediately. The Department shall be notified  
19 immediately by the Operator of any spills and shall be consulted regarding cleanup procedures.

20  
21 Erosion

22  
23 20. Silty water from the Project area shall not be discharged to locations downstream of the  
24 Project area. The Operator's ability to minimize siltation shall be the subject of preconstruction  
25 planning and feature implementation. Precautions to minimize siltation may require that the  
26 work site be isolated so that silt, or other deleterious materials, are not allowed to pass to  
27 downstream reaches. The placement of any structure or materials in the stream for this purpose,  
28 not included in the original Project description, shall be coordinated with the Department. If it is  
29 determined that silt levels resulting from Project-related activities constitute a threat to aquatic  
30 life, activities associated with the siltation shall be halted until effective Department-approved  
31 control devices are installed, or abatement procedures are initiated.

32  
33 21. All disturbed soils within the Project site shall be stabilized to reduce erosion potential,  
34 both during and following construction. Planting, seeding with native species, and mulching is  
35 conditionally acceptable. Where suitable vegetation cannot reasonably be expected to become  
36 established, non-erodible material shall be used for such stabilization. Any installation of non-  
37 erodible material, not included in the original Project description, shall be coordinated with the  
38 Department. Coordination may include the negotiation of additional Agreement provisions for  
39 this activity (see Restoration below).

40  
41 Pollution

42  
43 22. Raw cement, concrete or washings thereof, asphalt, paint or other coating material, oil or  
44 other petroleum products, or any other substances which could be hazardous to fish or wildlife  
45 resulting from Project-related activities, shall be prevented from contaminating the soil and/or  
46 entering the "Waters of the State."

1 23. All Project-generated debris, building materials, and rubbish shall be removed from the  
2 stream and from areas where such materials could be washed into the stream. All Project-  
3 generated debris shall be disposed of in a legal manner.

4  
5 Fill/Spoil

6  
7 24. Rock, gravel, and/or other materials shall not be imported into or moved within the San  
8 Joaquin River, except as otherwise addressed in this Agreement

9  
10 Diversion

11  
12 25. Any temporary stream diversion shall be coordinated with the Department. Coordination  
13 may include the negotiation of additional provisions, but as a minimum includes the following.  
14 Flow diversion shall be done in a manner that shall prevent pollution and/or siltation, and which  
15 shall provide flows to downstream reaches. Flows to downstream reaches shall be provided  
16 during all times so that the natural flow shall support aquatic life. Said flows shall be of  
17 sufficient quality and quantity, and of appropriate temperature to support aquatic life both above  
18 and below the diversion. Normal flows shall be restored to the effected stream immediately upon  
19 completion of work at that location.

20  
21 Maintenance

22  
23 26. Human-generated debris shall be removed from the stream and banks.

24  
25 Restoration

26  
27 27. The Operator assumes responsibility for the restoration of any wildlife habitat which may  
28 be impaired or damaged either directly or incidental to the Project as a result of failure to  
29 properly implement or complete the protective features of this Agreement, or from activities  
30 which were not included in the Operator's notification.

31  
32 28. Any alteration of existing channel morphology not addressed in this Agreement shall be  
33 subject to Department approval. Detailed plans shall be submitted to the Department for  
34 approval and processing.

35  
36 29. A Revegetation Plan shall be provided to the Department for approval prior to initiating  
37 construction, that contains the following components:

- 38  
39 a) All exposed slopes and exposed areas on the bank shall be seeded and mulched with a  
40 blend of a minimum of three (3) locally native grass species. One (1) or two (2) non-  
41 native sterile perennial grass species may be added to the seed mix, provided that the  
42 amount does not exceed 25 percent of the total seed mix by count. Locally native  
43 wildflower and/or shrub seeds may also be included in the seed mix. The proposed

1 seed mix shall be submitted to the Department in the Revegetation Plan for approval  
2 prior to application of the seed mix. Seeding shall be completed by November 15 of  
3 the year construction ends. Seeding shall be covered with broadcast straw. At the  
4 discretion of the Department, all exposed areas where seeding is considered  
5 unsuccessful after 90 days shall receive appropriate soil preparation and a second  
6 application of seeding, mulch and fertilizer as soon as is practical on a date mutually  
7 agreed upon.

- 8
- 9 b) Damaged or removed woody riparian vegetation with a DBH greater than four (4)  
10 inches shall be replaced at a 3:1 ratio (replaced to lost) and heritage trees greater than  
11 24 inches DBH shall be replaced at a 10:1 ratio. Tree and shrub species proposed for  
12 planting shall be included in the Revegetation Plan, and submitted to the Department  
13 prior to planting.
- 14
- 15 c) Monitoring: To ensure a successful revegetation effort, all planted vegetation and  
16 trees will be monitored and maintained, to ensure that 80 percent of the plants survive  
17 for at least five (5) years, or until the revegetation is determined successful upon  
18 approval by the Department

19

20 **MONITORING AND REPORTING PROGRAM (MRP):**

21

22 PURPOSE OF THE MRP

23

24 The purpose of the MRP is to ensure that the protective measures required by the Department are  
25 properly implemented, and to monitor the effectiveness of those measures.

26

27 OBLIGATIONS OF THE OPERATOR

28

29 The Operator shall have primary responsibility for monitoring compliance with all protective  
30 measures included as "Provisions" in this Agreement. Protective measures must be implemented  
31 within the time periods indicated in the Agreement and the program described below.

32

33 The Operator shall submit the following Reports to the Department:

- 34
- 35 • Construction/work Schedule (Provision 3)
  - 36
  - 37 • Verification of employee training (Provision 4)
  - 38
  - 39 • If necessary, a Pre-Construction Biological Survey for nesting birds (Provision 7).
  - 40
  - 41 • Pre-Construction Survey for giant garter snake (Provision 8)
  - 42
  - 43 • Preconstruction Survey for burrowing owl (Provision 9).

1 • Revegetation Plan (Provision 29)

2  
3 The Operator shall submit the following to the Department:

4  
5 In addition to the above monitoring and reporting requirements, the Department requires as part  
6 of this MRP that the Operator:

7  
8 Immediately notify the Department in writing if monitoring reveals that any of the protective  
9 measures were not implemented during the period indicated in this program, or if it anticipates  
10 that measures will not be implemented within the time period specified.

11  
12 Immediately notify the Department if any of the protective measures are not providing the level  
13 of protection that is appropriate for the impact that is occurring, and recommendations, if any, for  
14 alternative protective measures.

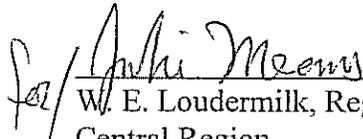
15  
16 **VERIFICATION OF COMPLIANCE:**

17  
18 The Department shall verify compliance with management compliance measures to ensure the  
19 accuracy of the Operator's monitoring and reporting efforts. The Department may, at its sole  
20 discretion, review relevant Project documents maintained by the Operator, interview the  
21 Operator's employees and agents, inspect the Project area, and take other actions to assess  
22 compliance with or effectiveness of management compliance measures for the Project.

1 **CONCURRENCE:**

2  
3  
4  
5  
6 **APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND GAME**

7  
8 on 10-14, 2008.

9  
10  
11   
12 W. E. Loudermilk, Regional Manager  
13 Central Region  
14  
15  
16  
17

18 **ACKNOWLEDGMENT**

19  
20 The undersigned acknowledges receipt of this Agreement and, by signing, accepts and agrees to  
21 comply with all terms and conditions contained herein. The undersigned also acknowledges that  
22 adequate funding shall be made available to implement the measures required by this Agreement.  
23

24  
25  
26  
27  
28 By:   
29 Tim Kerr, City Manager  
30 City of Turlock

Date: 9/29/08



From: California Regional Water Quality Control Board  
To: City of Turlock  
Date: July 1, 2008  
Title: Clean Water Act §401 Technically Conditioned Water  
Quality Certification For Discharge Of Dredged And/Or Fill  
Materials For The Harding Drain Bypass Project,  
(WDID#5B50CR00036) Stanislaus County





Linda S. Adams  
Secretary for  
Environmental  
Protection

# California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair



Arnold  
Schwarzenegger  
Governor

Sacramento Main Office  
11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114  
Phone (916) 464-3291 • FAX (916) 464-4645  
<http://www.waterboards.ca.gov/centralvalley>

1 July 2008

Mr. Dan Madden  
City Of Turlock  
156 S. Broadway, Suite 270  
Turlock, CA 95380

## **CLEAN WATER ACT §401 TECHNICALLY CONDITIONED WATER QUALITY CERTIFICATION FOR DISCHARGE OF DREDGED AND/OR FILL MATERIALS FOR THE HARDING DRAIN BYPASS PROJECT, (WDID#5B50CR00036) STANISLAUS COUNTY**

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

1. This certification action 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 Title 23 of the California Code of Regulations (23 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 subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action shall be conditioned upon total payment of the full fee required under 23 CCR §3833, unless otherwise stated in writing by the certifying agency.
4. Certification is valid for the duration of the described project. Discharger shall notify the Regional Board in writing within 7 days of project completion

### **ADDITIONAL TECHNICALLY CONDITIONED CERTIFICATION CONDITIONS :**

In addition to the four standard conditions, the applicant shall satisfy the following:

1. City Of Turlock shall notify the Board in writing of the start of any in-water activities.
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.

California Environmental Protection Agency

3. The discharge of petroleum products or other excavated materials to surface waters is prohibited.
4. Activities shall not cause turbidity increases in surface waters to exceed:
  - (a) where natural turbidity is between 0 and 5 Nephelometric Turbidity Units (NTUs), increases shall not exceed 1 NTU;
  - (b) where natural turbidity is between 5 and 50 NTUs, increases shall not exceed 20 percent;
  - (c) where natural turbidity is between 50 and 100 NTUs, increases shall not exceed 10 NTUs;
  - (d) 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 NTU over background turbidity as measured 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.

5. Activities shall not cause settleable matter to exceed 0.1 ml/l in surface waters as measured in surface waters 300 feet downstream from the project.
6. Activities shall not cause visible oil, grease, or foam in the work area or downstream.
7. All areas disturbed by project activities shall be protected from washout or erosion.
8. In the event that project activities result in the deposition of soil materials or creation of a visible plume in surface waters, the following monitoring shall be conducted immediately upstream and 300 feet downstream of the work site and the results reported to this office within two weeks:

<b>Parameter</b>	<b>Unit</b>	<b>Type of Sample</b>	<b>Frequency of Sample</b>
<b>Turbidity</b>	<b>NTU</b>	<b>Grab</b>	Every 4 hours during in water work
<b>Settleable Material</b>	<b>ml/l</b>	<b>Grab</b>	Same as above.

9. City Of Turlock shall notify the Board immediately if the above criteria for turbidity, settleable matter, oil/grease, or foam are exceeded.
10. City Of Turlock shall notify the Board immediately of any spill of petroleum products or other organic or earthen materials.
11. City Of Turlock shall comply with all Department of Fish and Game 1600 requirements for the project.

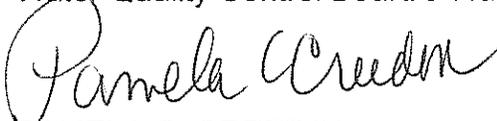
**REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:**

Patrick G. Gillum, Environmental Scientist  
11020 Sun Center Drive #200  
Rancho Cordova, California 95670-6114  
(916) 464-4709  
pgillum@waterboards.ca.gov

**WATER QUALITY CERTIFICATION:**

I hereby issue an order certifying that any discharge from City Of Turlock, Harding Drain Bypass Project (WDID #5B50CR00036) 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 strict compliance with the applicant's project description and the attached Project Information Sheet, and (b) compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).



PAMELA C. CREEDON  
Executive Officer

Enclosure: Project Information

cc: U.S. Army Corps of Engineers, Sacramento  
Mr. Dave Smith, Wetlands Section Chief (WTR-8), U.S. Environmental Protection Agency, Region 9, San Francisco  
U.S. Fish & Wildlife Service, Sacramento  
Mr. Bill Orme, 401 Certification and Wetlands Unit Chief, State Water Resources Control Board, Sacramento  
Mr. Jeff Drongesen, Department of Fish and Game, Sacramento  
Mr. Bill Jennings, CA Sportfishing Protection Alliance, Stockton  
Mr. Joseph Schofield, Downey Brand LLP, Sacramento

## PROJECT INFORMATION

**Application Date:** 26 February 2008

**Applicant:** Mr. Dan Madden  
City Of Turlock  
156 S. Broadway, Suite 270  
Turlock, CA 95380

**Applicant Representatives:** Mr. Joseph Schofield  
Downey Brand LLP  
555 Capitol Mall Ave.  
Sacramento, CA 95814

**Project Name:** Harding Drain Bypass Project

**Application Number:** WDID#5B50CR00036

**U.S. Army Corps File Number:** Nationwide Permit #7

**Type of Project:** Drain Bypass Project

**Project Location:** Section 36, Township 5 South, Range 8 East, MDB&M.

**County:** Stanislaus County

**Receiving Water(s) (hydrologic unit):** San Joaquin River, San Joaquin Hydrologic Basin, San Joaquin Valley floor Hydrologic Unit #535.60, Montpelier HA

**Water Body Type:** Streambed

**Designated Beneficial Uses:** The Basin Plan for the Central Valley Regional Board has designated beneficial uses for surface and ground waters within the region. Beneficial uses that could be impacted by the project include: Municipal and Domestic Water Supply (MUN); Agricultural Supply (AGR); Industrial Supply (IND), Hydropower Generation (POW); Groundwater Recharge, Water Contact Recreation (REC-1); Non-contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); Cold Freshwater Habitat (COLD); and Wildlife Habitat (WILD).

**Project Description (purpose/goal):** The Harding Drain Bypass Project will provide for the discharge of tertiary treated wastewater from the City's regional wastewater treatment plant directly into the San Joaquin River. The City proposes to build a pump driven pipeline from the current point of discharge to convey the water to a new discharge point into the San Joaquin River just upstream of the Harding Drain.

**Preliminary Water Quality Concerns:** The construction activities may impact surface waters with increased turbidity and settleable matter.

**Proposed Mitigation to Address Concerns:** City Of Turlock 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. City Of Turlock 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:** 70 cubic yards of clean soil will be placed into 0.016 acres of un-vegetated streambed.

**Dredge Volume:** None

**U.S. Army Corps of Engineers File Number:** Nationwide Permit #7

**Department of Fish & Game Streambed Alteration Agreement:** City Of Turlock applied for a Streambed Alteration Agreement on 16 November 2007.

**Possible Listed Species:** Central Valley steelhead, Delta smelt, Northwestern pond turtle, Giant Garter Snake, and Western burrowing owl.

**Status of CEQA Compliance:** The City of Turlock approved the Final Environmental Impact Report for this project on 24 May 2005.

**Compensatory Mitigation:** None

**Application Fee Provided:** Total fees of \$521.50 have been submitted as required by 23 CCR §3833b(2)(A) and by 23 CCR § 2200(e).



**From: State Water Resources Control Board**  
**To: City of Turlock**  
**Date: July 7, 2006**  
**Title: Order Approving Change in Point of Discharge of  
Treated Wastewater Effluent**





# State Water Resources Control Board



Linda S. Adams  
Secretary for  
Environmental Protection

## Division of Water Rights

1001 I Street, 14<sup>th</sup> Floor ♦ Sacramento, California 95814 ♦ 916.341.5300  
P.O. Box 2000 ♦ Sacramento, California 95812-2000  
Fax: 916.341.5400 ♦ [www.waterrights.ca.gov](http://www.waterrights.ca.gov)

Arnold Schwarzenegger  
Governor

JUL 07 2006

In Reply Refer to:  
334:KMG:WW44

City of Turlock  
c/o Jennifer Harder  
Downey Brand LLP  
555 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, CA 95814

Dear Ms. Harder:

### WASTEWATER CHANGE PETITION 44 – CITY OF TURLOCK, HARDING DRAIN BYPASS PROJECT

Your petition for change in the point of discharge of treated wastewater effluent from the City of Turlock's Regional Wastewater Treatment Facility has been approved. Please review the conditions of the Order and retain this Order with your other documents for this project.

Note that a threatened and endangered species condition and an archeological condition have been included in the Order.

If you have any questions, please contact Kathryn Gaffney of my staff at (916) 341-5360.

Sincerely,

Victoria A. Whitney  
Division Chief

Enclosure

✓cc: Dan Madden  
Municipal Services Director  
City of Turlock  
156 S. Broadway, Suite 270  
Turlock, CA 95380

Jon Ericson  
Central Valley Regional  
Water Quality Control Board  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

*California Environmental Protection Agency*

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

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In the Matter of Wastewater Petition WW44

City of Turlock

**ORDER APPROVING CHANGE IN POINT OF DISCHARGE  
OF TREATED WASTEWATER EFFLUENT**

---

SOURCE: Harding Drain tributary to San Joaquin River

COUNTY: Stanislaus

---

**WHEREAS:**

1. Treated Wastewater Change Petition WW44 was filed by the City of Turlock, Municipal Services Department (City) with the State Water Resources Control Board (State Water Board) on July 13, 2005, pursuant to section 1211 of the Water Code. Public notice of the change was issued on March 3, 2006, and no protests were received.
2. The petition was filed to change the point of discharge of treated wastewater effluent from the City's Regional Wastewater Treatment Facility. The City currently discharges up to 20 million gallons per day (approximately 31 cubic feet per second) of secondarily treated wastewater effluent into the Harding Drain tributary to the San Joaquin River in Stanislaus County. The City proposes to change its point of discharge of treated wastewater effluent from the current Harding Drain discharge location to the San Joaquin River. The new point of discharge is located approximately 560 feet upstream of the confluence of the Harding Drain and the San Joaquin River.
3. The State Water Board has determined that the petition for change in the point of discharge does not cause injury to any other lawful user of water.
4. The State Water Board has considered the environmental effects of the petition for change as described in the April 2005 Harding Drain Bypass Project Environmental Impact Report (EIR), SCH # 2003062002, prepared for this project. The EIR identified potential adverse environmental impacts from the project. However, the EIR concludes that the project would have a less-than-significant impact on water resources. Therefore, no findings by the State Water Board pursuant to California Code of Regulations, Title 14, section 15091 are necessary. The City of Turlock filed a Notice of Determination with the Stanislaus County Clerk on May 26, 2005. The State Water Board, Division of Water Rights has issued a Notice of Determination for this project.
5. Fish, wildlife, and plant species have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the order making the petitioner aware of possible obligations resulting from these acts.

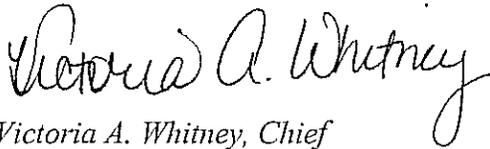
**NOW, THEREFORE, IT IS ORDERED THAT:**

1. The City of Turlock is authorized to change the point of discharge of treated wastewater effluent from a point along the Harding Drain located within the SE ¼ of SW ¼ of section 25, T5S, R9E, MDB&M to a point on the San Joaquin River located by California Coordinate System of 1927, Zone 3, North 351,101 feet and East 1,845,716 feet, being within the NE ¼ of NE ¼ of section 36, T5S, R8E, MDB&M, as shown on map filed with the State Water Board.
2. The petitioner shall comply with the following Endangered Species condition:

This change does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this order, the petitioner shall obtain authorization for an incidental take prior to construction or operation of the project. Petitioner shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this order.

(0000014)

STATE WATER RESOURCES CONTROL BOARD



*Victoria A. Whitney, Chief  
Division of Water Rights*

Dated:

JUL 07 2006



**From: County of Stanislaus**  
**To: City of Turlock**  
**Date: March 14, 2006**  
**Title: Encroachment Agreement**



## MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT is made this 14<sup>th</sup> day of March, 2006, by and between City of Turlock, hereinafter referred to as "CITY", and the County of Stanislaus, hereinafter referred to as "COUNTY".

- A. CITY has submitted an application for an encroachment permit to install **a five and one half mile, 36" diameter outfall force main**, hereinafter referred to as "ENCROACHMENT", within the road right-of-way of **Harding Road** hereinafter referred to as "ROADWAY".
- B. COUNTY will issue a permit to install the ENCROACHMENT, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, it is hereby agreed as follows:

1. COUNTY will issue an encroachment permit for the installation of the ENCROACHMENT. COUNTY will inspect the work.
2. CITY shall provide and pay for compaction test results. CITY shall provide compaction test results to COUNTY inspector within 48 hours of receiving results.
3. CITY shall comply with all COUNTY Standards. After installation of the ENCROACHMENT, the ROADWAY shall be reconstructed or repaired to a condition acceptable to COUNTY.
4. CITY shall be responsible for all costs associated with the installation, maintenance, repair, replacement, and use of the ENCROACHMENT.
5. CITY agrees that, in the future, should a failure of the ROADWAY occur due to the presence of the ENCROACHMENT, CITY shall repair the failure within 24 hours of notice by COUNTY. Should CITY fail to make the repairs in a timely manner, COUNTY may make the repairs and CITY agrees to reimburse COUNTY for all costs of the repairs.
6. CITY shall obtain an encroachment permit prior to excavating openings in the ROADWAY for purposes of maintaining, repairing, or replacing the ENCROACHMENT except as set forth in paragraph No. 8, below.
7. CITY shall abide by all conditions as detailed in Attachment "A."

8. CITY may excavate openings in the ROADWAY without obtaining an encroachment permit to maintain, repair, or replace the ENCROACHMENT in cases of emergency requiring immediate action. In such emergency cases, COUNTY's Director of Public Works shall be promptly notified of any such action and CITY, at its own expense, shall immediately replace the ROADWAY in as good condition as before such excavation.
9. CITY shall defend, indemnify, and hold COUNTY harmless from any and all claims, losses, damages, injuries and liabilities arising from the death or injury of any person or persons, or from the damage, destruction, loss, or theft of any property or properties caused by or connected with CITY's installation, maintenance, repair, replacement, or use of the ENCROACHMENT.
10. CITY agrees that it will promptly repair or replace any property damaged or destroyed by the installation, maintenance, repair, replacement or use of the ENCROACHMENT.
11. If, for any reason, COUNTY has to inspect any work performed under this Maintenance Agreement, CITY shall reimburse COUNTY for the reasonable cost of such inspection.
12. Unless expressly approved by COUNTY, CITY shall not obstruct or prevent the use of the ROADWAY by the public.
13. Upon abandoning or ceasing the use of the ENCROACHMENT by the CITY, the CITY shall abandon the ENCROACHMENT within the ROADWAY in a manner acceptable to CITY and COUNTY.
14. Any notices concerning this Agreement shall be mailed as follows:

COUNTY: Stanislaus County Department of Public Works  
1010 10<sup>th</sup> Street, Third Floor  
Modesto, CA 95354

CITY: City of Turlock  
Municipal Services  
156 S. Broadway, Suite 270  
Turlock, CA 95380

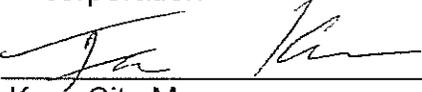
IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

COUNTY OF STANISLAUS

  
\_\_\_\_\_  
GEORGE STILLMAN, Director

George Stillman  
Print Name

CITY OF TURLOCK, a municipal corporation

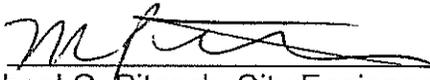
By:   
\_\_\_\_\_  
Tim Kerr, City Manager

Date: 3/15/06

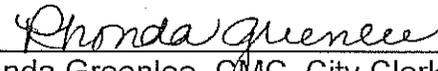
APPROVED AS TO FORM AND LEGALITY:

By:   
\_\_\_\_\_  
Richard C. Burton, City Attorney

APPROVED AS TO SUFFICIENCY:

By:   
\_\_\_\_\_  
Michael G. Pitcock, City Engineer

ATTEST:

By:   
\_\_\_\_\_  
Rhonda Greenlee, CMC, City Clerk

**Encroachment permit conditions for  
City of Turlock Harding Road Outfall Force Main**

1. The Contractor must agree to assume sole and complete responsibility for job site conditions during the course of construction of this project including safety of all persons and County paved roadways. This requirement shall apply continuously 24 hours per day and shall not be limited to normal working hours.
2. Traffic control shall be provided in conformance with Section 7-1.08, "Public Convenience," of the State Standard Specifications. Specific routes for this project as defined on sheet TH-1 Traffic Control and Detour Route must be adhered to. Any change to the approved plan must be submitted to Stanislaus County Traffic Division for approval.
3. The Contractor shall conform to the requirements of Section 81 "Monuments" of the State Standard Specification. When an existing monument is disturbed or damaged by the Contractor, the exact location of the existing monument point shall be referenced by established of not less than four (4) reference points, any two of which shall be adequate to locate the monument point. Reference points shall be set in locations that will not be disturbed by Contractor's work and shall be protected from damage by the Contractor.
4. Sections of asphalt outside the lines and limits of removal shown in the Plans or established by the Engineer that are removed, broken or damaged by the action of the Contractor, through his negligence or operations, shall be replaced by the Contractor at his own expense to the satisfaction of Stanislaus County. It is important to stress that the pipeline will need to be located as far from the edge of pavement, as possible, so the integrity of the paved roadway is not disturbed. Trenching and resurfacing shall conform to County Standards and Specifications. No water jetting is allowed as a means of compaction. Asphalt concrete shall conform to County Standards 3.12 requirements.
5. Improvement plans for the construction of the pipeline must be approved by Stanislaus County Department of Public Works.
6. The City of Turlock shall execute a Maintenance Agreement for the future maintenance of the sewer line prior to the issuance of the encroachment permit.

7. An encroachment permit shall be obtained a minimum of 48 hours prior to the start of any work within the County road rights-of-way. The San Joaquin River Discharge Structure will be on private property, inspected by the City of Turlock, and is not covered by this permit.
8. Warning signs and flagmen are to be placed in advance of the construction on a daily basis during the hours of operation, per the State of California Traffic Manual and Standard Specification.
9. Equipment loads that exceed extra legal weights must comply with Stanislaus County Transportation permits. Transportation permits are required for any vehicle or load that exceeds the legal limits according to the California Vehicle Code, and Section 11.18.040 of the Stanislaus County Code.
10. The speed limit for laden vehicles is governed by what is reasonable and safe based on driving conditions.
11. The City of Turlock and the Contractor shall provide certificates of insurance for general liability, which name Stanislaus County as additional insured. The City of Turlock agrees to hold Stanislaus County harmless and indemnify and defend County against any and all claims that may arise out of issuance of encroachment permit and construction of this Project.
12. Prior to acceptance of the project, the contractor shall deliver one set of neatly marked as-built record drawings.
13. Specific routes for road or lane closures must be approved by the Stanislaus County traffic Division prior to construction.
14. In a timely manner, the City of Turlock is to repair, any damage to the roadway directly attributable to the City of Turlock's pipeline for the entire length the proposed pipeline in the Stanislaus County right of way for the entire life of the project. All survey monumentation shall be preserved or replaced at Contractors expense.
15. Warning signs and flagmen are to be placed in advance of the construction on a daily basis during the hours of operation, per the State of California Traffic Manual and Standard Specification.
16. The Contractor shall be responsible to maintain the site in a neat, safe and orderly manner at all times. Existing roadside conditions must be maintained during excavation and placement of pipe material.

17. A pre-construction inspection meeting shall be scheduled with Stanislaus County Inspection division and appropriate regulatory agencies. A videotape of the existing roadway shall be provided by the contractor prior to construction.
18. Pre and post construction inspection of existing concrete lined laterals in the vicinity of the borings shall be conducted to assess the effects of construction on the laterals. Groundwater monitoring shall be performed before, during, and after pipeline installation to detect lateral leakage.
19. Upon completion, the proposed project should not create a significant traffic impact to Stanislaus County roadways.