

# 2017 NATIONWIDE PERMITS: THE FINAL RULE

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# TOPICS

- What are the Nationwide Permits?
- Summary of the final rule published on January 6, 2017
- Next steps
- What's in the 2017 Nationwide Permit final rule?
  - What changes were made?
- Conditions for the 2017 Nationwide Permits
- Sacramento District Regional Conditions
- Transitioning to the 2017 Nationwide Permits
- NWP Verification Process



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# NATIONWIDE PERMITS

- Congressional intent (Clean Water Act Section 404(e))
  - Streamlined authorization process for small activities with no more than minimal adverse environmental effects
  - Issued for no more than 5 years
- Authorize ~35,000 activities per year (reported) plus ~30,000 non-reporting activities
- First issued in 1977
  - 15 nationwide permits
  - 14 general conditions
- NWP Issuance involves a full interagency and public interest review



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# NATIONWIDE PERMITS

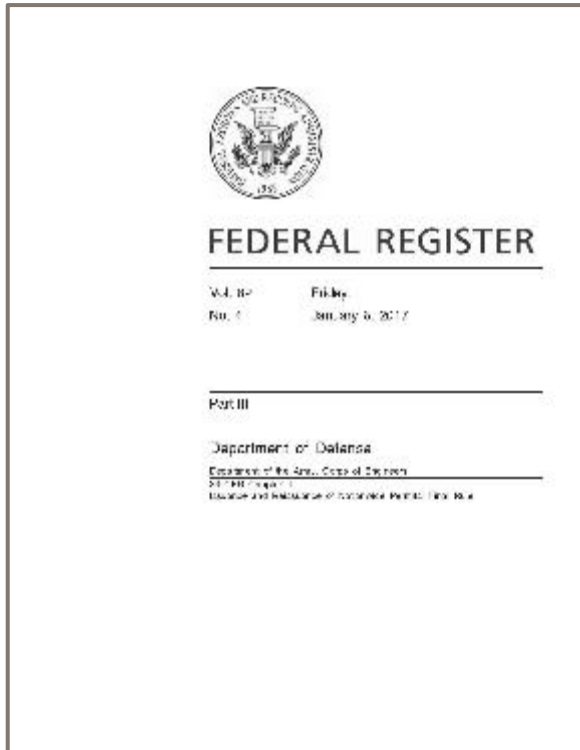
- 2012 NWP's expired on March 18, 2017
  - 50 nationwide permits
  - 31 general conditions
- 2017 NWP's effective March 19, 2017
  - 52 nationwide permits
  - 32 general conditions
- To qualify for the use of a NWP, a proposed activity must:
  - Comply with all terms of the NWP
  - Comply with all General Conditions of the NWP
  - Comply with all Regional Conditions of the NWP
  - Comply with all Special Conditions of the NWP (if applicable)
  - Have no more than minimal individual/cumulative adverse effects



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# SUMMARY OF JANUARY 6, 2017 FINAL RULE



- Reissued all 50 existing NWP's
- Issued two new NWP's
  - Removal of low-head dams
  - Construction and maintenance of living shorelines
- Issued one new general condition
  - Activities affecting structures or works built by the United States (federal water resources projects)
- Effective date: March 19, 2017
- Expiration date: March 18, 2022



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# NATIONWIDE PERMITS

- Types of activities authorized
  - Transportation
  - Maintenance
  - Restoration
  - Utility line activities
  - Structures in navigable waters
  - Recreational activities
  - Renewable energy
  - Mining
  - Residential, commercial, institutional developments



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# SUMMARY OF 2017 FINAL RULE

- Nationwide permits
  - 26 NWP's reissued with changes
  - 24 NWP's reissued with no changes
  - 2 new NWP's issued
- General conditions
  - Reissued 12 general conditions with changes
  - Reissued 19 general conditions without changes
  - Issued 1 new general condition
- Definitions
  - Added 5 new definitions



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# SUMMARY OF 2017 FINAL RULE

- What's stayed the same:
  - Acreage limits
  - Linear foot limits
  - Cubic yard limits
  - Most pre-construction notification (PCN) thresholds
- Vast majority of the changes are clarifications
- Little or no change to processes



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# PRE-CONSTRUCTION NOTIFICATION REQUIREMENTS

- 19 NWPs – no pre-construction notification (PCN) required
- 14 NWPs – some activities require PCN
- 19 NWPs – all activities require PCN
- For any NWP, PCN is required for:
  - Activities that might affect ESA-listed species or designated critical habitat
  - Activities that might have the potential to cause effects to historic properties
  - Activities that also require 408 permissions
  - Activities in Wild and Scenic Rivers

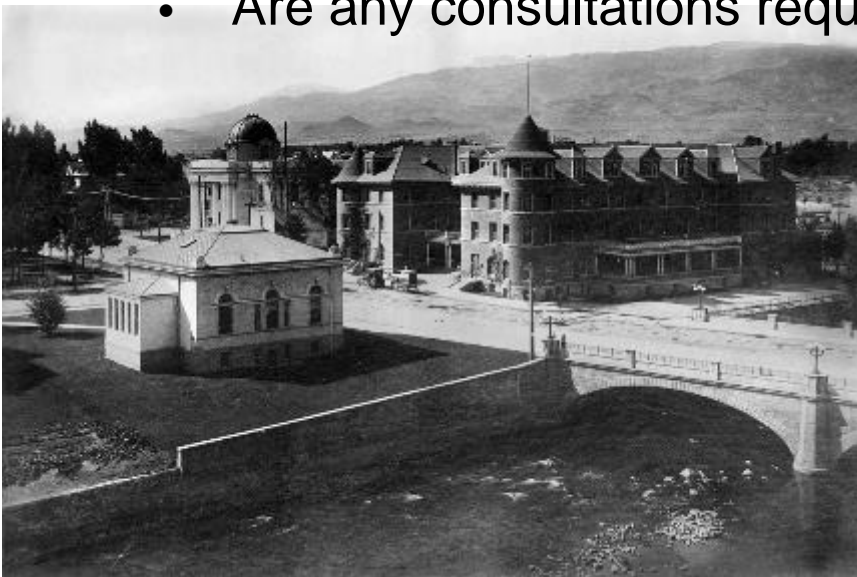


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# PRE-CONSTRUCTION NOTIFICATIONS

- Opportunity for district to review proposed NWP activity to determine eligibility for authorization
  - Will the proposed activity result in only minimal adverse environmental effects?
  - Does proposed activity comply with all applicable general and regional conditions?
  - Is compensatory mitigation or other mitigation required to ensure no more than minimal adverse environmental effects?
  - Are any consultations required?
    - National Historic Preservation Act Section 106
    - Endangered Species Act Section 7



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# PRE-CONSTRUCTION NOTIFICATIONS

- Many NWP's require the submittal of a PCN prior to beginning work. PCN requirements can be found:
  - In the Terms of the NWP
  - In the General Conditions (e.g. General Conditions 18 and 20)
  - In the Regional Conditions (e.g. Sacramento District Regional Condition B(2) for California)

2. For all NWP's, the permittee shall submit a PCN in accordance with General Condition 32 and Regional Condition B(1), in the following circumstances:

- a. For all activities that would result in the discharge of fill material into any vernal pool;
- b. For all activities in the Primary and Secondary Zones of the Legal Delta, the Sacramento River, the San Joaquin River, and navigable tributaries of these waters, when the Corps has not designated another Federal agency as the lead for compliance with ESA, MSFCMA, and NHPA, as specified in Regional Condition B(12);
- c. For all new or replacement linear transportation crossings of perennial, intermittent, or ephemeral drainages (e.g. natural or relocated streams, creeks, rivers) or other open waters of the U.S., where the pre-construction bankfull width of waters of the U.S. at the crossing would be reduced;

## 20. Historic Properties.

d. For all activities in waters of the discharge of a known natural spring source emanates from a point in the ground (excavated channel);

e.\* For all activities proposed by a permittee as Essential Fish Habitat (EFH) by the Permittee, which may result in an adverse effect to EFH, in which the location and extent of proposed impacts to EFH, at: <http://www.westcoast.fisheries.noaa.gov> or

f.\* For Water Quality Certificate is issued for activities on Tribal Lands.

(a) In cases where the district engineer determines that historic properties listed, or eligible for listing, in the National Register of Historic Places are located in the project area, the requirements of Section 106 of the National Historic Preservation Act shall apply.

(b) Federal permittees should follow their own procedures of the National Historic Preservation Act. If pre-construction activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding

**33. Temporary Construction, Access, and Dewatering.** Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected area must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., section 10 waters) (see general condition 32). The preconstruction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Authorities: Sections 10 and 404)



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# CHANGES TO 2017 NATIONWIDE PERMITS AND GENERAL CONDITIONS



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## NWP 3 – MAINTENANCE

- (a) Authorizes the repair, rehabilitation, or replacement of previously authorized structures or fills
- (b) Authorizes the removal of accumulated sediments in vicinity of existing structures and associated canals
- Limits:
  - Minor changes to conform to current construction practices, materials, current construction codes, and regulatory requirements (paragraph (a))
  - Removal of accumulated sediment within 200 feet of existing structures (paragraph (b))



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## NWP 3 – MAINTENANCE

- Changes:
  - Clarified that NWP authorizes removal of previously authorized structures or fills
  - Removal of accumulated sediment within or in immediate vicinity of structure or fill – No PCN required (paragraph (a))
  - Removal of accumulated sediment not in immediate vicinity of structure or fill – PCN required (paragraph (b))
  - Authorize use of timber mats, if Corps authorization required
  - Removed provision in paragraph (b) authorizing riprap to protect the structure
    - Riprap can be authorized by NWP 13, with or without PCN



## NWP 12 – UTILITY LINE ACTIVITIES

- Authorizes crossings of jurisdictional waters and wetlands for utility lines
- Also authorizes utility line substations, foundations for overhead utility lines, and access roads
- Limits:
  - ½-acre limit for each separate and distant waterbody crossing
  - ½-acre of non-tidal waters for utility line substations
  - ½-acre of non-tidal waters for access road crossings



## NWP 12 – UTILITY LINE ACTIVITIES

- Changes:
  - Clarified that for utility lines, the Corps is only authorizing regulated crossings of waters of the United States
  - Authorize regulated activities associated with remediation of inadvertent returns of drilling fluids if subsurface fracture during horizontal directional drilling activities
  - Authorize use of timber mats, if Corps authorization required
  - Added reference to Corps regulations for minimum clearance for overhead electric power lines over navigable waters



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## NWP 13 – BANK STABILIZATION

- Authorizes bank stabilization activities
- Limits:
  - 500 linear feet along bank
  - 1 cubic yard per running foot
  - No fills in special aquatic sites (e.g., wetlands)
- Above limits can be waived by district engineer
- Changes:
  - Clarified that this NWP authorizes a variety of bank stabilization activities, including bulkheads, revetments, riprap, bioengineering, vegetative stabilization, and stream barbs



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## NWP 13 – BANK STABILIZATION

- Changes Cont'd:
  - Cubic yard limit to be measured along bank, and includes in-stream techniques (e.g., barbs)
  - Authorize maintenance of bank stabilization activities
  - Native plants appropriate for site conditions must be used for bioengineering or vegetative stabilization
  - Limited waivers for bulkheads to 1,000 linear feet
  - Authorize use of timber mats, if Corps authorization required



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## NWP 21 – SURFACE COAL MINING ACTIVITIES

- Authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities
- Limits:
  - ½-acre of non-tidal waters; 300 linear feet of stream bed (Sum of these losses cannot exceed 1/2-acre)
- Changes:
  - Removed provision allowing re-authorization of activities authorized by 2007 NWP 21
  - All activities will be subject to ½-acre limit and 300 linear foot limit for losses of stream bed, and to the prohibition against construction of valley fills



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# NWP 27 – AQUATIC HABITAT RESTORATION, ENHANCEMENT, AND ESTABLISHMENT ACTIVITIES

- Authorizes restoration, enhancement, and establishment of aquatic habitat
  - Must be net gain in aquatic resource functions and services
- Changes:
  - To list of examples of authorized activities, add removal of stream barriers (e.g., undersized culverts, fords, and grade control structures)
  - Require use of ecological reference to plan, design, and implement the NWP 27 activity



Crystal Springs, Crystal Springs National Wildlife Refuge



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## ECOLOGICAL REFERENCE

- Intent is to limit to NWP 27 activities to those that will result in aquatic habitats that resemble natural ecosystems in the region
- Two approaches:
  - Use existing examples of target aquatic resource type in the region
  - Use a conceptual model for the target aquatic resource type in the region
- Take into account range of variability in the region



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## NWP 29 – RESIDENTIAL DEVELOPMENTS

## NWP 39 – COMMERCIAL AND INSTITUTIONAL DEVELOPMENTS

- Authorizes fills in non-tidal waters to construct or expand these developments and their features
- Limits:
  - 1/2-acre of non-tidal waters
  - Loss of 300 linear feet of stream bed  
(Sum of these losses cannot exceed 1/2-acre)
  - No fills in non-tidal wetlands adjacent to tidal waters



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# NWP 31 – MAINTENANCE OF EXISTING FLOOD CONTROL FACILITIES

- Authorizes maintenance for existing flood control facilities to a maintenance baseline approved by Corps district
- Limits: maintenance baseline approved by district engineer
- Changes:
  - Added provision stating that the facility will not be considered abandoned if permittee is experiencing delays in obtaining other required approvals or authorizations
  - Clarified that the one-time mitigation requirement applies since maintenance baseline was established by Corps district under this NWP, not every five years

## NWP 32 – COMPLETED ENFORCEMENT ACTIONS

- Authorizes Corps-regulated activities to close out enforcement actions
  - Non-judicial settlement agreements, federal court decisions, consent decrees, settlement agreements
- Changes:
  - Clarified that acreage limits for Corps non-judicial settlement agreements (5 acres for non-tidal waters and 1 acre for tidal waters) based on area adversely affected by activity
  - Clarified that non-compliance with terms and conditions of NWP 32 may result in additional enforcement action (e.g., a Class I administrative penalty)

# NWP 33 – TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING

- Authorizes temporary structures or work and discharges of dredged or fill material, including cofferdams, for construction activities or access fills
- Changes:
  - Pre-construction notification required only for those activities in waters subject to section 10 of the Rivers and Harbors Act of 1899



# NWP 41 – RESHAPING EXISTING DRAINAGE DITCHES

- Authorizes the reshaping of cross sections of existing drainage ditches to improve water quality
- Limit:
  - ▶ Activity cannot increase area drained by ditch
- Changes:
  - ▶ Removed 500-linear foot PCN threshold (no PCN required)



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# NWP 43 – STORMWATER MANAGEMENT FACILITIES

- Authorizes the construction and maintenance of stormwater management facilities and low-impact development integrated management features
- Limits:
  - ½-acre of non-tidal waters; 300 linear feet of stream bed(Sum of these losses cannot exceed 1/2-acre)
- Changes:
  - Add construction and maintenance of pollutant-reduction green infrastructure features to reduce inputs of sediments, nutrients, and other pollutants to meet Total Daily Maximum Loads



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## NWP 44 – MINING ACTIVITIES

- Authorizes mining activities other than coal mining activities (e.g., aggregate and hard rock/mineral mining)
- Limits:
  - ½-acre of non-tidal waters; 300 linear feet of stream bed
- Changes:
  - Clarified application of ½-acre limit
    - Area of non-tidal open waters mined (which includes any stream bed that is mined) plus area of non-tidal wetlands mined cannot exceed ½-acre



# NWP 45 – REPAIR OF UPLANDS DAMAGED BY DISCRETE EVENTS

- Authorizes discharges of dredged or fill material, including dredging, to restore upland areas damaged by storms, floods, or other discrete events
- Limit:
  - Restore uplands to pre-event ordinary high water mark
- Changes:
  - Allow district engineer to waive 12-month limit for submitting PCN if permittee can demonstrate funding, contracting, or similar delays



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# NWP 48 – COMMERCIAL SHELLFISH AQUACULTURE ACTIVITIES

- Authorizes structures or work, or discharges of dredged or fill material, for commercial shellfish aquaculture activities
- Limits:
  - Project area is area where legally binding agreements establish enforceable property interest, or area covered by permit or license, where the operator is authorized to conduct these activities



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# NWP 48 – COMMERCIAL SHELLFISH AQUACULTURE ACTIVITIES

- Changes:
  - Defined “new project area” as area where no commercial shellfish aquaculture activities have been conducted in past 100 years
  - Clarified that operator can submit one PCN for contiguous project areas, instead of one PCN per project area
  - Removed PCN requirement for dredge harvesting, tilling, or harrowing in areas inhabited by submerged aquatic vegetation
  - Removed PCN requirement for changing from bottom culture to floating or suspended culture
  - PCN should describe all activities the operator intends to undertake during 5-year period the NWP is in effect



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# NWP 51 – LAND-BASED RENEWABLE ENERGY GENERATION FACILITIES

- Authorizes the construction, expansion, or modification of these facilities in non-tidal waters
- Limits:
  - 1/2-acre of non-tidal waters; 300 linear feet of stream bed (Sum of these losses cannot exceed 1/2-acre)
- Changes:
  - PCN threshold increased to 1/10-acre



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# NWP 52 – WATER-BASED RENEWABLE ENERGY GENERATION PILOT PROJECTS

- Authorizes the construction, expansion, modification, or removal of these facilities in all waters, except in coral reefs
- Also authorizes land-based components
- Limits:
  - ½-acre; 300 linear feet of stream bed (Sum of these losses cannot exceed 1/2-acre)
  - 10 units
- Changes:
  - Added floating solar panels in navigable waters
  - Added wave energy devices



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## NWP 53 – REMOVAL OF LOW-HEAD DAMS

- New NWP
- Authorizes the removal of low-head dam for stream restoration and public safety
- Limits:
  - Low-head dams, which are defined as: “dams built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest on a continual and uncontrolled basis”
  - PCN for all activities



## NWP 53 – REMOVAL OF LOW-HEAD DAMS

- Removed dam structure must be deposited in area that has no waters of the United States unless another Corps permit authorizes placement of material in waters
- As a general rule, compensatory mitigation is not required for these activities because low-head dam removal restores stream ecological functions and services
- Associated stream restoration activities may be authorized by NWP 27
- Associated bank stabilization activities may be authorized by NWP 13



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# NWP 54 – LIVING SHORELINES

- New NWP
- Authorizes structures or work in navigable waters, and discharges of dredged or fill material, for the construction and maintenance of living shorelines to control erosion in coastal areas (including the Great Lakes)
- Limits:
  - 30 feet from mean low water line in tidal waters or ordinary high water mark in the Great Lakes
  - 500 linear feet along the length of the bank
- Both limits can be waived by the district engineer



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# NWP 54 – LIVING SHORELINES

- Coastal waters with small fetch and gentle slopes subject to low- to mid-energy waves
- Uses vegetation and other living elements (e.g., oysters), and where necessary, fill structures (e.g., sills or breakwaters) to protect those living elements
- Fills, including fill structures, must be the minimum necessary for the establishment and maintenance of the living shoreline
- Activity must be designed to have no more than minimal adverse effects on water and organism movement to and from shore
- PCNs required for all activities (except maintenance)



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## GENERAL CONDITION (GC) 2 – AQUATIC LIFE MOVEMENTS

- NWP activity must not substantially disrupt the necessary life cycle movements of aquatic species indigenous to the waterbody unless the activity's primary purpose is to impound water
- Change:
  - ▶ Added provision stating that if a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements



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## GC 16 – WILD AND SCENIC RIVERS

- Activities in National Wild and Scenic River, or study river designated by Congress, require PCNs to district engineers
- District engineer will coordinate with federal agency with direct management responsibility for that river
- Activity not authorized by NWP unless the federal agency with direct management responsibility determines the proposed NWP activity will not adversely affect the Wild and Scenic River designation or its study status



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## GC 17 – TRIBAL RIGHTS

- Revise general condition to be consistent with 1998 Department of Defense American Indian and Alaska Native Policy  
<http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/DoDPolicy.pdf>
- Explicitly cover the suite of tribal rights addressed in 1998 policy: treaty rights, protected tribal resources, and tribal lands
  - “No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.”
- Changes:
  - Removed “operation”
  - Changed “No activity...may impair” to the “no more than minimal adverse effects” threshold for general permits



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## GC 18 – ENDANGERED SPECIES

- Define “direct effects” and “indirect effects” to assist in Endangered Species Act compliance
  - Direct effects are immediate effects on listed species and critical habitat caused by NWP activity
  - Indirect effects are effects on listed species and critical habitat caused by NWP activity that occur later in time, and are reasonably certain to occur
- Clarified that other federal agencies are responsible for their own compliance with the Endangered Species Act



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# GC 19 – MIGRATORY BIRDS AND BALD AND GOLDEN EAGLES

- Clarified that the permittee is responsible for ensuring his/her activity complies with Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act
- Permittee is responsible for contacting local office of U.S. Fish and Wildlife Service to determine if “take” permits are needed



## GC 20 – HISTORIC PROPERTIES

- Revised text of general condition to be more consistent with threshold for National Historic Preservation Act section 106 consultation:
  - “May have the potential to cause effects to historic properties”
- Added designated tribal representative to list of sources for assistance for obtaining information on the potential presence of historic properties
- Clarified when section 106 consultation is conducted:
  - NWP activities where there are “no historic properties affected,” or that have “no adverse effects” or “adverse effects” on historic properties



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## GC 23 – MITIGATION

- Reorganized text to clarify mitigation requirements for NWP's and their relationship to the Corps' 2008 mitigation rule
- Preference for use of mitigation bank or in-lieu fee program credits to fulfill compensatory mitigation requirements imposed by district engineers as identified in 33 CFR 332.3(b)
  - Does not preclude the use of permittee-responsible mitigation, where appropriate (or where credits are not available)



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## GC 23 – MITIGATION

- Added provision stating that if compensatory mitigation is required, then the amount must be sufficient to ensure the NWP activity causes no more than minimal individual and cumulative adverse environmental effects
- Clarified that compensatory mitigation may be required to ensure no more than minimal adverse environmental effects if a regulated activity results in the loss of certain aquatic resource functions and services (e.g., the conversion of forested wetlands to emergent wetlands)



## GC 31 – ACTIVITIES AFFECTING STRUCTURES OR WORKS BUILT BY THE UNITED STATES

- New general condition
- Any NWP activity that also requires a Section 408 permission from the Corps requires notification to the Corps district
- Activity is not authorized by NWP until after the Corps issues the 408 permission, and the district issues the NWP verification



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## GC 32 – PRE-CONSTRUCTION NOTIFICATION

- No changes to the Corps' review process
  - Retained 30-day completeness review period
  - Retained 45-day verification decision period
- Changes to content of pre-construction notification:
  - Specify the NWP(s) the project proponent wants to use
  - Describe mitigation measures intended to reduce adverse environmental effects
  - For linear projects, clarify that notification must identify other crossings of waters of the United States that require Corps authorization, including those authorized by general permit that do not require pre-construction notification
  - For linear projects, the notification must also include the quantity of losses of aquatic resources for each single and complete crossing of those waters and wetlands



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## GC 32, PARAGRAPH (b)(3)

- (b)(3) – “Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;”
- There is some redundancy among the 52 NWPs
- 2009 Regulatory SOP:
  - “Use most efficient permit process (general permits/letters of permission) whenever possible” (page 9)
- If more than one NWP could authorize the proposed activity, a project proponent may prefer to use a specific NWP
  - e.g., one NWP where the state has issued WQC and the other NWP requires an individual WQC
- But if the proposed activity does not fit within the terms of the applicant’s choice of NWP, use the appropriate NWP
  - e.g., applicant wants to use NWP 27 for bank stabilization (use NWP 13 or 54 instead)

## GC 32, PARAGRAPH (b)(3)

- Paragraph 1 of Section D, District Engineer's Decision:
  - “If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.”  
[82 FR 2004]



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## NEW DEFINITIONS

- Ecological reference
- Navigable waters
- Protected tribal resources\*
- Tribal lands\*
- Tribal rights\*



\* From 1998 Department of Defense American Indian and Alaska Native Policy



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# SACRAMENTO DISTRICT REGIONAL CONDITIONS



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## REGIONAL CONDITIONS (RC)

- **33 CFR 330.4(e)**
  - Division engineer may assert discretionary authority by modifying, suspending, or revoking NWP authorization for a specific geographic area, class of activity, or class of waters within his division
- **33 CFR 330.5(b)(2):**
  - Concurrent with the HQ notification of proposed, modified, reissued, or revoked NWPs, the District Engineer will notify the known interested public by a notice issued at the district level. The notice will include proposed RCs or proposed revocations of NWP authorizations for specific geographic areas, classes of activities, or classes of waters, if any, developed by the division engineer.

## REGIONAL CONDITIONS

- **Sacramento District: RCs for California, Nevada, Utah**
  - Public Notice of Proposed RCs and revocations of NWP's issued on June 15, 2016. Comment period ended on August 1, 2016.
  - 6 comment letters received (National Marine Fisheries Service; Placer County Flood Control and Water Conservation District; Pyramid Lake Paiute Tribe Environmental Department (Nevada); U.S. Environmental Protection Agency (USEPA), Region 8 (Utah); USEPA Region 9 (California and Nevada); Utah Department of Environmental Quality, Division of Water Quality
- **Albuquerque District: RCs for Colorado**

# REGIONAL CONDITIONS

## Approved by South Pacific Division Engineer on March 22, 2017

- Changes made by District based on comments received and review of proposed NWPs

## California

- 24 RCs
- 3 Revocations

## Nevada

- 23 RCs
- 2 Revocations

Final Sacramento District Nationwide Permit (NWP)  
Regional Conditions for California, excluding the Lower Main Basin  
 (PWSs that 10, 20, 28, 32, 36, 40, 42)

**A. Revised NWPs**

1. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley.

**B. Region**

17. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley.

Lower Sacramento District Nationwide Permit (NWP)  
Regional Conditions for Nevada and the Lower Main Basin in California  
 (PWSs that 10, 20, 28, 32, 36, 40, 42)

**A. Revised NWPs**

1. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley.

17. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley.

18. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley.

19. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley.

1. NWPs 10, 20, 28, 32, 36, 40, 42 and 44 are revised for use in areas that have not been previously approved for use in the Sacramento-San Joaquin River Delta and the Central Valley.



# REGIONAL CONDITION CHANGES FROM 2012 NWPS

- Re-formatting
  - Section A: Revoked NWPs
  - Section B: RCs Applicable Before Authorization
    - Additional information required to be submitted with the PCN
    - Additional activities that require submittal of a PCN
    - Additional activity and NWP specific RCs to ensure the effects are no more than minimal
  - Section C: RCs Applicable After Authorization
    - Compensatory mitigation requirements
    - Measures that must be taken prior to/during construction to ensure the effects are no more than minimal
    - Post-construction reporting requirements



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# REGIONAL CONDITION CHANGES FROM 2012 NWPS

- 3 RCs eliminated
  - 2012 RCs 4, 13, 24 (CA)/22 (NV),
- 3 RCs added for Nevada
  - A(2): All NWPs revoked in Lake Tahoe upon issuance of RGP
  - B(11): Discharge in standing or flowing waters
  - C(3): Installation of BMPs
- 7 RCs with little or no change



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# REGIONAL CONDITION A(3) FOR CALIFORNIA, A(1) FOR NEVADA

- **RC:**

- All NWP's except 3, 6, 20, 27, 32, and 38 are revoked for activities in histosols, fens, bogs, peatlands, and in wetlands contiguous with fens. This condition does not apply to NWP's 1, 2, 8, 9, 10, 11, 19, 24, 28, 35 or 36, as these NWP's either apply to Section 10 only activities or do not authorize impacts to wetlands and/or other special aquatic sites. For NWP's 3, 6, 20, 27, and 38, see RC B(5).

- **Changes from 2012 NWP RC:**

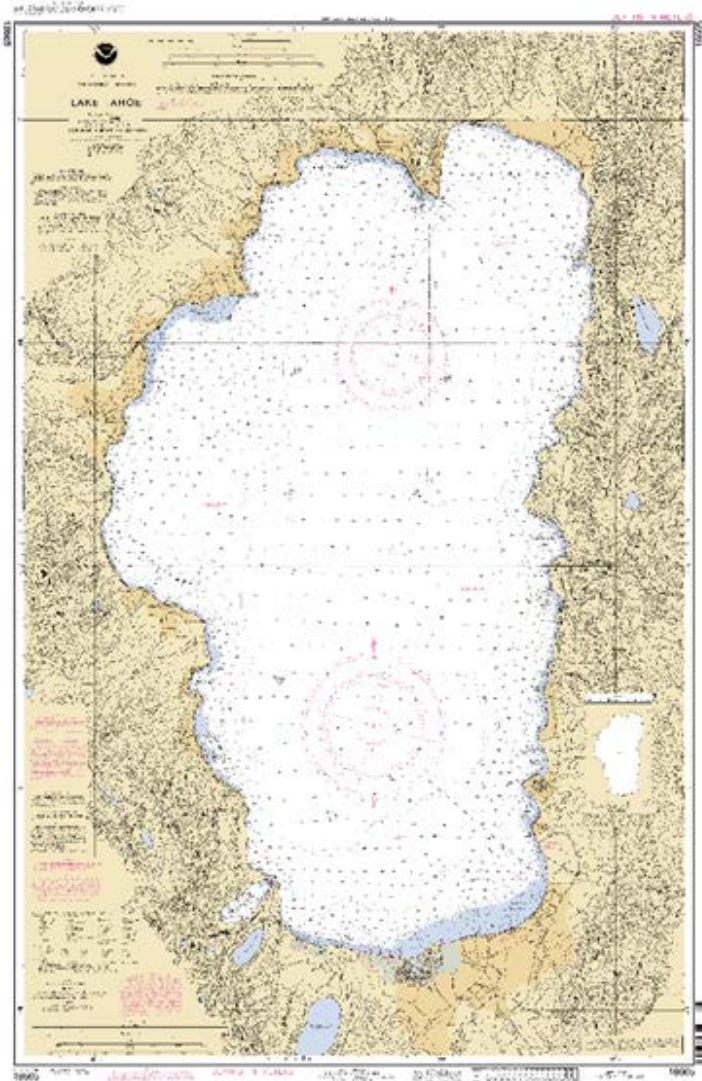
- Included NWP 19 in list of NWP's where this condition is not applicable.
- Moved PCN requirements to new RC B(5)
- Eliminated PCN requirement for NWP 32



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# REGIONAL CONDITION A(2) FOR NEVADA



- **RC:**
  - All NWP's are revoked for activities waterward of the ordinary high water mark of Lake Tahoe at elevation 6,229.1 feet (Lake Tahoe Datum) upon issuance of the Regional General Permit for *Routine Minimally Impacting Projects within Lake Tahoe*.
- **Changes from 2012 NWP RCs:**
  - This RC is new.



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# REGIONAL CONDITION B(1) FOR CALIFORNIA & NEVADA

- **RC:**
  - Requirements for additional information required to be submitted with a PCN.
- **Changes from 2012 NWP RC:**
  - Where the proposed RC included information to be submitted with a PCN, this information was moved to RC B(1) for the final RCs.
  - Added subparagraphs (d) through (p) for California and (d) through (o) for Nevada

## REGIONAL CONDITION B(2) FOR CALIFORNIA & NEVADA

- **RC:** Permittee shall submit a PCN in the following circumstances:
  - Discharges in vernal pools (B(2)(a) CA only)
  - Activities in 1<sup>0</sup> and 2<sup>0</sup> zones of Legal Delta, Sacramento River, San Joaquin River, and navigable tributaries (B(2)(b) CA only)
  - New/Replacement linear transportation crossings of perennial, intermittent, or ephemeral drainages or other open waters of the U.S., where the pre-construction bankfull width of WOUS at the crossing would be reduced. (B(2)(c) CA & B(2)(a) NV)
  - Activities within 100-feet of point of discharge of a known natural spring source (B(2)(d) CA & B(2)(b) NV)
  - Activities in EFH that would result in an adverse effect to EFH (B(2)(e) CA only)
  - Activities on tribal lands. (B(2)(f) CA & B(2)(c) NV)
  - Activities proposing in-stream grouted outfall structures or grouting of stream bottoms (B(2)(d) NV only)



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# REGIONAL CONDITION B(2) FOR CALIFORNIA & NEVADA

- **Changes from 2012 NWP RC:**
  - B(2)(b) for CA: modified from “immediate tributaries” to “navigable tributaries” and identified that only when the Corps has not designated another Federal agency as lead for compliance with ESA, MSFCMA, and NHPA/
  - B(2)(c) for CA, B(2)(a) for NV: included ephemeral drainages; identifies only for new/replacement linear transportation crossings of drainages/open waters, and only where the pre-construction bankfull width of WOUS at the crossing would be reduced.
  - B(2)(e) for CA: clarify that only when there would be an adverse effect to EFH
  - B(2)(f) for CA, B(2)(c) for NV: new condition
  - B(2)(d) for NV: new condition



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# REGIONAL CONDITION B(3) FOR CALIFORNIA & NEVADA

- **RC:** PCN shall be submitted for all utility lines when:
  - Result in a discharge into perennial drainages, other perennial WOUS, special aquatic sites (B(3)(a) CA only)
  - Result in loss of >100 lf of perennial, intermittent, ephemeral drainages or other open waters (B(3)(a) NV only)
  - Result in loss of >100 lf of perennial or intermittent drainages or other open WOUS (B(3)(b) CA only)
  - Construction of temporary or permanent access road, substation, or foundation within WOUS (B(3)(c) CA, B(3)(b) NV)
  - Trenches in WOUS would not be restored within 30 days (B(3)(d) CA, B(3)(c) NV)
  - Discharge of excess material associated with installation of utility line trench into WOUS (B(3)(e) CA, B(3)(d) NV)



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# REGIONAL CONDITION B(3) FOR CALIFORNIA & NEVADA

- **Changes from 2012 NWP RC:**
  - Changed from only NWP 12 to all utility lines
  - Removed requirement for PCN for all perennial, intermittent, and ephemeral waters and special aquatic sites for NV
  - B(3)(a) for CA: removed requirement for PCN for all intermittent waters
  - B(3)(b) for CA: added intermittent waters to PCN requirement if loss of greater than 100 lf
  - B(3)(a) for NV: added perennial and intermittent waters into PCN requirement if loss of greater than 100 lf
  - Added B(3)(e) for CA and B(3)(d) for NV requiring a PCN if excess material would be discharged into WOUS.



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# REGIONAL CONDITION B(4) FOR CALIFORNIA & NEVADA

- **RC:**
  - New bank stabilization activities shall involve either the sole use of native vegetation/bioengineered design techniques or combination of hard-armoring and native vegetation/bioengineered design techniques, unless specifically determined to be not practicable.
  - The permittee shall submit a PCN in accordance with General Condition 32 and RC B(1) for any new bank stabilization activity that involves any hard-armoring or the placement of any non-vegetated or non-bioengineered technique below the ordinary high water mark or, if tidal waters, the high tide line of waters of the U.S.
- **Changes from 2012 NWP RC:**
  - Clarified that only applies to “new” bank stabilization



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# REGIONAL CONDITION B(5) FOR CALIFORNIA & NEVADA

- **RC:**
  - For NWP 3, 6, 20, and 27: The permittee shall submit a PCN in accordance with General Condition 32 and RC B(1) for activities in histosols, fens, bogs, peatlands, and in wetlands contiguous with fens.
- **Changes from 2012 NWP RC:**
  - Removed requirement for a PCN for NWP 32.



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# REGIONAL CONDITION B(6) FOR CALIFORNIA & NEVADA

- **RC:**
  - For NWP 23: The permittee shall submit a PCN for all activities proposed under this NWP, in accordance with General Condition 32 and RC B(1).
  
- **Changes from 2012 NWP RC:**
  - Updated General Condition and RC numbering
  - Moved information required in PCN to RC B(1)(k)



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# REGIONAL CONDITION B(7) FOR CALIFORNIA & NEVADA

- **RC:**

- **California:** For NWP 27, submit a PCN when:
  - Discharge of dredged/fill material into perennial drainages or other perennial open WOUS or special aquatic sites
  - The activity would result in a discharge of dredged/fill material into greater than 0.10 acre of 100 liner feet of intermittent/ephemeral drainages or other intermittent/ephemeral WOUS.
- **Nevada:** For NWP 27, submit a PCN for activities that result in a discharge of dredged/fill material into WOUS. The following restrictions apply:
  - Facilities for controlling stormwater runoff, construction of water parks such as kayak courses, and the use of grout or concrete to construct in-stream structures are not authorized
  - Post-project stream sinuosity shall be appropriate to geomorphology of surrounding area and equal to or greater than pre-project sinuosity
  - Structures shall allow passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the Corps.

# REGIONAL CONDITION B(7) FOR CALIFORNIA & NEVADA

- **Changes from 2012 NWP RC:**

- **California:**

- Modified subparagraph (a) to eliminate requirement for a PCN for all intermittent waters
- Modified subparagraph (b) to include requirement for a PCN for intermittent waters, and included an acreage threshold for a PCN (0.10 acre)

- **Nevada:**

- Modified to require a PCN for all discharges of dredged/fill material



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# REGIONAL CONDITION B(8) FOR CALIFORNIA & NEVADA

- **RC:**

- For NWPs 29 and 39: Channelization or relocation of perennial or intermittent drainages is not authorized, except when, as determined by the Corps, the proposed channelization or relocation would result in a net increase in aquatic resource functions and services.
- This RC does not apply to man-made ditches, unless, as determined by the Corps, the ditch (1) was constructed through an aquatic resource or is a relocated drainage; (2) the ditch receives water from an area determined to be a water of the U.S.; and (3) the ditch diverts water to an area determined to be a water of the U.S.

- **Changes from 2012 NWP RC:**

- Added “channelization” in second part of the first sentence
- Added clarification that condition does not apply to certain ditches



# REGIONAL CONDITION B(9) FOR CALIFORNIA & NEVADA

- **RC:**
  - For NWP 46: The discharge shall not cause the loss of greater than 0.5 acre or 300 linear feet of waters of the U.S., unless specifically waived in writing by the Corps.
- **Changes from 2012 NWP RC:**
  - Minor changes in wording for clarification



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# REGIONAL CONDITION B(10) FOR CALIFORNIA & NEVADA

- **RC:**

- The following criteria apply to linear transportation crossings (e.g. roads, highways, railways, trails, bridges, culverts)
  - For activities in WOUS that are suitable habitat for Federally-listed fish species, including designated critical habitat for such species, design new or substantially reconstructed crossings to ensure passage and/or spawning of fish is not hindered. Permittee shall employ bridge designs that span the stream or river or designs that use a bottomless arch culvert with a natural stream bed
  - Linear transportation crossings shall be constructed to maintain the pre-construction course, condition, capacity, and location of open waters unless it can be demonstrated by permittee, and Corps' concurs, that the activity would result in a net increase in aquatic resource functions and services. For existing crossings, pre-construction course, condition, capacity, and location determined based on the upstream and downstream waters
  - Unless determined to be not practicable by the Corps, all linear transportation crossings proposed to be replaced shall be designed to approximate the bankfull width and depth of upstream and downstream open waters.



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# REGIONAL CONDITION B(10) FOR CALIFORNIA & NEVADA

- **Changes from 2012 NWP RC:**
  - Modified to clarify “linear transportation crossings” instead of “road crossings” and include examples
  - Subparagraph (a) modified to add “including designated critical habitat for such species,” and to specify that the condition applies to new or substantially reconstructed linear transportation crossings
  - Subparagraphs (b) through (d) deleted and replaced



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# REGIONAL CONDITION B(11) FOR CALIFORNIA & NEVADA

- **RC:**

- Unless determined to be not practicable by the Corps, no dredged/fill material shall be discharged within standing or flowing waters.
  - Ephemeral or intermittent drainages: construction during the dry season.
  - Perennial drainages: dewatering of the work area.
  - All dewatering shall be conducted to allow fish and wildlife passage during construction.
  - All dewatering structures and/or fills shall be removed within 30 days

- **Changes from 2012 NWP RC:**

- New RC for 2017. 2012 RC 6 for road crossings included similar language. RC now applies to all activities that result in a discharge of dredged/fill material into WOUS.



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# REGIONAL CONDITION B(12) FOR CALIFORNIA & NEVADA

- **RC:**

- For activities in which the Corps designates another Federal agency as the lead for compliance with ESA, MSFCMA, NHPA
  - Prospective permittee shall provide all relevant documentation to the Corps demonstrating any previous consultation efforts as it pertains to the Corps Regulatory permit area (for ESA and MSFCMA compliance) and the Corps Regulatory area of potential effect (APE) (for Section 106 compliance).
  - For activities requiring a PCN, this information shall be submitted with the PCN. If the Corps does not designate another Federal agency as the lead for ESA, EFH and/or NHPA, the Corps will initiate consultation for compliance, as appropriate.

- **Changes from 2012 NWP RC:**

- Replaced “lead Federal agency” with “prospective permittee”



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# REGIONAL CONDITION C(1) FOR CALIFORNIA & NEVADA

- **RC:**

- The permittee shall record the NWP verification letter with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property for:
  - Areas required to be preserved as a special condition of the NWP verification letter
  - Areas where boat ramps, docks, marinas, piers, or permanently moored vessels will be constructed or placed in or adjacent to navigable waters.
  - The recordation shall also include a map showing the surveyed location of the required preserve area or authorized structure. Evidence of the recordation of the NWP verification shall be provided to the Corps with the compliance certification.

- **Changes from 2012 NWP RC:**

- Added requirement that evidence of recordation be submitted to Corps
- Minor wording changes for clarification



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# REGIONAL CONDITION C(2) FOR CALIFORNIA & NEVADA

- **RC:**

- **Compensatory Mitigation Requirements**

- For permittee-responsible compensatory mitigation, the permittee shall develop and submit to the Corps, for review and approval, a final mitigation and monitoring plan following the SPD mitigation and monitoring guidelines or most recent update
- Permittee shall complete construction of any compensatory mitigation before or concurrent with construction of the authorized activity, except when determined to be not practicable by the Corps. Proof of Mitigation Bank or In-Lieu Fee credit purchase shall be submitted to the Corps prior to commencement of construction of the authorized activity in WOUS
- Activities in the 2<sup>o</sup> Zone of the Legal Delta shall be compensated in the 2<sup>o</sup> Zone of the Legal Delta (California Only)

- **Changes from 2012 NWP RC:**

- Combined 2012 RCs 9 (CA & NV), 10 (CA & NV), and 17 (CA) only into subparagraphs (a), (b), and (c)
- Modified subparagraph (a) to require that plans meet the SPD Mitigation and Monitoring guidelines or most recent update



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# REGIONAL CONDITION C(3) FOR CALIFORNIA & NEVADA

- **RC:**

- Unless determined to be not practicable or appropriate by the Corps, for activities that result in the discharge of dredged and/or fill material into waters of the U.S., the permittee shall employ construction BMPs.
  - Methods include appropriate measures to intercept and capture sediment prior to entering WOUS.
  - Shall be in place prior to initiation of construction and remain until construction completed
  - BMPs shall be maintained until construction activities are completed and site soils are stabilized.

- **Changes from 2012 NWP RC:**

- New RC



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# REGIONAL CONDITION C(4) FOR CALIFORNIA & NEVADA

## • RC:

- Unless determined to be not practicable or appropriate by the Corps, for discharge of dredged and/or fill material into waters of the U.S., clearly identify the limits of the authorized activity in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of construction activities in WOUS.
  - Maintain identification until construction is complete and soils stabilized
  - Permittee prohibited from any activity that impacts WOUS outside permit limits

## • Changes from 2012 NWP RC:

- Clarified that condition is applicable unless determined to be not practicable or appropriate by the Corps
- Clarified that the condition is applicable to activities that result in a discharge of dredged/fill material into WOUS.



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# REGIONAL CONDITION C(5) FOR CALIFORNIA & NEVADA

- **RC:**

- For temporary access/construction activities resulting in temporary fill in WOUS the permittee shall:
  - Utilize spawning quality gravel, where appropriate as determined by the Corps for all temporary fills within WOUS supporting fisheries
  - Install a horizontal mark to delineate the existing bottom elevation of waters temporarily filled during construction prior to the placement of temporary fill in WOUS.
  - Remove all temporary fill and restore the area to pre-project contours and conditions within 30 days following completion of construction activities in waters of the U.S.

- **Changes from 2012 NWP RC:**

- Moved information required for PCN to RC B(1)(f)
- For subparagraph (a), deleted requirement for “clean and washed gravel” and clarified that the condition applies to WOUS supporting all fisheries instead of “anadromous fisheries”
- Subparagraph (c) modified to specify that temporary fills must be removed and the area restored within 30 days



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# REGIONAL CONDITION C(6) FOR CALIFORNIA & NEVADA

- **RC:**

- For all utility line activities:
  - Ensure the utility line does not result in the draining of WOUS
  - Unless determined not practicable or appropriate by the Corps, remove and stockpile the top 6-12 inches of topsoil and replace stockpiled topsoil on top and seed the area with native vegetation
  - Unless determined to be not practicable by the Corps ensure that excess material associated with the utility line trench is disposed of in an upland location outside of WOUS.

- **Changes from 2012 NWP RC:**

- Now applicable to all NWPs instead of just NWP 12
- Requirements from main paragraph of 2012 RC 16 are no subparagraphs (a) and (b)
- Subparagraphs (a) – (d) of the 2012 RC are now in RC B(3)
- Subparagraph (c) new for 2017



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# REGIONAL CONDITION C(7) FOR CALIFORNIA & NEVADA

- **RC:**

- The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware of and adhere to the terms and conditions of the permit authorization. The permittee shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all construction activities are completed.

- **Changes from 2012 NWP RC:**

- No changes



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# REGIONAL CONDITION C(8) FOR CALIFORNIA & NEVADA

- **RC:**

- The permittee shall allow Corps representatives to inspect the authorized activity and any avoidance, preservation, and/or compensatory mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified by the Corps in advance of an inspection.

- **Changes from 2012 NWP RC:**

- Replaced “mitigation areas” with “avoidance, preservation, and/or compensatory mitigation”



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# REGIONAL CONDITION C(9) FOR CALIFORNIA & NEVADA

- **RC:**

- For NWP's requiring a PCN, the following additional information shall be submitted with the compliance certificate required under General Condition 30, within 30-days following completion of construction activities in WOUS
  - As-built drawings: plan-view drawing showing the authorized work footprint & work as constructed, and cross-section view drawing (where appropriate) of the work as constructed
  - Numbered and dated post-construction photographs of
    - Work within a representative sample of the permanently filled WOUS
    - All partially filled WOUS
    - All avoided WOUSCompass angle and similar to the required pre-construction photographs and identified on the plan-view drawings.
  - Description/photo-documentation of BMPs
  - For temporary fill, a description and photo-documentation of all restored WOUS. If not restored to pre-project contours or conditions, description and photo-documentation of the temporary fill and information on why restoration has not been completed.



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# REGIONAL CONDITION C(9) FOR CALIFORNIA & NEVADA

- **Changes from 2012 NWP RC:**

- Added requirement that the information required within 30 days
- For subparagraph (a), clarified that as-build drawings are required for the work conducted on the site and/or permittee responsible compensatory mitigation areas. Included a requirement for cross-section view drawing if appropriate
- For subparagraph (b), included a list of required post-construction photographs
- Added new subparagraphs (c) and (d)



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# TRANSITION FROM 2012 NWP's TO 2017 NWP's



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## NWP GRANDFATHERING

- 33 CFR 330.6(b): Activities which have commenced (i.e. are under construction) or are under contract to commence in reliance upon an NWP will remain authorized provided the activity is completed within 12 months of the date of the NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5(c)
  - For those activities authorized under the 2012 NWPs, have until March 19, 2018 to complete the work if meets this provision, provided a Section 401 WQC is received prior to discharges of dredged/fill material into WOUS.



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# NWP GRANDFATHERING

- If authorized under 2012 NWPs and does not meet grandfathering, submit a request for verification under 2017 NWPs.
  - If no change from previous authorization, submit letter that previous information valid and provide supplemental information to show compliance with terms, General Conditions or RCs that have changed
    - Additional information will be requested if necessary
  - If changes from the previous authorization, submit a new PCN to show compliance with the NWP terms and conditions



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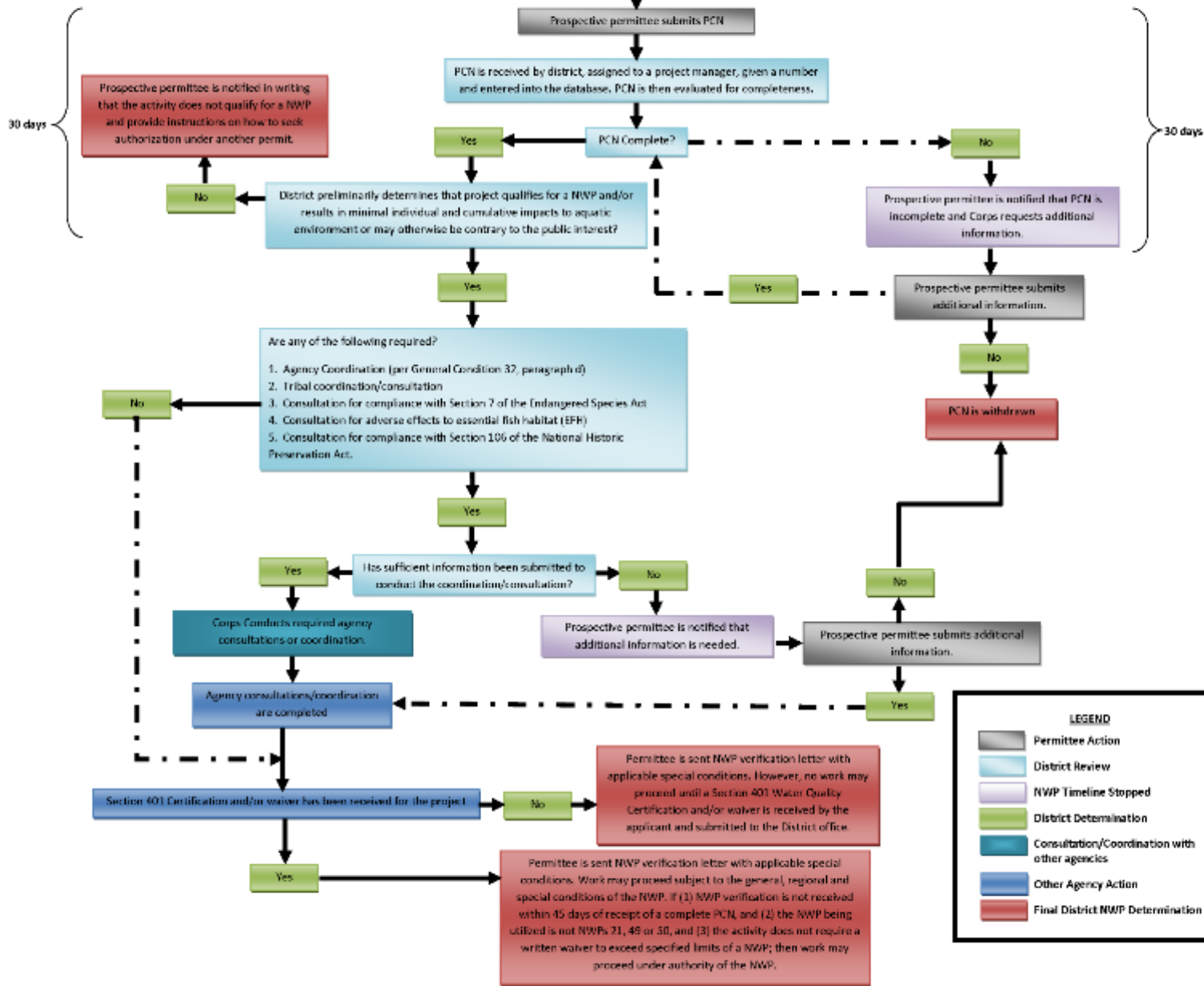
# NWP VERIFICATION PROCESS



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# NATIONWIDE PERMIT PROCESS



**LEGEND**

- Permittee Action
- District Review
- NWP Timeline Stopped
- District Determination
- Consultation/Coordination with other agencies
- Other Agency Action
- Final District NWP Determination



# TIMING

- **GC 32:**

- Corps has 30 days to determine if PCN is complete.
  - If not complete, Corps will request additional information (specify the information needed for a complete PCN)
- Prospective permittee shall not begin work until either:
  - Notified in writing by the Corps that activity may proceed under the NWP with any special conditions
  - 45 calendar days have passed from the Corp's receipt of the complete PCN and prospective permittee has not received written notice from Corps.

**HOWEVER:**

- If required to notify the Corps pursuant to GCs 18 or 20, cannot begin activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties.
- If NWPs 21, 49, or 50, cannot begin work until receive written approval from the Corps
- If the proposed activity requires a written waiver to exceed specified limits of an NWP, may not begin activity until the Corps issues the waiver
- If permittee is notified in writing within 45 calendar days of receipt of a complete PCN that an individual permit is required, cannot begin activity until an individual permit has been obtained



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## AGENCY COORDINATION (GC 32)

- Required for the following NWP activities:
  - Activities that will result in the loss of greater than 1/2-acre
  - Activities authorized by NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 that require PCNs and will result in loss of greater than 300 linear feet of intermittent and ephemeral stream bed
  - NWP 13 and 54 activities, where waivers are requested
- Copies of PCN to federal and state resource agencies
  - Change – removed SHPO/THPO
- 10 calendar day review period, may be extended by 15 days
- Consider agency comments on actions to ensure no more than minimal adverse environmental effects



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## DISTRICT ENGINEER'S DECISION (SECTION D)

- Criteria for determining whether a proposed NWP activity will result in no more than minimal individual or cumulative adverse environmental effects or any public interest review factor
  - For waiver requests, written determination of no more than minimal adverse environmental effects
  - Consider the direct and indirect effects caused by the NWP activity
  - Consider cumulative effects of NWP use on a regional basis
    - Regions may be watersheds, ecoregions, county, or other types of geographic areas
    - Non-linear projects – single watershed or region
    - Linear projects that cross multiple watersheds or regions – consider cumulative effects in each watershed or region



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## DISTRICT ENGINEER'S DECISION (SECTION D)

- Is mitigation, including compensatory mitigation, required to ensure no more than minimal effects?
  - Add activity-specific conditions requiring avoidance and minimization measures, such as:
    - Construction or management practices that reduce effects on aquatic environment
    - Time-of-year restrictions
  - If compensatory mitigation required, add activity-specific conditions
    - Use of mitigation bank or in-lieu fee program credits
    - Permittee-responsible mitigation, including approval of mitigation plan
      - Conceptual or detailed plan to issue NWP verification



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# MINIMAL EFFECTS DETERMINATIONS

- Factors considered by district engineers:
  - Environmental setting in the vicinity of the NWP activity
  - Type of resource that will be affected
  - Functions provided by the affected aquatic resources
  - Degree or magnitude to which the aquatic resources perform those functions
  - Extent that aquatic resource functions will be lost (e.g., partial or complete loss)
  - Duration of the adverse effects (temporary or permanent)
  - Importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and
  - Mitigation required by the district engineer



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# SECTION 401 WATER QUALITY CERTIFICATIONS



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# SECTION 401 WATER QUALITY CERTIFICATIONS (WQC) FOR CALIFORNIA AND NEVADA

- Section 401 WQC requested on January 20, 2017
  - California State Water Resources Control Board: On March 17, 2017: issued WQC, subject to conditions, for 14 NWP's (1, 4, 5, 6, 9, 10, 11, 12, 20, 22, 28, 32, 36, 54). Denied WQC's for 38 NWP's (2, 3, 7, 8, 13-19, 21, 23, 24, 25, 27, 29-31, 33-35, 37-46, and 48-53). NWP's 5, 6, 23, 33, 38, 43, 46, and 54 require notification and reporting requirements. (Applicable to Los Angeles, Sacramento, and San Francisco Districts)
  - U.S. Environmental Protection Agency (USEPA), Region IX: On February 27, 2017, issued WQC for 51 NWP's, subject to conditions and denied one NWP (NWP 43), for activities on Tribal Lands. All of the NWP's that have been certified require the submittal of a PCN or Modified PCN to USEPA, Region IX. (applicable to Arizona (Los Angeles District), California (Los Angeles, Sacramento, and San Francisco Districts), and Nevada (Sacramento District))

# SECTION 401 WATER QUALITY CERTIFICATIONS (WQC) FOR CALIFORNIA AND NEVADA

- Section 401 WQC cont'd
  - Nevada Division of Environmental Protection, Bureau of Water Quality Planning (NDEP-BWQP): On February 28, 2017, waived 8 NHPs (8, 10, 21, 24, 34, 48, 49, and 50), issued 401 WQC for 12 NHPs (1, 4, 5, 6, 9, 11, 20, 22, 28, 30, 32, and 38), and denied 32 NHPs (2, 3, 7, 12-19, 23, 25, 27, 29, 31, 33, 35-27, 39, 40-46, and 51-54). For the NHPs that have been certified, a signed 401 application is required to be submitted to the NDEP-BWQP. (Applicable to Nevada)
  - Pyramid Lake Paiute: Did not receive a response.
  - Walker River Paiute Tribe: Did not Receive a response.



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# QUESTIONS?



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