

2012 Nationwide Permits and Regional Conditions

Krystal Bell
Regulatory Project Manager
CA North Branch

June 13, 2013



US Army Corps of Engineers
BUILDING STRONG[®]

BUILDING STRONG



- 2012 NWP Reissuance
- NWP Covered Activities
- General Conditions
- Regional Conditions



What is a Nationwide Permit?

- Nationwide permits (NWP) are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment.
- In order to qualify for the use of a NWP, perspective permittees must comply with all of the terms, general conditions (GCs), and regional conditions (RCs) of the NWP, including any requirements for the submittal of a pre-construction notification (PCN).
- The NWP verification may include additional case specific conditions (special conditions) to ensure no more than minimal individual and cumulative impacts, and will state that the verification is valid for a specific period of time (generally but no more than two years), unless the NWP authorization is modified, suspended, or revokes. Per regulation, the NWPs must be reissued every five years. The reissuance process involves a full interagency and public interest review.



NWP Background

- Nationwide permits (NWPs) are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment.
- Many of the proposed NWPs require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.
- Per regulation, the NWPs must be reissued every five years.
- The existing NWPs were issued on March 19, 2012 and are set to expire on March 18, 2017.



NWPs

- For 2012, 50 NWPs were approved
- Types of Activities: Residential, commercial and institutional developments; structures in navigable waters; renewable energy; scientific research and survey activities; transportation; recreation; maintenance; restoration; etc.
- Many NWPs require the submittal of a pre-construction notification (PCN) prior to beginning work. PCN requirements are found in the terms of the NWP, in the General Conditions, and in the Regional Conditions. If no PCN is required, applicant may proceed under the authority of the NWP, provided the applicant follow **all** general and regional conditions.



NWPs

- In order to qualify for use under a NWP, the activity must:
 - ▶ 1. Meet the terms of the NWP
 - ▶ 2. Meet the General Conditions of the NWP
 - ▶ 3. Meet the Regional Conditions of the NWP
 - ▶ If the activity does not meet all of these requirements, it does not qualify for authorization under a NWP



NWP Process

1. Applicant submits a PCN
2. USACE determines if PCN is complete within 15 days. If PCN is not complete, the applicant will be notified that the PCN is not complete and will be requested to submit the specific info necessary
3. If PCN is complete, USACE will determine if the project qualifies for a NWP. If project does not qualify for a NWP, the applicant will be notified within 15 days that the project will need to be evaluated under another type of permit (RGP, LOP or SP)
4. If project qualifies for a NWP, USACE will initiate any required consultations under Section 7 of the Endangered Species Act (ESA) and Section 106 of the National Historic Preservation Act (NHPA) (note: CalTrans is usually the lead Federal agency and conducts this consultation and then provides the information to the Corps)



NWP Process

5. Following completion of ESA or NHPA consultation, Corps will then **verify** the use of the NWP, and will generally add special conditions to the verification, in order to further avoid, minimize, or compensate for impacts to waters of the U.S.
6. If a Section 401 Water Quality Certification (WQC) has not been issued for the activity, the applicant must apply for individual Certification from the Regional Water Quality Control Board. **No work may begin under authority of a NWP until the Section 401 WQC has been issued or waived. Conditions of the Section 401 WQC become conditions of the USACE NWP verification.**



Commonly Used NWP's in SPK

- **NW03 - Maintenance**
- NW05 - Scientific Measurement Devices
- NW06 - Survey Activities
- NW07 - Outfall Structures and Associated Intake Structures
- NW10 - Mooring Buoys
- NW11 - Temporary Recreational Structures
- **NW12 - Utility Line Activities**
- **NW13 - Bank Stabilization**
- **NW14 - Linear Transportation Projects**
- NW17 - Hydropower Projects
- NW18 - Minor Discharges
- **NW23 - Approved Categorical Exclusions**
- NW25 - Structural Discharges
- NW29 - Residential Developments
- NW31 - Maintenance of Existing Flood Control Facilities
- NW33 - Temporary Construction, Access, and Dewatering
- NW35 - Maintenance Dredging of Existing Basins
- NW39 - Commercial and Institutional Developments



General Conditions (GCs)

- 31 General Conditions:

- ▶ 17 Tribal Rights

- Corps is required to consult with Federally-recognized Tribes.

- ▶ 18 ESA:

- Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized.

- ▶ 20 Historic Properties:

- Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties.



GCs Cont'd

- ▶ 21 Discovery of Previously Unknown Remains and Artifacts (**NEW**):
 - This typically was included as a special condition but has been added as a GC into the 2012 NWP's.

- ▶ 23 Mitigation:
 - Requires avoidance, minimization, compensation.
 - Compensatory mitigation at a minimum of 1:1 will be required for all wetland losses that exceed 1/10th acre and require a PCN. The DE may require mitigation for losses less than 1/10th acre.
 - The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.
 - If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States
 - Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP's.



GCs Cont'd

▶ 25 Water Quality:

- 401 Certification is required prior to work in WOUS. Corps may send a provisional NWP verification that states the work is denied without prejudice until you obtain a 401 Certification.
- Remember: **No work may begin under authority of a NWP until the Section 401 WQC has been issued or waived. Conditions of the Section 401 WQC become conditions of the USACE NWP verification.**

▶ 27 Regional and Case-by-Case Conditions:

- Activities must comply with Regional and Special Conditions – More to come later!

▶ 28 Use of Multiple NWPs:

- 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.



GCs Cont'd

► 31 Pre-Construction Notification:

- Timing: Corps has 30 days to determine if PCN is complete.
 - Work can begin when – you are notified by the Corps via NWP verification letter or **45 calendar days** have passed from the Corps' receipt of a complete PCN and you have not received written notification from the Corps. **Don't forget about GC 18 or 20 (ESA and Historic Properties Conditions)!**
 - 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.
- Contents of a PCN:
 - Name, address, contact info; location; project description; wetland delineation (**45 day period does not start until the Corps receives a wetland delineation**); mitigation statement; project's effects on listed species and/or historic properties.
- PCN Form:
 - See SPK website:
<http://www.spk.usace.army.mil/Portals/12/documents/regulatory/pdf/PCN%20Checklist%20-%20ADOBE.pdf>



Changes to NWP Definitions

Best management practices (BMPs)

Compensatory mitigation

Currently serviceable

Direct effects

Discharge

Enhancement

Ephemeral stream

Establishment (creation)

High Tide Line

Historic property

Independent utility

Indirect effects

Intermittent stream

Loss of waters of the United States

Non-tidal wetland

Open water

Ordinary high water mark

Perennial stream

Practicable

Pre-construction notification

Preservation

Re-establishment

Rehabilitation

Restoration

Riffle and pool complex

Riparian areas

Shellfish seeding

Single and complete linear project

Single and complete non-linear project

Stormwater management

Stormwater management facilities

Stream bed

Stream channelization

Structure

Tidal wetland

Vegetated shallows

Waterbody



Major Changes in Definitions

- **Direct Effects:** New definition
- **High Tide Line:** New definition
- **Indirect Effects:** New definition
- **Single and Complete Project:** Has now been divided into two definitions, one for “single and complete linear project,” and one for “single and complete non-linear project.” The definitions have not changed.



Regional Conditions (RCs)

- Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional Conditions (RCs) are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWP are minimal, both individually and cumulative.
- 26 Total RCs
- RC 1 - Add'l PCN requirements:
 - Written statements demonstrating avoidance and minimization effects to WOUS
 - Drawings and cross-sections consistent with Division standards
 - Numbered and dated pre-project color photographs of the project area including avoidance areas
- RC 2 – For all NWPs a PCN is required when:
 - Discharge of fill in vernal pools
 - Any activities in Primary and Secondary Zones of the Delta
 - Crossings of perennial and intermittent WOUS
 - Activities proposed within 100 feet of the point of discharge of a known natural spring source
 - For all activities located in areas designated as EFH by NMFS



RCs Cont'd

- RC 3 - Recordation of NWP verification with registrar of deeds or other appropriate official.
- RC 4 – For all avoided WOUS:
 - Permittees shall establish a preserve
 - Place avoided WOUS into a separate preserve parcel
 - Establish permanent legal protection
- RC 5 – Temporary Impacts:
 - Provide a complete description of temporary fills
 - Utilize material containing clean and washed gravel.
 - Place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing ground elevation of the waters temporarily filled
 - Removal all temporary fill within 30 days following completion of construction activities



RCs Cont'd

- RC 6 – Road Crossings (In addition to GC 2)
 - For suitable habitat for federally-listed fish species you shall design all road crossings to ensure that the passage and/or spawning of fish is not hindered.
 - Road crossings shall be designed to ensure that no more than minor impacts would occur to fish and wildlife passage or expected high flows, following the criteria listed in Regional Condition 6(a).
 - No construction activities shall occur within standing or flowing waters.
 - All bank stabilization activities associated with a road crossing shall comply with Regional Condition 19.

- RC 7 – Lead Federal Agency Designation and required information
 - Caltrans local assistance projects. If Caltrans is going to conduct Section 7 or Section 106 consultation have them coordinate **early** with the Corps.



Regional Conditions (RCs) Cont'd

- RC 8 – Post-Construction Notification Information
 - As-Builts
 - Numbered and dated post-construction photos

- RC 9 - Final comprehensive mitigation plan for permittee-responsible mitigation – Corps must approve prior to work in waters of the U.S. – May see as a Special Condition on the verification

- RC 10 –Construction of any compensatory mitigation (or proof of mitigation payment) must be prior to or concurrent with project construction. – May see as a Special Condition on the verification

- RC 11 - Copy of permit authorization/verification and drawings at construction site

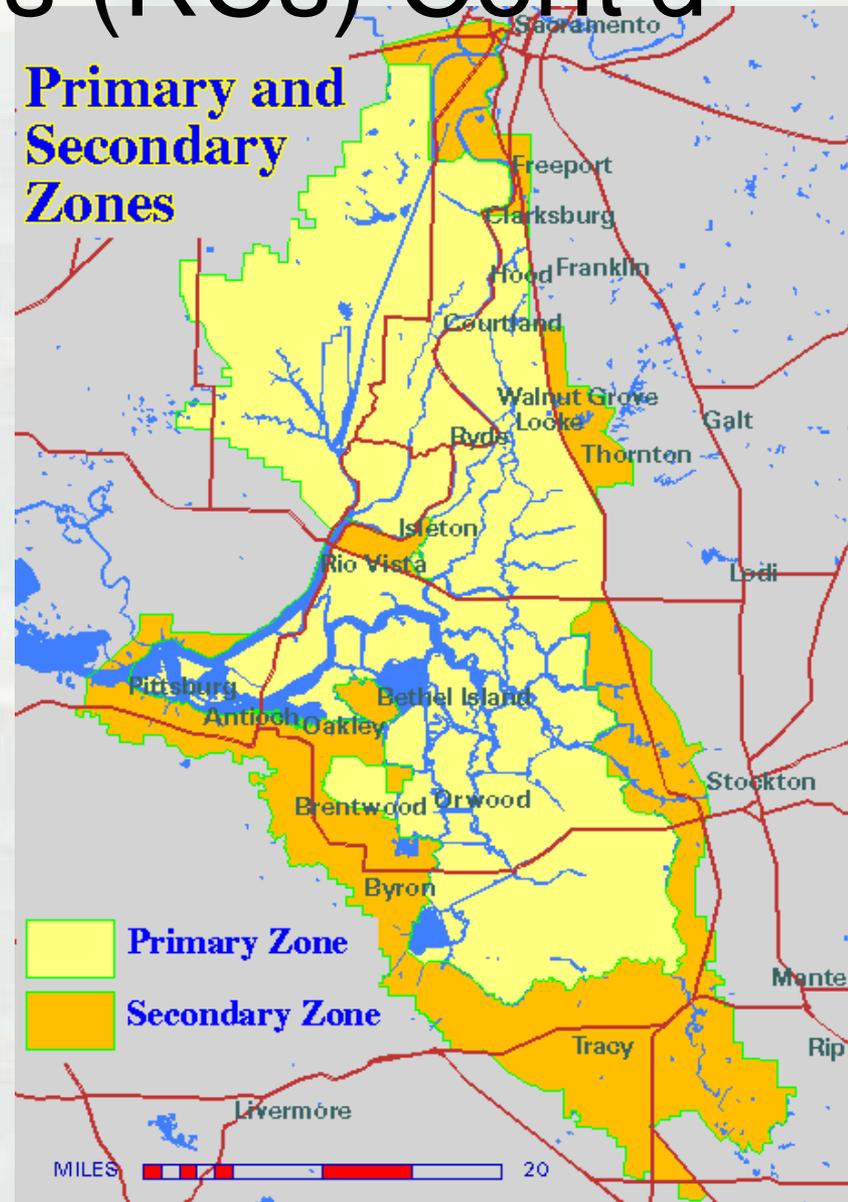
- RC 12 - Identification of the limits of disturbance

- RC 13 - If PCN is required must notify Corps within 10 days of initiation of construction



Regional Conditions (RCs) Cont'd

- RC 14 - Corps inspection of authorized work and mitigation
- RC 15 - Mather Core Specific RC
 - NWPs 14, 18, 23, 29, 39, 40, 42, 43, and 44 are revoked from use in vernal pools that may contain habitat for Federally-listed threatened and/or endangered vernal pool species.
- RC 16 – NWPs 29 and 39 are revoked in the Primary and Secondary Zone of the Legal Delta.
- RC 17 – Compensatory mitigation is required for all unavoidable impacts within the Secondary Zone of the Legal Delta.



Regional Conditions (RCs) Cont'd

- RC 18 – For NWP 12:
 - Permittees shall ensure the construction of utility lines does not result in the draining of any water of the U.S., including wetlands. This may be accomplished through the use of clay blocks, bentonite, or other suitable material (as approved by the Corps) to seal the trench.
 - A PCN is required when the utility crossing would:
 - fill a perennial or intermittent water, wetlands, mudflats, vegetated shallow, riffle and pool complex, sanctuary, refuge, or coral reef
 - result in discharge in greater than 100 linear feet of an ephemeral WOUS
 - include the construction of a temporary or permanent access road, substation, or foundation within a WOUS
 - not involve restoration of all utility line trenches to pre-project conditions and contours within 30 days following completion of construction

- RC 19 – For NWPs 13 and 14:
 - All bank stabilization activities shall involve either the sole use of native vegetation or other bioengineered design techniques (e.g. willow plantings, root wads, large woody debris, etc.), or a combination of hard-armoring (e.g. rip-rap) and native vegetation or bioengineered design techniques, unless specifically determined to be impracticable by the Corps

- RC 20 – For NWP 23:
 - The permittee shall submit a PCN for all activities proposed for this NWP, in accordance with General Condition 31 and Regional Condition 1 and include a signed copy of the Categorical Exclusion and Section 7 and NHPA documentation



Regional Conditions (RCs) Cont'd

- RC 21 – For NWP 27:
 - PCN is required when: a discharge into perennial waters, intermittent waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs; or
 - discharge of greater than 100 linear feet of ephemeral WOUS

- RC 22 – For NWPs 29 and 39:
 - Channelization or relocation of intermittent or perennial drainages is not authorized unless determined acceptable by the Corps

- RC 23 – Any requests to waive the 300 linear foot discharge limit for intermittent and perennial WOUS for NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 or to waive the 500 linear foot limit for NWP 13 must include:
 - A narrative description of the stream
 - An analysis of the proposed impacts in accordance with GC 31 and RC 1
 - Avoidance and minimization of impacts
 - And a compensatory mitigation plan



Regional Conditions (RCs) Cont'd

- RC 24 – For NWP 29, 39, 40, 42, and 43:
 - The permittee shall establish and maintain upland vegetated buffers in perpetuity, unless specifically determined to be impracticable by the Corps, next to all preserved open waters, streams and wetlands including created, restored, enhanced or preserved waters of the U.S., consistent with General Condition 23(f).
 - 50 foot vegetated buffers required unless waived by Corps.

- RC 25 – For NWP 46:
 - The discharge shall not cause the loss of greater than 0.5 acres of waters of the United States or the loss of more than 300 linear feet of ditch, unless specifically waived in writing by the Corps.

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



A photograph of a field of low-growing green plants. The plants have small, narrow leaves and are covered with numerous small flowers. Most of the flowers are purple with a white center, but there are also several small white flowers scattered throughout. In the top right corner, there is a single, larger yellow flower. The background is a dense carpet of these plants.

Questions?

Contact Information



Krystel Bell

Krystel.L.Bell@usace.army.mil

916-557-7745

POC for: Butte County Regional Conservation Plan (BRCP), Placer County Conservation Plan (PCCP), and Department of Water Resources Flood Management Office (DWR-FMO)

<http://www.spk.usace.army.mil/Missions/Regulatory.aspx>

<http://www.spk.usace.army.mil/Missions/Regulatory/Permitting/NationwidePermits.aspx>

