



**US Army Corps
of Engineers**

Sacramento District
1325 J Street
Sacramento, CA 95814

Special Public Notice

Date: August 6, 2004
Comments Due: ~~September 5, 2004~~
Extended: October 5, 2004

In reply, please refer to Proposed NWP Regional Conditions

On January 15, 2002, the U.S. Army Corps of Engineers reissued all Nationwide Permits, General Conditions, and definitions with some modifications, and one new General Condition (33 Code of Federal Regulations Part 330). Nationwide Permits (NWP) are general permits issued on a nationwide basis to authorize activities which would typically have minimal individual and cumulative impacts on the aquatic environment. On March 18, 2002, the reissued Nationwide Permits became effective.

In accordance with 33 CFR 330.4(e) and General Condition 6 of the Nationwide Permit Program, regional conditions may be added by the Division Engineer to address differences in aquatic resource functions and values in watersheds or other types of geographic regions and to ensure that the NWP authorize activities with only minimal adverse effects on the aquatic environment, individually and cumulatively. The Sacramento District currently has several regional conditions in effect. To view these, visit our website at <http://www.spk.usace.army.mil/regulatory.html> and click on Permitting and then Nationwide Permits.

With this notice, the Sacramento District is proposing to modify existing and add several new regional conditions to the NWP in the States of California, Nevada and Utah. Regional Conditions for the State of Colorado will not be changed and remain in full force and effect. The proposed regional conditions are intended to ensure activities authorized under the Nationwide Permit Program in the Sacramento District have only minimal individual and cumulative impacts to the aquatic environment. These conditions would also enhance accounting for use of the NWP, tracking compliance, and reducing delays in authorizing projects.

This notice is to inform interested parties of this proposal and to solicit comments from the public, Federal, State, and local agencies and officials, Indian tribes, and others. Comments received will be considered by the Sacramento District to determine whether, and to what degree, the existing regional conditions should be modified. Comments will be used in the preparation of any decision documentation that may be necessary. Please note that all comment letters received are subject to release to the public through the Freedom of Information Act. Written comments, referencing "Proposed NWP Regional Conditions," must be submitted to the office listed below on or before September 5, 2004:

US Army Corps of Engineers, Sacramento District
Attn: Regulatory Branch (MJewell)
1325 J Street, Room 1480
Sacramento, California 95814-2922

If the final decision is to not modify or add new regional conditions to the NWP, the existing regional conditions will remain in full force and effect. If you have questions or need additional information, please contact Michael Jewell of my Regulatory Branch staff by telephone at (916) 557-5254 or email at michael.s.jewell@usace.army.mil.

Ronald P Light
Colonel, Corps of Engineers
District Engineer

PROPOSED NATIONWIDE PERMIT REGIONAL CONDITIONS

Regional Conditions Applicable to All Nationwide Permits

1. The prospective permittee must notify the District Engineer prior to proceeding with any activity under the Nationwide Permit Program. In addition to those items listed under General Condition 13, the contents of the notification must include a completed application form (ENG 4345) and a written statement explaining how the project was designed to avoid and minimize adverse effects to waters of the United States per General Condition 19. [Existing conditions I(3) and III modified]
2. In accordance with General Condition 13(f), the 45-day period will not start until a delineation of waters of the U.S, including wetlands, has been completed and submitted to the District Engineer. A complete delineation is one prepared in accordance with the 1987 Wetland Delineation Manual and meets that Sacramento District's Minimum Standards for Acceptance of Preliminary Wetland Delineations. [New]
3. In general, compensatory mitigation will be completed at a mitigation ratio of 2:1 (2 acres restored/created for every 1 acre impacted). An exception to this compensatory mitigation ratio is mitigation that has been created in advance of project impacts to waters of the U.S., such as that found at a Corps -approved wetland mitigation bank. [New]
4. All compensatory mitigation will be completed prior to, or concurrent with, commencing work. When compensatory mitigation involves the use of a mitigation bank or in-lieu fee program, payment must be made before commencing work. [Existing condition I(2) modified]
5. Except in unusual circumstances, the Nationwide Permit written verification will be recorded against with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property. [New]
6. In accordance with General Condition 27, verification under a Nationwide Permit is valid for two years from the date of District's written verification. Work must be commenced, or under contract to commence, within the verification period. If work is not commenced, or under contract to commence, within the verification period, the permittee may request a new verification under the Nationwide Permit. All work in waters of the United States must be completed within three years of the date of the written verification. [New]
7. Representatives of the Sacramento District must be allowed to access the site to inspect the permitted work, following notice (usually by telephone). [New]
8. NWP verifications are not transferable. If a person or entity other than that named on the NWP verification will be responsible for completing the authorized activity, the party must notify the District and request verification under its name. The notification must include a name, address, telephone number, and statement that the new person/entity is responsible for compliance with all terms and conditions of the Nationwide Permit. Such notification must be sent prior to the new person/entity discharging any dredged or fill material into waters of the United States. [New]

Regional Conditions Applicable to Specific Nationwide Permits

9. For NWP 13, bank stabilization activities must include the use of vegetation or other biotechnical practice. Activities that involve the use of hard-armoring (e.g., with rip-rap) must incorporate the use of vegetation as a component of the design, unless deemed impracticable by the District Engineer. [New]
10. For NWPs 39, 40, 42, and 43, wetland or upland vegetated buffers must be established and maintained in perpetuity, to the maximum extent practicable, next to all open waters, streams and wetlands, consistent with General Condition 19. Except in unusual circumstances, vegetated buffers will be 50 feet or greater in width, depending on water quality or habitat loss concerns. Based on what is best for the aquatic environment, the District Engineer may give compensatory mitigation credit for buffers wider than 50 feet. [New]
11. For NWPs 39, 40, 42, and 43, any waters of the United States and associated vegetated buffers preserved to minimize or compensate for project impacts must be placed into a separate "preserve" parcel prior to discharging any material into waters of the U.S., except in extraordinary circumstances. Permanent legal protection (e.g., easements, deed restrictions) must be established for all preserve parcels, following approval of the legal instrument. [New]

Regional Conditions for Suspension/Revocation to Certain Geographic or Special Areas

12. NWPs 12, 14, 29, 33, 39, 40, 41, 42, 43, and 44 are suspended from use in histosols, including fens. [Existing condition I(1) modified]
13. NWPs are suspended from use within 100 feet of the water source of a natural spring. A spring is an aquatic feature caused by groundwater being discharged to the surface, creating wetland and/or stream characteristics. Springs include seeps and other waters formed from groundwater discharges. [New, similar to State of Colorado condition]
14. NWPs are suspended in the Lake Tahoe basin in favor of using Regional General Permit 16. [Existing condition II]