Final Sacramento District Nationwide Permit (NWP) Regional Conditions for Nevada and the Lake Tahoe Basin in California

(Effective March 19, 2017 until March 18, 2022)

A. Revoked NWPs

1. All NWPs 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 NWPs 1, 2, 8, 9, 10, 11, 19, 24, 28, 35 or 36, as these NWPs either apply to Section 10 only activities or do not authorize impacts to wetlands and/or other special aquatic sites. For NWPs 3, 6, 20, 27, and 38, see Regional Condition B(5).

2. All NWPs 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*.

B. Regional Conditions Applicable Before Authorization

1.* When pre-construction notification (PCN) is required, the permittee shall notify the U.S. Army Corps of Engineers, Sacramento District (Corps) in accordance with General Condition 32 using either the South Pacific Division Preconstruction Notification (PCN) Checklist or an application form (ENG Form 4345) with an attachment providing information on compliance with all of the General and Regional Conditions. In addition, the PCN shall include:

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

b.* Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark or, if tidal waters, the mean high water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. Unless specifically waived by the Sacramento District, all drawings shall follow the South Pacific Division February 2016, *Updated Map and Drawing Standards for the South Pacific Division Regulatory Program*, or most recent update (available on the South Pacific Division website at: http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/);

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

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d.* Delineation of aquatic resources in accordance with the Sacramento District's Minimum Standards for Acceptance of Aquatic Resources Delineation Reports (available at http://www.spk.usace.army.mil/Portals/12/documents/regulatory/jd/minimum-standards/Minimum_Standards_for_Delineation_with_Template-final.pdf), or updated standards adopted by the Sacramento District, unless specifically waived by the Sacramento District;

e. A description of proposed construction Best Management Practices (BMPs) and highly visible markers to be used during construction of the proposed activity, as required by Regional Conditions C(3) and C(4). If no BMPs or highly visible markers are proposed, the PCN shall provide a description of why their use is not practicable or necessary;

f. For all activities proposed for the purpose of temporary access and construction which would result in the placement of dredged or fill material into waters of the U.S.:

(1) The reason(s) why avoidance of temporary fill in waters of the U.S. is not practicable;

(2) A description of the proposed temporary fill, including the type and amount (in cubic yards) of material to be placed;

(3) The area (in acres) of waters of the U.S. and, for drainages (e.g. natural or relocated streams, creeks, rivers), the length (in linear feet) where the temporary fill is proposed to be placed; and

(4) A proposed plan for restoration of the temporary fill area to pre-project contours and conditions, including a plan for the re-vegetation of the temporary fill area, if vegetation would be removed or destroyed by the proposed temporary fill;

g. For all dewatering activities that propose structures or fill in waters of the U.S. that require authorization from the Corps:

(1) The proposed methods for dewatering;

(2) The equipment that would be used to conduct the dewatering;

(3) The length of time the area is proposed to be dewatered;

(4) The area (in acres) and length (in linear feet) in waters of the U.S. of the structure and/or fill;

(5) The method for removal of the structures and/or fill; and

(6) The method for restoration of the waters of the U.S. affected by the structure or fill following construction.

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h. For linear transportation crossings that propose to alter the pre-construction course, condition, capacity or location of open waters, the PCN shall include sufficient justification to determine that the proposed activity would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

i. For replacement linear transportation crossings that would result in a reduction in the pre-construction bankfull width and depth of open waters of the U.S. at the crossing, as compared to the upstream and downstream open waters:

(1) Information on why it is not practicable to approximate the pre-construction bankfull width of the upstream and downstream open waters, and;

(2) Sufficient justification to determine that the reduction in the pre-construction bankfull width would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

j.* For any requests to waive the applicable linear foot limitations for NWPs 13, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52 and 54:

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

(2) An analysis of the proposed impacts to the waterbody, in accordance with General Condition 32 and Regional Condition B(1);

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

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

k. For NWP 23: A copy of the signed Categorical Exclusion document and final agency determinations regarding compliance with Section 7 of the Endangered Species Act (ESA), Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and

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Management Act (MSFCMA), and Section 106 of the National Historic Preservation Act (NHPA), in accordance with General Conditions 18 and 20 and Regional Condition B(12).

l. For NWP 27: Sufficient justification to determine that the proposed activity would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

m. For any NWP 29 or 39 activities that propose channelization or relocation of perennial or intermittent drainages: Justification on how the proposed channelization or relocation would result in a net increase in aquatic resource functions and services. Functions and services to be considered in the justification include, but are not limited to: short- or long-term surface water storage, subsurface water storage, moderation of groundwater flow or discharge, dissipation of energy, cycling of nutrients, removal of elements and compounds, retention of particulates, export of organic carbon, and maintenance of plant and animal communities.

n. For construction activities that would occur within standing or flowing waters: Information on why it is not practicable to conduct construction activities when the area is dewatered naturally or through an approved dewatering plan.

o. For all new bank stabilization activities that would not involve the sole use of native vegetation or other bioengineered design techniques: Information on why the sole use of vegetated techniques to accomplish the bank stabilization activity is not practicable.

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

a. 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;

b. For all activities in waters of the U.S. proposed within 100 feet of the point of discharge of a known natural spring source (i.e. which is any location where ground water emanates from a point in the ground excluding seeps or other discharges which lack a defined channel);

c.* For Water Quality Certificate issuance considerations, all activities in waters of the U.S. on Tribal Lands.; and

d. For all activities proposing in-stream grouted outfall structures or grouting of stream bottoms.

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3. For all utility line activities: The permittee shall submit a PCN in accordance with General Condition 32 and Regional Condition B(1) for new utility line activities when:

a. The utility line activity would result in a loss of greater than 100 linear feet of perennial, intermittent, or ephemeral drainages (e.g. natural or relocated streams, creeks, rivers) or other open waters of the U.S.;

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

c. All utility line trenches in waters of the U.S. would not be restored to pre-project contours and conditions within 30 days following completion of construction activities in waters of the U.S; or

d. The utility line activity would involve the discharge of any excess material associated with the construction of a utility line trench into waters of the U.S.

4. All new 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 not practicable by the Corps. The permittee shall submit a PCN in accordance with General Condition 32 and Regional Condition 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.

5. For NWP 3, 6, 20, and 27: The permittee shall submit a PCN in accordance with General Condition 32 and Regional Condition B(1) for activities in histosols, fens, bogs, peatlands, and in wetlands contiguous with fens.

6. For NWP 23: The permittee shall submit a PCN for all activities proposed under this NWP, in accordance with General Condition 32 and Regional Condition B(1).

7. For NWP 27: The permittee shall submit a PCN in accordance with General Condition 32 and Regional Condition B(1) for aquatic habitat restoration, establishment, and enhancement activities that result in a discharge of dredged and/or fill material into waters of the U.S. The following applies to all NWP 27 activities:

a. 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;

b. 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; and

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c. Structures shall allow the passage of aquatic organisms, recreational water craft or other navigational activities unless specifically waived in writing by the Corps.

8. For NWPs 29 and 39: The channelization or relocation of perennial or intermittent drainages (e.g. natural or relocated streams, creeks, rivers) 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 Regional Condition 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.

9. 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.

10. In addition to the requirements of General Conditions 2 and 9, the following criteria shall apply to linear transportation crossings (e.g. roads, highways, railways, trails, bridges, culverts):

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

b. 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 the permittee, and the Corps' concurs, that the activity would result in a net increase in aquatic resource functions and services. For areas containing existing linear transportation crossings, the pre-construction course, condition, capacity, and location of open waters shall be determined based on the upstream and downstream portions of the open waters.

c. 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.

11. Unless determined to be not practicable by the Corps, no dredged and/or fill material shall be discharged within standing or flowing waters. For ephemeral or intermittent drainages (e.g. natural or relocated streams, creeks, rivers), this may be accomplished through construction during the dry season. In perennial drainages, this may be accomplished through 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 following completion of construction activities in waters of the U.S.

12.* For activities in which the Corps designates another Federal agency as the lead for

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compliance with Section 7 of the ESA of 1973 as amended, pursuant to 50 CFR Part 402.07; Section 305(b)(4)(B) of the MSFCMA, pursuant to 50 CFR 600.920(b); and/or Section 106 of the NHPA of 1966, as amended, pursuant to 36 CFR 800.2(a)(2), the 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.

C. Regional Conditions Applicable After Authorization

1. 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 (a) required to be preserved as a special condition of the NWP verification letter, including any associated covenants or restrictions, or (b) 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 required in General Condition 30 and Regional Condition C(9).

2. Compensatory Mitigation Requirements:

a. For all activities requiring permittee responsible compensatory mitigation, the permittee shall develop and submit to the Corps for review and approval, a final comprehensive mitigation and monitoring plan prior to commencement of construction activities within waters of the U.S. The plan shall include the mitigation location and design drawings, vegetation plans, including target species to be planted, and final success criteria, presented in the format of the *Final 2015 Regional Compensatory Mitigation and Monitoring Guidelines for South Pacific Division USACE*, or most recent update (available on the South Pacific Division website at: whttp://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/); and

b.* The permittee shall complete the construction of any compensatory mitigation required by special condition(s) of the NWP verification before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be not practicable by the Corps. When compensatory mitigation involves use of a mitigation bank or in-lieu fee program, the permittee shall submit proof of purchase of required credits to the Corps prior to commencement of construction of the authorized activity in waters of the U.S.

3. 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 on-site prior to the initiation of construction activities in waters of the U.S., to prevent degradation to on-site and off-site waters of the U.S. Methods

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shall include the use of appropriate measures to intercept and capture sediment prior to entering waters of the U.S., as well as erosion control measures along the perimeter of all work areas to prevent the displacement of fill material. All BMPs shall be in place prior to initiation of any construction activities and shall remain until construction activities are completed. The permittee shall maintain all BMPs until construction activities are completed and site soils are stabilized.

4. 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 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 within waters of the U.S. The permittee shall maintain such identification properly until construction is completed and the soils have been stabilized. The permittee is prohibited from any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits (as shown on the permit drawings).

5. For all temporary access and construction activities resulting in temporary fill within waters of the U.S., the permittee shall:

a. Utilize spawning quality gravel, where appropriate as determined by the Corps after consultation with appropriate Federal and state fish and wildlife agencies, for all temporary fills within waters of the U.S. supporting fisheries;

b. Install a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing bottom elevation of the waters temporarily filled during construction, prior to the placement of temporary fill in waters of the U.S.; and

c. 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.

6. For all utility line activities:

a. The permittee 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;

b. Unless determined to be not practicable or appropriate by the Corps, during construction of utility line trenches, the permittee shall remove and separately stockpile the top 6 – 12 inches of topsoil. Following installation of the utility line(s), the permittee shall replace the stockpiled topsoil on top and seed the area with native vegetation; and

c. Unless determined to be not practicable by the Corps, the permittee shall ensure that any excess material associated with the construction of a utility line trench is disposed of in an upland location outside of waters of the U.S.

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7. 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.

8. 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.

9. For all NWPs which require a PCN, the permittee shall submit the following additional information with the compliance certificate required under General Condition 30, within 30-days following the completion of construction activities in waters of the U.S.:

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

b. Numbered and dated post-construction color photographs of (1) the work conducted within a representative sample of the permanently filled waters of the U.S., (2) all of the partially filled waters of the U.S., and (3) all avoided waters of the U.S. on and immediately adjacent to the project area. The compass angle and position of all photographs shall be similar to the pre-construction color photographs required in Regional Condition B(1)(c) and shall be identified on the plan-view drawing(s) required in subpart (a) of this Regional Condition;

c. A description and photo-documentation of all BMPs installed as required by Regional Condition C(3); and

d. For all temporary fill authorized within waters of the U.S., a description and photo-documentation of all restored waters of the U.S., including information showing compliance with Regional Condition C(5). For temporary fill within waters of the U.S. that have not been restored to pre-project contours or condition, a description and photo-documentation of the temporary fill within waters of the U.S., including information on why restoration has not been completed.

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