



CITIZENS COMMITTEE TO COMPLETE THE REFUGE

453 Tennessee Lane, Palo Alto CA 94306

Tel 650 493-5540

Fax 650 494-7640

Florence@refuge.org

Lieutenant Colonel John C. Morrow, Commander
US Army Corps of Engineers
San Francisco District
1455 Market Street
San Francisco, CA 94103-1398
Email: James.C.Mazza@usace.army.mil
Attn: James Mazza

August 6, 2016

**Re: Public Notice (PN) 2016-00006, Nationwide Permit and San Francisco District's
Regional Condition Reissuance**

Dear Commander Morrow,

This responds to Public Notice: Nationwide Permits and San Francisco District's Regional Condition Reissuance, dated June 6, 2016. We thank you for the opportunity to provide comments. Based upon our review of the PN, we find the proposed regional conditions are inadequate. The nationwide permit program as proposed is likely result in more than minimal impacts to water quality and the aquatic environment within the boundaries of the San Francisco District. The regional conditions must be modified.

The Citizens Committee to Complete the Refuge, consisting of 2,000 members, has an ongoing history of interest in wetland protection, wetland restoration and wetland acquisition. As such, the Committee has taken an active interest in Clean Water Act regulations, policies, implementation and enforcement. We have established a record of providing information regarding possible CWA violations to both the Corps and EPA. We regularly respond to Corps public notices, and inform the public of important local CWA issues. We have responded to past proposals of reissuance and changes to the nationwide permit program. These actions demonstrate our ongoing commitment to wetland issues, toward protecting the public interest in wetlands, and in Section 404 of the CWA.

The Public Notice for the proposed regional conditions is inadequate:

Corps regulations at 33 CFR §325.3 (a) *General* state:

The public notice is the primary method of advising all interested parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment.

As noted below, the requirement of any general permit is that the activities proposed "will have only *minimal cumulative* adverse effects on water quality and the aquatic environment." [emphasis added] A finding of "minimal cumulative" adverse effects is the basic premise upon which the Corps authorizes the NWP. However, the Corps has yet to assess or disclose the cumulative effects of this program. Any information provided is largely in boiler plate language long after the public comment period has closed.

Thus the public's ability to substantively review and assess the impacts of the proposed nationwide permits (NWP) on the aquatic environment has been thwarted. This is contrary to the guidance provided in by the Council on Environmental Quality in their 2007, "A Citizens Guide to NEPA," which states at the outset, "Two major purposes of the environmental review process are better informed decisions and citizen involvement, both of which should lead to implementation of NEPA's policies.

General Permits:

Nationwide Permits are "general permits," (33 CFR 322.2 (f) and 33 CFR 323.s (n)) and are implemented with the goal of reducing the "administrative burdens on the Corps and the regulated public, by authorizing activities that have minimal adverse environmental effects."

The 404 (b)(1) Guidelines (40 CFR Part 230.7 (a)) establish the following requirements for General Permits:

- (1) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment;
- (2) The activities in such category will have only minimal adverse effects when performed separately; and
- (3) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment.

Thus, the NWP program should authorize only those impacts to "waters of the U.S." that are truly "*minimal*" in nature both *individually and cumulatively*. In return, those projects that meet the terms and conditions of the NWPs receive either no review or expedited review from the Corps, and little if any, review by the resource agencies.

The determination of "minimal adverse environmental effects" has *never* been based on a rigorous analysis of the cumulative effects of the program on the aquatic environment. In fact, in the early 2000's Corps Headquarters, under pressure from the scientific and environmental communities initiated a Programmatic Environmental Impact Statement (PEIS) but failed to ever produce a final document.

The Council of Environmental Quality (1999) begins their discussion of the concept of cumulative impacts with the following observation, "Evidence is increasing that the most devastating environmental effects may result not from the direct effects of a particular action, but from the combination of individually minor effects of multiple actions over time." This statement is particularly pertinent to the impacts of the nationwide permit program on water quality and the aquatic environment. While each NWP authorization individually may have only minimal impacts on the aquatic environment, the synergistic interactions of historic losses of habitat, continued authorization of new losses or modifications of the aquatic environment through federal and non-federal actions, and a growing number of stressors (e.g. pollutants, invasive species, increases in impervious surfaces, etc.) is resulting in continued degradation of the aquatic environment. As stated earlier, the Corps has yet to demonstrate that any substantive assessment of the cumulative impacts of the NWP program has occurred at the national or regional level.

The application of discretionary authority is inconsistent amongst the three Regulatory Divisions within California:

Corps Headquarters continues their assertion the NWP program will have only "minimal impacts" individually and cumulatively on the aquatic environment based upon an overwhelming reliance on the

assertion of discretionary authority at the regional level by the District and Division Engineer. Included in this authority is the ability to revoke NWP where historic losses of waters of the U.S. are high.

Of great concern is the inconsistency with which the assertion of discretionary authority may be utilized to ensure impacts of the NWP program are in fact minimal in nature. Of the three regulatory divisions within California, the San Francisco District is the only district that has not revoked the use of any of the NWPs. The San Francisco District has prohibited the use of a portion of NWP 12 that would authorize the construction of substations, as the District has presumed a substation could be situated in uplands and not in waters of the U.S. Despite the tremendous development pressure within the San Francisco Bay Area and areas adjacent, and despite the historic losses of wetlands within the region, no NWP has been revoked within the geographic boundaries of the San Francisco District.

This is in glaring contrast to the regional conditions proposed by the Sacramento and Los Angeles Districts. The Sacramento District has proposed revoking:

1. NWPs 29 and 39 are revoked for activities located in the Primary or Secondary Zone of the Legal Delta.
2. 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 for all activities located in the Mather Core Recovery Area in Sacramento County, as identified in the U.S. Fish and Wildlife Service's *Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* dated December 15, 2005.
3. All NWPs except 3, 6, 20, 27, 32, and 38 are revoked for activities in histosols, fens, bogs and peatlands and in wetlands contiguous with fens. 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. For NWPs 3, 6, 20, 27, 32 and 38, see Regional Condition B(2).\

The Los Angeles District has proposed revoking:

1. Nationwide Permits (NWP) 3, 7, 12-15, 17-19, 21, 23, 25, 29, 35, 36, or 39-46, 48-52, A and B *cannot be used to authorize structures, work, and/or the discharge of dredged or fill material* that would result in the "loss" of wetlands, mudflats, vegetated shallows or riffle and pool complexes as defined at 40 CFR Part 230.40-45. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program. Furthermore, this regional condition applies only within the State of Arizona and within the Mojave and Sonoran (Colorado) desert regions of California. The desert regions in California are limited to four USGS Hydrologic Unit Code (HUC) accounting units (Lower Colorado -150301, Northern Mojave-180902, Southern Mojave-181001, and Salton Sea-181002). [emphasis added]
2. Individual Permits shall be required for all discharges of fill material in jurisdictional vernal pools, with the exception that discharges for the purpose of restoration, enhancement, management or scientific study of vernal pools may be authorized under NWPs 5, 6, and 27 with the submission of a PCN in accordance with General Condition 32 and Regional Condition 3.
3. Individual Permits (Standard Individual Permit or 404 Letter of Permission) shall be required in San Luis Obispo Creek and Santa Rosa Creek in San Luis Obispo County for bank stabilization projects, and in Gaviota Creek, Mission Creek and Carpinteria Creek in Santa Barbara County for bank stabilization projects and grade control structures.

4. In conjunction with the Los Angeles District's Special Area Management Plans (SAMPs) for the San Diego Creek Watershed and San Juan Creek/Western San Mateo Creek Watersheds in Orange County, California, the Corps' Division Engineer, through his discretionary authority *has revoked the use of the following 26 selected NWP's within these SAMP watersheds: 03, 07, 12, 13, 14, 16, 17, 18, 19, 21, 25, 27, 29, 31, 33, 39, 40, 41, 42, 43, 44, 46, 49, 50, A and B.* Consequently, *these NWP's are no longer available in those watersheds to authorize impacts to waters of the United States from discharges of dredged or fill material under the Corps' Clean Water Act section 404 authority.*

In addition to these revocations, both Sacramento and Los Angeles Districts have placed restrictions on the areal extent authorized by some of the NWP's.

The Sacramento District has placed the following limitations on NWP's:

- 9. NWP's 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 relocation would result in a net increase in aquatic resource functions and services.
- 10. 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.

The Los Angeles District has placed the following limitations on NWP's:

- 6. Within the Murrieta Creek and Temecula Creek Watersheds in Riverside County the use of NWP's 29, 39, 42 and 43, and NWP 14 combined with any of those NWP's shall be restricted. The permanent impact or loss of stream bed plus any other losses of jurisdictional wetlands and non-wetland waters of the U.S. caused by the NWP activity *cannot exceed 0.25 acre*. The definition of "loss" for this regional condition is the same as the definition of "loss of waters of the United States" used for the Nationwide Permit Program.

We are strongly opposed to the implementation of the NWP program as proposed. Unfortunately, it is likely Corps Headquarters will reauthorize the NWP program with few if any positive modifications. It is therefore, imperative the San Francisco District provide strong regional conditions that will ensure within the District that the NWP authorizations individually and *cumulatively* will not result in more than minimal adverse impacts. Since the San Francisco District does not have adequate information to assess the degree to which past authorizations (general, individual, etc.) have impacted district watersheds, or the degree to which any compensatory mitigation may have or have not replaced lost functions and values, it is crucial that strong and consistent limits be placed on the impacts that will be authorized through use of NWP's and that the NWP's are revoked in habitats that are known to have suffered significant losses or are difficult to recreate (not just physically but functionally as well).

The regional conditions proposed by the San Francisco District are inadequate and the adverse effects of the NWP program will result in impacts to the environment that are individually and cumulatively more than minimal.

A. General Regional Conditions that apply to all NWP's in the Sacramento, San Francisco, and Los Angeles District:

1. Pre-construction notification (PCN) – This regional condition identifies the documentation required for any PCN - a process of Corps review triggered by any NWP activity that has the potential for more than minimal impacts. The requirements should be amended to require the applicant not only provide evidence of avoidance and minimization, but also discuss the direct and indirect impacts of the proposed project, as well as the cumulative impacts of the project (in consideration of other fill placed in waters of the U.S. within the vicinity of their project).

2. PCN requirement for activities located within Essential Fish Habitat – please see comments below

4. Other NEPA lead – The proposed regional condition should clarify that for project locations that support endangered species, essential fish habitat, or historic properties, **NWP authorization must not be assumed by the project proponent until compliance** with the Endangered Species Act (ESA) of 1973, the Magnuson-Stevens Fishery Conservation and Management Act (EFH – essential fish habitat), and/or the National Historic Preservation Act (NHPA) of 1966 **has been determined and confirmation that the project is compliant is received in writing.**

5. Fish passage – The language of this regional condition is confusing. We suggest the words, “...unless determined to be impracticable by the Corps...” be deleted. We urge the Corps to adopt the following changes due to the cumulative impacts of road crossings, bank stabilization projects, flood control vegetation removal, dams, etc. on the accessibility and viability of spawning grounds of federally listed fish species. Situations described under the original language would likely result in more than minimal impacts and should be reviewed through the individual permit process:

For all activities in waters of the U.S. that are suitable habitat for Federally listed fish species, all road crossings shall be designed to ensure that the passage and/or spawning fish is not hindered. In these areas, the permittee shall employ bridge designs that span the stream or river...~~unless determined to be impracticable by the Corps.~~ it can be **confirmed by the National Marine Fishery Service (NMFS) demonstrated** that the **proposed design will not adversely impact a Federally listed fish species.**

6. Compensatory Mitigation – The use of compensatory mitigation to buy down the adverse impacts of a project does not comply with the 404 (b)(1) Guidelines (40 CFR 230) that require, for non-water dependent projects, a strict sequence of avoidance and minimization occurs prior to any consideration of compensatory mitigation. If the impacts of an individual project are not minimal without the inclusion of compensatory mitigation, the project should be subject to the individual permit process, and the public should be able to review and comment on the project and any proposed compensatory mitigation. Furthermore, categories of activities (i.e. NWPs) that include a requirement for compensatory mitigation to buy-down adverse impacts to a minimal level should not qualify as a general permit.

Failing compliance with the requirement of general permits, we support the District’s regional condition that states “mitigation that is required by special condition to the permitted activity shall be completed before or concurrent with commencement of construction of the authorized activity...” but believe the words ~~“except when specifically determined to be impracticable by the Corps”~~ should be deleted.

Numerous studies, beginning with the National Research Council's 1992¹ "Restoration of Aquatic Ecosystems," 2001 "Compensating for Wetland Losses Under the Clean Water Act"² and the State Water Resources Control Board's (SWRCB's) study by Ambrose et al.³, recognize the failure of compensatory mitigation wetlands in fully replicating the functions of natural wetlands.

Issues raised echo those identified in the Draft NWP's Programmatic Environmental Impact Statement (PEIS) prepared by the Institute for Water Resources (IWR)⁴:

- lack of proper identification of impacted wetland functions and values;
- inadequate consideration given to hydrologic conditions, geomorphology, ecologic landscape, etc.;
- type of compensatory mitigation is not specified (e.g. creation, restoration, etc.);
- database information is inadequate;
- little follow-up – i.e. compliance inspections are rare.
- long lag time between permit authorization (and fill in waters of the U.S.) and actual initiation of compensatory mitigation (if initiated at all)

Of the 89,857 permits issued in fiscal year 1998, it appears only 1321 permits were inspected for compliance. This figure represents a mere 1.5 % of all permitted activities.

A review of compensatory mitigation success conducted on behalf of the State Water Resources Control Board (Ambrose et al, 2007) revealed that while permittees for the most part comply with the compensatory mitigation requirements (one half to two thirds of the 143 files reviewed), and acreages of "wetlands" are produced, compensatory mitigation sites do not fully recapture lost functions and values of wetlands filled.

IWR estimated wetland compensatory mitigation success ranges from 30% to 90%. IWR has attempted to provide "Estimates of water resource abundance and the cumulative 100-year impact of NWP's assuming FY 1998 rates hold constant over the next century." Based upon this analysis acreage impacts for the NWP range from a negative impact (30% wetland mitigation success) of -464,240 acres to a positive impact of 232,600 acres (90% wetlands mitigation success). The figure of 90% wetlands mitigation success is unfounded. In fact (p.4-14) the PEIS concluded, "...More quantified assessment appears less encouraging, however, indicating a higher functional failure rate than the qualitative methods. Compensatory mitigation may not generate much more than 50% of the self-sustaining function expected program-wide, even for wetlands that have undergone substantial research." Based upon the incredibly low rate of permit compliance inspections, the actual figure of successful wetlands mitigation may be lower still. Therefore, **we strongly urge the District to require mitigation be successfully completed before project construction to ensure functions and values are in fact replaced and to avoid temporal losses of functions and values.**

¹ National Research Council. *Restoration of Aquatic Ecosystems: Science, Technology, and Public Policy*. Washington, DC: The National Academies Press, 1992. doi:10.17226/1807.

² National Research Council (NRC). 2001. *Compensating for Wetland Losses Under the Clean Water Act*. National Academy Press, Washington D.C.

³ Ambrose, R.F., J.C. Callaway, S.F. Lee. 2007. *An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Water Resources Control Board, 1991-2002*. Prepared for the State of California Environmental Protection Agency, California State Water Resources Control Board.

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Kihslinger⁵, reviewed recent literature regarding wetlands compensatory mitigation compliance and success and concluded:

Although wetland mitigation accounts for a significant annual investment in habitat restoration and protection, *it has not, to date, proven to be a reliable conservation tool*. Despite the nationwide "no net loss" goal, *the federal compensatory mitigation program may currently lead to a net loss in wetlands acres and function*. On the high end, Turner and colleagues (2001) estimated that the §404 program may lead to an 80% loss in acres and functions. [emphasis added]

Her review of the existing literature revealed:

Studies of the ecological performance of compensatory mitigation have shown that compensatory wetland projects fail to replace lost wetland acres and functions even more often than they fail in their administrative performance. In fact, permit compliance has been shown to be a poor indicator of whether or not mitigation projects are adequately replacing the appropriate habitat types and ecological functions of wetlands.

...In addition to not meeting acreage requirements, mitigation wetlands often do not replace the functions and types of wetlands destroyed due to permitted impacts. *Turner and colleagues (2001) found that an average of only 21% of mitigation sites met various tests of ecological equivalency to lost wetlands*. Two recent studies compared mitigation sites to *impact sites*. One found that only 17% of the sites evaluated successfully replaced lost functions (Mink and Ladd 2003). The other study determined that 29% of the sites were successful in this regard (Ambrose and Lee 2004). The former study also found that 50% of the mitigation sites evaluated were actually non-jurisdictional riparian and upland habitat. Four studies comparing mitigation sites to *reference wetlands* found that fewer than 50% of the sites evaluated were considered ecologically successful (Ambrose et al. 2006 - 19%; Johnson et al. 2002 - 46%; MDEQ 2001 - 22%; Sudol and Ambrose 2002 - 16%). Ambrose and colleagues' statewide study of 143 permit files in California found that 27% of the constructed mitigation did not even meet the jurisdictional definition of a wetland (Ambrose et al. 2006). [emphasis added]

As mentioned above, a critical concern with compensatory mitigation of all types (including the use of mitigation banks), is the loss of local wetland functions and values and a reduction in the biodiversity of wetland types. Clare et al.⁶ observed:

The idea that a constructed wetland that visually resembles a natural wetland is adequate compensation ignores that wetlands grow and develop according to a myriad of highly variable inputs over time, including stochastic weather, random arrival events of species, competition, surface and groundwater interactions, and many others. The fluctuations and interactions of wetland ecosystems are more akin to human metabolism than they are to an automotive engine, with dynamic interacting components such as wetland soils, hydrologic regimes, riparian zones, and

⁵ Kihslinger, Rebecca. 2008. Success of Wetland Mitigation Projects. National Wetlands Newsletter Vol. 30, No. 2: 14-16

⁶ Clare, Shari, Naomi Krogman, Lee Fotte, Nathan Lemphers. 2011. Where is the avoidance in the implementation of wetland law and policy? Wetlands Ecological Manage 19: 165-182

water chemistry that are linked to their surroundings. Constructed wetlands must grow, mature, and evolve, often requiring decades to centuries to stabilize and broadly resemble naturally occurring wetlands. Such time frames are rarely considered in the price of compensation.

Despite the complexity of wetland ecosystems, optimistic and naive land developers, economists, engineers, and policy makers often argue for compensation over avoidance, confident in the notion that constructed wetlands can adequately replace the values and functions of a natural wetland. *The lack of focus on wetland avoidance allows for engineered compensatory wetlands to receive more political and economic value than their natural counterparts, as they provide decision-makers the options, flexibility, and negotiation room beyond a hard and fast requirement to relocate the proposed development to a nonwetland site.* The premise of compensatory offset wetland policies is that habitat loss can be mitigated through the creation or restoration of habitat that is equivalent to that which was lost. The challenges associated with measuring, let alone reproducing, the full suite of ecological, social, and economic values and functions of a natural wetland makes the reliance on this policy approach untenable in all cases, *and highlights the need to give greater consideration to avoidance in the mitigation sequence.* [emphasis added]

Based upon the information presented above, the fact that compensatory mitigation is required does not ensure that functions and values of waters of the U.S. will, in fact, be replaced. Therefore we urge the San Francisco District to require that compensatory mitigation be performed in advance of proposed project impacts.

Prohibit the use of "in lieu fee" mitigation. Use of "in lieu fee" mitigation does not ensure "no net loss of wetlands," at best it may provide some protection for existing wetland areas. The use of "in lieu fee" mitigation may provide a disincentive to avoid or minimize adverse impacts to the aquatic environment if the Corps were to accept the use of "in lieu fee" mitigation without first requiring, even for NWP, rigorous application of sequencing – avoidance and minimization before compensatory mitigation.

This type of mitigation, in the absence of strict compliance with sequencing, and without meaningful resource agency and public review and comment, is not consistent with the goals of the Clean Water Act of "restoring and maintaining the chemical, physical and biological integrity of the Nation's waters." Furthermore, a General Accounting Office (GAO) study "Wetlands Protection – Assessment Needed to Determine Effectiveness of In-Lieu-Fee Mitigation", dated May 2001⁷, states:

The extent to which the in-lieu-fee option has achieved its purpose of mitigating adverse impacts to wetlands is uncertain. While Corps officials in 11 of 17 districts with the in-lieu-fee options told us the number of wetland acres restored, enhanced, created, or preserved by in-lieu-fee organizations equaled or exceeded the number of wetland acres adversely affected, data submitted by over half those districts did not support these claims.

We urge the San Francisco District to not accept "in lieu fee" mitigation for buying down the adverse impacts of nationwide permits.

⁷ General Office of Accounting (GAO). May 2001. Report to Congressional Requestors, Wetlands Protection Assessments Needed to Determine Effectiveness of In-Lieu-Fee. United States General Accounting Office, Washington D.C.

6. Description of information that must be provided by an applicant seeking a waiver of 300 linear foot restriction for intermittent and ephemeral streams for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, 52 and B to waive the 500 linear foot limitation for NWP 13 (bank stabilization) - The Corps proposes to require that applicants requesting a waiver of the linear foot restrictions provide additional information pertaining to existing conditions, direct and indirect impacts, and cumulative impacts in the watershed. However, the emphasis of the information to be analyzed appears to continue to focus more on the discrete impacts of a particular project rather than on the substantive analysis of whether cumulative impacts within a watershed indicate the linear foot restriction should be enforced, or in fact the use of these NWPs should be revoked, as has been done in the Sacramento and Los Angeles Districts.

It is unclear how the decision process would be applied in practice. What are the factors the Corps will rely upon to determine when to waive the 300 linear foot restriction? The burden is placed upon the Corps to demonstrate that fills exceeding 300 linear feet are more than minimal, with reduced resource agency input, within a limited period of time, and without the benefit public input. Also, there is absolutely no assurance the review will be substantive and that required documentation will be more than a mere checklist where Corps staff will check "yes" or "no."

Review of the District's 2007 NWP decision documents [that is the last set of decision documents currently available to the public] sheds little light on the cumulative impacts of the four NWPs on watersheds within the District boundaries. We are merely provided an estimate of the number of times NWPs, e.g. NWP 13 (bank stabilization) may be used per year and an estimate of the linear footage and acreage of impacts.

Levick et al (2008)⁸ note that ephemeral and intermittent streams comprise "over 81% of all streams in the arid and semi-arid southwest (Arizona, New Mexico, Nevada, Utah, Colorado and California)" according to the U.S. Geological Survey National Hydrography Dataset.

The authors affirm the importance of ephemeral and intermittent streams:

Ephemeral and intermittent streams *are the defining characteristics* of many watersheds in dry, arid and semi-arid regions, and *serve a critical role* in the protection and maintenance of water resources, human health, and the environment...

...highlighting *their importance* in maintaining water quality, overall watershed health, and provisioning of the essential human and biological requirements of clean water.

...Ephemeral and intermittent streams are *integral parts of a watershed, and their condition affects the health of the entire ecosystem*. Healthy ecosystems perform a diverse array of functions that provide goods and services to society. [emphasis added]

Regarding cumulative impacts the authors caution, "Individual ephemeral or intermittent stream segments *should not be examined in isolation*. Given their vast extent and the accumulation of impacts to them over

⁸ Levick, L., J. Fonseca, D. Goodrich, M. Hernandez, D. Semmens, J. Stromberg, R. Leidy, M. Scianni, D. P. Guertin, M. Tluczek, and W. Kepner. 2008. The Ecological and Hydrological Significance of Ephemeral and Intermittent Streams in the Arid and Semi-arid American Southwest. U.S. Environmental Protection Agency and USDA/ARS Southwest Watershed Research Center, EPA/600/R-08/134, ARS/233046, 116 pp.

large areas in the rapidly developing southwest, a landscape or watershed-scale approach should be employed that considers the cumulative effects on overall watershed function.” [emphasis added]

In the absence of meaningful data on the cumulative impacts of the Regulatory Program on stream courses (hence watersheds) within the District, there can be no provision for not asserting discretionary authority in this matter. Previous versions of NWP 26 alone were responsible for the filling of hundreds of miles of local stream courses. Not to mention the added negative impacts of using multiple NWPs (bank stabilization, road crossings, outfall structures, etc.) for projects. The resulting increase in the percentage of impervious surfaces in the upper reaches of watersheds has significant negative ramifications for downstream water quality. Filling of miles of these headwater areas is also responsible for local extinctions of rare, threatened or endangered species of water-dependent organisms.

The District should adhere to strict restrictions of authorizing no more than 300 linear feet of stream impacts for the NWPs listed above. Failing that, the District must **substantively** analyze the cumulative effects of the NWP program on watersheds within its boundaries before considering waiving restrictions on the linear footage that can be authorized by NWPs.

General Regional Conditions that apply to all NWPs in the San Francisco District:

1. Specific NWPs are not authorized in Diked Baylands/Historic Baylands:

The General Regional Conditions should clarify that in addition to NWPs 29 (Residential Developments) and 39 (Commercial and Institutional Developments), the use of **NWP authorization is prohibited in diked baylands for NWP 40 (Agricultural Activities), NWP 41(Reshaping Existing Drainage Ditches), NWP 42 (Recreational Facilities), NWP 43 (Stormwater Management Facilities), NWP 44 (Mining Activities) and NWP 51 (Land-Based Renewable Energy Generation Facilities)**. The NWP regulations clearly state for each of these NWPs, “This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.”

The PN defines San Francisco Bay diked baylands as:

...undeveloped areas currently *behind levees that are within the historic margin of the Bay*. Diked historic baylands are those areas on the Nichols and Write map below the 5-foot contour line, National Geodetic Vertical Datum (NGVD) (see Nichols, D.R. and N.A. Wright. 1971. Preliminary map of historic margins of marshland, San Francisco Bay, California. U.S. Geological Survey Open File Map). [emphasis added]

According to 33 CFR 328.3 (c) “The term adjacent means bordering, contiguous, or neighboring. Wetlands *separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are adjacent wetlands.*” [emphasis added]

By this definition, diked baylands and the non-tidal wetlands that occur within them are “adjacent” to San Francisco Bay, a “tidal” water. These lands have a topographic connection to San Francisco Bay because they lie within the historic tidal shorelines and bay margins. Ecological connections exist as well (e.g. use of wetlands on either side of levees by endangered species such as the salt marsh harvest mouse, nesting waterbirds, etc.) and are documented in the scientific literature (e.g. see Goals Project, 1999, Southern Pacific Shorebird Conservation Plan, 2003). Such ecological connections are also confirmed by the recommendations of the Draft Tidal Marsh Ecosystem Recovery Plan (2010) and the California Climate Adaptation Strategy (2009) that diked baylands (i.e. low-lying lands adjacent to the bay) may provide

important escape habitat for tidal marsh species as sea level rises. Hydrological connections often exist through shallow subsurface connections, overtopping, piping, and normal seepage. Lastly and most importantly the San Francisco District has an overwhelming precedent of asserting jurisdiction over diked baylands based upon their adjacency to San Francisco Bay, a traditional navigable water (that is also tidal).

The San Francisco District has proposed under General Regional Condition 1 that activities occurring within diked baylands may be authorized through the NWP Pre-construction notification process (PCN). **This proposed regional condition is not within the discretion of the District Engineer for the NWPs listed above.** The Proposal to Reissue and Modify Nationwide Permits, published June 1, 2016, emphatically states, “Corps regional conditions can only be *more restrictive* than the original NWP terms and conditions.” [emphasis added] As we have indicated above, the terms of these particular NWPs state that their use is prohibited in “non-tidal wetlands adjacent to tidal waters.” **Therefore, the San Francisco District must clarify, that while notification to the Corps is required for other NWP activities, individual permits are required for the activities described in NWPs 29, 39, 40, 41, 42, 43, 44, and 51 within diked baylands.**

2. Prohibit the use of all NWPs in jurisdictional vernal pools. Vernal pools in California have suffered high historic losses. Successful compensatory mitigation (structural) for this habitat type is not always achieved. In addition, much is still unknown about the biological requirements of vernal pool plant and animal communities, making it difficult to determine if compensatory mitigation successfully restores lost functions and values. It cannot be assumed that the NWP program would have minimal adverse effects for this habitat type. This request is not without precedent as the Los Angeles District has proposed a similar ban on the use of NWPs in jurisdictional vernal pools within its district boundaries.

The San Francisco District has identified the severity of vernal pool losses in the Santa Rosa Plain:

During the past 40 years, the Santa Rosa Plain has been transformed from an area which was a rural residential, agricultural area with large expanses of open space to a more urbanized and intensely agricultural area with less open space. This change in land use has **resulted in a substantial loss of seasonal wetland habitat, especially vernal pools. This loss of seasonal wetlands has become so severe that several plant species which are adapted to live in vernal pools in the Santa Rosa Plain have been listed as federally protected endangered species by the US Fish and Wildlife Service.** These endangered plant species are: Sonoma sunshine (*Blennosperma bakeri*), Burke's goldfields (*Lasthenia burkei*), Sebastopol meadowfoam (*Limnanthes vinculans*), and Many-flowered navarretia (*Navarretia leucociphala* spp. *plieantha*). Also, the Sonoma County population segment of the California Tiger Salamander (*Ambystoma californiense*) is listed as federally endangered. (emphasis added)

The fact that the San Francisco District has not restricted the use of NWPs in vernal pools within the Santa Rosa Plain points to the inconsistencies that can arise in the heavy reliance of the use of discretionary authority to ensure impacts of the NWP program are minimal. As stated earlier, both the Sacramento and Los Angeles districts have revoked the use of NWPs in certain regions of high losses of vernal pool habitat. Given the severity of the problem of vernal pool loss in the Santa Rosa Plain, we continue to urge the Corps to prohibit the loss of NWPs in the Santa Rosa Plain and in other jurisdictional vernal pools within the district.

3. Revoke the use of NWPs in identified recovery units or critical habitat, essential fish habitat (EFH) and eelgrass beds. The San Francisco District has proposed the requirement of PCNs for all NWPs in areas that

support EFH and eel grass beds, however this general condition is inadequate. The District must acknowledge that certain habitats are sufficiently rare and difficult to recreate (not just physically, but also in terms of replacement of lost functions and values) that the use of NWP in those habitats (e.g. eelgrass beds and spawning streams for salmonids) will result in environmental harm. Authorization of NWPs in these habitats would be inconsistent with the requirement of minimal adverse impacts to water quality and the aquatic environment. For example salmonid spawning habitat has suffered high historic losses within California and within the boundaries of the San Francisco District, resulting in the federal listing of several salmonids.

According to the Subtidal Goals Project (2010), known occurrences eelgrass beds “comprise only 1% of the total estuarine area.” Though it represents a small percentage of the available estuarine habitat, eelgrass bed habitat is significant as “eelgrass transforms unstructured shallow-water areas into physically structured habitat that can support a wide variety of organisms,” and “have a higher abundance, biomass, and productivity of consumer organisms than do unstructured habitats.” This habitat is extremely sensitive to increases in turbidity caused by wind waves, boat wakes, dredging, and increased wave action generated by reflection of waves off of hardened shorelines. Eelgrass beds are also physically disturbed by dredging and wave action. Due to its limited distribution and sensitivity to disturbance the use of NWPs should be revoked in eelgrass beds.

The following should be added as general conditions within the San Francisco District:

The use of NWPs for the placement of above grade fills must be revoked within the 100-year floodplain.

General Condition 10 perpetuates NWP authorization for above grade fills within the 100-year floodplain. The NWP language simply states, “The activity must comply with any applicable FEMA-approved state or local floodplain management requirements.” There doesn’t even appear to be a requirement for pre-construction notification (PCN) for above grade fills proposed within the 100-year floodplain.

The NWP process will not provide adequate scrutiny to ensure no more than minimal adverse impacts individually or cumulatively will occur. The NWP program has long been regarded as a “rubber stamp” process. Staff has little time to review the proposed project and the resource agencies have an even more limited time frame for review. This provides little assurance that the levels of scrutiny given these permit requests will be adequate.

It is unclear whether the 100-year floodplain has been mapped or updated for all areas within the District, therefore the Corps may not be able to rely upon FEMA, and state, or local floodplain management requirements to ensure public safety or to determine that adverse impacts to the aquatic environment will be minimized.

Waters of the U.S. located within the 100-year floodplain provide important functions and values such as flood storage, groundwater recharge, erosion control, water quality improvement, fish and wildlife habitat, endangered species habitat, etc. It is critical that land altering activities in floodplains be subject to thorough design considerations, alternatives analysis, cumulative impacts review, growth inducement considerations, and agency and public review and comment.

The 2009 California Climate Adaptation Strategy reports that “Currently, over 260,000 Californians live in areas designated as at-risk in a 100-year flood event (a one percent change of occurring every year),” and that “What we currently define to be the 100-year flood today will occur much more frequently as sea level

rises; therefore, the number of people exposed to risks from the 100-year floods will increase substantially as a result of sea-level rise in coming decades.” Furthermore,

Studies indicate that a 1.4 m (~5 feet) rise in the level of the San Francisco Bay by 2100 would place 33 percent more land at risk from flood-related inundation that is at risk today. Without accounting for future growth and land use change, the amount of developed land at risk in the Bay area could more than double from current levels by the end of the century. A majority of the structures at risk in that region are designated as residential property. The initial estimates of development in San Francisco Bay in 2100 indicate that over \$62 billion worth of building and contents could be at risk.

Brody et al (2007)⁹ studied the rising costs of flood damage in Florida and concluded:

Altering or removing a wetland in order to construct a parking lot, road, or building reduces the local wetland capacity to capture, store, and slowly release water runoff, exacerbating local flooding. Our study estimates that one wetland permit increased the average cost of each flood in Florida by \$989.62. Since each county had issued 407 such permits on average, they had on average increased the property damage each later flood would cause by \$402,465.29. This wetland permit effect equates to, on average, \$563,451 of flood damage per county per year, and an average of \$30,426,354 per year for all of Florida.

Currently, these costs are not born by the project proponent, but by the community:

...the economic burden resulting from altering a naturally occurring wetland should be borne by the individual permit applicant rather than the community at large. To fully internalize what is currently an externality, planning organizations ought to consider setting the acquisition costs of a wetland permit at an appropriate level (in our case at \$989.62). Increasing the cost of acquiring a permit, and perhaps charging to maintain it, will reduce the attractiveness of altering wetlands in the first place. The majority of permits issued by the ACOE, including letters of permission, nationwide, and general permits, have no fee. Individual permits cost only \$10 for individuals and \$100 for commercial projects (for a more detailed explanation of permit types, see Highfield & Brody, 2006). Only 14.7% of the federal permits we included in our study are individual permits.

The use of NWP 29 and 39 must be revoked within the 100-year flood plain. Due to concerns regarding increased flood risk due to sea level rise, issues of public safety, the future economic burden resulting from the need to provide protection where sufficient flood control does not currently exist or from property damage resulting from flooding, etc. NWP 29 and 39 should be revoked within the 100-year flood plain. Authorization of residential, commercial and institutional developments, or stormwater management facilities within the 100-year flood plain should not occur in the absence of meaningful public review and comment.

Prohibit the use of NWP 12 (Utility Line Activities), 13 (Bank Stabilization), 14 (Linear Transportation Projects), 18 (Minor Discharges), 29 (Residential Developments), 39 (Commercial and Institutional

⁹Brody, S.D., S. Zahran, P. Maghelal, H. Grover, and W.E. Highfield. 2007. The Rising Costs of Floods: Examining the Impact of Planning and Development Decisions on Property Damage in Florida. *Journal of the American Planning Association*, Vol. 73, No. 3. pp. 330-345

Developments), 40 (Agricultural Activities), 41 (Reshaping Existing Drainage Ditches), 42 (Recreational Facilities), 43 (Stormwater Management Facilities), and 44 (Mining Activities) within wetlands adjacent to perennial streams and wetlands with woody vegetation adjacent to any stream course. California has lost between 90 and 95% of its riparian habitat. Surrounding, and impinging development have degraded much of the remaining habitat. While most development proposals may not fill all riparian wetlands within a project site, fragmentation of the habitat occurs when fill is placed to allow golf course play or road crossings across this habitat. This fragmentation severely degrades the wildlife values of the riparian wetlands. Corps guidance clearly indicates that in habitats or geographic areas where historic losses are high the NWP's may be revoked.

Require that compensatory mitigation be provided for all unavoidable impacts to "waters of the U.S." Compensatory mitigation must be reviewed and approved by the Corps and resource agencies in advance of NWP issuance and must be submitted in the form of a detailed mitigation and monitoring plan with enforceable conditions. The Corps must commit to providing the resources necessary to conduct compliance inspections and to ensure any required compensatory mitigation is successfully completed by the project proponent.

Revoke the proposal that riparian mitigation may be the only compensatory mitigation required for projects in or near streams or other areas next to open waters. There is great potential for misuse if this proposal is incorporated in the NWP program. The lack of specific guidelines for what constitutes "riparian areas" could allow things such as landscaping (with "native species") adjacent to golf course tees, fairways, and greens to be considered as mitigation for impacts to waters of the U.S. The incorporation of the language proposed in the NWP program is yet another indication the Corps NWP program provides rubber stamp authorization in place of the careful review of functions and values lost, the relative occurrence of the aquatic habitat to be impacted (how common or uncommon is it), the degree of success that has been demonstrated in recreating the habitat to be impacted, and the appropriateness of the mitigation proposed to offset the adverse impacts of the proposed project. This language if not revoked will provide an easy out for developers rather than providing a disincentive to impact waters of the U.S.

To avoid piece-mealing of impacts to "waters of the U.S." and to be consistent with the requirements of avoidance and minimization as required by the Guidelines NWP's 3 (Maintenance), 12 (Utility Line Projects), 13 (Bank Stabilization), 14 (Linear Transportation Projects), 42 (Recreational Facilities), and 48 (Commercial Shellfish Aquaculture Activities) should not be used to expand previously permitted projects. If the District does proceed with authorization of "expansion" projects mentioned in these NWP's, the total amount of impact in waters of the U.S. including both previous and proposed impacts, should not exceed the amount currently authorized by the NWP under which authorization will be granted and the applicant should be required to document the total amount of past and proposed impacts and Corps staff should be required to confirm the amount of waters of the U.S. impacted.

Prohibit the use of riprap in areas adjacent to endangered species populations, refuges, special aquatic sites, and wetland areas that support woody vegetation. Riprap provides shelter for non-native predators of endangered species, fragments riparian habitat, and can displace important aquatic plant communities, therefore placement of riprap in these areas is inconsistent with the minimal impacts criteria, especially given the proposal to allow discretionary waiver of compensatory mitigation.

Require the applicant delineate the limits of the authorized activity prior to initiation of construction:

We urge the San Francisco District to adopt a general condition proposed by the Sacramento District:

Unless determined to be not practicable or necessary by the Corps, 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).

General condition regarding temporary access and construction activities resulting in temporary fill in waters of the U.S.:

We urge the San Francisco District to incorporate a general condition proposed by the Sacramento District regarding the use of temporary fills:

- a. For temporary fills within waters of the U.S. supporting fisheries, spawning quality gravel shall be used, where appropriate, as determined by the Corps, after consultation with appropriate Federal and state fish and wildlife agencies;
- b. Prior to placing temporary fill in waters of the U.S., place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing bottom elevation of the waters temporarily filled during construction; 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.

Provide information regarding the specific NWP authorizations in the published quarterly report such as NWP(s) utilized, acreage and linear footage of impact, mitigation required - yes/no, type of activity authorized, type of water impacted and watershed location. We requested this information be provided during the last NWP program renewal. This information is still not available on the District website; in fact no permit information is available online from the period 2008 to 2016. No information is provided regarding NWP authorizations. The Corps is supposed to be tracking the water bodies in which it is authorizing the placement of dredged or fill materials, the amount of fill (acreage and linear feet), the extent to which compensatory mitigation (if required) has been successfully completed, etc. in order to assess cumulative impacts. The information provided on the Corps website raises serious questions about the extent to which this is being tracked.

Publish pre-construction notifications (PCNs) on the District website for public information.

We understand that preconstruction notifications are not subject to public comment, but if the Corps is not going to provide information summarizing the use of NWPs and their cumulative impacts to waters of the U.S., the public at least can note the types of activities that are being reviewed through the PCN process.

The San Francisco District should revoke NWPs 21 (Surface Coal Mining Operations), 34 (Cranberry Production Activities), 49 (Coal Remining Activities), and 50 (Underground Coal Mining) as these NWPs would not be utilized within the district.

In addition to the regional conditions proposed by the San Francisco District, incorporate these regional conditions to ensure the adverse individual and cumulative effects of the NWP program are reduced to a minimal level for this region.

NWP 3 (Maintenance) - REVOKE modifications (a) and (b) or at minimum:

- **Prohibit the addition of new riprap.** The District has not proposed to place any restriction on the amount (volume) of additional riprap “to protect the structure” authorized by this NWP. The interpretation of “maintenance” within the confines of NWP 3 has always referred to the replacement of currently serviceable structures. We do not believe it is appropriate to confuse the issue by incorporating new work into the terms of this NWP. Furthermore, scouring adjacent to a structure may indicate that it was improperly sized, located or installed. Further review of the structure should be required - simply throwing additional riprap at the problem does not seem an appropriate remedy. This is also counter to the intent of the NWP program in that it encourages rather than minimizes impacts to “waters of the U.S.” Lastly, the proposed modification does not consider the adverse impacts that will inevitably arise upstream or downstream of the added riprap.
- **Prohibit the amount of “removal of accumulated sediments and debris in the vicinity of the existing structures” to no more than 25 cubic yards and prohibit the use of this provision in eelgrass beds, other special aquatic sites, and jurisdictional riparian habitat.** The language of this NWP suggests that maintenance dredging could extend more than 200 feet – “This 200 linear foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associate with outfall and intake structures.”

What does this mean? Is maintenance dredging to be limited to the immediate vicinity of the outfall or intake structure or is it more expansive?

Clarification should be provided. NWP 19 (Minor Dredging) authorizes no more than 25 cubic yards of dredging implying dredging in excess of that amount would be “more than minimal.” If more than 25 cubic yards of dredging is required, the structure has likely not been “maintained” as a “currently serviceable structure” and an individual permit authorization should be required.

- **The District should require submittal of documentation post-construction and prior to the next high flow season to demonstrate the temporary fills have been removed from the stream channel and the channel bed has been returned to pre-construction elevations.**
- **We support the District’s guidance that to the extent practicable disruption of the stream channel should be avoided.**

NWP 11 (Temporary Recreational Structures):

- **Alter proposed regional condition to prohibit use in riparian wetlands, vegetated shallows, or special aquatic sites.**
The District proposed requirement of notification is inadequate. Recreational structures that are “temporary” in nature do not need to be placed in areas of such high resource value.

NWP 12 (Utility Line Discharges):

Within the District, many utility lines are located in areas of high wildlife values (e.g. salt marsh harvest mouse and clapper rail habitat, riparian habitat, etc.). The proposed modifications of NWP 12 are

sufficiently broad that significant adverse impacts to the human and aquatic environment will likely occur; therefore we are recommending that the types of activities and geographic location in which these facilities may be located be severely restricted.

- **Prohibit use in identified recovery units, critical habitat and special aquatic sites.**
- **Adopt the condition proposed by the Sacramento District regarding separation of topsoil:**

For utility line trenches, during construction, the permittee shall remove and stockpile, separately, 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.

- **Prohibit side-casting of material into wetlands.**
- **Revoke the use of this NWP to on construct or expand substation facilities.** We fully support the district's position that utility line substations generally do not require being sited in waters or wetlands. This being the case, such construction would not meet the requirement of avoidance.
- **Limit total impacts of this NWP to 0.3 acres.**
- **Temporary impacts must be included in the calculation of impacts.** This NWP states "waters of the United States temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevations, are not included in the calculation of permanent loss of waters of the United States." Temporary impacts to waters of the U.S. can have more than minimal adverse effects. For example, exotic invasives (e.g. *Lepidium latifolium*) with little wildlife value can colonize areas that have been recently disturbed and lower the habitat value by excluding native species.
- **Require post-construction documentation be submitted demonstrating pre-construction contours have been restored and that the area has been successfully revegetated.** At minimum require submittal of plans for revegetation of the disturbed area, monitoring and removal of non-natives and especially non-native invasive species, and require submittal of documentation to demonstrate the disturbed areas have been restored to pre-disturbance conditions or better.

NWP 13 (Bank Stabilization):

- **Revoke the use of this NWP in special aquatic sites, instead of merely requiring notification. This NWP should not be authorized in areas supporting wetlands or riparian habitat (individual permit review should be required).**
- **Limit bank stabilization in streams to 200 linear feet and no more than 1 cubic yard per running foot.** The District must acknowledge the adverse impact of bank stabilization projects on natural stream processes and on habitat values, and recognize that the bank stabilization in one reach of stream can lead to destabilization of the stream opposite of the project and upstream and downstream of the area of impact. In addition this limitation should be effective regardless of the type of bank stabilization proposed.

The 2007 District decision document anticipated this NWP would be utilized approximately 40 times per year resulting in the loss of approximately 1,200 linear feet of channel bank and approximately 1 acre of jurisdictional area. Based upon this estimate, the average permit authorization would be no more than 30 linear feet and 1,089 square feet of area. Thus the proposed 500 linear foot restriction is excessive and should be reduced to a maximum of 200 linear feet. Furthermore, the District has failed to demonstrate that the use of the NWP for projects greater than 200 linear feet wouldn't result in more than minimal cumulative adverse impacts to the aquatic environment.

- **The Corps must require that the proposed site for disposal of excess material be identified by the project proponent.** Excess material should be disposed of at an upland site away from any wetlands or other waters of the U.S.
- **We support the district's proposal that the project proponent address the effect of the bank stabilization on the stability of the opposite side of the streambank and on adjacent properties upstream and downstream of the activity. The project proponent should be required to monitor these areas for at least two successive normal rainfall seasons to demonstrate the project is not adversely impacting surrounding areas through the deflection of flows.**
- **We strenuously object to the use of this NWP to expand existing bank stabilization.** This amounts to a piece-mealed review of impacts of bank stabilization. Furthermore, if previously authorized bank stabilization has proved ineffective, it would be inappropriate to review the bank stabilization design or impacts through a streamlined process. The fact that additional bank stabilization is required is indicative that more detailed consideration of the cause of the bank instability and most effective means of addressing that problem is necessary. Therefore, any proposal for an expansion of existing bank stabilization should require an individual permit.
- **For any bank stabilization considered under the auspices of this NWP, we strongly recommend the incorporation of the following language from the Sacramento District:**

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 bank stabilization activity that involves 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. The request to utilize non-vegetated techniques must include information on why the sole use of vegetated techniques to accomplish the bank stabilization activity is not practicable.

NWP 14 (Linear Transportation Projects):

- **Prohibit the construction of new linear transportation or spur projects.** The growth inducing potential for these types of projects clearly warrants a thorough alternative analysis and resource agency and public review and comment.

- **Prohibit the use of this NWP for use in identified critical habitats, recovery units, or special aquatic sites.** We have discussed earlier in this document why the use of NWPs in these habitats is inappropriate.
- **We fully support the district’s prohibition of the use of this NWP for the construction of new runways and taxiways.**
- **Reduce the impact threshold to 0.1 acres.** This acreage should be more than adequate. According to the 2007 District decision document [the last decision document available for public review] for this NWP, NWP 14 was anticipated to be used 35 times per year resulting in the loss of 450 linear feet and/or 1 acre of waters of the U.S. That would equal an average of 0.02 acres per use. Note this is for reporting nationwide authorizations only.
- **Restrict the linear footage of total stream course fill to 100 feet.** This is more than adequate based upon the information provided in the District decision document. In fact, a 100 linear foot restriction may be excessive based upon the 2007 District decision document.
- **Condition 3 should be modified** to clarify that if the NWP has been used to authorize previous project segments, **the total amount of impacts** (past authorizations and proposed) **cannot exceed the amount authorized by the use of this NWP (1/2 acre), to avoid piece-meal review of project impacts to waters of the U.S.**
- The last sentence of Condition 4 for NWP 14 “Bottomless and embedded culverts are encouraged over traditional culvert stream crossings”, should be modified to the language proposed by the Sacramento District:

Culverted crossings that do not utilize a bottomless arch culvert with a natural stream bed may be utilized for waters that do not contain suitable habitat for Federally-listed fish and wildlife species, if it can be demonstrated and is specifically determined by the Corps, that such crossing will result in no more than minor impacts to fish and wildlife or expected high flows.

NWP 18 (Minor Discharges): Prohibit the use of this NWP in special aquatic sites. Please refer to the discussion on proposed overall regional conditions above.

Oddly enough, the 2007 District decision document [the last decision document available to the public] does not provide a volume estimate for the anticipated use of this NWP. Instead the District estimates the NWP will be used 6 times per year with a loss of 30 linear feet of waters of the U.S. Based upon the information provided by the District, the use of this NWP should be restricted to discharges no more than 1/10-acre (0.1 acres) and should not be utilized in special aquatic sites.

NWP 23 (Approved Categorical Exclusions) - REVOKE:

- **Failing revocation, the district should implement all the regional conditions it has proposed AND impose a ½ acre limit, 300 linear foot limit, and 25 cubic yard limit.**

This NWP places no limit on the extent of impacts that can occur in waters of the U.S., and it relegates the responsibility of determining whether proposed activities will have a minimal impact on waters of

the U.S. to other agencies. If proposed activities are truly minimal in nature, they should be authorized by NWP's designed for the specific suites of activities that are proposed.

NWP 27 (Wetland and Riparian Restoration and Creation Activities):

- **Incorporate the regional condition of requiring preconstruction notifications (PCN), as proposed by the Sacramento District, under the following circumstances:**
 - a. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into perennial waters, wetlands, mudflats, vegetated shallows, riffle and pool complexes, sanctuaries and refuges or coral reefs; or
 - b. The restoration, establishment or enhancement activity would result in a discharge of dredged and/or fill material into greater than 0.10 acre or 100 linear feet of intermittent or ephemeral waters of the U.S.
- **Incorporate the requirement that the following documentation be provided with a PCN submittal as proposed by the Sacramento District:**

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.

The PCN submittal should also provide documentation to demonstrate that the proposed activities will not adversely impact existing wetlands functions, values, or areal extent.

- **Prohibit the use of this NWP for the creation of mitigation banks.**

We strongly object to the note that states this NWP can be utilized to authorize mitigation banks and in-lieu fee projects.

As the Corps is well aware, projects authorized under NWP benefit from expedited or no review, as long as the activities proposed in waters of the U.S. and navigable waters, meet the terms and conditions of the NWP. There is no opportunity for the public to provide comments to individual NWP authorizations, only to the overall program.

It might be possible, that any fills associated with the creation of a mitigation bank are individually minimal; however, while mitigation banks allow project proponents to purchase mitigation credits for wetland fill impacts that are supposed to be individually minimal, when viewed cumulatively they may have significant adverse impacts to the aquatic environment. Wetland mitigation banks do not ensure replacement of wetlands functions and values at the local level, e.g. flood desynchronization, endangered species habitat, etc., nor do mitigation banks ensure no net loss of wetlands; therefore, the creation of a mitigation bank cannot meet the requirements of a general permit, as the cumulative impacts cannot be considered minimal.

In addition, significant impacts to the aquatic environment also occur when mitigation banks fail.

If a mitigation bank fails, there is not only a loss in wetlands functions and values at the mitigation bank site, but any mitigation credits granted for wetland fill impacts would be of no value, resulting in losses of functions and values throughout the service area.

For the reasons elaborated, it is inappropriate to suggest mitigation banks may be authorized through the use of this NWP. The public must have an opportunity to review and provide comment on any wetlands mitigation bank or in-lieu fee program.

- **We strongly object the “reversion” language of the proposed NWP program. This should be revoked within the boundaries of the District. At the very least, preconstruction notification should be required and in any instance where “reversion” of wetlands occurs, the applicant should be required to provide documentation of the prior condition of the lands before reversion activities are commenced.** We are deeply concerned the proposed “reversion” language could facilitate further losses of functional wetlands. While the Corps has excluded prior converted croplands from regulation, and while it is true these areas might no longer “pond” water, many prior converted croplands still meet the Corps criteria of wetlands and retain wetlands functions and values (i.e. hydrologically they are saturated to the surface for the requisite period of time, but since they do not pond water, they have arbitrarily been exempted from wetlands regulation). We are therefore concerned that the reversion language in this NWP provides an additional loophole for landowners to convert areas still functioning as wetlands to uplands. A regional condition needs to be added that clarifies that the requirement to provide documentation of the “prior condition” of any site proposed for reversion activities, pertains to prior converted croplands as well.

The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit, this pertains to prior converted croplands.

Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition, this requirement pertains prior converted croplands.

- **Prohibit the "relocation of aquatic habitat types on the project site."** There is tremendous potential for abuse of this NWP by a developer who wishes to consolidate wetlands in one area of his property, under the auspices of “restoration,” to allow development of the site.
- **Limit the use of this NWP to 300 linear feet of stream or 0.5 acres of wetlands.**
- **Prohibit the use of riprap and armoring under this NWP.**
- **Require that the "wetland enhancement, restoration or creation agreement" is reviewed and approved by the Corps and other resource and regulatory agencies.**
- **Restrict the use of this NWP to federal and state agencies or to projects approved or sponsored by federal or state agencies.**

- **Require that the "wetland enhancement, restoration or creation agreement" have enforceable conditions.**

NWP 29 (Residential Developments) – REVOKE or at minimum:

- **Prohibit the use of this NWP in special aquatic sites, identified recovery units and critical habitat, and within the 100-year floodplain.**
- **Prohibit the use of this NWP for the construction of golf courses associated with residential developments.** Too many subdivisions with associated golf courses have been proposed in the past decade. Many of them were permitted under the previous NWP 26 resulting in the filling of hundreds of miles of bay area streams. Such developments are being proposed in the headwaters of many of our streams and involve massive cut and fill, given the instability of bay area slopes it is highly unlikely the amount of contouring involved in such developments will result in only minimal impacts. In addition, such projects have tremendous potential for significant adverse impacts to the human environment, including growth inducement, introduction of pollutants, etc.
- **Emphasize the requirement that documentation of avoidance and minimization must be provided.**
- **Require on-site compensatory mitigation for any unavoidable impacts.**

NWP 31 (Maintenance of Existing Flood Control Facilities) REVOKE or at minimum:

- **Failing revocation, the District must impose strict acreage, linear footage, and cubic yardage limits.** It is inconceivable that there should be no limits on the extent of impact authorized under this NWP. Just because a flood control facility was previously authorized does not automatically result in minimal impacts when that facility is maintained. For example, dredging of a flood control channel can result in tremendous disturbance to surrounding habitat and result in degradation of water quality downstream of the dredging. The 2007 decision document estimates this NWP will rarely be used "0-1 times in the next five years" with an anticipated impact of 1/10 of an acre to waters of the U.S. Based upon this estimate, review of proposed activities by individual permit would not be a regulatory burden and based upon this assessment, the District should limit the use of this NWP to 1/10 of an acre.
- **Impose restrictions on the habitats in which this NWP may be used.** Use of this NWP should be prohibited in areas of tidal marsh, eelgrass beds, special aquatic sites, essential fish habitat, critical habitat, or recovery units.
- **Revocation of the proposal to require one-time mitigation.** This proposal completely ignores the length of time between maintenance cycles. Given a sufficient interval significant wildlife habitat can become established. Many of these facilities support listed anadromous fish and other special status species. Maintenance dredging also disturbs soils, exposing the channels to non-native invasive species, thereby facilitating the spread of invasive species.

We urge the Corps to require compensatory mitigation for lost habitat values, impacts to anadromous fish, and special status species. Mitigation should be required to offset the temporal

losses of this habitat particularly if the habitat impacted is locally rare, e.g. fringe tidal marsh habitat.

NWP 33 (Temporary Construction, Access, and Dewatering): In addition to the regional conditions proposed, the District should:

- Prohibit the use of this NWP in special aquatic sites, jurisdictional riparian habitat, or essential fish habitat, critical habitat or recovery units.
- Impose an acreage and linear foot limit. The impacts should be limited to ½ acre and no more than 300 linear feet of stream.
- Require post-construction documentation be submitted to the Corps that demonstrates pre-construction conditions have been restored, including revegetation and removal of any invasive or non-native species.
- Implement the regional conditions proposed by the district.
- Incorporate the conditions described above under general conditions for temporary fills.

NWP 35 (Maintenance Dredging of Existing Basins):

- Clarify use of this NWP is prohibited permit in habitats occupied by endangered species, essential fish habitat, critical habitat, or recovery units.
- Prohibit the use of this permit in special aquatic sites.
- Implement the regional conditions proposed by the district.

NWP 39 (Commercial and Institutional Developments) - REVOKE or at minimum:

- Refer to the overall regional prohibitions and conditions proposed above.
- Refer to the restrictions proposed in the overall regional conditions above, i.e. prohibiting the use within the 100-year flood plain, special aquatic sites and endangered species habitat, strict 300 linear foot limit, etc.
- Retain 300 linear foot prohibitions on fill in streams all streams (perennial, intermittent, and ephemeral).
- Reduce fill acreage to 1/3 acre.
- Require compensatory mitigation for any unavoidable impacts, to the standard listed above under the general conditions.

NWP 40 (Agricultural Activities) - REVOKE or at minimum:

- **We are strongly opposed to the implementation of this NWP.** Adequate exemptions currently exist to allow for normal agricultural activities to continue on agricultural lands. The adoption of National Resources Conservation Service (NRCS) wetland categorizations for the purposes of Section 404 of the Clean Water Act has led to the removal of extensive areas that otherwise meet wetland criteria (prior converted croplands) from regulatory review. The Corps and NRCS have withdrawn from their previous memorandum of understanding regarding agricultural lands. Now the Corps is proposing to rubber-stamp the filling or conversion of those remaining areas that are still identified as "waters of the U.S." on agricultural lands.
- **Please refer to the comments on proposed overall regional conditions stated above.**
- **Based upon the District's 2007 analysis of the average acreage of impacts per action, restrict the aggregate impact threshold to 0.1 acres and require notification for all impact amounts.**
- **Clarify the acreage limitation includes dewatering of jurisdictional areas or conversion of waters of the U.S. from one type to another, as a result of any proposed activities.** For example, if the proponent proposes to install drainage tiles, the acreage impacted would include not only the area in which the drainage tiles are installed, but also all areas that are dewatered as a result of the installation.
- **Clarify that the use of this NWP is prohibited in diked baylands.** The NWP regulations clearly state, "This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters."
- **Prohibit the use of this permit in areas that would alter the hydrology of adjacent wetlands.**
- **Prohibit fills or discharges into the channel of any stream (including ephemerals) that could impede high flows.**
- **Require a compensatory mitigation and monitoring plan complete with enforceable conditions that has been reviewed and approved by the Corps and resource agencies.**
- **Require that the Corps make its own minimal effects determination consistent with the requirements of Section 404 of the Clean Water Act.**

NWP 41 (Reshaping Existing Drainage Ditches) - REVOKE:

The Corps has not demonstrated that there is sufficient need for this NWP. The reshaping of "drainage ditches in waters of the U.S." requires thorough review to ensure that adverse impacts to "waters of the U.S." do not occur in the areas upstream or downstream of the impacts (e.g. increased headcutting, bank erosion, increased sediment deposition, etc.). This is not a review that can be conducted within the confines of the NWP review process. In addition, the sidestepping of excavated drainage ditch soils may have significant adverse impacts on the hydrologic regime of adjacent wetlands.

- **Clarify that the use of this NWP is prohibited in diked baylands.** The NWP regulations clearly state, "This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters."
- **Please see the comments above under overall regional conditions.**

- **At minimum the Corps must limit the linear footage of fill and impact to 100' in all streams, and the total acreage of fill and impact to 1/10 acre.** [based upon 2007 estimates of expected use]
- **Compensatory mitigation must be required for all impacts to waters of the U.S. Mitigation must be approved in advance of permit issuance and consistent with the general condition above.**

NWP 42 (Recreational Facilities) - REVOKE or at minimum:

- **The district had previously proposed to prohibit the use of this NWP for the construction or expansion of golf courses.** We urge the district to reinstate this prohibition. Golf course proposals we have reviewed involve substantial recontouring of the landscape, massive engineering of fill material, and significant adverse impacts to water quality and the aquatic environment and the species that utilize the aquatic environment. Golf courses require inordinate amounts of water that are not appropriate given the recurrent conditions of drought in California. The authorization of golf course projects would not meet the criteria of minimal impacts.
- **Refer to the comments above under overall regional conditions.**
- **Clarify that the use of this NWP is prohibited in diked baylands.** The NWP regulations clearly state, "This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters."
- **Limit the impact to "waters of the U.S." to 1/10 acre of fill.** [Based upon District's 2007 estimate of anticipated use]
- **Prohibit use of this NWP for construction of buildings, stables or parking lots.**
- **Prohibit the authorization of habitat conversion under this NWP.**
- **Prohibit the use of this NWP in any special aquatic site.**
- **Clarify that the use of this NWP is prohibited in areas that support federally listed species or critical habitat.**
- **Require compensatory mitigation at a minimum one-for-one replacement for any impacts to waters of the U.S Clarify the use of riparian buffers must be supportive of functions and values attributed to naturally occurring riparian habitat and not merely landscaping for recreational features.**

NWP 43 (Stormwater Management Facilities) - REVOKE or at minimum:

- **Clarify that the use of this NWP is prohibited in diked baylands.** The NWP regulations clearly state, "This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters."
- **Refer to comments stated above under overall regional conditions.**
- **Reduce the fill threshold for the construction of new facilities to 0.1 acres.** [Based upon District 2007 estimates of use.]

- **Prohibit impacts in excess of 300 linear feet in streams.**
- **Clarify the use of this NWP is prohibited in areas that support federally listed species or critical habitat.**
- **Prohibit the use of this NWP in streams that support anadromous fish.**
- **Prohibit the use in special aquatic sites and areas with riparian vegetation.**
- **Prohibit the construction of in-stream retention or detention basins and do not consider these areas as compensatory mitigation if regular maintenance will be required (e.g. dredging or removal of vegetation, etc.).**
- **Require that base-flows of the stream be maintained during periods of low flows to protect the downstream environment.**
- **Prohibit the construction of concrete or riprapped channels.**

NWP 44 (Mining Activities) - REVOKE:

- **In the 2007 NWPs the District revoked this NWP.** The San Francisco District currently has an LOP (Letter of Permission) for gravel mining activities in two counties within the district. SFD should seriously analyze the cumulative effects of the permitted activities through the LOP. This analysis should include a categorization of the stream types impacted (ephemeral, intermittent, perennial) and the linear footage and acreage of impacts in each stream type and within each watershed. The Corps should also assess permit compliance and mitigation compliance (including an analysis of successfully completed compensatory mitigation).
- **Clarify that the use of this NWP is prohibited in diked baylands.** The NWP regulations clearly state, “This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.”

NWP 46 (Discharges in Ditches):

- **Impose restrictions on the use of this NWP to ½ acre and 300 linear feet.** As written, this NWP could authorize up to one acre of fill. There is no NWP that authorizes that amount of fill and there has been no documentation provided by the Corps to convincingly demonstrate that this NWP won’t result in more than minimal impacts to water quality or the aquatic environment.

NWP 48 (Existing Commercial Shellfish Aquaculture Activities) – Revoke proposed changes that would authorize new activities and expansion of existing operations.

- **Prohibit this use of this NWP in special aquatic sites.**
- **Prohibit the expansion of existing facilities or the construction of new facilities.**

NWP 51 (Land-Based Renewable Energy Generation Facilities) – REVOKE:

- **The proposed regional conditions are silent with respect to this NWP proposal. This NWP should be revoked due to the numerous public interest factors and impacts to waters of the U.S. that may result from such projects.**
- **Clarify that the use of this NWP is prohibited in diked baylands.** The NWP regulations clearly state, “This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.”
- **Prohibit the use of this NWP in special aquatic sites, critical habitat, and recovery units. In addition, this NWP should be prohibited in areas of known importance to migratory birds and raptors.**
- **The land-based renewable energy generation facilities within California cover massive tracts of land (3,500 acres for one of the projects proposed within the District). This NWP proposes restrictions of ½-acre of non-tidal including the loss of no more than 300-linear feet of stream channel impacts.** The alteration of vast tracts of land through the development of roads, buildings, above grade pads, etc. will certainly have watershed impacts that will in turn impact and alter hydrologic functions and values within the watershed (e.g. alteration of patterns and flashiness of flows, increase potential for erosion and thus degradation of water quality, adverse impacts to sustainability of aquatic species through fragmentation of habitat, etc.) In addition there is the likelihood of significant adverse impacts to public interest factors (e.g. water supply, aesthetics, recreation, conservation, etc.) **Authorization of projects that will alter massive tracts of lands and hence the dynamics of the watershed through NWP would be an abuse of discretion.**

NWP 52 (Water-based Renewable energy Generation Pilot Projects) – REVOKE:

- **The proposed regional conditions are silent with respect to this NWP proposal. This NWP should be revoked due to the numerous public interest factors and impacts to waters of the U.S. that may result from such projects. The analysis of this NWP provided in the draft regulations is wholly inadequate; therefore the use of this NWP within the San Francisco District should be revoked.**
- **The Corps has failed to demonstrate projects proposed for authorization under this NWP will have impacts that are similar in nature or that the impacts will be similar in their effects on the aquatic environment. In fact, the Corps has failed to describe what the potential impacts to the aquatic environment may be other than providing a description of the attendant features. Until the Corps can develop a substantive description of the types of impacts that are likely to occur and their anticipated impacts on the aquatic environment, the proposed NWP fails to meet the requirements of NEPA and the 404 (b)(1) Guidelines. Once this information is available, CCCR requests the opportunity to review and provide comment on regional conditions that may be necessary to reduce the impacts of the NWP to a minimal level.**

NWP A (Removal of Low-Head Dams):

- **Prohibit the use of this NWP in identified critical habitat or recovery units.** While we support the removal of low-head dams in theory, there may be trade-offs in wildlife values that may require more detailed analysis and mitigation. As an example, there might be benefits to Steelhead Trout to have a low-head dam removed from a stream, however, further upstream, the habitat that has evolved after the installation of the dam, may provide important habitat for another listed species.

- **In addition to the information required through the normal PCN process, the applicant should be required to provide the following:**
 - An assessment of the current conditions both upstream and downstream of the dam, including the areal extent of waters and wetlands.
 - An assessment of anticipated impacts of dam removal, could there be deepening (incision) of the channel?
 - An assessment of whether there will be impacts to existing riparian and wetland habitat and how will that be compensated?
 - Identification of any listed species upstream or downstream of the dam that could be adversely impacted.
 - The quantity of material behind the existing dam, its quality (e.g. grain size, contaminants, etc.)
 - Contingency measures that might need to be implemented and who would be responsible for their implementation and what funding source is available.

NWP B (Living Shorelines) –

On the one hand, CCCR supports the use of softer engineering techniques over riprap and armoring. We understand that a living shoreline may provide habitat and in places like the San Francisco Bay Area, there may be places where a living shoreline approach may be useful in dealing with sea level rise and the need to provide escape habitat for tidal marsh species. However, the Clean Water Act requires that impacts to waters of the U.S. should first be avoided. We are concerned that the concepts of avoidance or minimization will not be given adequate consideration due to the availability of a technique that may be considered more “natural.”

We are also concerned, just as we are with NWP 27, that there is tremendous potential for abuse.

- **Prohibit the use of this NWP in special aquatic sites, essential fish habitat, critical habitat and recovery units.**
- **The applicant must be required to demonstrate why bank stabilization is necessary and why avoidance (managed retreat) is not possible.**
- **The NWP must require the applicant to provide assurances that the structure is sound (i.e. there is sound engineering behind the proposed design), and that it will not result in adverse impacts to existing and adjacent waters of the U.S., or become a hazard.**
- **The NWP should not authorize the construction of breakwaters.**
- **If fill material is used, it must meet water quality standards, and must be capable of supporting target vegetation.**
- **The NWP should be conditioned to ensure introductions of non-native invasive species will not occur.**
- **The NWP should make clear that the living shoreline cannot be used to provide compensatory mitigation for another project.**

Conclusion:

Absent revocation of NWP's indicated above, the San Francisco District must make every effort to develop regional conditions that will effectively reduce the adverse impacts to a minimal level. The proposed regional conditions do not meet that goal. We recommend that at minimum, the San Francisco District adopt the regional conditions we have proposed. It is important to recognize that even with the incorporation of such conditions, close scrutiny of each NWP request is necessary. We recognize the NWP program places a substantial burden on Corps Districts by increasing the number of potentially complex permit applications that will have to be reviewed within a limited time period (45 days). However, the breadth of activities and geographic scope covered by the NWP program, combined with the lack of adequate information regarding the cumulative effects of the Regulatory Program on "waters of the U.S.", places the responsibility of ensuring that no more than minimal adverse impacts are authorized, squarely on the shoulders of Corps staff and the District Engineer. The Corps cannot continue with a "rubber-stamp" approach to NWP review. (Please note that we are using the word "prohibit" within the context of the NWP review process. We fully realize that all activities listed below would be eligible for review under the individual permit process.)

Regional conditioning may be effective in reducing the impacts of general permits such as the NWP program, but only if informed by an understanding of the types of activities that are permitted (through general permits, LOPs, individual permits, etc.) within the watersheds of the district and required compensatory mitigation is tracked to ensure unavoidable adverse impacts are being offset, and that functions and values are being restored. Finally and most importantly, the San Francisco District should be analyzing the cumulative impacts of permits issued to determine if hydrologic functions of watersheds are remaining intact. We would argue that none of this is occurring to the degree necessary in any of the Corps districts across the country. We understand that this may be difficult to accomplish due to issues of understaffing, budget, etc. However, understanding the reasons why this is not occurring does not ensure the adverse impacts of the NWP program are adequately minimized.

It is completely absurd that the Corps should state that the proposed modifications are a "reflection of the Corps' unequivocal commitment to its environmental mission and to wetlands protection." In general, the proposed NWP program:

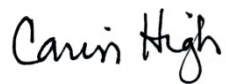
- maintains the significant increase in geographic scope that was introduced in the March 2000 NWP's and which still have not been demonstrated to have minimal adverse individual and cumulative impacts as required by the 404 (b)(1) Guidelines,
- maintains the significant increase in the number of Corps authorizations that can occur in the absence of public comment and with reduced agency review;
- relies too heavily on regional special conditioning to reduce impacts to a "minimal" nature;
- and presumes that compensatory mitigation will adequately offset the impacts authorized under the NWP program.

The Corps to this day has not even attempted to substantively demonstrate that the increased scope of the NWP program does not have significant adverse impacts on the human and aquatic environment. Corps districts have insufficient staff or incentive to adequately track potential cumulative adverse effects, review mitigation compliance, or review individual NWP requests, yet Corps Headquarters has identified this data

as fundamental to Corps' demonstration of compliance with the National Environmental Policy Act (NEPA) and Section 404 (e) of the Clean Water Act. Thus, implementation of the NWP program is in violation of the requirements of NEPA and the Clean Water Act.

The NWP program as proposed will have significant adverse impacts to waters of the U.S. within the State of California. The NWP program as proposed violates the intent of the Clean Water Act to "restore and maintain the chemical, physical and biological integrity of the Nation's waters." It does not ensure "no net loss of wetlands." It is not in the public interest. For these reasons we urge the San Francisco District to adopt the revocations and regional conditions contained in this letter.

Yours Sincerely,



Carin High
CCCR Vice-Chair

cc: South Pacific Division
EPA
USFWS
CDFG
SFRWQCB
WQCB

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