



# PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS  
LOS ANGELES DISTRICT

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## PROPOSED REAUTHORIZATION OF REGIONAL GENERAL PERMIT 63 FOR REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS

**Public Notice/Application No.:** SPL-2013-00609-BAH

**Project:** Reauthorization of RGP 63 (Emergency Authorizations)

**Comment Period:** August 30, 2013 – September 30, 2013

**Project Manager:** Bruce Henderson; 805-585-2145; [Bruce.A.Henderson@usace.army.mil](mailto:Bruce.A.Henderson@usace.army.mil)

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### Location

In any jurisdictional waters of the United States throughout the Los Angeles District of the U.S. Army Corps of Engineers, including the coastal drainages of San Luis Obispo County, all of Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, Orange, San Diego, Imperial and Inyo counties, Mono County to the Conway Summit above Mono Lake, the southern slopes of the Tehachapi Mountains in Kern County, and all of the State of Arizona. In the event of future modifications to District boundaries, this permit would also apply in any areas so revised.

### Activity

To reauthorize Regional General Permit 63 (RGP63) for emergency actions to provide an expedited response to public agencies and private parties for necessary emergency repair and protection measures in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899, where there is a sudden, unexpected occurrence involving a clear and imminent threat to life or property (such as those situations that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken immediately) demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. For more information, see page 4 of this notice.

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Interested parties are hereby notified that the Los Angeles District, U.S. Army Corps of Engineers is considering reauthorization of an existing RGP for the activity described herein. Interested parties are invited to provide their views on the proposed action, which will become a part of the record and will be considered in the decision. This permit will be issued or denied under Section 404 of the Clean Water Act of 1972 (33 U.S.C. 1344) and Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403). Comments should be mailed to:

**U.S. Army Corps of Engineers  
ATTENTION: Regulatory Branch (SPL-2013-00609-BAH)  
2151 Alessandro Drive, Suite 110  
Ventura, California 93001**

Alternatively, comments can be sent electronically to: [Bruce.A.Henderson@usace.army.mil](mailto:Bruce.A.Henderson@usace.army.mil)

The mission of the U.S. Army Corps of Engineers Regulatory Program is to protect the Nation's aquatic resources, while allowing reasonable development through fair, flexible and balanced permit decisions. The Corps evaluates permit applications for essentially all construction activities that occur in the Nation's waters, including wetlands. The Regulatory Program in the Los Angeles District is executed to protect aquatic resources by developing and implementing short- and long-term initiatives to improve regulatory products, processes, program transparency, and customer feedback considering current staffing levels and historical funding trends.

Corps permits are necessary for any work, including construction and dredging, in the Nation's navigable waters and their tributary waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the United States. The permit review process serves to first avoid and then minimize adverse effects of projects on aquatic resources to the maximum practicable extent. Any remaining unavoidable adverse impacts to the aquatic environment are offset by compensatory mitigation requirements, which may include restoration, enhancement, establishment, and/or preservation of aquatic ecosystem system functions and services.

## **Evaluation Factors**

The decision whether to reauthorize this regional general permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed action on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof. Factors that will be considered include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people. In addition, the evaluation of the activity will include application of the EPA Guidelines (40 CFR 230) as required by Section 404 (b)(1) of the Clean Water Act.

The Corps of Engineers is soliciting comments from the public, Federal, state, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed action. Any comments received will be considered by the Corps of Engineers to determine whether to reissue, modify, or condition this RGP. To make this decision, comments are used to assess impacts on endangered and threatened species or species proposed for listing as endangered or threatened, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed action.

## **Preliminary Review of Selected Factors**

**EIS Determination** – A preliminary determination has been made that an environmental impact statement is not required for the proposed action.

**Water Quality** – Section 401 requires that any applicant for a Section 404 permit provide proof of water quality certification to the Corps of Engineers prior to utilization of any Section 404 permit. For the purpose of this proposed reauthorization of Regional General Permit 63, it will be the responsibility of the applicant to acquire Section 401 certification or waiver thereof from the appropriate agency prior to conducting their project unless the pertinent agency has already issued their certification. Such certification would be acquired from the Arizona Department of Environmental Quality, California State Water Resources

Control Board, the appropriate California Regional Water Quality Control Board, the U.S. Environmental Protection Agency for most tribal lands, or from one of seven tribes (the Navajo Nation of Arizona; the Hualapai Indian Tribe of the Hualapai Indian Nation, Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Hopi Tribe of Arizona; the Big Pine Band of Owens Valley Paiute Shoshone Indians of Big Pine Reservation, California; the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California; and the Twenty-Nine Palms Band of Mission Indians of California) that implement Section 401 on tribal lands under their control. Due to often limited time constraints with emergency actions, the applicant would not be required to provide prior proof to the Corps if such an action would result in undue harm to life or property. However, the applicant would be required to provide proof of Section 401 certification or waiver upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the ADEQ, SWRCB, RWQCB, EPA or any of the identified Tribes, as appropriate, have received Section 401 certification or waiver.

**Coastal Zone Management** – For those projects in or affecting the coastal zone, the Federal Coastal Zone Management Act requires that the applicant obtain concurrence from the California Coastal Commission (CCC) that the project is consistent with the State’s Coastal Zone Management Plan (CZMP). Although projects may receive approval under an approved Local Coastal Plan, federal consistency requirements may not be satisfied; it is intended that corrective measures will comply with and will be conducted in a manner that is consistent with the CZMP. Due to often limited time constraints with emergency actions, the applicant would not be required to provide prior proof to the Corps if such an action would result in undue harm to life or property. However, the applicant would be required to provide proof of consistency upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the CCC have received such determinations or waivers.

**Cultural Resources** – Given that the majority of emergency activities involving flood events that potentially endanger life or property are located in what are now or what were in the past active floodplains, or are threatened by an active period of erosion, cultural resources that may be present have low potential for complete integrity. It is presumed historic disturbances may have occurred to such a degree that emergency corrective measures would not further endanger the resource. It is also presumed most cultural resources that may be impacted through actions authorized under this RGP would already be impacted through flood events, and that further damage through authorized actions would probably be considered not adverse. If intact sites do exist, those portions immediately adjacent to flood channels are often disturbed. Bank stabilization of these areas may result in site protection, and therefore would provide a beneficial effect. The District Engineer hereby requests the State Historic Preservation Officer’s input on the proposed action.

**Endangered Species** – Section 7 of the Endangered Species Act (ESA) of 1973, as amended, contains provisions for consultation in the event of emergencies that threaten

human welfare or property. The Corps, U.S. Fish and Wildlife Service, and NOAA Fisheries (National Marine Fisheries Service) have expedited coordination among the agencies during emergency situations under informal procedures. In brief, if the Corps determines that emergency authorization is warranted, Corps staff contact, by telephone and/or electronic mail, specific personnel from the Service(s) to determine if listed species or designated critical habitat may be present and, if so, what actions could be taken during the emergency response to minimize the effects of the response on the listed species or designated critical habitat. As appropriate and capable of being implemented during the response, these recommendations would be imposed on the applicant seeking emergency authorization. As a requirement of the emergency authorization's conditions, the permittee would provide a post-response written report to the Corps that describes the emergency, a justification of the emergency response, and an evaluation of the response to and the effects of the emergency on the listed species and their habitats, as well as a map of the affected areas and photographs of the emergency area prior to (if possible) and after the emergency response.

At the conclusion of the emergency, the Corps and the Services complete formal consultation on the effects of the emergency action on listed species, or designated critical habitat, as required by Section 7 of the ESA. The Corps and Services also use these procedures to consider the effects of flood response actions on species that are proposed for listing under the ESA.

**Public Hearing** – Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for public hearing shall state with particularity the reasons for holding a public hearing.

**Request for Additional Information from other Regulatory and Resource Agencies** –

The Corps is requesting that each agency that wishes to review projects submitted for approval under this RGP provide the following information to ensure proper coordination is conducted efficiently:

1. Maps (preferably 8.5" x 11") indicating the geographical extent of the agency's authority or responsibility, or specific areas of particular interest;
2. A list of telephone and facsimile numbers where project information should be sent;
3. A list of personnel and phone numbers if specific persons are to be contacted for specific geographic areas or specific areas of responsibility; and
4. Agency street and mailing addresses.

**Proposed Action**

The Corps of Engineers Los Angeles District proposes to reauthorize Regional General Permit 63 for emergency actions to provide a rapid response to public agencies and private parties for emergency repair and protection measures in waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act and Section 10 of the

River and Harbor Act of 1899. **Emergency situations are described as sudden, unexpected occurrences involving a clear and imminent threat to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures.** This definition should not be parsed and dissected to determine if each given term applies to every action. Rather, it should be used to provide a rapid assessment if a proposed response is appropriate to the immediate situation. For instance, not only do recently burned watersheds have a lack of intercepting vegetation to slow runoff and facilitate percolation, but they may have hydrophobic soils that exacerbate runoff, creating serious problems related to mud and debris flows. Public works and flood control agencies often have a short window within which to prepare and an extended permit consideration period would not be prudent. Generally, “sudden, unexpected” events would include forecasts of rain events several days in the future. Similarly, imminent threats include reasonable assessments of potential losses, and not those based purely on less-supported speculation.

Los Angeles District is considering the following modifications of RGP 63 to address its effective implementation. Comment on these proposed modifications is welcome.

1. Extension of work initiation following authorization from 7 days to 14 days. Public works agencies and others must often prioritize allocation of personnel, equipment, and matériel among several pressing situations. A 7-day window to initiate a response can be insufficient.
2. Generally, it is anticipated that authorized actions to respond to an imminent threat would be allowed to remain in place, presuming that to remove the authorized fill would potentially effect a return of the threat under similar conditions. If the Regulatory project manager determines the fill would provide a temporary solution to the imminent threat, such as a berm to protect a project under construction, or a future project that addresses the matter, the temporary fill would be expected to be removed upon completion of this other project.

### **Additional Project Information**

Existing emergency procedures in Corps regulations at 33 CFR Part 325.2(e)(4) require the Corps to determine if a particular situation constitutes an emergency as defined above. The District Engineer would explain the circumstances and recommend special procedures to the Division Engineer who would then instruct the District Engineer as to further processing of the application. Reasonable efforts would be made to receive comments from interested Federal, state, and local agencies and the affected public. These measures are usually accomplished within 24 hours of receiving the request. Notice of any special procedures authorized and their rationale would be appropriately published as soon as practicable, or other appropriate procedures as called for in regulations would be conducted after-the-fact. Further coordination would be conducted with other agency personnel unless that agency has already indicated to the Corps that notification for a particular class of projects or projects within particular geographic areas was unnecessary. Because emergencies due to flooding

events, or others exacerbated by other environmental conditions such as fires, typically occur in several areas at once and are often not isolated, infrequent events, appropriately responding to multiple requests in an often short time frame severely taxes Regulatory personnel to the detriment of human safety and in many cases the natural environment.

The RGP would be limited to sudden, unexpected situations that could potentially result in an unacceptable hazard to life or a significant loss of property if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. Examples of work anticipated for emergency authorization under this RGP include debris and sediment removal, placement of riprap for bank stabilization or bridge pier or abutment reinforcement, culvert cleanout, construction of temporary earthen berms for flow control, or minimal vegetation removal to allow routing of flow within the existing watercourse. This list is not inclusive and other activities may be authorized if the Corps determines they are appropriate for the situation. It is not anticipated that this RGP would be used to authorize channelization of watercourses.

RGP 63 was established on March 7, 2001, and reauthorized on December 22, 2008. Since its reauthorization in 2008, it has been used to authorize approximately 260 actions determined to meet the terms and conditions of the permit. These actions included protection or repair of bridges or grade control structures; replacement of collapsed bridges and culverted crossings; repair of slopes supporting rail lines and roadways; various water/sewer/oil pipeline repair and protection projects; bank erosion repair at landfills adjacent to watercourses; various road protection projects subject to high flows or high surf; debris removal from detention/debris basins and from culverts or bridge crossings; repair of levees or berms damaged by storm events; and cleanup operations for sewer spills or petroleum. The great majority of these actions resulted in work in waters of the United States of substantially less than one-half acre with a few notable exceptions, such as a project to repair a major bridge failure. In most cases, mitigation was not warranted because high flows already exacted damage to the streamcourse that would reestablish through normal processes in the absence of any repairs. Most of the actions occurred during periods of high flows or high surf conditions, primarily winter wet conditions in coastal California, which often are exacerbated by wildfires of the previous summer and fall, and heavy rainfall events in summer in Arizona. Many projects were authorized to prepare for the upcoming wet season or forecast storm events, such as sediment removal from detention or debris basins on burned watersheds. Compliance with permit terms and conditions was high.

The proposed RGP is not intended to address general maintenance of channels or other projects in anticipation of a *potential* need. Other procedures are currently in place to address such concerns, or the project proponent may apply for other Department of the Army authorization such as standard permits or other general permits already established.

In addition, pursuant to 33 CFR Part 323.4(a)(2), the discharge of dredged or fill material that may result from the following activities is not prohibited by or otherwise subject to regulation under Section 404:

“Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.” In addition, regulations at 33 CFR Part 323.4(c) state “[a]ny discharge of dredged or fill material into waters of the United States incidental to... “such maintenance activities...” must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.” Note that activities conducted under this exemption may still be constrained by regulations of one or more other agencies unless the agency or agencies have established separate emergency or exemption procedures.

The proposed RGP does not in any way infringe upon the responsibilities of any other Federal, state or local agency that may have other jurisdictions that pertain to a particular action, nor does it obviate the need to acquire any other such approvals from other Federal, state or local agencies.

The need for mitigation for impacts to aquatic resources will be determined on a case-by-case basis. The Corps will strive to be fair and judicious in any such determination. We recognize that many of the project areas that may be considered for authorization under this RGP may already be extremely affected by high storm flows and imposition of mitigation in such situations may be unwarranted. However, this may not be true for all actions authorized under this RGP. If this is determined to be true of a particular situation, the Corps, after discussion with other resource agencies and the permittee, will determine appropriate mitigation to replace impacted functions and services resulting from a specific project or group of projects within a defined geographic area.

Failure to comply with all applicable permit conditions or to demonstrate a “good faith” effort to comply with permit conditions prior to initiating the project will be considered a violation of Section 404 of the Clean Water Act. Resolution of enforcement actions may include restoration to pre-project conditions, or after-the-fact authorization of a project after achieving compliance with applicable permit terms and conditions, including those imposed by the State Water Resources Control Board or EPA or the identified Native American Tribes pursuant to Section 401 of the Clean Water Act, and/or other mitigation as determined to be appropriate. For situations where the District Engineer determines the unauthorized activity

to be willful, repeated, flagrant, or of substantial impact, he may recommend criminal or civil actions to obtain penalties and refer the case to the local U.S. Attorney and/or to EPA.

### **Proposed General Conditions**

At this time, the Corps is proposing that all actions conducted under this RGP be subject to the following general conditions, which are repeated almost verbatim from the current RGP 63 permit language except for considerations described above on page 6, or are statements requesting input from agencies:

1. **Time Period Covered:** This Regional General Permit shall expire on **[five years from date of reauthorization]**. Reauthorizations of this permit will likely be favorably considered as compliance with the reporting requirement on the part of the permittees is demonstrated.
2. **Notification/Communication:**
  - a. **Timing:** The applicant must notify the District Engineer (DE) as early as possible and shall not begin the activity until notified by the DE that the activity may proceed under this RGP with any site-specific special conditions imposed by the District or Division Engineer. This office recognizes there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed from the DE. It is not the intention of this office to imply that one allows such threat to life or property result in actual loss. If one proceeds without such notice from the DE, one must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means.
  - b. **Contents of Notification:** The notification should be in writing and include the following information:
    - (1) The name, address and telephone number of the applicant and the designated point of contact and their address and telephone number;
    - (2) The location of the proposed project in detail, including the identification of the waterbody(ies) (this should include a copy of a U.S. Geologic Survey [USGS] topographic map, Thomas Guide map, or hand-drawn location map with suitable landmarks; the map should have sufficient detail to clearly indicate the location and extent of the project, as well as detailed directions to the site);
    - (3) A brief, but clear, description of the imminent threat to life or property and the proposed project's purpose and need;
    - (4) A description of methods anticipated to be used to rectify the situation (i.e., "field engineering" is not an adequate description. It is presumed if one mobilizes matériel and a particular piece of equipment to a site, then one probably has a fairly well-defined intention for that matériel and equipment.

- Plans, drawings or sketches showing the area to be impacted, cross sections showing details of construction, and a short narrative describing how the work is to be completed should be provided as a minimum); and
- (5) A brief description of the project area's existing conditions and anticipated impacts resulting from the proposed work (amount of dredge or fill material, removal of significant vegetation, loss of habitat, etc.).
- c. **Form of Notification:** The standard Application for Department of the Army Permit (Form ENG 4345), available from the District's Website at (<http://www.spl.usace.army.mil/Missions/Regulatory.aspx>), may be used as the notification and must include all of the information required in General Condition 2.b. Items (1)-(5) above. A letter or facsimile transmission may also be used. In certain situations where there is an imminent threat to life or property and the applicant is unable to make direct contact with this office, a message shall be left on voice mail or an e-mail message shall be sent. Those messages should include the information identified in General Condition 2.b. Items (1)-(5) above. Formal written notification should be sent to this office as soon as possible.
- d. **Agency Coordination:** Upon receipt of a notification, the DE will immediately provide (i.e., by facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), Arizona Department of Environmental Quality, California Department of Fish and Wildlife (CDFW), California State Water Resources Control Board (SWRCB), the appropriate Regional Water Quality Control Board (RWQCB), California Coastal Commission (CCC), State Lands Commission, State Historic Preservation Office (SHPO), and the Monterey Bay National Marine Sanctuary, as appropriate. These agencies will be requested to telephone or facsimile transmit to the DE (c/o the Regulatory Branch Project Manager), as expeditiously as possible, a notice indicating whether or not they intend to provide substantive, site-specific comments regarding the proposed project. If notified that comments will be provided by an agency, the DE will allow them to provide their comments in a short timeframe determined by this office on a case-by-case basis to not likely result in loss of life or property before making a decision on the proposed project.
- The DE will fully consider any comments from Federal or State agencies, received within the specified timeframe, concerning the proposed activity's compliance with the conditions of their authority and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The DE will indicate the results of that consideration in the administrative record associated with the notification, but will not provide a formal response to the agency comments.
- e. **Mitigation:** Discharges of dredged or fill material into Waters of the United States must be avoided or minimized to the maximum extent practicable at the project site. Compensation for unavoidable discharge of fill materials may require

appropriate mitigation measures. Factors that the DE will consider when determining the acceptability of appropriate and practicable mitigation will include, but are not limited to:

- (1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, aquifer recharge, sediment conveyance or retention, flood storage, etc.;
- (2) The permanence of the project's impacts on the resource; and
- (3) The potential long-term effects of the action on remaining functions and values of the impacted aquatic resource.

To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; replacing the loss of aquatic resource values by creating, restoring, or enhancing similar functions and values; or using bioremediation techniques in conjunction with other methods to offset project impacts. To the extent appropriate, applicants should consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds, "in-lieu" fees to organizations such as The Nature Conservancy or State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

- f. **District Engineer's Decision:** In reviewing the notification for the proposed activity, the DE will determine whether the activity authorized by this RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.e. above) the applicant has included in the proposal in determining whether the net adverse environmental effects for the proposed work are minimal. If the DE determines the activity complies with the terms and conditions of this RGP and the adverse effects are minimal, this office will notify the applicant and include any situation-specific conditions deemed necessary.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan also. However, the DE may approve the mitigation proposal after the proposal for the work is approved and project work has commenced.

If the DE determines the adverse effects of the proposed work are more than minimal, the DE will notify the applicant either:

- (1) That the project does not qualify for authorization under this RGP and instruct the applicant on the procedures to seek authorization under an individual permit, or
- (2) That the project is authorized under this RGP subject to the applicant

submitting a mitigation proposal that would reduce the adverse effects to the minimal level.

3. **Authorized Work:** Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction does not result in significantly increased impacts to aquatic resources and logistical concerns indicate such reconstruction is as expedient considering the condition of the project site and is limited to in-kind replacement or refurbishment. Moderate upgrading would be considered if the applicant wishes to use bioremediation or other environmentally sensitive solutions. For example, it may be determined that reconstruction of a bridge crossing or a roadway damaged by flood flows is a more appropriate course of action than temporarily shoring up the facility to allow an immediate return of its use. When continued public safety is an issue, such reconstruction will remain a viable option for consideration for authorization under this RGP. The RGP may NOT be used to upgrade an existing structure to current standards when that activity would result in additional adverse effects on aquatic resources, except in very unusual and limited circumstances. Such upgrade projects are considered separate activities for which other forms of authorization will be required.
4. **Start Work Date:** Any projects authorized under this RGP must be initiated within fourteen (14) calendar days of receiving authorization to proceed. Projects that cannot be initiated within this timeframe would not meet the definition of an "emergency." If the project start time can be delayed for more than two weeks, the imminent threat of impending loss is likely to have diminished in magnitude as well as immediacy. On the other hand, the RGP could be used to authorize projects as they become discovered, such as with the receding flows of a river some time after a flood event occurred but which likely was the immediate cause of the damage. Further, this RGP cannot be used to authorize long-planned-for projects, nor shall it be used for projects that are likely to have been known to the applicant but for which an application was not submitted in a timely manner. That is, the applicant's failure to act in a timely manner prior to the storm season will not obligate the Corps or other agencies to authorize work unless we agree the situation qualifies as an emergency as defined on page 1.
5. **Access to Site:** You must allow representatives from this office and other agencies to inspect the authorized activity at any time deemed necessary to ensure the project is being or has been accomplished in accordance with the terms and conditions of this RGP.
6. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

7. **Water Quality Certification:** The California State Water Resources Control Board and the Arizona Department of Environmental Quality both issued conditional certifications pursuant to Section 401 of the federal Clean Water Act for RGP 63 in 2008. These conditions were incorporated verbatim in RGP 63 specific to their respective states. We request these agencies, as well as the EPA and the identified Native American Tribes, to consider this proposed reauthorization for Section 401 water quality certification.

8. **Coastal Zone Management:** For those projects affecting uses or resources of the coastal zone, the Federal Coastal Zone Management Act (CZMA) requires that the permittee obtain concurrence from the California Coastal Commission that the project is consistent with the State's certified Coastal Management Program. For activities within the coastal zone that require a coastal development permit from the commission, the permittees should contact the Commission office to request an emergency permit, and no additional federal consistency review is necessary. For activities within the coastal zone that require a coastal development permit from a local government with a certified local coastal program, the permittee should contact the appropriate local government. Because a coastal permit issued by a local agency does not satisfy the federal consistency requirements of the CZMA, the permittee should also contact Mark Delaplaine (415-904-5289), Federal Consistency Coordinator for the Commission, to determine the appropriate emergency procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or resources, or for any activity conducted by a federal agency, the permittee should also contact Mr. Delaplaine to determine appropriate emergency procedures.

Due to the often limited time constraints with emergency actions, the Corps would not require the permittee to provide proof of review by the Commission, if such an action would result in undue harm to life or property. However, the Corps will require the permittee to provide evidence of consistency upon completion of the project unless the Corps is already aware that a particular project, class of projects, or projects in a particular area described by the Commission, have received such determinations or waivers.

Disposal of flood-delivered sediments into the marine environment are not authorized under RGP 63 due to potential adverse effects to the habitat and water quality. If such activity is proposed, it shall be addressed through other permitting procedures.

9. **Endangered Species:** No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify designated critical habitat as identified under the Federal Endangered Species Act (ESA).

Authorization of an activity by the RGP does NOT authorize the "take" of a

listed threatened or endangered species, as defined under the Federal ESA. Applicants shall notify the DE if any listed or proposed species or designated or proposed critical habitat might be affected by or is in the vicinity of the project. The applicant shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and the activity is authorized. In all circumstances, the applicant should, if aware of the potential presence of listed or proposed species or designated or proposed critical habitat, make considerable efforts to contact this office and/or personnel at U.S. Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS). In some cases the FWS and NMFS may be able to make *a priori* determinations that listed species are not present.

Information on the location of listed or proposed threatened or endangered species and their designated or proposed critical habitat can be obtained directly from the FWS or NMFS or from their websites at:

USFWS – <http://www.fws.gov/endangered/>

NMFS – <http://www.nmfs.noaa.gov/pr/species/>

To the extent possible, this office will implement any programmatic biological opinions and incidental take statements that may be available. Any terms and conditions inherent to these documents will become conditions on a particular applicant's utilization of this RGP.

Information on the presence of listed or proposed species at a specific project site may not be available. In such cases, the nature of the emergency may prevent an applicant from conducting the surveys necessary to make a reasonable determination. Therefore, the applicant may assume the species is present, if suitable habitat occurs onsite, and request that the emergency provisions of Section 7 of the ESA be implemented.

10. **Historic Properties:** Impacts to historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places shall be avoided to the maximum extent practicable. If such resources are impacted because of actions authorized under this RGP, you shall provide a full report of the action and the impacts incurred by the resource to this office within 45 days after completion of the action. The Corps, the SHPO and/or the Advisory Council for Historic Preservation will then jointly make a determination as to appropriate procedures and/or mitigation to be addressed.

If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

11. **Regional and Case-by-Case Conditions:** The activity must comply with any regional conditions added by the Division Engineer and with any case-specific

conditions added by this office.

12. **Erosion and Siltation Controls:** Every effort must be made to ensure any material dredged or excavated from waters of the United States is not likely to be washed back into any waters of the United States. When feasible, erosion and siltation controls, such as siltation or turbidity curtains, sedimentation basins, and/or straw (or hay) bales or other means designed to minimize turbidity in the watercourse above background levels existing at the time of construction, shall be used and maintained in effective operating condition during construction unless conditions preclude their use, or if conditions are such that the proposed work would not increase turbidity levels above the background level existing at the time of the work. All exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.
13. **Equipment:** When feasible, and if personnel would not be put into any additional potential hazard, heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance, such as use of wide-treaded equipment or floatation devices.
14. **Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts. (See Section 307 of the Clean Water Act (CWA))
15. **Wild and Scenic Rivers:** No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while that river is in an official study status, unless the appropriate Federal agency with direct management responsibility for that river has determined in writing that the proposed activity would not adversely effect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., FWS, National Park Service, USDA Forest Service, Bureau of Land Management). Currently the only designated Wild and Scenic River systems in the Los Angeles District are the main stem of Sespe Creek from its confluence with Rock Creek and Howard Creek downstream to where it leaves Section 26, T5N, R20W; the Sisquoc River from its origin to the Los Padres National Forest boundary in California; and the Verde River from the section line between Sections 26 and 27, T13N, R5E, Gila-Salt River meridian to the confluence of Red Creek with the Verde River within Section 34, T9 1/2N, R6E .
16. **Aquatic Life Movements:** No activity may substantially disrupt the movement of

those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Culverts placed in streams must be installed to maintain low flow conditions.

17. **Shellfish Production:** No discharge of dredged or fill material may occur in areas of concentrated natural or commercial shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by the Corps' Nationwide Permit 4.
18. **Spawning Areas:** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
19. **Waterfowl Breeding Areas:** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
20. **Navigation:** No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. If future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expenses to the United States. No claim shall be made against the United States on account of any such removal or alteration.
21. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.
22. **Obstruction of High Flows:** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water except within the existing river plain (unless the primary purpose of the fill is to impound waters).
23. **Adverse Effects from Impoundments:** If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
24. **Proper Maintenance:** Any structure or fill authorized by this RGP shall be maintained, including maintenance to ensure public safety, unless it is later determined that the structure is further contributing to other adverse conditions to

private or public property. In such situations, corrective measures will be taken to rectify these adverse conditions, including removal and/or redesign of the original emergency corrective action, or appropriate mitigation as determined through coordination with the permittee and the appropriate Federal and State agencies. Temporary levees constructed to control flows shall not be maintained beyond the current storm season (i.e., maintenance of temporary levees is not authorized after the storm season in which the need arose).

25. **Removal of Temporary Fills:** Temporary fills shall be removed in their entirety and the affected areas returned to their pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation common to the area. If an area impacted by such a temporary fill is considered likely to naturally re-establish native riparian or wetland vegetation to a level similar to pre-project or pre-event conditions within two years, the permittee will not be required to do so.
  
26. **Reports:** The permittee shall provide a written report to this office within 45 days after completion of any action conducted under this RGP. *PROVIDING THIS REPORT IS MANDATORY.* This office has additional responsibilities pursuant to consultation with the FWS and NMFS under Section 7 of the ESA. Further, these reports enable us to track the use of this RGP to verify that the minimal effects determination is being met as required by Section 404(e) of the CWA. Failure to provide timely reports following responses to emergencies is non-compliance with the General Conditions of this RGP and would be considered a violation (33 CFR Part 326.4(d)). At a minimum the Report shall include the following:
  - I. The name, address, and telephone number of:
    - a. the applicant
    - b. the applicant's agent (if appropriate)
  - II. Full description of the activity including:
    - a. description of the emergency and the potential for loss of life or property
    - b. purpose of the activity
    - c. final goal of the entire activity
    - d. location (e.g., latitude/longitude or UTM coordinates; section/township/range on appropriate USGS topo map; Thomas Guide map, or other source to accurately portray project location)
    - e. size and description of project area (include maps or drawings showing the areal and lineal extent of the project, and pre- and post-construction photographs)
    - f. quantities of materials used
    - g. information on receiving waterbody impacted including:
      - (1) name of waterbody
      - (2) type of receiving waterbody (e.g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland type, etc.)
      - (3) temporary/permanent adverse impact(s) in acres/cubic yards/linear

feet

- (4) compensatory mitigation in acres/cubic yards/linear feet
  - (5) other mitigation steps (to avoid, minimize, compensate)
- h. information on federally listed or proposed endangered species or designated or proposed critical habitat (notification must be provided to FWS and/or NMFS as appropriate) including:
- (1) temporary/permanent adverse impacts
  - (2) compensatory mitigation
  - (3) other mitigation steps (to avoid, minimize, compensate)

If there are a substantial number of projects and this requirement would consume large quantities of staff resources, the permittee may, as an option, submit a comprehensive report providing all of the information required in the notification condition (Item 2.b.) above. If a project was conducted in an area known to harbor Federally listed or proposed endangered species or designated or proposed critical habitat, a list of measures taken to minimize harm to the species and/or habitat and provide a copy of the report to the FWS and/or the NMFS, as appropriate, must also be included. If mitigation was determined to be appropriate for a specific project or group of projects, a mitigation proposal must be submitted to this office for review and approval. We will forward the report to the appropriate agencies for their review and comment.

For additional information regarding this proposed RGP, please call Bruce Henderson of my staff at (805) 585-2145. This public notice is issued by the Chief, Regulatory Branch.



*Regulatory Program Goals:*

- To provide strong protection of the nation's aquatic environment, including wetlands.
- To ensure the Corps provides the regulated public with fair and reasonable decisions.
- To enhance the efficiency of the Corps' administration of its regulatory program.

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**U.S. ARMY CORPS OF ENGINEERS – LOS ANGELES DISTRICT**

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