



July 29, 2016

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Mr. David Olson
U.S. Army Corps of Engineers
Attn: CECW-CO-R
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Via email to: NWP2017@usace.army.mil

**Subject: Proposal to Reissue and Modify Nationwide Permits
Docket No. COE-2015-0017**

Dear Mr. Olson:

The California State Association of Counties (CSAC) appreciates this opportunity to offer comments on the proposed reissuance of the Nationwide Permits (NWP) as published on June 1, 2016. CSAC represents all 58 counties in California before the State Legislature, administrative agencies and the federal government.

Our members are responsible for public safety including flood protection, and regional transportation for economic vitality and quality of life. We depend on an efficient Nationwide Permit program to construct minor improvements and maintain our inventory of bridges, culverts, and flood control channels. We have reviewed the draft NWP and can offer the comments below.

1. We appreciate the one-year period after the term of the NWP to complete authorized activities that have commenced or are under contract to commence. We respectfully request that the 2017 NWP allow the District Engineer to extend the one-year term to two years to allow longer term projects to continue without disruption (p. 35189).
2. We support raising the acreage limit and Pre-construction Notification threshold for NWP No. 14 Linear Transportation Projects (p. 35190). We also concur with the Corps position that separate and distant crossings may qualify for NWP (p. 35200). Increases in limits and threshold provide crucial flexibility in applying the NWP but still retain the necessary environmental protections because the NWP is still constrained by the threshold of “no more than minimal individual and cumulative adverse environmental effects.”
3. Any changes to the NWP in response to the “Waters of the US” Final Rule at this time would be premature because of the numerous legal challenges and the Sixth Circuit Court’s stay of the Rule. To avoid future confusion, we recommend delaying any changes to the NWP in response to the Final Rule (p. 35190).
4. We strongly support the District Engineer’s authority to waive limits on NWP No. 13, Bank Stabilization, and No. 43 Stormwater Management Facilities. Our diverse nation has a tremendous variety of climatic conditions and flood control features. The flexibility of the waivers is crucial to California and in particular Southern California where the flood control

channels are dry most of the year. In addition, the NWP Nos. 13 and 43 should not have a cap on the linear foot limit. The current acreage limit provides ample limitations and the linear foot cap would eliminate the permitting of small amounts of work dispersed along a longer stretch of channel. . Furthermore, in practical use, the limit of 1 cubic yard of stabilization material per linear foot of stream bank is insufficient. Scour depths require the use of a minimum of 3 cubic yards per linear foot for small projects. Much of the material is buried below the channel bottom, causing minimal impacts to stream functions. We respectfully request increasing the cubic yard limit (p. 35191 and 35192).

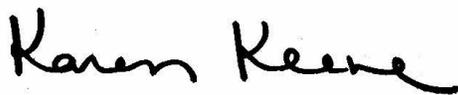
5. We respectfully disagree with the concept that mitigation should be required on all waivers of the 300 foot linear limit. Mitigation should be a function of the impacts, not to a procedural limit. (p. 35192).
6. We concur and support the decision that the reissuance action itself (of the NWPs) does not jeopardize endangered species or adversely modify critical habitat, and therefore does not require Endangered Species Act §7 consultation. General Condition No. 18, Endangered Species in conjunction with General Condition No. 32, Pre-Construction Notification (PCN), provide the appropriate controls and process for any required activity specific §7 consultation (p. 35192 and 35193).
7. To improve the application and utility of certain NWPs, we urge the Corps to work with the California State Water Resources Control Board and the California Coastal Commission to pre-approve §401 Water Quality Certifications and Coastal Zone Management Act (CZMA) Consistency Determinations for NWP No. 3 Maintenance; No. 13 Bank Stabilization; No. 31 Maintenance of Existing Flood Control Facilities; and No. 33 Temporary Construction Access, and Dewatering (p. 35196).
8. We concur with allowing the use of temporary mats for construction equipment access in NWP No. 3 (p. 35198).
9. We concur that a NWP No. 13 should not specify a certain technique of bank stabilization. We support the option of a hybrid measure with vegetated slope protection and riprap toe protection (p. 35199).
10. NWP No. 19, Minor Dredging currently does not allow placement of dredged materials below the mean high tide line. We suggest that this NWP be revised to allow such placement for beach nourishment (p. 35200). This flexibility would also support the Corps of Engineers' Coastal Sediment Management Plan efforts.
11. NWP No. 31, Maintenance of Existing Flood Control Facilities excludes flood control facility that are considered "abandoned" (operated at a significantly reduced capacity without needed maintenance). We request clarification that a facility is not considered "abandoned" if the public agency owner has made good faith efforts towards securing approvals for maintenance (p. 35225).
12. NWP No. 31 also authorizes compensatory mitigation for maintenance activities. We request clarification that a facility constructed under a Clean Water Act permit has been fully mitigated

for permanent impacts, and the maintenance of those facilities does not require subsequent mitigation. We also request clarification that maintenance of facilities constructed prior to the enactment of the Clean Water Act do not need mitigation (p. 35225).

13. NWP No. 41, we suggest the text of this NWP allow/suggest discharges in the form of small berms or grade breaks in ditch bottoms to slow water, which would provide additional water quality benefits and groundwater recharge. (p. 35227)
14. General Condition No. 23, Mitigation identifies site protection as a mitigation requirement. We request clarification that county ownership or public park designation of the mitigation site fulfills the site protection requirement. We also disagree with the statement that clearing non-native trees from a functioning riparian habitat causes more harm than good in most cases. By implementing non-destructive methods over time, great increases in habitat functions may be gained without substantial loss of value. Furthermore, most riparian ecosystems are adapted to restore naturally following periodic flood impacts. A well-designed restoration project can mimic these 'reset' events. Non-native plant species can substantially change habitat suitability for wildlife, and when allowed to persist they serve as source populations for invasion into downstream habitats (p. 35209).
15. We strongly support the current threshold for compensatory mitigation in General Condition No. 23. NWPs are limited to only minimal adverse effects and the current threshold provides a reasonable balance between efficiency of processing permits and protecting the environment. The Corps' own data documents that 70% of the permitted impacts are less than a tenth of an acre, and validates the current approach (p. 35209 and 35210).
16. General Condition No. 31 requires that a §408 Permission is secured (when involving a federally constructed facility) prior to issuing a NWP permit. We request requiring this process only for major §408 Permissions and exempting minor §408 Permissions from triggering a Pre-Construction Notification requirement (p. 35211).

Thank you again for supporting the Nationwide Permitting program.

Sincerely,

A handwritten signature in black ink that reads "Karen Keene". The signature is written in a cursive, flowing style.

Karen Keene
CSAC Director of Federal Affairs