

**United States Department of the Interior
U.S. Fish and Wildlife Service
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AESO/FA
22410-2006-FA-0037

November 27, 2006

Dr. Aaron O. Allen, Project Manager
U.S. Army Corps of Engineers
Los Angeles District Regulatory Branch
P.O. Box 53711
Los Angeles, California 90053-2325

Dear Dr. Allen:

We have received the Special Public Notice (SPN) of October 10, 2006, entitled Nationwide Permit Reissuance Request For Comments issued by the U.S. Army Corps of Engineers Los Angeles District. The SPN is related to the Corps' September 26, 2006, Proposal to Reissue and Modify Nationwide Permits; Notice (71 FR 56258-56299) (Proposal). We have provided comments regarding national issues related to the Proposal to our Regional Director for submission to the Director. The SPN requests that comments relating to regional conditions be submitted directly to your office. The SPN includes a list of Proposed Regional Conditions for the Los Angeles District. We have reviewed the proposal and offer the following comments for your consideration.

As expressed in past comment letters submitted to the Corps' regarding the Nationwide Permit (NWP) program, we have reviewed a number of activities for which environmental impacts have been underestimated due to a scope of impact analysis narrowly and inappropriately confined to areas below the jurisdictional ordinary high water mark. In particular we are concerned about projects that have substantial amenities located above the ordinary high water mark, such as residential development, commercial development, and aggregate mining. In the current Proposal, these include NWP's 29, 39, and 44. These activities often have more than minimal adverse effects on the environment and should not qualify for a NWP. We suggest that regional conditioning ensure that these NWPs be processed through the Individual Permit program. Or, recognizing the potential increase in regulatory burden, we recommend that pre-construction notifications (PCNs) for these NWPs be provided to the Fish and Wildlife Service (FWS), Environmental Protection Agency (EPA), Arizona Game and Fish Department (AGFD) for a minimum 15-day resource-agency review.

Proposed Regional Condition (RC) #2 would disallow the use of most NWPs to authorize the discharge of dredged or fill material into special aquatic sites as defined at 40 CFR Part 230.40-45, which include wetlands, mudflats, vegetated shallows, and riffle/pool complexes. We do not

believe RC #2, as currently proposed, would ensure the protection of important resources in Arizona that contribute substantially to the function of jurisdictional waters, specifically riparian ecosystems. Riparian ecosystems provide many of the same ecological functions as special aquatic sites, but lack protection because they do not meet the regulatory criteria. We recently commented on the Draft Arid West Regional Supplement to the Corps of Engineers Wetland Delineation Manual, and recommended the expansion of wetland criteria to capture riparian ecosystems of Arizona. We believe regional conditioning within the NWP program to provide regulatory protection of riparian ecosystems would be a significant step in resource protection. Also, protecting headwater spring ecosystems is critically important as they may harbor endemic aquatic invertebrates. We recommend that RC #2 be rewritten to protect riparian and spring ecosystems. Regulatory criteria should be developed in coordination with FWS, EPA, and AGFD.

Proposed RC #4 provides for notification for projects in special aquatic sites. We recommend that PCNs for projects affecting special aquatic sites (including riparian and spring ecosystems) also be provided to FWS, EPA, and AGFD for a minimum 15-day resource-agency review.

Thank you for the opportunity to provide input on the subject SPN. We are available to assist in the further development and refinement of regional conditions for the State of Arizona after the NWP program has been reissued, particularly for the protection of threatened or endangered species and their critical habitats. We recommend coordination of this review with AGFD and EPA. If you have any questions, please contact Mike Martinez (x224) or Debra Bills (x239).

Sincerely,

/s/ Steven L. Spangle
Field Supervisor

cc: Regional Administrator, Environmental Protection Agency, San Francisco, CA
Chief, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ
Chief, Regulatory Branch, Army Corps of Engineers, Phoenix, AZ