



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

**DEPARTMENT OF THE ARMY  
REGIONAL GENERAL PERMIT NUMBER 78  
for  
AUTHORIZATION OF PROJECTS IMPLEMENTED UNDER THE  
CALIFORNIA DEPARTMENT OF FISH AND GAME'S  
FISHERIES RESTORATION GRANT PROGRAM**

**Permittee:** California Department of Fish & Game  
**Permit Number:** Regional General Permit (RGP) No. 78 (SPL-2003-01123-BAH)  
**Issuing Office:** Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** Implementation of salmonid habitat enhancement and restoration projects conducted under the California Department of Fish and Game's Fisheries Restoration Grant Program. Projects would be identified on an annual basis and would apply one or more of the habitat restoration treatments described in Part VII of the California Salmonid Stream Habitat Restoration Manual (CDFG 2002) (<http://www.dfg.ca.gov/fish/Resources/HabitatManual.asp>). Projects would include instream habitat improvements by use of cover structures such as logs, rootwads, tree bundles, and boulders; boulder structures such as boulder weirs, boulder clusters, and boulder wind-deflectors; log structures such as log weirs, log wing-deflectors, divide logs, digger logs and Hewitt ramps; placement of spawning gravel; installation of fish screens at water diversion intakes; removal of fish passage obstructions such as log jams or beaver dams; modifying waterfalls and chutes to incorporate resting pools; modify landslides to improve passage opportunities; construct fishways using step-and-pool, Denil ladders, Alaskan steep-pass or other appropriate methods; improve passage through culverts by constructing back-flooding weirs downstream of the culvert outflow or installing baffles within the culvert; armor streambanks with boulder riprap or logs where appropriate; revegetate riparian areas with native species; install willow or brush revetments or wattles to facilitate

bank stabilization and revegetation; and other methods as identified in the Restoration Manual. This list is not exclusive and other methods may be identified as appropriate for a given situation.

Dam removal projects are not addressed in this regional general permit and would require separate authorization from the Corps.

Compensatory mitigation is not required for structures or work conducted in compliance with this RGP.

**Project Location:** Projects would be identified on an annual basis and a list would be provided to the Corps. This permit applies only to those projects within Los Angeles District (coastal San Luis Obispo County, Santa Barbara County, Ventura County, Los Angeles County, Orange County, and San Diego County).

#### **GENERAL CONDITIONS OF THIS RGP:**

1. This regional general permit expires on May 8, 2014. Requests for an extension of the permit should be submitted to this office for consideration at least 60 days before the above date is reached.
2. You must maintain the activities authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain an authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing any of the activities authorized by this permit, 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.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activities at any time deemed necessary to ensure that they are being or have been accomplished with the terms and conditions of your permit. The Corps of Engineers retains the discretion to reissue, modify, rescind, or exclude certain activities or areas from this RGP.

## **SPECIAL CONDITIONS OF THIS RGP:**

1. The permittee shall implement all habitat improvement projects in accordance with the latest version of the California Salmonid Stream habitat Restoration Manual.
2. The permittee shall generally restrict habitat improvement projects to the summer dry season, generally between July 1 and November 1, unless seasonal conditions warrant an extension beyond November 1 (generally when the region experiences a relatively late initiation of rainfall that results in persistent flow within the subject streamcourse).
3. The permittee shall ensure a project's staging area and equipment/material storage area are located outside of the stream's high water channel and associated riparian area. The number of access routes and total area of the work site activity shall be limited to the minimum necessary to complete the restoration action.
4. The permittee shall ensure all mechanized equipment work within the stream channel shall be preformed in isolation from the flowing stream. If any work must be accomplished with flowing water is present, the contractor shall utilize minor diversions (i.e., sandbag berms, seed-free rice straw bales, etc.) upstream of the work area and convey flows around the active project area. Intakes at the upstream end of the diversion shall be fitted with fish screens meeting CDFG and NMFS criteria to prevent entrainment or impingement of small fish. The receiving area downstream of the active project area shall utilize a sediment or desilting basin before ultimate release back to the active stream channel. Materials used for diversion of flows shall be removed in their entirety when they are no longer necessary to complete the project.
5. The permittee shall ensure that revegetation is accomplished using only native species that would be expected to occur within the subject subwatershed.
6. The permittee shall ensure that project contractors and workers are made familiar with the project's purpose and intent, including the need to avoid and minimize adverse impacts to aquatic resources.
7. The permittee shall ensure that ground-disturbance activities that may affect cultural resources will be avoided through implementation of mitigation measures, including completing cultural resource surveys, fencing, on-site monitoring, and redesigning proposed work to avoid disturbance of cultural resources. The permittee shall conduct preliminary investigations for cultural resources at each year's proposed project sites, and provide the findings of these investigations to the Corps with its annual list of proposed projects.
8. Pursuant to 36 C.F.R. Section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the permittee shall notify the Corps archeological staff within 24 hours (Steve Dibble at 213-452-3849 or John Killeen at 213-452-3861). The permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered and shall not resume construction in the area surrounding the potential cultural resources until the Corps re-authorizes project construction, per 36 C.F.R. Section 800.13.

9. The permittee shall ensure that specific measures that have been developed to avoid impacts to endangered, rare, or threatened species that could occur at specific work sites, as described in the CDFG's 2003 Negative Declaration (CEQA), are fully implemented as necessary.

10. This Corps permit does not authorize you to take any threatened or endangered species, in particular the endangered tidewater goby (*Eucyclogobius newberryi*), unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), arroyo toad (*Bufo californicus*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), the threatened California red-legged frog (*Rana aurora draytonii*), or southern steelhead (*Oncorhynchus mykiss*), or adversely modify designated critical habitat for any of these species. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with incidental take provisions with which you must comply). The enclosed USFWS and NMFS biological opinions (1-8-08-F-17 and SWR/2007/06563, respectively) contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with incidental take that is also specified in the BOs. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BOs, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BOs, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit. The USFWS or NMFS are the appropriate authorities to determine compliance with the terms and conditions of its BO and with the ESA.

11. The applicant shall notify the Corps on an annual basis of the year's projects and shall not begin the activity until after receiving a written Notice to Proceed (NTP). The NTP may include site-specific special conditions to avoid and minimize adverse impacts to waters of the United States. The notification must include the following information:

- i. The name, address and telephone number of the project point of contact;
- ii. The location of the proposed project in sufficient detail to locate the project in the field, including the identification of the waterbody (this could include a copy of a U.S.G.S. topographic map, Thomas Guide map, or hand-drawn location map with suitable landmarks);
- iii. Color photographs of the site;
- iv. A description of the current site conditions, including factors in the watershed that may be contributing to the degradation problem and existing habitat;
- v. A description of the proposed methods and materials of construction, and a brief discussion regarding how the proposed work would address the situation;
- vi. Detailed drawings (plan view and cross-section, as appropriate) of the proposed structures or work, including, as appropriate;
- vii. If a water diversion is proposed, the notification must include a dewatering plan; and
- viii. If a temporary access path is proposed, the submitted project plans must illustrate the location and dimensions of the path.

12. Per the biological opinion issued by the NMFS, individual projects that may affect southern steelhead cannot exceed 500 contiguous linear feet.

13. The permittee shall monitor and maintain the structures or work conducted at a given site for at least three years after construction to ensure the integrity of the structure and successful growth of the planted vegetation. Maintenance of any structure authorized by this RGP must be conducted in accordance with the terms and conditions of the authorization. Maintenance that requires deviations from the original design may require a separate or additional authorization.

14. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, tires, etc.), and material discharged must be free from pollutants in toxic amounts. (See Section 307 of the Clean Water Act)

15. For projects affecting uses or resources of the coastal zone, the permittee shall obtain concurrence from the California Coastal Commission (CCC) that the project is consistent with the State's certified Coastal Management Program. Because a coastal permit issued by a local agency does not satisfy the federal consistency requirements of the federal Coastal Zone Management Act (CZMA), the permittee shall also contact the Federal Consistency Coordinator for the CCC at (415) 904-5289 to determine the appropriate procedures. For any activity outside the coastal zone, but with the potential to affect coastal uses or resources, the permittee should also contact the Federal Consistency Coordinator to determine the appropriate procedures.

16. 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. 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 exits Section 26, T5N, R20W, and the Sisquoc River from its origin to the Los Padres National Forest boundary in California.

17. No activity or its operation may impair reserved Tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights. For projects proposed on Tribal lands, the permittee shall submit an approval letter from the Tribe with the notification package and shall obtain Section 401 Water Quality Certification, or waiver thereof, from the EPA.

#### **Further Information:**

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activities authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.



Aaron O. Allen, Ph.D.  
Chief, North Coast Section  
Regulatory Division

May 8, 2009  
DATE

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
TRANSFEEE

\_\_\_\_\_  
DATE