ALBUQUERQUE DISTRICT
U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT NUMBER NM-12-01 FOR REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS

SPONSOR AND ISSUING OFFICE: U.S. Army Corps of Engineers, Albuquerque District

PERMIT NUMBER: Regional General Permit (RGP) No. NM-12-01 (Corps File No. SPA-2012-00347-ABQ)

ISSUANCE DATE: January 24, 2013

PERMITTEE: Public agencies, businesses, or private parties (i.e., the public in general)

Note: The term "you" and its derivatives, as used in this permit, means the permittee. The term "this office" refers to the Albuquerque District office of the Corps of Engineers, which has jurisdiction over the permitted activity, or the appropriate official of this office acting under the authority of the commanding officer.

After you receive written approval that your project complies with the terms and conditions of this RGP NM-12-01 from this office, you are authorized to perform work in accordance with the General Conditions and any project-specific conditions.

PROJECT DESCRIPTION: This permit authorizes discharges of dredged or fill material into Waters of the United States, including wetlands, and/or work or structures in Navigable Waters of the United States for necessary repair and protection measures associated with an emergency situation. An "emergency situation" is present where there is a clear, sudden, unexpected, and imminent threat to life or property demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property or essential public services (i.e., a situation 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). Examples of work that maybe undertaken under this permit, upon authorization by the District Engineer (DE), include but are not limited to:

- Levee construction, rebuilding or maintenance.
- Removal of accumulated sediment, debris or vegetation to prevent or mitigate the emergency situation.
- Bank stabilization to prevent or minimize erosion or the loss of structures such as bridges.
- Debris containment structures.
- Construction of diversion channels and flow deflection structures.

Note: Emergencies covered under this RGP are a subset of activities that may be authorized under 33 CFR 325.2. This RGP covers emergency actions/projects that are undertaken in certain limited circumstances to alleviate an immediate threat. Not all actions/projects that result from an emergency event are eligible for emergency authorization under this RGP. For example, projects undertaken months after the emergency event should be authorized under a Nationwide Permit (NWP) instead of this RGP. The Corps will work with applicants to expedite NWP authorizations as necessary.

PROJECT LOCATION: Within the State of New Mexico.

GENERAL CONDITIONS OF THIS RGP:

1. **Time Period Covered**: This general permit will be effective through January 24, 2017; however eligible projects authorized under this general permit must be completed by the time specified in the approval notification. The reauthorization of this RGP in 2017 will be based on the permit's usefulness and an evaluation of the impacts of projects that were authorized.

2. **Notification/Communication:**
   a. **Timing**: The applicant must notify the DE as early as possible and shall not begin the activity until the DE provides written authorization that the activity may proceed under this RGP with any site-specific special conditions imposed by the DE. The Corps recognizes there may be situations where in the first few days after an emergency, an imminent threat to public health or safety must be addressed prior to the applicant receiving written authorization to proceed from the DE. It is not the intention of this permit to require imminent threats to public health or safety to remain unaddressed. If an applicant chooses to proceed under this paragraph without prior written authorization from the DE, the applicant must ensure that initial notice of a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means within 72 hours. The initial notice must at a minimum include a project description, and location map. In these limited situations where a project must be implemented prior to DE authorization to address an imminent threat to public health or safety, a complete after-the-fact application must be submitted within 30 days of initiation of the project.
      i. Notification should be sent to:
         Attn: NM/TX Branch Chief via fax at 505-342-3678 or mail/electronic mail at:
         U.S. Army Corps of Engineers
         Albuquerque District
         Regulatory Division, CESPA-RD
         4101 Jefferson Plaza NE
         Albuquerque, NM 87109
         SPA-RD-NM@usace.army.mil
   b. **Contents of Notification**: The notification should be in writing and include the following information:

      (1) Applicant's name, address, and telephone number, and contact information for the owner of the affected land.
      (2) A written description of the proposed work including:
         (a) The purpose and need- describe nature of emergency that makes use of this RGP necessary and why such actions were not anticipated earlier.
         (b) A description of waters of the United States that may be affected by the activities
         (c) Type, composition, and quantity of material to be excavated or placed (including temporary material used for cofferdams, etc)
         (d) Length, width, and depth of fill area and/or excavation area
         (e) A discussion of the direct and indirect adverse environmental effects of the activity
         (f) Location of disposal site for excavated material
         (g) Type of equipment to be used
         (h) Identification/delineation of wetlands
         (i) The receiving site for excess water (drainage projects)

(j) Any other pertinent, supporting data

(3) A location map indicating the location of the proposed work and a legal description (section, township, range, and county, NAD 83 UTM coordinates or latitude and longitude).

(4) A set of 8.5 by 11-inch drawings showing the details of the proposed work (plan and cross-sectional views showing elevations and dimensions). In situations where detailed plans are not available, conceptual/as-built plans (if already constructed) may be submitted with project notification. Detailed plans however, may be required after-the-fact with the post-activity report.

(5) If applicable, a compensatory mitigation plan for proposed wetland and/or stream fill or drainage activities.

(6) A written statement that the permittee agrees to abide by the terms and conditions of this permit.

c. **Form of Notification**: Nationwide Permit Pre-Construction Notification (PCN) Form, available from the District's website at: http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/RGP.aspx may be used as the notification and must include all of the information required in General Condition 2.b. Items (1)-(6) 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. Again, those messages should include the information identified in General Condition 2.b. Items (1)-(6) above. Formal written notification must be sent to this office as soon as possible.

d. **Notification to NMED:** For projects in which the New Mexico Environment Department (NMED) is the water quality certifying agency, the applicant must also provide a copy of the Pre-Construction Notification directly to the NMED Surface Water Quality Bureau (see condition 7 below), and obtain confirmation for the use of the Section 401 Water Quality Certification prior to commencing work in intermittent and perennial streams, Special Aquatic Sites, and Outstanding National Resource Waters (ONRWs). A copy of NMED's confirmation must be provided to the Corps.

e. **Critical Resource Waters:** The DE may authorize activities under this RGP only after it is determined that impacts to designated critical resource waters (if present) will be no more than minimal. If the Corps identifies a critical resource water at the project site, the DE will notify all appropriate agencies.

f. **Agency Coordination**: Upon receipt of a PCN the DE will immediately provide (i.e., by electronic mail, facsimile transmission, overnight mail or other expeditious manner) a copy to the following offices as appropriate: Offices of the Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the appropriate tribal entity, the New Mexico Environment Department (NMED), the New Mexico Department of Game and Fish (NMGF), and the New Mexico State Historic Preservation Office (SHPO). These agencies and tribes will be requested to telephone, electronic mail or facsimile transmit to the Corps Regulatory Branch Project Manager, as expeditiously as possible, a response 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 or tribal representative, the DE will provide an opportunity for comments. Due to the emergency nature of the projects being reviewed, comments are requested within a 3 day review timeframe, which may be extended by request to 5 days if circumstances warrant such extension. If the Corps does not receive a response from agencies within the specified timeframe, the DE will proceed with its authorization. If there are substantive changes after the Corps authorizes work, or a need to conduct a site visit, the DE

will provide additional opportunity for agency comment and for coordinating agencies to participate.

The DE will fully consider any agency comments received within the specified timeframe concerning the proposed activity's impacts 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 and will provide an informal response to the commenting agency by electronic mail, facsimile transmission or other means.

g. **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 will require, at the discretion of the DE, appropriate mitigation measures. Factors that the DE will consider when determining the suitability 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 purpose. 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 other methods to offset project impacts. Impacts to riparian habitat may require submittal of a revegetation plan.

h. **District Engineer's Decision**: In reviewing the notification for the proposed activity, the DE will determine whether the activity would likely result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.b. above.) the applicant has included.

   If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan.

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

3. **Authorized Work**: Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency. In certain limited circumstances complete reconstruction may be authorized if the project results in only very minor additional impact 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. The RGP may NOT be used to upgrade an existing structure when that activity would result in additional adverse effects on aquatic resources. Such upgrade projects are considered separate activities for which other forms of authorization will be required.

   Work not described in permit application documentation but deemed necessary after a field assessment is not authorized unless coordinated with the Regulatory project manager and acknowledged by appropriate means in writing (i.e., electronic mail or facsimile transmission, memo to the record, etc.). These coordinated permit modifications must also be described in sufficient detail in the post-

activity report (see General Condition 28). This RGP also does not authorize work required by property owners as *quid pro quo* for access through private or public property where such access is contingent upon work conducted by the permittee in waters of the U.S. for the benefit of the property owner. This is absolutely inappropriate and such additional activities are violations of Section 404 of the Clean Water Act unless previously authorized. If a local agency needs to acquire such access from an otherwise uncooperative property owner, existing condemnation procedures should be utilized to acquire the temporary access or permanent easement.

4. **Start Work Date**: Any projects authorized under this RGP must be initiated within seven (7) days of receiving authorization to proceed. Projects that cannot be initiated within this immediate timeframe generally would not meet the definition of an "emergency." If the project start time can be delayed for more than a week, the imminent threat of impending loss may have diminished in magnitude as well as immediacy. However, there may be limited circumstances where, after notice to and input by the agencies, logistical considerations necessitate an extension of between 1 and 7 days. 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 emergency event will not obligate the Corps or other agencies to authorize work because of a self-described emergency situation unless the agencies agree that the situation qualifies as an emergency as defined in this RGP .

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, and tribal water quality.

7. **Water Quality Certification**:

For Permittees on Non-tribal Land: The New Mexico Environment Department, Surface Water Quality Bureau issued conditional certification for the RGP dated on January, 7, 2013. Specifically, the New Mexico SWQB noted that New Mexico water quality certification is subject to the following conditions:

1. Activities in intermittent and perennial surface waters of the state require notification to the NMED Surface Water Quality Bureau (SWQB). Emergency RGP applicants are encouraged to provide to SWQB the same Pre-Construction Notification that they submit to the Corps, as described in the Emergency RGP General Condition 2. The notification must include: 1) construction plans (including proposed in-channel excavations and temporary diversions); 2) a description of potential adverse water quality impacts (including turbidity, which is a measurement of the amount of suspended material in water, as well as oil, grease, or hydraulic fluid, and all other potential contaminants); 3) a description of methods to be used to prevent water quality impacts (including detailed Best Management Practices, which must be designed to minimize sediment, oil, grease, and other pollutants from entering the water); 4) any surface water monitoring procedures; and 5) for any unavoidable surface water impacts, conceptual mitigation plans. Notifications for emergency projects may be faxed to 505-827-0160, Attn: Neal Schaeffer.

2. Notification of emergency channel and bank stabilization projects that do not implement bioengineering techniques must include a written discussion of the alternative techniques that were considered and why they were found not to be practicable. Bioengineering techniques incorporate primary materials found in the natural riparian environment, such as tree or boulder revetments.

3. Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must not be stored within the 100-year floodplain and must have a secondary containment system capable of containing twice

the volume of the product. Appropriate spill clean-up materials such as booms and absorbent pads must be available on-site at all times during construction.

4. All heavy equipment used in the project area must be pressure washed and/or steam cleaned before the start of the project and inspected daily for leaks. A written log of inspections and maintenance must be completed and maintained throughout the project period. Leaking equipment must not be used in or near surface water. Refuel equipment at least 100 feet from surface water.

5. Work in the stream channel should be limited to periods of no flow. Work in flowing water must have prior approval by the SWQB. Requests for such approval must describe planned methods to minimize turbidity and to avoid spills.

6. Temporary crossings should be restricted to a single location and perpendicular to and at a narrow point of the channel to minimize disturbance. Heavy equipment must be operated from the bank or work platforms and not enter surface water, unless otherwise approved in writing by SWQB. Heavy equipment must not be parked within the stream channel. Requests for such approval of deviations must include a description of planned methods to minimize turbidity and avoid spills.

7. Unless otherwise approved by SWQB, flowing water must be temporarily diverted around the work area but remain within the existing channel to minimize erosion and turbidity and to provide for aquatic life movement. Diversion structures must be non-erodible, such as sand bags, concrete barriers, or channel lined with geotextile or plastic sheeting (dirt cofferdams generally are not acceptable diversion structures). Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity, to avoid spills, and to provide a continuous zone of passage for aquatic life through or around the project area in which the water quality meets all applicable criteria including turbidity.

8. Work or the use of heavy equipment in wetlands must be avoided or minimized unless the impacts are to be mitigated. Unless otherwise approved by SWQB, wetland crossings must be restricted to a single location and constructed perpendicular to and at a narrow point of the wetland. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity and avoid spills. Wetland vegetation and excavated material (top soil) must be retained and reused to improve seeding success. Permeable fills should be designed and installed when practicable, and flows to wetlands must not be permanently disrupted. Fill materials must be clean and consist of coarse material with minimal fines. Ditches or culverts in wetlands must have properly designed, installed and maintained siltation or sedimentation structures at the outfall.

9. During demolition of structures within Waters of the State, materials must be kept out of the channel. To the extent practicable, impermeable containment material (e.g., plastic sheet, canvas, tarpaulins or other catchment devices) must be secured under the structure and on the banks to capture any debris that may fall into the stream channel. Any debris that falls onto the containment area or channel must be properly disposed in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC).

10. Bridges, culverts and structures at stream crossings must be properly designed, installed and maintained to allow passage of sediment, bedload, and woody debris, and to prevent erosion problems or diversion of the stream from its natural channel. Unless otherwise approved by SWQB, projects must not alter the natural stream channel size or shape (width, depth, gradient, direction or meander pattern), streamflow velocity (sediment transport rates), or water flow capacity. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity and avoid spills, as well as to stabilize modified hydraulic geometry.

11. Culverts at stream crossings must be designed and installed to prevent upstream headcutting, downstream channel incision, and erosion of the streambanks or the crossing. Culverts should be designed to pass 100-year flow events. Culvert design must allow for the passage of fish and other aquatic organisms. The road grade at culvert stream crossings must prevent the diversion of the stream from its channel in the event of culvert failure due to plugging or the exceedence of capacity. If the flow overtops the road, it must return to its natural channel instead of running down the road into a new channel.

12. Excavated trenches must be backfilled and compacted to match the bulk density and elevation of the adjacent undisturbed soil. Construction excavation dewatering discharges are to be uncontaminated and include all practicable erosion control measures and turbidity control techniques.

13. Unless otherwise approved by SWQB, the slope steepness for emergency riprap installation should not exceed one foot vertical for two feet horizontal. The use of a filter between the bank revetment and soil is generally necessary.

14. Unless otherwise approved by SWQB, all areas adjacent to the watercourse that are disturbed because of the project, including temporary access roads, stockpiles and staging areas, must be restored to pre-project elevations. Destruction of riparian or riverine vegetation, especially mature cottonwoods, shall be avoided to the maximum extent practicable.

15. A copy of this Certification must be kept at the project site during all phases of construction. All contractors involved in the project must be provided a copy of this certification and made aware of the conditions prior to starting construction.

16. The Post-Activity Reports described in the Emergency RGP General Condition 28 of the Emergency RGP must also be submitted to SWQB.

The SWQB also included the following additional comment:

1. Activities that disturb one acre or may more require a permit from EPA under CWA §402 (NPDES). Applicants should submit the appropriate application to EPA 14 days prior to initiating construction. In the case of emergency operations, you must apply no later than 30 days after the start of construction and are considered provisionally covered under the terms and conditions of the EPA-issued general permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of your application (Notice of Intent, or NOI), unless EPA notifies you that you authorization has been delayed or denied. For additional information, contact:

EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202
Ph: 800-887-6063 or 214-665-2760 if calling outside Region 6

For Permittees on Tribal Lands: Water Quality Certification was requested from the 12 Native American tribes that have been granted Water Quality Certification authority by EPA.

The following are a list of tribes that have certified RGP NM-12-01 with special conditions.

- Santa Clara Pueblo
- Ohkay Owingeh
- Pueblo of Acoma

Santa Clara Pueblo certified RGP NM-12-01 with the following conditions:

1. A Notice Of Intent (NOI) and Notice Of Termination (NOT) shall be provided to the Santa Clara Pueblo Governor's Office at the same time it is provided to the U.S. Army Corps of Engineer's District Engineer.
2. Access to Pueblo lands under the jurisdiction of the Pueblo must be approved in advance by the Pueblo's Governor's Office.
3. A preliminary review by the Environmental and Cultural Preservation Office must occur before work is initiated. A staff member from these offices shall be permitted to escort personnel and remain on site during all permitted work.
4. All permitted work will comply with applicable provisions of United States Clean Water Act and the Santa Clara Water Quality Code, adopted as amended by Santa Clara Tribal Council Resolution No. 2003-27 (July 15, 2003), and approved by the Secretary of the Interior effective August 5, 2003.

Ohkay Owingeh certified RGP NM-12-01 with the following conditions:

1. The Ohkay Owingeh Water Quality Standards shall not be exceeded.
2. The Permittee shall comply with all U.S. Army Corps of Engineers §404 permit conditions and Section 10 of the Rivers and Harbors Act of 1899 (RHA).
3. Prior to commencement of each project on Ohkay Owingeh Lands, the permittee shall provide a "Notice Of Intent" and a "Notice Of Termination" to Ohkay Owingeh Office of Environmental Affairs and the Environmental Protection Agency, and the copy of the proposed action (project plan) shall be provided to the tribe upon the tribes request.
4. Work in the stream channel should be limited to periods of no flow when practicable, and must be limited to periods of low flow. Avoid working within the channel during spring runoff or summer thunderstorm season.
5. When working in a stream channel, flowing water must be temporarily diverted around the work area to minimize sedimentation and turbidity problems. Acceptable diversion structures are non-erosive and include (but are not limited to) sand bags, water bladders, concrete barriers lined with plastic, and flumes.
6. The permittee shall restore all areas disturbed by construction activities to pre-project conditions. This shall include restoration of surface contours, stabilization of the soil and restoration of appropriate native vegetation to establish permanent cover.
7. All fuels, oil, hydraulic fluid, or other substances of this nature must note be stored, temporarily of otherwise, within the normal floodplain or the wetland. A secondary containment system for these items shall be used in the event the primary containment system leaks. Refueling or servicing of equipment must not take place within 100 feet of any watercourse or within the wetland area.
8. The construction area shall be protected such that a runoff event will not move soil or contaminants to surface water or away from the construction site. These measures shall be in place prior to the commencement of activities and inspected daily.
9. Temporary mats must be placed on stream banks, riparian areas, and wetlands, to minimize impacts to soil and vegetation from heavy equipment.
10. Temporary access roads must be restored to pre-project conditions.
11. Do to known and unknown endangered species that may reside on Ohkay Owingeh's river corridor, the permittee shall contact Ohkay Owingeh prior to project.

The Pueblo of Acoma certified RGP NM-12-01 with the following condition:

1. For projects in which the Pueblo of Acoma is the water quality certifying agency, the applicant must also provide a copy of the Pre-Construction Notification directly to the Pueblo of Acoma Environmental Office, and obtain confirmation for the use of the Section 401 Water Quality Certification prior to commencing work in intermittent and perennial streams, Special Aquatic Sites, and Outstanding National Resource Waters (ONRWs). A copy of the Pueblo of Acoma's confirmation must be provided to the Corps.

The following are a list of tribes that have denied Section 401 Water Quality Certification for RGP NM-12-01:

- Taos Pueblo.
- Pueblo of Isleta
- Pueblo of Sandia

For projects on tribal lands where water quality certification was denied, the prospective permittee must receive individual Section 401 certification to ensure proposed actions do not exceed tribal water quality standards.

Tribes that did not respond to request for certification:

The following tribes did not respond to the Corps' request for certification and are therefore presumed to have waived certification. However, the applicant should contact the tribe prior to commencing work on tribal lands where certification was not provided.

- Pueblo of Nambe
- Picuris Pueblo
- Pueblo of Pojoaque
- Tesuque Pueblo
- Navajo Nation
- Ute Mountain Ute Tribe

Tribes without water quality certification authority:

The U.S. Environmental Protection Agency has not issued Section 401 certification for tribal lands in New Mexico where the tribe does not have delegated water quality certification authority. Until such certification is received, this permit is not effective on the following tribal lands:

- Santa Ana Pueblo
- Pueblo of Cochiti
- Jemez Pueblo
- Pueblo of San Felipe
- Pueblo of San Ildefonso
- Zia Pueblo
- Santa Domingo/Kewa Pueblo
- Zuni Pueblo
- Mescalero Apache Pueblo
- Laguna Pueblo
- Jicarilla Apache Pueblo

8. **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. The U.S. Fish and Wildlife Service may provide project-specific recommendations to avoid or minimize potential take of listed species or adverse modification of designated critical habitat. The Corps will determine the degree to which the recommendations would be incorporated into the emergency authorization. .

   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 from their website at http://www.fws.gov/endangered/

9. **Historic Properties**: Impacts to historic properties listed, proposed for listing, or potentially eligible for listing in the National Register of Historic Places will be avoided to the maximum extent practicable. If such resources are impacted because of actions authorized under this RGP, the permittee 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 the permittee discovers any previously unknown archeological or paleontological remains while accomplishing the activity authorized by this RGP, the permittee must immediately notify the Corps Regulatory Branch who 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.

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

11. **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 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, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.

12. **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.

13. **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. During repair, demolition, treatments, or cleaning activities of bridges or associated structures, materials must be kept out of the channel. All asphalt, concrete, drilling fluids and other construction materials must be properly handled and contained to prevent releases into waters of the U.S. (See Section 307 of the Clean Water Act)

14. **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., U.S. Fish and Wildlife Service, National Park Service, USDA Forest Service, Bureau of Land Management). As of the date this permit is issued, the only designated Wild and Scenic River systems in the Albuquerque District are the Rio Grande segment extending from the Colorado state line downstream approximately 68 miles to the west section line of Section 15, T23N, R10E and the lower four miles of the Red River; The East Fork of the Jemez River from the Santa Fe National Forest boundary to its confluence with the Rio San Antonio; The Pecos River from its headwaters to the town site of Tererro; and the Rio Chama from El Vado Ranch launch site (immediately south of El Vado Dam) downstream 24.6 miles. Updated information is available at http://www.rivers.gov/wildriverslist.html

15. **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.

16. **Spawning Areas**: Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

17. **Waterfowl Breeding Areas**: Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

18. **Navigation**: No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. The permittee shall agree that, 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.

19. **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.

20. **Stream Channelization**: The Corps will not authorize blockage or filling of an existing stream meander in this RGP. The Corps will prohibit channelization, except for minor channelization or alignments in the vicinity of stream crossings.

21. **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).

22. **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.

23. **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 in waters of the U.S. 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).

24. **Maintenance Projects:**

    a. Exempt activities: Maintenance activities that include emergency reconstruction of recently damaged parts, of currently serviceable structures, such as dikes, dams, levees, riprap, bridge abutments, and transportation structures may be exempt under 33 CFR 323.4. Exempt maintenance activities do not include any modification that changes the character, scope, or size of the original fill design and emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for the maintenance exemption. If the maintenance activity involves ANY modifications to the original fill design, including the location of fill, the type of material to be used, the amount of material used, etc., then the activity does not qualify for the maintenance exemption and a DA permit will be required. Additionally, in-stream borrow for fill material is not an exempt activity unless the borrow activity occurs in a channel reach with a documented engineered design capacity and the borrow activity does not exceed the design capacity.

b. Non-exempt maintenance: The following types of maintenance activities may be authorized under this RGP in an emergency situation:

(1) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. This RGP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within 7 days of the date of their destruction or damage. In cases of catastrophic events, such as tornadoes, this 7-day limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.
(2) The removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, but not levees or other structures that run parallel to the stream) and/or the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure, unless the district engineer waives the 200 foot limit. This 200 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 associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. The placement of new or additional riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.
(3) Temporary structures, fills, and work necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows.

25. **Bank Stabilization:** Bank stabilization activities that are necessary for erosion protection must meet the following criteria: (a) No material is placed in excess of the minimum needed for erosion protection; (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects; (c) The activity will not exceed an average of once cubic yard per running foot placed along the bank below the plane of the ordinary high water mark, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects.

26. **Removal of Temporary Fills**: Temporary fills shall be removed in their entirety and the affected areas returned to 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, revegetation will not be required.

27. **Removal of Vegetation**: Vegetation removal shall be limited to that which is necessary to ensure functionality of the emergency measure. All removal of riparian or wetland vegetation must be fully described in 2.b. (2) (e) above.

28. **Post-Activity Reports**: The permittee shall provide a concise written report to this office as soon as practicable (within 45 days of completing the project) 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 under Section 7 of the ESA. Further, these reports enable the Corps 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)). In situations where there multiple projects being implemented in an area by a permittee, the permittee may consolidate reporting into a single comprehensive report.

    At a minimum the Report shall include any changes to the information provided in the original PCN and the following:

    I. Photos
    (a) Pre and post-construction (date and location)
    II. Detailed plans or As-built drawings (if required and if not submitted with PCN)
    III. Statement confirming that all general and special conditions were followed
    IV. Mitigation Plan (if deferred due to urgency of the proposed project)

29. The permittee must comply with all Federal, State and local applicable regulations and ordinances.

FURTHER INFORMATION:

1. **Congressional Authorities**: Activities conducted under this RGP are authorized 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).

2. **Limits of authorization under RGP #**
    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 provision of permit verification under this RGP is not contrary to the public interest is made in reliance on the information provided by the permittee.

5. **Reevaluation of Permit Decision**: This office may reevaluate its decision to issue this RGP, or on the verification that any particular activity qualifies for this RGP, at any time circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
   a. Failure to comply with the terms and conditions of this permit.
   b. The information provided in support of the permit verification request or after-action report proves to be false, incomplete, or inaccurate. See Item 4 above.
   c. Significant new information becomes available which this office did not consider in reaching the original public interest decision.
   d. The activity is determined to result in more than minimal impacts.

   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 compliance with the terms and conditions of this permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office. If the permittee fails 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 the permittee for the cost.

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

Allan E. Steinle

ALLAN E. STEINLE
Chief, Regulatory Division

31 Jan 14

DATE