



ALBUQUERQUE DISTRICT  
U.S. ARMY CORPS OF ENGINEERS

**DRAFT REGIONAL GENERAL PERMIT (RGP) NM/WEST TX-14-02**

**SEDIMENT AND DEBRIS REMOVAL ACTIVITIES THAT LOWER THE RISK OF FLOOD IMPACTS IN WATERSHEDS DAMAGED BY WILDFIRE AND OTHER SIGNIFICANT DISTURBANCES**

**EFFECTIVE DATE:** \*\*, 2014

**EXPIRATION DATE:** \*\*, 2019

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

**PERMIT NUMBER:** Regional General Permit (RGP) No. NM/West TX-14-02 (Corps File No. SPA-2014-00174-LCO)

**PERMITTEE:** Local, state or federal agencies.

**AREA OF COVERAGE:** Within the State of New Mexico and in those areas of west Texas in which the District has jurisdiction.

**PROJECTS AUTHORIZED:** This RGP authorizes sediment and debris removal activities in waters of the United States undertaken by local, state or federal government agencies that lower the risk of flood impacts in watersheds damaged by wildfire and other significant disturbances such as flooding. Authorized activities include restoring flow conveyance/channel geometry to pre-flood event dimensions by removing accumulated sediment and debris, associated sloping and stabilization of vertical banks to prevent collapse, and temporary access roads associated with the removal activity.

Activities are limited to 1000 linear feet as measured along the bank. A waiver of the 1000 foot limit may be granted in severely flood damaged watersheds where aquatic functions in the subject channel have been severely compromised by sediment/debris accumulation or in other areas where the applicant demonstrates the project results in no more than a minimal impact.

Documentation must be provided which verifies the proposed work will not increase pre-event channel capacity. In areas where no pre-event data is available, the applicant must provide a basis for determining the pre-event channel capacity.

Activities that are **NOT** authorized by this RGP include:

- Work that increases channel capacity beyond pre-flood dimensions.
- Activities that channelize or re-align the channel, or cut-off meanders.

- Removal of vegetation from within the channel without Corps approval, except that shallow rooted upland-type vegetation (may be removed from within the channel to mitigate hazards).
- Activities that remove material from stream channels to use in construction of bank top levees.
- Discharges into wetlands or destruction of wetlands through excavation, ditching or other hydrologic manipulation.

Activities authorized by this permit may require compensatory mitigation. Where compensatory mitigation is required, compensatory mitigation plans will be developed by the applicant, approved by the Corps, and coordinated with the applicable resource agencies on a case-by-case basis. In urgent situations, final approval of mitigation plans by the Corps may be subsequent to approval of the requested work. However, a conceptual mitigation plan must be provided with the application.

Each activity will be evaluated and, in some cases, may be authorized by nationwide permits or other regional general permits or may be exempt from regulation under Section 404(f)(1) of the Clean Water Act. For any activity that the District Engineer determines to have more than minimal environmental effects, individually or cumulatively, or that may be contrary to the public interest, an individual permit may be required.

Before any project will be considered and before authorization is granted under this RGP, it must be in compliance with the following General Conditions.

This RGP **does not** authorize flood control or emergency work in advance of permit verification.

This RGP may only be used in basins with documented watershed perturbations, such as wildfire and/or flooding, which have significantly increased stream bed aggradation above the baseline condition.

#### DEFINITIONS:

**Riparian vegetation** is vegetation within the riparian area or the stream and is generally made up of species of herbs, trees or shrubs that thrive in proximity to water.

**Riparian areas** are lands adjacent to streams and lakes. Riparian areas are transitional between terrestrial and aquatic ecosystems and provide a variety of ecological functions and services and help improve or maintain local water quality.

#### GENERAL CONDITIONS OF THIS RGP:

1. **Application and Project Completion Timeframes:** The time limit for **applying** for flood related repair activities is two **(2) years** following the flood event. The District will consider waivers of the two year time limit for extreme cases in which there has been a wildfire in the watershed and watershed recovery efforts limit the effectiveness of projects completed within a two year timeframe.

The time limit for **completing** the work authorized by this RGP is **one year** from the

permit verification date. If additional time will be needed to complete the authorized activity, a written request for a time extension must be submitted to the Corps at least **45 days** before the permit expires. The request should include justification for an extension.

2. **Notification/Communication:**

- a. **Timing of Notification:** The applicant must notify the DE as early as possible and shall not begin the activity until the DE provides written verification that the activity may proceed under this RGP with any site-specific special conditions imposed by the District or DE. Notification should be sent to:
- 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, CESPARD  
4101 Jefferson Plaza NE  
Albuquerque, NM 87109  
[SPA-RD-NM@usace.army.mil](mailto: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 the project that falls within the scope of this RGP.
    - (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) Photos of the project site.
    - (f) A discussion of the direct and indirect adverse environmental effects of the activity
    - (g) Location of disposal site for excavated material
    - (h) Type of equipment to be used
    - (i) Identification/delineation of wetlands
    - (j) Description of impacts to vegetation and wildlife.
    - (k) Mitigation Plan (if applicable)
    - (l) Maintenance Plan (if applicable)
    - (m) 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).
- (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 the permit.

c. **Form of Notification:** The Nationwide Permit Pre-Construction Notification (PCN) Form, available from the District's website at: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/NWP.aspx>, may be used as the notification. Regardless of the form of notification, that applicant must provide all of the information required in General Condition 2.b. Items (1)-(6) above.

d. **Mitigation:** Impacts resulting from discharges of dredged or fill material into Waters of the United States must be avoided or minimized to the maximum extent practicable. Compensation for unavoidable impacts will be required if necessary to offset impacts to aquatic resource functions. 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.

The DE will utilize a watershed-based approach to establish compensatory mitigation requirements in association with use of this RGP to the extent appropriate and practicable. The goal of a watershed approach is to maintain and improve the quality and quantity of aquatic resources in a watershed through strategic selection of mitigation sites..

e. **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 or an explanation as to why compensatory mitigation should not be required.

If the applicant elects to submit a mitigation plan as part of the proposed project, the DE will 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. **Certificate of Completion:** Upon completion of the work, the permittee shall submit a signed Certification of Compliance form to the Corps. The certification shall include:
  - a. A statement that the work was done in accordance with the Corps authorization, including any special conditions.
  - b. A statement that the required compensatory mitigation, if applicable, was done in accordance with the permit conditions.
  - c. The signature of the permittee certifying the completion of the work and mitigation.
  - d. Project site photos.
  - e. For all projects that include a design-build component, the permittee shall also submit a complete set of as-built drawings.
4. **Suitable Structures/Material:** The applicant must evaluate and employ structures and other project components that maintain, to the maximum extent possible, the natural functions/services of the aquatic environment.

All in-channel structures shall be keyed into the adjacent depositional environment (e.g. the stream bank) and protected by large rock or other suitable material to prevent them from being bypassed through scouring/undercutting or lateral migration during high flows. The distance that in-channel structures are keyed into the surrounding depositional environment shall be based on the size of the material used for the specific project and appropriate to the stream's hydrograph. As such, a scour analysis and other applicable hydraulic/hydrologic calculations may be required.

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. 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)

5. **Best Management Practices:**
  - a. Where appropriate and practicable, objects that create roughness in the stream, such as riparian vegetation and boulders, should be left in the channel to slow water and reduce damaging effects of erosion. Vegetation within the stream mitigates flood flows; provides hydraulic roughness which reduces flow velocity and severity. Where appropriate, in-stream vegetation and undeveloped floodplain areas can help absorb flood flows and should be

planned for in managing flood flows. By allowing the flood flows to overtop embankments in the right locations, flows will be diverted, dissipated, detained, and decreased. Large, shallow rooted trees growing within the stream channel may be removed to prevent them from being dislodged during floods and creating downstream hazards.

- b. Efforts must be taken to avoid removing natural structural materials that protect or armor the stream bed because such removal may expose material that is more susceptible to erosion and headcuts.
- c. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.
- d. Management of Water Flows. Work in the stream channel should be limited to periods of no or low flow. In the event that storm flows or runoff events are forecasted during construction, work in the channel must cease and measures must be taken to remove temporary piles within the channel and to divert flows around the construction site.

6. **Authorized Work:** 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 approved in writing (i.e., electronic mail or facsimile transmission, memo to the record, etc.).

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.

7. **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.
8. **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.
9. **Water Quality Certification:** To Be determined
10. **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).

As appropriate, the Corps will consult with the U.S. Fish and Wildlife Service (USFWS) on specific requests to perform work under this permit if the project may affect a threatened or endangered species, or critical habitat.

Consultation may conclude with the identification of conservation recommendations by the USFWS in non-jeopardy Biological Opinion (BO). At the Corps' discretion, these recommendations will be incorporated into the permit decision, and the Corps will enforce compliance with accepted recommendations. If the USFWS renders a jeopardy BO and reasonable and prudent alternatives cannot be implemented to avoid the unacceptable impacts, the project will require an individual Department of the Army permit. Authorization of an activity under this permit does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a BO with "incidental take" provisions, etc.) from the USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA.

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/>.

11. **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 will be impacted because of actions authorized under this RGP, the Corps, the State Historic Preservation Office 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 historic or archeological 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.

12. **Regional and Case-by-Case Conditions:** The activity must comply with any special conditions added by the District Engineer.
13. **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.
14. **Removal of Temporary Fills:** Temporary stockpiles within water of the United States must be completely removed from the channel within 24 hours. Other temporary fills associated with the project, such as access roads or coffer dams, shall be removed in their entirety and the affected areas returned to pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation appropriate for the area within 30 days of the end of construction.
15. **Compliance with Other Laws:** 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 404 of the Clean Water Act (33 U.S.C. 1344).

2. **Limits of authorization under RGP No. NM-14-02:**

- 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  
Chief, Regulatory Division

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DATE

DRAFT