



**US Army Corps  
of Engineers®**  
Albuquerque District

## JOINT PUBLIC NOTICE

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Action No.:	SPA-2014-00449-ABQ
Action Title:	Letter of Permission NM-1
Proposed Area:	state of New Mexico
Public Notice Date:	February 20, 2015
Comment Due Date:	March 22, 2015

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Reply To:

Regulatory Division  
New Mexico/Texas Branch  
U.S. Army Corps of Engineers, Albuquerque District  
4101 Jefferson Plaza, Northeast  
Albuquerque, New Mexico 87109

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**PROPOSED LETTER OF PERMISSION PROCEDURE UNDER SECTIONS 404  
and 401  
OF THE CLEAN WATER ACT (33 USC 1344)  
for MAINTENANCE ACTIVITIES AT CERTAIN EXISTING  
STRUCTURES/FACILITIES CONDUCTED BY GOVERNMENT ORGANIZATIONS**

Interested parties are hereby notified that, in accordance with Title 33 Code of Federal Regulations (CFR) Part 325.2(e), published in the Federal Register on November 13, 1986, the Albuquerque District of the United States Army Corps of Engineers (Corps) intends to issue a Letter of Permission (LOP) procedure for authorizing the work described herein, within the state of New Mexico. The purpose of this procedure is to expedite Section 404 authorization for the activities described below when they would not pose substantial adverse individual or cumulative impacts on the aquatic environment. Each LOP issued will include the general conditions identified herein by reference and appropriate case-specific provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require authorization by standard individual permit. However, compliance with this LOP procedure, including the general conditions, does not guarantee authorization of the work by LOP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this LOP are prohibited unless authorized by a separate permit.

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**PERMITEES:** As of the date of this public notice, the Albuquerque Metropolitan Arroyo Flood Control Authority (AMAFCA), Southern Sandoval County Arroyo Flood Control Authority (SSCAFCA), and Bernalillo County (BernCo) would be the permittees for this LOP procedure. Through this public notice the Corps is also soliciting for potential additional permittees who may qualify to use this LOP procedure. Prospective permittees who would like to be considered for approval by the Corps to use this LOP procedure must be a government or quasi-government organization with an operations and maintenance program for facilities or structures located in an urban area that they are responsible for or own. An “urban area” means an area that has been identified in the U.S. Census Bureau’s 2010 geographic dataset as an “urbanized area” (<http://www.census.gov/geo/reference/ua/urban-rural-2010.html>). Prospective permittees shall make a request for consideration in writing to the Corps at the address provided above by the close of the comment period for this public notice. Requests received after the close of the comment period may still be considered, but a full review by the Corps prior to issuing the final LOP procedure is not guaranteed. The Corps shall evaluate requests for prospective permittee consideration based on organization type; organization mission; and the type, frequency and scope of maintenance activities conducted by the organization. The Corps may contact prospective permittee requestors for more information in order to determine the appropriateness of approving their request. A final public notice issuing this LOP procedure will include a list of all approved permittees.

**LOCATION OF WORK:** This LOP procedure shall apply to maintenance work at facilities and structures operated and maintained by the permittees located within the state of New Mexico in all waters of the United States (U.S.), including wetlands.

**PROPOSED CATEGORIES OF ACTIVITIES:** Work authorized by LOP under this procedure is limited to discharges of dredged and fill material associated with maintenance activities conducted by the permittees in waters of the U.S. The proposed categories of activities to be authorized by this LOP procedure consist of maintenance activities conducted by the permittees including, sediment removal from earthen and concrete structures; erosion repair and control; concrete repairs; vegetation removal; trash removal; vector cleaning; access control; slide gate servicing; water monitoring; water quality monitoring; bank restoration; pipe and structure repairs; and work associated with these activities, such as temporary diversion structures. Maintenance is the repair, rehabilitation, or replacement of a facility, structure or fill. Maintenance does not include new construction. Impacts to waters of the U.S. shall be avoided or minimized through the use of practicable alternatives. Work that would have substantial adverse impacts on the aquatic environment or cause a substantial reduction in the reach of waters of the U.S. shall not be authorized by LOP under this procedure.

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**APPLICATION PROCEDURES:** An application for authorization of work, under this LOP procedure, must be submitted in writing to the Corps, Albuquerque District Office, at the beginning of the calendar year for anticipated maintenance projects. The information may be submitted on an [Application for Department of the Army Permit form \(ENG Form 4345\)](#) or in any other form convenient to the applicant. The LOP application for anticipated maintenance within a particular calendar year shall be submitted by an individual permittee and shall contain the following information:

1. Name, address, telephone number, and electronic mail address, if available, of the prospective permittee;
2. A list, preferably in spreadsheet format, of the prospective permittee's anticipated maintenance projects for the calendar year to include a brief description of the anticipated maintenance activity, description of the best management practices utilized for adverse impact avoidance and minimization for each maintenance project, an estimate of the area of impact to waters of the U.S. for each maintenance project, an estimate of the volume of dredged and/or fill material to be discharged in waters of the U.S., an estimate of the volume of excavated material from waters of the U.S., identification of any disposal site location(s) or statement that material removed will be disposed in an upland location, and planned begin and end dates for the work;
3. A vicinity map showing the location of each of the prospective permittee's anticipated maintenance projects for the calendar year;
4. If potential wetlands are in or adjacent to the proposed maintenance site, a wetland delineation utilizing the appropriate Corps Wetland Delineation Regional Supplemental Guidance shall be performed and submitted with the application;
5. For all existing structures requiring maintenance within the calendar year include the date of initial construction and any major modifications. A structure that is 50 years or older is considered historic and must be evaluated in accordance with Appendix C of 33 CFR Part 325 and the National Historic Preservation Act (see Item 6 below);
6. A statement disclosing whether or not any cultural resources protected under the National Historic Preservation Act might be affected by, or found in the vicinity of, the proposed project(s); and
7. A statement disclosing whether or not any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed project(s). Direct coordination with the U.S. Fish and Wildlife Service (USFWS) concerning the potential impact of the entire project on threatened and endangered species is strongly encouraged.

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In the case of unanticipated maintenance work that falls within the scope of this LOP procedure, prospective permittees shall notify the Corps, Albuquerque District Office, as early as possible to discuss permitting requirements. The Corps recognizes there may be situations where imminent threats to life or property occur and the prospective permittee has not received authorization to proceed from the District Engineer. It is not the intention of this LOP procedure to require threats to life or property to remain unaddressed. If a prospective permittee chooses to proceed without authorization from the District Engineer, the applicant must ensure that prior notice of such a unilateral decision to proceed is made to this office by telephone, facsimile, e-mail, delivered written notice or other alternative means.

Note that other Corps permits or permit processes may be available for unanticipated maintenance projects in emergency situations. Emergency situations are defined in the Corps implementing regulations at 33 Code of Federal Regulations Part 325.2. Currently, the Corps Albuquerque District Regulatory Program may process emergency projects under [Regional General Permit NM-12-01 for Repair and Protection Activities in Emergency Situations](#) or by standard individual permit utilizing the South Pacific Division Emergency Permit Procedures.

If the unanticipated maintenance work cannot be authorized by General Permit, but the work does fall within the scope of this LOP procedure, then the permittee shall submit in writing to the Corps, Albuquerque District Office, an application for authorization of work under this LOP procedure. The LOP application for unanticipated maintenance shall be submitted by an individual permittee and shall contain the same information as described above for anticipated work.

All permittees shall submit a final annual report to the Corps Albuquerque District Office by December 31<sup>st</sup> of each calendar year that documents the work accomplished under the LOP issued to the permittee that same calendar year, which includes both anticipated and unanticipated work. The final annual report will include, at a minimum, the following information:

1. A list, preferably in spreadsheet format, of maintenance projects authorized by LOP that were not conducted during the calendar year, if any;
2. A list, preferably in spreadsheet format, of maintenance projects that were conducted during the calendar year authorized by LOP including project location; actual acres or linear feet of impact to waters of the U.S.; actual volume in cubic yards or cubic feet of material discharged into and/or removed from waters of the U.S.; photographs of the maintenance sites taken within 30 days after construction is complete; a statement that each maintenance project was conducted in compliance with the terms and conditions of this LOP procedure; and documentation of compliance with any special conditions added to the LOP;

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3. For projects where the original structure/facility capacity was modified, include drawings or sketches of those projects conducted during the calendar year to include plan, profile, and cross-section views.

**GENERAL CONDITIONS:** In addition to limitations discussed in the Proposed Categories of Activities, projects authorized by LOP under this procedure are subject to the following general conditions:

1. In issuing a LOP, the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to issuing an LOP, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.
2. Projects authorized by LOP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.
3. An LOP should not be considered as an approval of the design features of any authorized project or an implication that such is considered adequate for the purpose intended; a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. LOPs do not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. Nor do they relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located and to address all non-encroachment restrictions within a regulatory floodway of such local jurisdiction as identified by the Federal Emergency Management Agency.
4. This LOP procedure may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that such action would be in the public interest.
5. Any modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.
6. An LOP does not authorize the interference with any existing or proposed Federal project, and the permittee shall not be entitled to compensation for damage or injury to the structures or activities authorized herein which may result from existing or future operations undertaken by the United States in the public interest.

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9. Permittees shall make every reasonable effort to conduct the activities authorized by LOP in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, riparian areas and native vegetation, particularly mast-producing trees and shrubs such as juniper, pinyon pines, and oaks.

10. The District Engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

a) The activity must be designed and conducted to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).

b) Mitigation in all its forms (avoiding, minimizing, or compensating for resources losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 0.1-acre, unless the District Engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or that the adverse effects of the proposed activity are minimal and, therefore, provides a project-specific waiver of this requirement. For wetland losses of 0.1-acre or less, the District Engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 Code of Federal Regulations Part 332. Where compensatory mitigation is required, it shall only be required once for impacts associated with the approved maintenance activity.

11. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections of project sites at any time deemed necessary to ensure that the activity being performed by LOP is in accordance with the terms and conditions prescribed herein.

12. The impact of activities authorized by LOP using this procedure on cultural resources shall be taken into account by the Corps prior to the initiation of work. Cultural resources include, but are not limited to, prehistoric and historic archeological sites, artifacts, historic buildings and structures, and areas of cultural interest (e.g. Traditional Cultural Properties). If cultural resources are determined to be in the permit area, the permittee shall not conduct any work that would affect the cultural resource until the requirements of 33 CFR Part 325, Appendix C, have been satisfied. If a previously unknown cultural resource is

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encountered during work authorized by an LOP issued under this procedure, the permittee shall immediately notify the Corps and avoid further impact to the cultural resource until the Corps has verified that the requirements of 33 CFR Part 325, Appendix C, have been satisfied.

13. Dredged and fill material shall not consist of unsuitable material (e.g., trash, debris, waste products, asphalt, car bodies, tires, etc.) and must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

14. Permittees shall use and maintain appropriate erosion and sedimentation controls in effective operating condition during construction, and permanently stabilize all exposed soil at the earliest practicable date.

15. Permittees shall remove all temporary fills in their entirety.

16. Permittees shall coordinate all construction activities in federally maintained channels and/or waterways for required setback distances with the Corps prior to application for a permit.

17. Permittees shall place all heavy equipment working in wetlands on mats, or take other measures to minimize soil disturbance.

18. No authorization will be granted for an activity that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

19. The project shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area unless the primary purpose of the activity is to impound water.

20. Permittees shall properly maintain any structure or fill to ensure public safety.

21. Permittees shall address any potential adverse impacts of the discharge of dredged or fill material to public water supply intakes.

22. Stream realignment is not authorized.

23. Permittees shall avoid and minimize discharges of dredged or fill material into waters of the U.S. through the use of practicable alternatives.

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24. To the maximum extent practicable, permittees shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the fill is to impound water.

25. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

**WATER QUALITY CERTIFICATION:** In accordance with Section 401 of the Clean Water Act, certification of compliance with state or tribal water quality standards by the state or tribal water quality certifying authority, is required for any discharge of dredged and fill material into waters of the U.S. under Section 404 of the Clean Water Act. The Environmental Protection Agency (EPA) administers Section 401 for those tribes who do not have water quality certifying authority. This public notice serves to both notify the public that the New Mexico Environment Department Surface Water Quality Bureau (NMED), EPA Region 6, and the following tribes: Pueblo of Sandia, Pueblo of Isleta, Pueblo of Nambé, Pueblo of Acoma, Picuris Pueblo, Pueblo of Pojoaque, Santa Clara Pueblo, Taos Pueblo, Ohkay Owinghey, Pueblo of Tesuque, and Navajo Nation will consider issuing a certification under Section 401 and for the Corps to request water quality certification from these water quality certifying authorities in the state of New Mexico for this LOP procedure in an effort to streamline permit processing. These water quality certifying authorities will accept and consider written comments regarding water quality certification received during the comment period. Comments may be submitted electronically or by hard copy to:

1. State Water Quality Certification: Comments on this public notice regarding state water quality certification may be addressed to Abe Franklin, NMED SWQB, P.O. Box 5469, Santa Fe, New Mexico 87502-5469, 505-476-3017, [Abraham.franklin@state.nm.us](mailto:Abraham.franklin@state.nm.us)

2. Tribal Water Quality Certification:

a) Comments on this public notice regarding tribal water quality certification on the following tribal lands where the tribe has water quality certifying authority may be addressed to the contact provided for each tribe below:

Scott Bulgrin, Pueblo of Sandia, Environment Department, 481 Sandia Loop, Bernalillo, New Mexico 87004, 505-771-5081, [sbulgrin@sandiapueblo.nsn.us](mailto:sbulgrin@sandiapueblo.nsn.us)

Ramona Montoya, Environment Division Manager, Pueblo of Isleta, P.O. Box 1270, Isleta, New Mexico 87022, 505-869-7565, [POI36871@Isletapueblo.com](mailto:POI36871@Isletapueblo.com)

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Steve Rydeen, Director, Environment Department, Pueblo of Nambe, Rural Route 1, Box 117BB, Nambe Pueblo, New Mexico 87506, 505-455-4420, [srydeen@nambepueblo.org](mailto:srydeen@nambepueblo.org)

Steve Juanico, Pueblo of Acoma, [juanicojs@msn.com](mailto:juanicojs@msn.com)

Jennie Olguin, Picuris Pueblo, [jennie.olguin@picurisppueblo.org](mailto:jennie.olguin@picurisppueblo.org)

Adam Duran, Pueblo of Pojoaque, [aduran@puebloofpojoaque.org](mailto:aduran@puebloofpojoaque.org)

Dino Chavarria, Office of Environmental Affairs, Santa Clara Pueblo, P.O. Box 580, Espanola, New Mexico 87532, 505-753-7326, [dinoc@santaclarapueblo.org](mailto:dinoc@santaclarapueblo.org)

Robert Gomez, Environmental Office, Taos Pueblo, P.O. Box 1846, Taos, New Mexico, 87571, 575-751-4601, [RGomez@taospueblo.com](mailto:RGomez@taospueblo.com)

Connie Martinez, Environment Department, Ohkay Owingeh, P.O. Box 717, Ohkay Owingeh, New Mexico 87566, 505-852-4212, [connie\\_martinez@ohkayowinge-h-nsn.gov](mailto:connie_martinez@ohkayowinge-h-nsn.gov)

Jeremy Yepa, Environment Department, Pueblo of Tesuque, Route 42, P.O. Box 360-T, Santa Fe, New Mexico, 87506, 505-955-7743, [jyepa@pueblooftesuque.org](mailto:jyepa@pueblooftesuque.org)

Lee Anna Martinez-Silversmith, 401 Certification Program Coordinator, Navajo Nation EPA, Water Quality Program, P.O. Box 339, Window Rock, Arizona, 86515, 928-871-7700, [leeanna.martinez09@yahoo.com](mailto:leeanna.martinez09@yahoo.com)

b) Comments on this public notice regarding water quality certification on tribal lands where the tribe does not have water quality certification authority may be addressed to Thomas Nystrom, EPA Region 6, 1445 Ross Avenue, Suite 1200, 6WQ-EM, Dallas, Texas 75202-2733, 214-665-8331, [nystrom.thomas@epamail.epa.gov](mailto:nystrom.thomas@epamail.epa.gov)

Water Quality Certifications issued for this LOP procedure will be published with the final version and made conditions of all LOPs issued under this procedure. If water quality certification is denied, the permittees must obtain individual water quality certification from the appropriate certifying authority and provide a copy of individual water quality certification to the Corps prior to authorization by LOP under this procedure.

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**OTHER AUTHORIZATIONS:** The permittees are responsible for obtaining any additional federal, state, or local permits that may be required, which include, but are not limited to:

1. Any work on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency.
2. Projects involving government property on Corps reservoirs will require submission of detailed design information to the reservoir manager and Corps approval of the proposed activity, including a real estate consent to easement.
3. Activities within a 100-year floodplain may require a permit from the local Floodplain Administrator. In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.
4. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in the disturbance of one or more acres, must be controlled and authorized under Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Construction Activities. A copy of the general permit, application (notice of intent), and additional information is available at:  
<http://water.epa.gov/polwaste/npdes/stormwater/Applying-for-Coverage-under-the-Construction-General-Permit-CGP.cfm>
5. Proposed activities subject to authorization under this permit and affecting an international water in New Mexico, including the Rio Grande, and all tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 North Mesa Street, El Paso, Texas 79902.
6. Activities outside the Corps permit area that may affect a federally listed endangered or threatened species or its critical habitat could require permits from the USFWS to prevent a violation of the Endangered Species Act under Section 9.

**EVALUATION PROCEDURES:** Prior to authorizing any project, the Corps shall conduct a public interest evaluation and determine mitigation requirements, if any, for the proposed work. The Corps will evaluate the proposed projects to determine if the work qualifies for authorization under this LOP procedure. Projects that qualify for authorization under this LOP procedure must meet the terms and conditions of this procedure.

Work cannot proceed until the Corps has issued a written LOP to the permittee for projects that cannot be authorized by any other valid Corps general permit without the requirement for preconstruction notification. The Corps may add special conditions to

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the LOP to ensure that adverse environmental impacts are not substantial, or may determine that a standard individual permit is required.

The Corps will evaluate this LOP procedure every five years from the date of issuance to determine if any changes need to be made or if the procedure is still needed. If the Corps determines that changes to this LOP procedure are needed or required, a new public notice will be issued with a 30 day comment period to all interested parties notifying them of the proposed changes.

This LOP procedure shall become effective on the date of the signature of the District Engineer, or their authorized representative.

Patrick J. Dagon  
Lieutenant Colonel, U.S. Army  
District Commander

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