



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

PUBLIC NOTICE

Regional General Permit File No.:	SPA-2008-00110-DUR
Public Notice Date:	March 26, 2008
Comment Due Date:	April 10, 2008
USACE Contact Phone:	970-375-9509

Reply To:

Regulatory Division
US Army Corps of Engineers, Albuquerque District
4101 Jefferson Plaza, NE
Albuquerque, NM 87109-3435

PROPOSED EMERGENCY REGIONAL GENERAL PERMIT UNDER SECTION 404 OF THE CLEAN WATER ACT (33 USC 1344)

Summary of Proposed Regional General Permit:

The U.S. Army Corps of Engineers, Albuquerque District, announces the draft Regional General Permit (RGP) to provide an expedited response to public agencies and private parties for necessary emergency repair and protection measures in waters of the United States. These activities would be authorized pursuant to Section 404 of the Clean Water Act and Section 10 of the River and Harbor Act of 1899, where there is a sudden, unexpected occurrence involving a clear and imminent threat to life or property (such as those situations 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) demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services. This proposed RGP may be accessed at <http://www.spa.usace.army.mil/reg/default.asp>. Prospective users of this permit should be cognizant of its terms and special conditions so as to avoid activities that would result in an enforcement action by the Government.

Location: In any jurisdictional waters of the United States throughout the Albuquerque District of the U.S. Army Corps of Engineers, including those parts of the States of Colorado, New Mexico, and Texas subject to regulatory review by this office. In the event of future modifications to District boundaries, this permit would also apply in any areas so revised.

Expiration Date: The emergency Regional General Permit is proposed to expire on April 15, 2013. The reauthorization of this RGP in 2013 will depend in part on the degree to which users of this RGP (permittees) comply with the RGP's terms and conditions, and in

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particular, its reporting requirements.

Additional Information: Pursuant to 33 CFR Part 323.4(a)(2), the discharge of dredged or fill material that may result from the following activities is not prohibited by or otherwise subject to regulation under Section 404:

“Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.”

In addition, regulations at 33 CFR Part 323.4(c) state “[a]ny discharge of dredged or fill material into waters of the United States incidental to...” such maintenance activities...“must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.”

Note that activities conducted under this exemption may still be constrained by regulations of one or more other agencies. For example, U.S. Fish and Wildlife Service may require permits for the take of species listed as threatened or endangered under the federal Endangered Species Act. Also, the Colorado Department of Public Health, the New Mexico Environment Department, and the Texas Natural Resource Conservation Commission may require authorizations under state laws.

Furthermore, activities that result in the discharge of no more than incidental or de minimis fallback of excavated sediments are not regulated under Section 404 of the Clean Water Act. Such activities include the removal of accumulated material or debris from areas otherwise subject to Corps jurisdiction where the discharge is incidental to the primary activity of excavation by use of backhoes, excavators, suction dredges or similar equipment. Bulldozing and stockpiling of material to facilitate eventual excavation is regulated as a discharge of material if conducted within Corps jurisdiction and would require a Section 404 permit. Removal of vegetation by use of hand tools or certain mowers does not typically result in the discharge of fill material and is not regulated under the Clean Water Act, but bulldozing for vegetation removal would likely be regulated as well as disking of the substrate for weed control in certain circumstances.

Individuals who desire to conduct work within waters of the United States that they believe would qualify under the 404(f) exemptions or which would qualify as a non-regulated excavation activity with only incidental fallback are strongly advised to first coordinate their planned activities with the Corps of Engineers Regulatory staff.

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Comments: Any comments concerning this project should be received by the District Engineer no later than April 10, 2008. Comments received after the end of the Public Notice comment period will not be considered. However, more time may be given if a request, with a valid reason, is received prior to the suspense date. The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make the decision to issue the proposed Emergency RGP, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed below. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

To request additional information on the proposed Emergency Regional General Permit, please contact the following:

Deanna L. Cummings
Regulatory Division
Albuquerque District, Corps of Engineers
4101 Jefferson Plaza, NE
Albuquerque, NM 87109-3435
970-375-9509
Fax No. 505-342-3498 or 970-375-9531

The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The evaluation of the impact of this activity will include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act. All factors relevant to the proposal and the cumulative effects will be considered; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

At the request of the Department of Public Safety, Emergency Management Preparedness, State Coordinator, we are sending a copy of this notice to the local flood plain administrator for their information. In accordance with 44 CFR Part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), participating communities are required to review all proposed development to determine if a flood plain development permit is required. The local Flood Plain Administrator is required to perform this review for all proposed development and maintain records of such review.

You may contact:

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Department of Public Safety
State Floodplain Coordinator
Attn: Mr. Bill Borthwick
email: wborthwick@dps.state.nm.us
Phone: 505-476-9617

State Reclamation Engineer
Attn: Mr. James Mirabal
Homepage: www.tnrcc.state.tx.us
Phone: 512-239-4771

If the District Engineer determines that the proposed Emergency RGP complies with the 404(b)(1) guidelines, he will issue the permit unless issuance would be contrary to the public interest.

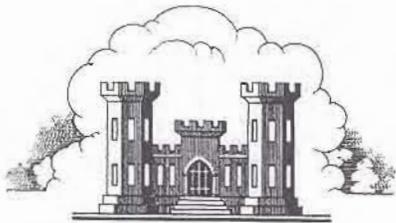
Any person may request a public hearing. The request must be submitted, in writing, to the District Engineer within 15 days of the date of this notice and must clearly set forth the reasons for holding a public hearing.

B.A. Estok
Lieutenant Colonel, U.S. Army
District Commander

Enclosures

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ALBUQUERQUE DISTRICT
U.S. ARMY CORPS OF ENGINEERS

**DEPARTMENT OF THE ARMY REGIONAL GENERAL PERMIT
FOR
REPAIR AND PROTECTION ACTIVITIES IN EMERGENCY SITUATIONS**

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

PERMIT NUMBER: Emergency Regional General Permit (File No. SPA-2008-00110-DUR)

ISSUANCE DATE: Proposed issuance date April 15, 2008

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 from this office, you are authorized to perform work in accordance with the General Conditions and any project-specific conditions specified below.

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).

PROJECT LOCATION: Within those parts of the States of Colorado, New Mexico, and Texas subject to regulatory review by this office. In the event of future modifications to District boundaries, this permit would also apply in any areas so revised.

GENERAL CONDITIONS OF THIS RGP:

1. **Time Period Covered:** The time limit for completing work authorized by this RGP ends on April 9, 2013. The reauthorization of this RGP in 2013 will depend on the degree to which users of this RGP (permittees) comply with the RGP's terms and conditions, and in particular, its reporting requirements.
2. **Notification/Communication:**
 - a. **Timing:** The applicant must notify the District Engineer (DE) as early as possible and shall not begin the activity until notified by the DE that the activity may proceed under this RGP with any site-specific special conditions imposed by the District or Division Engineer. The Corps

recognizes there may be situations where imminent threats to life or property occur and the applicant has not received a notice to proceed from the DE. It is not the intention of this office to imply that one allows such threat to life or property result in actual loss. If the applicant proceeds without such notice from the DE, they 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. Notification should be to the appropriate office as listed in attachment A.

- b. **Contents of Notification:** The notification should be in writing and include the following information:
- (1) The name, address and telephone number of the applicant and the designated point of contact and their address and telephone number;
 - (2) The location of the proposed project in detail, including the identification of the waterbody(ies) (this should include a copy of a U.S. Geologic Survey [USGS] topographic map, street map, or hand-drawn location map with suitable landmarks; the map should have sufficient detail to clearly indicate the location and extent of the project, as well as detailed directions to the site);
 - (3) A brief, but clear, description of the imminent threat to life or property and the proposed project's purpose and need;
 - (4) A description of methods anticipated to be used to rectify the situation ("field engineering" is not an adequate description. It is presumed if one mobilizes matériel and a particular piece of equipment to a site, then one probably has a fairly well defined intention for that matériel and equipment. Plans, drawings or sketches showing the area to be impacted, cross sections showing details of construction, and a short narrative describing how the work is to be completed should be provided as a minimum); and
 - (5) A brief description of the project area's existing conditions and anticipated environmental impacts resulting from the proposed work (amount of dredge or fill material, acreage of disturbance, removal of significant vegetation, loss of habitat, etc.).
- c. **Form of Notification:** The standard Application for Department of the Army Permit (Form ENG 4345), available from the District's Website at <http://www.spa.usace.army.mil/reg/default.asp>, may be used as the notification and must include all of the information required in General Condition 2.b. Items (1)-(5) 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)-(5) above. Formal written notification should be sent to the appropriate office listed in attachment A as soon as possible.
- d. **Agency Coordination:** Upon receipt of a notification, the DE will immediately provide (i.e., by facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Environmental Protection Agency (USEPA), the U.S. Fish and Wildlife Service (USFWS), the State Historic Preservation Office (SHPO), and the Colorado Division of Wildlife, New Mexico Environment Department, the New Mexico Department of Game and Fish, the Texas Parks and Wildlife Department and the Texas Commission on Water Quality, as appropriate. These agencies will be requested to telephone or facsimile transmit to the Corps Regulatory Division Project Manager, within 24 hours (or the next business day if a weekend), a notice 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, the DE will allow them to provide their comments in a short timeframe determined by the DE on a case-by-case basis to not likely result in loss of life or property before making a decision on the proposed project.

The DE will fully consider any comments from Federal or State agencies, received within the specified timeframe, concerning the proposed activity's compliance with the conditions of their authority 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 associated with the notification and will provide an informal response to the commenting agency by electronic mail, facsimile transmission or other means.

- e. **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 may require appropriate mitigation measures. Factors that the DE will consider when determining the acceptability of appropriate and practicable mitigation will include, but are not limited to:
 - (1) The approximate functions of the aquatic resource being impacted, such as habitat quality, 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 purposes. 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 to offset project impacts. To the extent appropriate, applicants should consider mitigation banking and other forms of mitigation, including contributions to wetland trust funds or in-lieu fees to organizations such as State, county or other governmental or non-governmental natural resource management organizations, where such fees contribute to the restoration, creation, replacement, enhancement, or preservation of aquatic resources.

- f. **District Engineer's Decision:** In reviewing the notification for the proposed activity, the DE will determine whether the activity authorized by this RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public's interest. The applicant may, as an option, submit a proposed mitigation plan with the notification to expedite the process and the DE will consider any mitigation (See General Condition 2.e. above.) the applicant has included in the proposal in determining whether the net adverse environmental effects for the proposed work are minimal. 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 applicant elects to submit a mitigation plan as part of the proposed project, the DE will expeditiously review the proposed plan also. However, the DE may approve the mitigation proposal after the proposal for the work is approved and project work has commenced.

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

- (1) 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 or other general permit, or
- (2) That the project is authorized under this RGP subject to the applicant submitting a mitigation proposal that would reduce the adverse effects to the minimal level.

- 3. **Authorized Work:** Any work authorized by this RGP must be the minimum necessary to alleviate the immediate emergency, unless complete reconstruction only results in 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. Moderate upgrading would be considered if the applicant wishes to use bioremediation or other environmentally sensitive solutions. The RGP may NOT be used to upgrade an existing structure to current standards when that activity would result in additional adverse effects on aquatic resources, except in very unusual and

limited circumstances. Such upgrade projects are considered separate activities for which other forms of authorization will be required.

This RGP 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 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 is likely to have diminished in magnitude as well as immediacy. 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 spring runoff or monsoon season will not obligate the Corps or other agencies to authorize work because of an "emergency" situation unless we agree that the situation qualifies as an emergency as defined on page 1.
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.
7. **Water Quality Certification:** At this time, within the State of Colorado (except for tribal lands), all nationwide permits and regional general permits have been granted water quality certification. For tribal lands within Colorado under the Albuquerque District, water quality certification must be obtained from the U.S. EPA in Denver, Colorado. Emergency activities within the state of New Mexico must obtain water quality certification from the New Mexico Environment Department, Surface Water Quality Bureau. For activities on tribal lands within New Mexico, please see attachment B. Emergency activities within the State of Texas must obtain certification from the Texas Natural Resource Conservation Commission.
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. Applicants shall notify the DE if any listed or proposed species or designated or proposed critical habitat might be affected by or is in the vicinity of the project. The applicant shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and the activity is authorized. In all circumstances, the applicant should, if aware of the potential presence of listed or proposed species or designated or proposed critical habitat, make considerable efforts to contact this office and/or personnel at USFWS. In some cases the USFWS may be able to make *a priori* determinations that listed species are not present.

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 USFWS or from their websites at:

USFWS – <http://endangered.USFWS.gov/>

To the extent possible, this office will implement any programmatic biological opinions and incidental take statements that may be available. Any terms and conditions inherent to these documents will become conditions on a particular applicant's utilization of this RGP.

In many cases, information on the presence of listed or proposed species at a specific project site may not be available. In such cases, the nature of the emergency may prevent an applicant from conducting the surveys necessary to make a reasonable determination. Therefore, the applicant may assume the species is present, if suitable habitat occurs onsite, and request that the emergency provisions of Section 7 of the ESA be implemented.

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, you 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 you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this RGP, you must immediately notify the Corps Regulatory Division 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 regional conditions added by the Division Engineer (see CFR Part 330.4(e)) and 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 (or hay) 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 or high tide line, 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. In addition, any action must comply with the Colorado and New Mexico regional conditions regarding suitable fill; manmade material use must be approved by the Corps and other methods utilizing soft engineering methods be determined to be impracticable in light of cost, technology and logistics (See Section 307 of the Clean Water Act (CWA) and the Colorado and New Mexico Regional Conditions at <http://www.spa.usace.army.mil/reg/NATIONWIDES-NEW/Nationwide%20Permits.asp>.)
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., USFWS, National Park Service, USDA Forest Service, Bureau of Land Management).

15. **Aquatic Life Movement s:** 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. **Shellfish h Production:** No discharge of dredged or fill material may occur in areas of concentrated natural or commercial shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by the Corps' Nationwide Permit (NWP) 4.
17. **Spawning Areas :** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
18. **Waterfo wl Breeding Areas:** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
19. **Navigation :** No activity may cause more than a minimal adverse effect on the course or capacity of a navigable water. You understand and 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, you 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.
20. **Water Supply Inta kes:** 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.
21. **Obstruction of High Flo ws:** 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 you and the appropriate Federal and State agencies. Temporary levees constructed 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. **Re moval of Temporary Fills:** Temporary fills shall be removed in their entirety and the affected areas returned to their 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, you will not be required to do so.

25. **Reports** : You shall provide a 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 USFWS under Section 7 of the ESA. Further, these reports enable us 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)).

At a minimum the Report shall include the following:

- I. The name, address, and telephone number of:
 - (a) the applicant
 - (b) the applicant's agent (if appropriate)
- II. Full description of the activity including:
 1. description of the emergency and the potential for loss of life or property
 2. purpose of the activity
 3. final goal of the entire activity
 4. location (e.g., latitude/longitude or UTM coordinates; section/township/range on appropriate USGS topo map; local street map, or other source to accurately portray project location)
 5. size and description of project area (include maps or drawings showing the areal and lineal extent of the project, and pre- and post-construction photographs)
 6. quantities of materials used
 7. information on receiving waterbody impacted including:
 - a) name of waterbody
 - b) type of receiving waterbody (e.g., river/streambed, lake/reservoir, ocean/estuary/bay, riparian area, wetland type, etc.)
 - c) temporary/permanent adverse impact(s) in acres/cubic yards/linear feet
 - d) compensatory mitigation in acres/cubic yards/linear feet
 - e) other mitigation steps (to avoid, minimize, compensate)
 8. information on federally listed or proposed endangered species or designated or proposed critical habitat (notification must be provided to USFWS and/or NOAA as appropriate) including:
 - a) temporary/permanent adverse impacts
 - b) compensatory mitigation
 - c) other mitigation steps (to avoid, minimize, compensate)

If there are a substantial number of projects and this requirement would consume large quantities of your staff resources, you may, as an option, submit a comprehensive report providing all of the information required in the notification condition (Item 2.b.) above. The report shall include a description of the emergency and the potential for loss of life or property, maps to the project location, maps or drawings showing the areal and lineal extent of the project, quantities of material used, and pre- and post-construction photographs. If the project was conducted in an area known to harbor federally-listed or proposed endangered species or designated or proposed critical habitat, you must include a list of measures taken to minimize harm to the species and/or habitat and provide a copy of the report to the USFWS, as appropriate. If mitigation was determined to be appropriate for a specific project or group of projects, a mitigation proposal must be submitted to this office for review and approval. We will forward the report to the appropriate agencies for their review and comment.

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 this authorization:**
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. **Limits of Federal Liability:** In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. **Reevaluation:** 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. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit verification request or after-action report proves to have been false, incomplete, or inaccurate. See Item 4 above.
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

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

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

B.A. Estok
Lieutenant Colonel, U.S. Army
District Commander

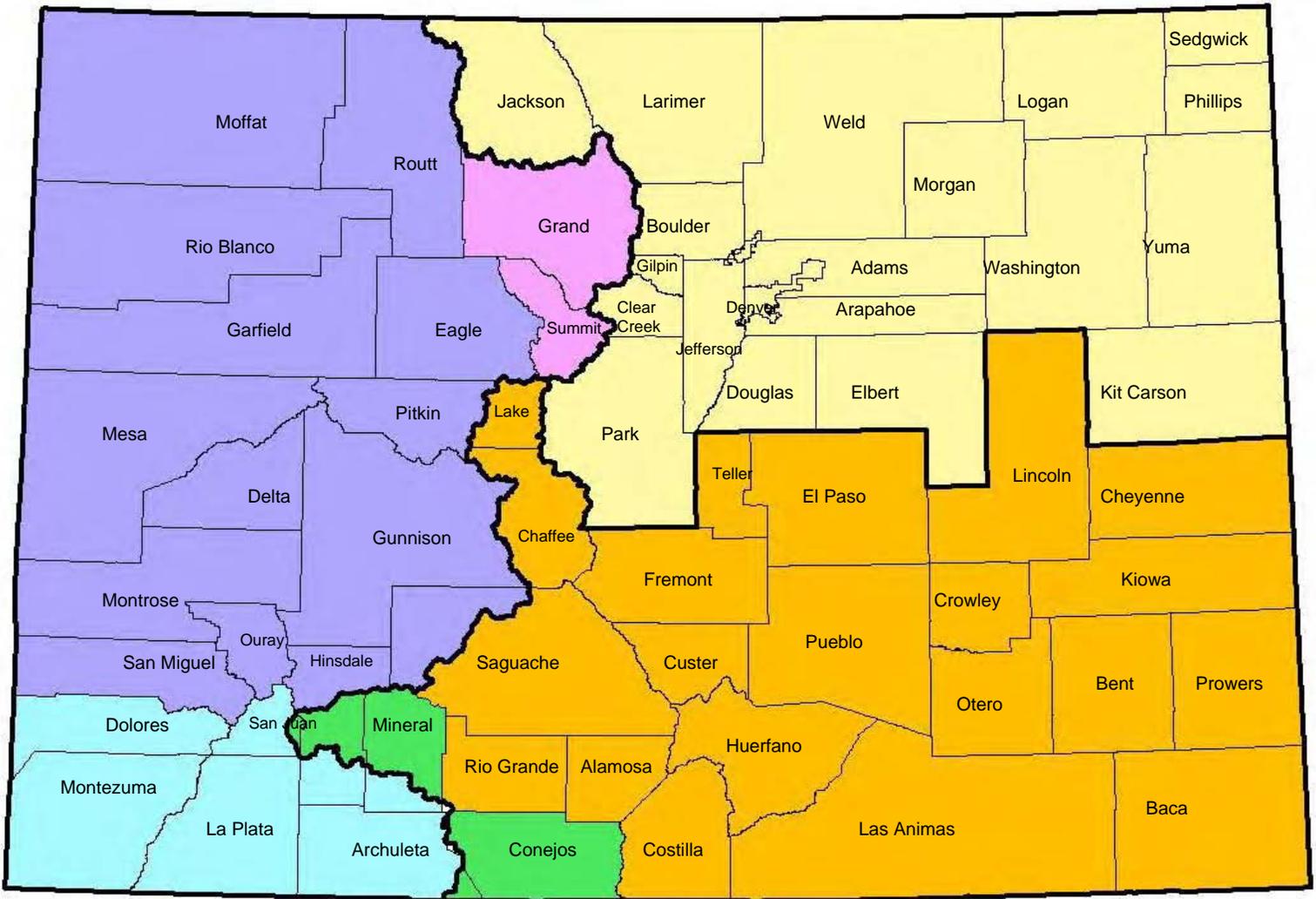
DATE

Attachment A

Albuquerque District Regulatory Offices and Boundary Maps



U. S. Army Corps of Engineers Colorado Regulatory Field Offices



 **Frisco Regulatory Office**
Sacramento District
301 West Main, Suite 202
P. O. Box 607
Frisco, CO 80443
Phone: (970) 668-9676
Fax: (970) 668-3150

 **Colorado/Gunnison Basin Regulatory Office**
Sacramento District
400 Rood Ave, Room 142
Grand Junction, CO 81501-2563
Phone: (970) 243-1199
Fax: (970) 241-2358

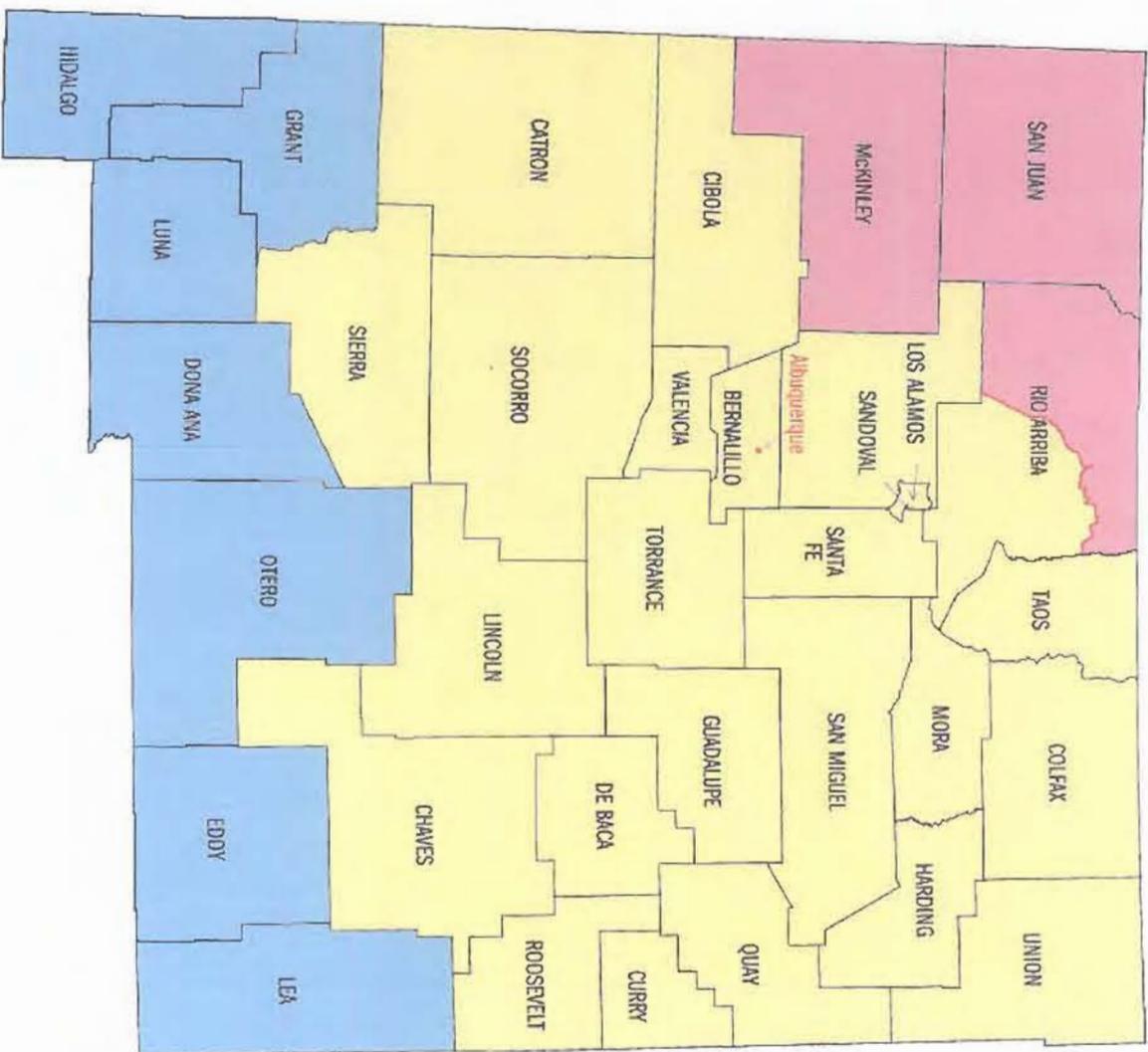
 **Durango Regulatory Office**
Sacramento District
799 E. 3rd Street, Unit #2
Durango, CO 81303
Phone: (970) 375-9506 (Sacramento District)
Fax: (970) 375-9531

 **Denver Regulatory Office**
Omaha District
9307 South Wadsworth Blvd.
Littleton, CO 80128-6901
Phone: (303) 979-4120
Fax: (303) 979-0602

 **Southern Colorado Regulatory Office**
Albuquerque District
200 South Santa Fe Avenue, Suite 301
Pueblo, CO 81003
Phone: (719) 543-9459
Fax: (719) 543-9475

 **Durango Regulatory Office**
Albuquerque District
799 E. 3rd Street, Unit #2
Durango, CO 81303
Phone: (970) 375-9506 (Albuquerque District)
Fax (970) 375- 9531

US ARMY CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT NEW MEXICO REGULATORY BOUNDARIES



US ARMY CORPS OF ENGINEERS
Durango Regulatory Office
799 E. 3rd Street, Unit #2
Durango, Colorado 81301
Phone: (970) 375-9509
Fax: (970) 375-9531



US ARMY CORPS OF ENGINEERS
Albuquerque District
Regulatory Branch
4101 Jefferson Plaza, NE
Albuquerque, NM 87109
Phone: (505) 342-3282
Fax: (505) 342-3498



US ARMY CORPS OF ENGINEERS
El Paso Regulatory Office
P.O. Box 6096
Ft. Bliss, TX 79906-0096
Phone: (915) 568-1359
Fax: (915) 568-1348

Attachment B

WATER QUALITY CERTIFICATION INFORMATION SUMMARY FOR NATIONWIDE PERMIT USE IN THE ALBUQUERQUE DISTRICT

Section 401 water quality certification for nationwide permits (NWP) in the Albuquerque District has been variously issued, waived, denied, or conditioned by certifying agencies. Review the following list to determine the status of water quality certification for the type of NWP and area of use. This list is a summary of information received from the certifying agencies; the specific requirements are available in each agency's water quality certification. You must obtain any required individual water quality certification from the appropriate water quality certification authority for your project area prior to construction under the specified nationwide permits:

State of Colorado. Water quality certification for all NWPs is issued by State of Colorado statute.

State of New Mexico. Issued conditional certification to use NWPs for projects in ephemeral stream channels. Denied certification for projects in intermittent or perennial streams. For projects in intermittent or perennial streams, you must obtain individual water quality certification from the New Mexico Environment Department.

Contact:
New Mexico Environment Department
Surface Water Quality Bureau, Sec 401 Certification Program
Harold Runnels Building, 1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110 Phone: (505) 476-3017

State of Texas. Issued water quality certification for NWPs 1-2, 4-6, 9-11, 20, 23-24, 28, and 34-35. Issued conditional water quality certification for NWPs 3, 7, 12-19, 21-22, 25, 27, 29-33, and 36-44. The permittee must use best management practices (BMPs)

described in the certification for erosion control, post-construction total soluble solids control and sedimentation control. A copy of the certification conditions may be obtained from the Albuquerque District or from the Texas Natural Resource Conservation Commission.

Contact:
Texas Natural Resource Conservation Commission
Water Quality Assessment Section
Water Quality Division (MC-150)
P.O. Box 13087
Austin, Texas 78711-3087 Phone: (512) 239-4586

Pueblo of Acoma jurisdiction. Water quality certification denied for all NWPs. Requires individual water quality certification for use of any NWP within Pueblo of Acoma jurisdiction.

Contact:
Pueblo of Acoma
Haaku Water Office
P.O. Box 309
Acoma, New Mexico 87034-0309 Phone: (505) 552-6604

Pueblo of Isleta jurisdiction. Water quality certification denied for all NWPs. Requires individual water quality certification for use of any NWP within Pueblo of Isleta jurisdiction.

Contact:
Water Quality Program
Pueblo of Isleta
P.O. Box 1270
Isleta, New Mexico 87022-1270 Phone: (505) 869-2710

Pueblo of Nambe jurisdiction. Water quality certification denied for all NWPs. Requires individual water quality certification for use of any NWP within Pueblo of Nambe jurisdiction.

Contact:
Pueblo of Nambe
Department of Environment and Natural Resources
Route 1, Box 117BB
Nambe Pueblo, New Mexico 87501 Phone: (505) 455-2036

Picuris Pueblo jurisdiction. Requires individual water quality certification for use of any NWP within Picuris Pueblo jurisdiction.

Contact:
Picuris Pueblo
Environment Department
P.O. Box 127
Penasco, New Mexico 87553-0127 Phone: (505) 587-2519

Pueblo of Pojoaque jurisdiction. Requires individual water quality certification for use of any NWP within Pueblo of Pojoaque jurisdiction.

Contact:
Pueblo of Pojoaque Environment Department
39 Camino del Rincon, #3
Santa Fe, New Mexico 87506-8718 Phone: (505) 455-2087

Pueblo of Sandia jurisdiction. Requires individual water quality certification for use of any NWP within Pueblo of Sandia jurisdiction.

Contact:
Pueblo of Sandia
Environmental Director
Box 6008
Bernalillo, New Mexico 87004-6008 Phone: (505) 867-4533

Pueblo of San Juan jurisdiction. Requires individual water quality certification for use of any NWP within Pueblo of San Juan jurisdiction.

Contact:
Office of Environmental Affairs
San Juan Pueblo
P.O. Box 717
San Juan Pueblo, New Mexico 87566-0717 Phone: (505) 852-4212

Santa Clara Pueblo jurisdiction. Water quality certification denied for all NWPs. Requires individual water quality certification for use of NWPs within Santa Clara Pueblo jurisdiction.

Contact:
Santa Clara Pueblo - Office of Environmental Affairs
Surface Water Division
P.O. Box 580
Española, New Mexico 87532-0580 Phone: (505)753-7326, ext. 232

Taos Pueblo jurisdiction: Requires individual water quality certification to use any NWP within Taos Pueblo jurisdiction.

Contact:
Taos Pueblo Environmental Office
P.O. Box 1846
Taos, NM 87571-1846
505-751-4601; 505-751-9024/fax
Director: Robert Gomez, 505-751-4610, rgomez@taospueblo.com
Point of Contact: Jeff Ogburn, 505-751-4610, jogburn@taospueblo.com

Pueblo of Tesuque jurisdiction. Requires individual water quality certification to use any NWP within Pueblo of Tesuque jurisdiction.

Contact:
Pueblo of Tesuque Environment Department
Route 5, Box 360-T
Santa Fe, New Mexico 87501 Phone: (505) 983-2667 or 988-3620

Navajo Nation jurisdiction: Requires individual water quality certification to use any NWP within Navajo Nation.

Contact:
Navajo Nation EPA
PO Box 339
Window Rock, Arizona 86515 Phone: 928-871-7800

Tribal lands in Colorado, certifying agency: EPA, Region 8 (Note: EPA certifies projects on tribal lands in Colorado where the tribe does not have water quality certifying authority). Water quality certification denied for NWPs 21, 33 and 44, and conditional certification issued for all other NWPs. Individual water quality certification for use of NWPs 21, 33, and 44 must be obtained from the EPA, Region 8.

Contact the applicable Tribe and:

U.S. Environmental Protection Agency, Region 8
Ecosystems Protection Program
999 18th Street, Suite 500
Denver, Colorado 80202-2466 Phone: (303) 312-6794

Tribal lands in New Mexico, certifying agency: EPA, Region 6 (Note: EPA certifies projects on tribal lands in New Mexico where the tribe does not have water quality certifying authority). Issued conditional water quality certification for use of all NWPs.

Contact:
U.S. Environmental Protection Agency, Region 6
Ecosystems Protection Branch (6WQ-EM)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733 Phone: (214) 665-6694

General Information regarding Section 401 water quality certification and Section 404 permit requirements may be obtained

from our web site at www.spa.usace.army.mil/reg/default.asp or by contacting us at:

Regulatory Branch
Albuquerque District, U.S. Army Corps of Engineers
4101 Jefferson Plaza, NE
Albuquerque, New Mexico 87109-3435
Phone: (505) 342-3283