



# Introduction



- Clean Water Act
- Section 404
- USACE Jurisdiction
- Types of Permits
- Mitigation
- Water Quality Certification
- Coordination with Floodplain Mgrs



# Background

- Clean Water Act
  - ▶ Passed in 1972
  - ▶ Based on 1948 Federal Water Pollution Control Act
  - ▶ Amended 1977 and 1987



# CWA Section 404

- Regulates discharges of dredged or fill material into waters of the U.S.
- Jointly administered by USACE and USEPA
- USACE evaluates projects/issues authorizations/USEPA conducts oversight
- USEPA has primacy on enforcement, but USACE conducts most here in NM



# USACE Jurisdiction

- Rather complicated
- Currently based on SWANCC and Rapanos SCOTUS cases
- Recently issued CW Rule in process to be withdrawn
- Two pathways – Approved jurisdictional determinations (AJDs) and preliminary jurisdictional determinations (PJDs)



# USACE Jurisdiction

- AJDs must be used to determine an aquatic feature is not within our jurisdiction –requires USACE HQ, USEPA approval
- PJDs used where applicant agrees aquatic resources are jurisdictional for purposes of obtaining a permit and also agrees to abide by permit terms and conditions.
- Mostly do PJDs and issue permits for work in waters



# USACE Jurisdiction



- Primary basis is Ordinary High Water Mark (OHWM) for streams/rivers
- Wetlands required to meet three-parameter test – soils, hydrology, plants



# USACE Jurisdiction

- Comparison of OHWM to 100-yr floodplain

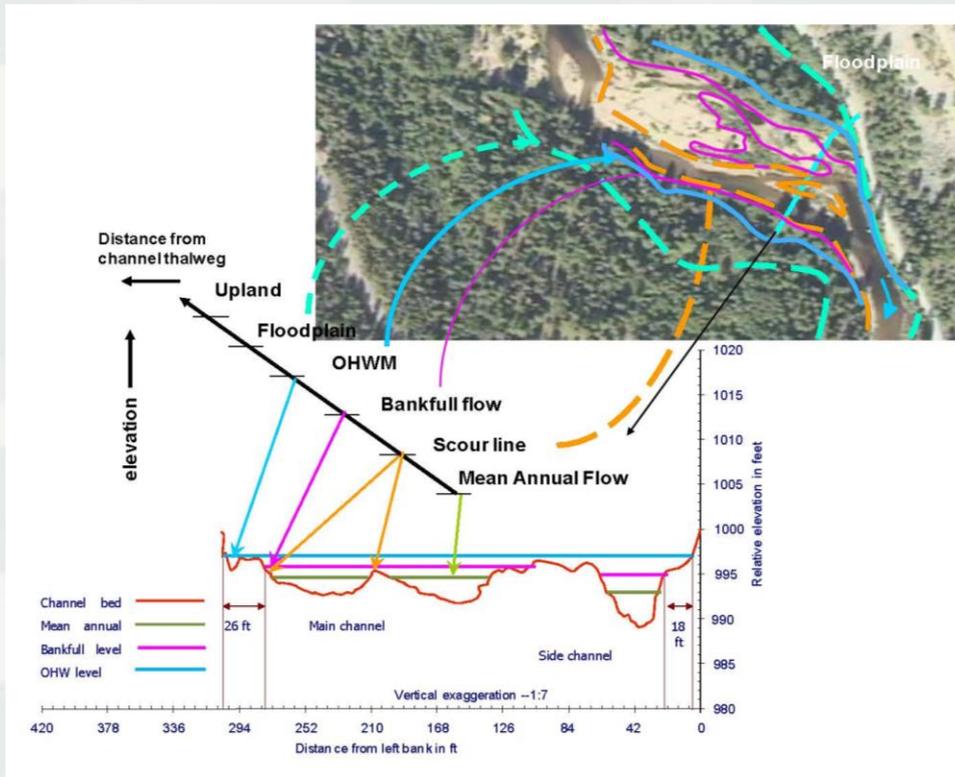
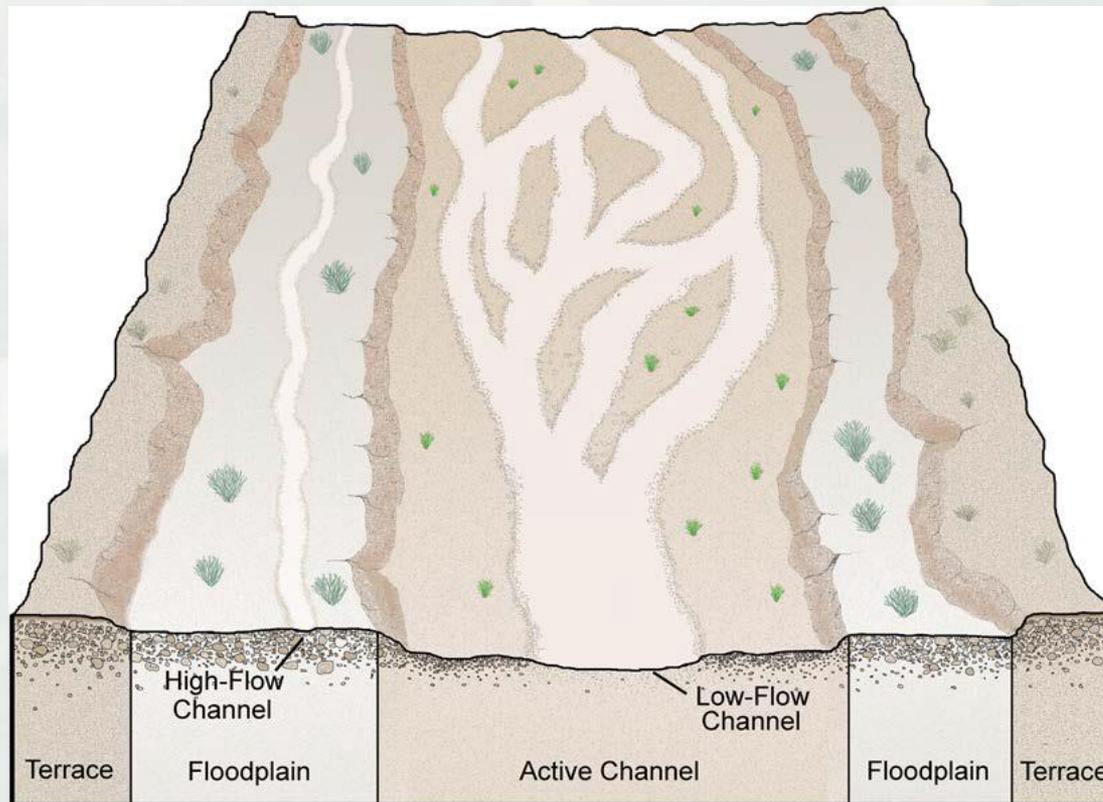


Figure from WA DOE, Draft OHWM Manual



# USACE Jurisdiction

- Comparison of OHWM to 100-yr floodplain



# Types of Permits

- Standard Individual Permits
- Letters of Permission
- Nationwide Permits
- Regional General Permits



# Types of permits

- Standard Individual Permits (IPs) and Letters of Permission (LOPs)
  - ▶ More than minimal impacts
  - ▶ For IPs, EA-level decision document and alternatives analysis for each action
  - ▶ For LOPs, EA-level decision document initially, letters of approval
  - ▶ Both used on limited basis in Albuquerque District



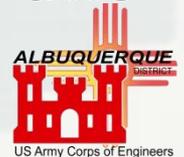
# Types of Permits

- Nationwide Permits (NWPs) and Regional General Permits (RGPs)
  - ▶ Minimal impacts (must be minimum impacts necessary to meet project purpose)
  - ▶ For like activities
  - ▶ NWPs issued and evaluated nationally every five years (next year)
  - ▶ RGPs issued on a regional or District basis and for five years only



# Types of Permits

- NWPs regionally conditioned to ensure minimal impacts with use, on an individual and cumulative basis
  - ▶ Most important are requirements to submit application and obtain confirmation of water quality certification for perennial, intermittent, and wetland waters
- Current RGPs include Emergency, Sediment and Debris Removal, Urban Ephemeral Waters, and US Bureau of Reclamation – Elephant Butte Reach



# Types of Permits

- NWP's most commonly used
  - ▶ Maintenance
  - ▶ Utility crossings – typically temporary impacts unless bank protection added
  - ▶ Bank stabilization
  - ▶ Linear transportation crossings
    - These can be accomplished without impacts within USACE jurisdiction if clear-spanned
  - ▶ Stream Restoration



# Mitigation

- For permanent impacts to aquatic resources where functions and services are lost, USACE may require compensatory mitigation – no net loss
  - ▶ Enhancement, establishment or re-establishment, preservation
  - ▶ Utilize standard procedure for determining mitigation ratios
  - ▶ Monitoring with performance standards for 5+ years
- For temporary impacts, may require minimization measures with monitoring



# Water Quality Certification (WQC)

- Section 401 of CWA
- Non-tribal areas of NM – NM Environment Department Surface Water Quality Bureau is delegated authority by EPA
  - ▶ Conditioned WQC issued for NWP, RGP – confirmation from NMED required for perennial, intermittent, wetland waters
  - ▶ Individual WQC required for IPs
- Tribal areas – see website for details, some have delegated WQC authority, some do not



# Types of Permits

- General Conditions to NWP's
  - ▶ NHPA and ESA compliance
  - ▶ Aquatic Life Movements, Spawning Areas,
  - ▶ Mgmt of Water Flows, Soil Erosion and Sediment Controls
  - ▶ Fills within 100-year Floodplains



# Coordination with Floodplain Managers

- General Condition 10 – Fills within 100-year Floodplains
  - ▶ “The Activity must comply with applicable FEMA-approved state or local floodplain management requirements.”
  - ▶ Opportunity to coordinate activities between Corps and local CFM



# Coordination with Floodplain Managers

- NFIP Regulations 44 CFR 60.3 and other sections require compliance with CWA, specifically, and other Federal, State and local permits in general.



# Coordination with Floodplain Managers

## ■ Examples

- ▶ Currently coordinating with Taos County on several arroyo crossings within 100-year floodplains
  - Taos CFM and I cross-referenced requirements where crossing in 100-yr floodplain also required 404-permitting
  - Also coordinated on projects where USACE permit required but not in mapped 100-yr floodplain
  - USACE does not require PE-stamped plans for pre-construction notifications



# Coordination with Floodplain Managers



- Enforcement – can coordinate local floodplain and USACE enforcement requirements successfully

# USACE Regulatory Offices



# Questions?

