



U.S. ARMY CORPS OF ENGINEERS

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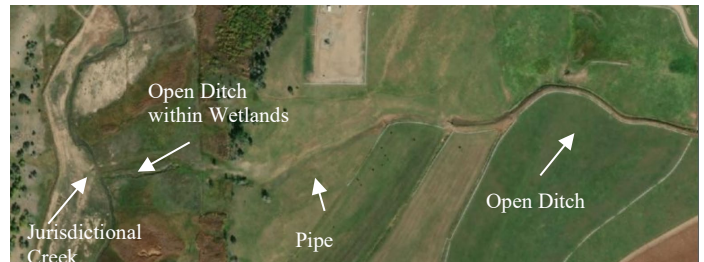
Since 1977, the U.S. Army Corps of Engineers (Corps) has regulated the discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act (CWA). Under Section 404(f), the Corps exempted certain discharges into waters of the U.S. The exemptions include the maintenance and construction of irrigation ditches and the maintenance of drainage ditches that do not change waters to a new use, reduce the reach of waters, nor impair the circulation or flow of waters.

**What Is New?**

The Department of the Army and U.S. Environmental Protection Agency issued a memorandum to the field regarding application of the exemptions under Section 404(f)(1)(C) of the CWA for the construction or maintenance of irrigation ditches and for the maintenance of drainage ditches. For purposes of implementing the ditch exemptions, the memo defines terms including “irrigation ditch” and “drainage ditch” and provides a framework for determining the applicability of the ditch exemptions and the recapture provision in CWA Section 404(f)(2). The memorandum provides a clear, consistent approach regarding the application of the exemptions, superseding prior national guidance.

**Which Types of Ditches are Considered Waters of the U.S.?**

The joint memo only applies to jurisdictional irrigation and drainage ditches. In Colorado, jurisdictional ditches convey at least seasonal surface flow directly to waters of the U.S. If the ditch does not provide surface return flows to a waterway, then that ditch is not jurisdictional and work within those ditches does not require authorization under Section 404 of the CWA.



*Figure 1 The irrigation ditch in this photograph would be considered a jurisdictional irrigation ditch (waters of the US) in Colorado because it conveys surface water directly to a waters of the US*

**What Activities Require a Permit (this list is not entirely inclusive)?**

- Conversion of open jurisdictional irrigation ditches to pipes
- Construction of dikes, drainage ditches, or other works or structures which converts a wetland from silvicultural or non-agricultural use to agricultural use or has the effect of draining wetlands
- Conversion of a jurisdictional water to dryland

**What Activities Generally Do Not Require a Permit (this list is not entirely inclusive)?**

- Installation of sprinkler systems
- Armoring, lining, and/or piping activities within a previously armored, lined, or piped section
- Temporary fill within waters of the United States used to facilitate the completion of an exempt activity

**What Types of Permits are Available?**

- Nationwide Permit (NWP) 3 authorizes maintenance activities of previously authorized, currently serviceable structure/fill
- NWP 18 authorizes up to 25 cubic yards of material into waters of the US
- NWP 40 authorizes up to ½ acre of loss to waters associated with agricultural activities
- NWP 46 authorizes up to 1 acre of permanent impact to irrigation ditches
- Standard individual permits authorize activities that do not qualify for general permits

**What is the Corps’ Role?**

- Processing requests in a timely fashion
- Developing regional general permit (RGP) 5 to expedite permitting review of irrigation ditch activities

**What Can You Do?**

- Provide comments on the public notice for the proposed RGP 5
- Contact your local Corps office regarding any questions and help spread the word
- Provide a complete notification to the Corps as soon as possible for projects requiring authorization under Section 404 of the CWA

**Where Can You Find More Information**

You can find a copy of the joint memo, public notice for the proposed RGP, and local Corps contact information at: <https://www.nwo.usace.army.mil/Missions/Regulatory-Program/Colorado/>.