ALBUQUERQUE DISTRICT
U.S. ARMY CORPS OF ENGINEERS

STREAM STABILIZATION AND WATER QUALITY IMPROVEMENT PROJECTS PROJECTS WITHIN URBAN EPHEMERAL CHANNELS IN THE ALBUQUERQUE DISTRICT AREAS OF NEW MEXICO

EFFECTIVE DATE: September 6, 2019 EXPIRATION DATE: September 6, 2024

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

PERMIT NUMBER: Regional General Permit (RGP) No. NM-14-01 (Corps File No. SPA-2013-00565-ABQ)

PERMITTEE: Public agencies, businesses, or private parties (i.e., the public in general)

Notes: As used in this permit, “urban environments” means areas that have been identified in the U.S. Census Bureau 2010 geographic dataset as urbanized areas. In New Mexico, these urbanized areas include the greater Albuquerque area including Bernalillo, Corrales and developed portions of Rio Rancho; Farmington; Las Cruces; Los Lunas; and Santa Fe. [http://www.census.gov/geo/reference/ua/urban-rural-2010.html]

As used in this permit, “ephemeral channel” means a stream that has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

As used in this permit "urban ephemeral channels" means ephemeral channels that are located in urban environments, where the watershed has been altered as a result of surrounding residential, commercial, or industrial development. For example, many of the large arroyos within the city limits of Albuquerque have been channelized and lined with concrete to compensate for the increase in flow size and velocity due to an increase in impervious surfaces from urbanization. However, this RGP is not applicable to situations where the segment of ephemeral channel that is proposed for work is located within an undeveloped environment, even though it may convey flows downstream to an altered watershed. Undeveloped environment refers to streams that have no infrastructure within 2,000 feet of the top of bank for an ephemeral stream.

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 District Engineer (DE).

After you receive verification from this office that your project complies with the terms and conditions of this RGP, you are authorized to perform work in accordance with the General Conditions and any project-specific conditions.

PROJECT DESCRIPTION: This permit authorizes discharges of dredged or fill material into waters of the United States for stream stabilization projects for the purpose of water quality improvements in ephemeral drainages located in urban environments within the State of New Mexico. Examples of work that may be undertaken under this permit, upon authorization by the District Engineer (DE), include but are not limited to:

- Bank stabilization projects that exceed the thresholds for Nationwide Permit (NWP) 13 and are determined by the Corps to result in minimal impacts to the aquatic environment. These must have a water quality component through reduction of erosion (which should be stated in the application purpose and need from any proposed project).
- Construction of grade control structures, energy dissipaters, and flow deflection structures.
- Installation of water quality improvement features (e.g. debris containment or removal structures, sediment settling basins).
- Any combination of these types of activities if the proposed undertaking will result in minimal impacts to the aquatic environment.

LOCATION: Urban environments within the State of New Mexico.

GENERAL CONDITIONS OF THIS RGP:

1. **Time Period Covered**: This general permit will be effective through September 6, 2024; however eligible projects verified under this general permit must be completed by the time specified in the approval notification. If more time is required, the permittee must request an extension of time from the Corps. Requests for time extension shall be submitted to the Corps at least 45 days prior to the permit's specified expiration.

   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.

The reauthorization of this RGP after September 6, 2024 will be based on the permit's usefulness and an evaluation of the impacts of projects that were verified.

2. **Notification/Communication**:

a. **Timing**: 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.
   i. Notification should be sent to:
      Attn: NM/TX Branch Chief mail/electronic mail at:
      U.S. Army Corps of Engineers
      Albuquerque District
      Regulatory Division, CESPA-RD
      4101 Jefferson Plaza NE
      Albuquerque, NM 87109
      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. This information must include a description about how the project complies with the terms 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) A discussion of the direct and indirect adverse environmental effects of the activity to include a description of the actions taken by the applicant to avoid and minimize adverse impacts to the aquatic environment.
(f) Location of disposal site for excavated material

(g) Type of equipment to be used
(h) Identification/delineation of all waters of the United States within the project area, including wetlands
(i) Maintenance Plan (if applicable)
(j) 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 and monitoring plan for proposed wetland and/or stream fill or drainage activities. Mitigation and monitoring plans shall follow the *South Pacific Division Regional Compensatory Mitigation and Monitoring Guidelines* (MMG), which may be found at:
https://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf

c. **Form of Notification**: The Nationwide Permit Pre-Construction Notification (PCN) Form, available from the District's website at: https://www.spa.usace.army.mil/Portals/16/docs/civilworks/regulatory/NWP/SPD%20NWP%20PCN%20Instructions_Form.pdf?ver=2018-09-11-123833-480 may be used as the notification. Regardless of the form of notification, the applicant must provide all of the information required in General Condition 2.b. Items (1)-(5) 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 at the discretion of the DE. Factors that the DE will consider when determining the suitability of appropriate mitigation will include, but are not limited to:

(1) The acreage of impact to waters of the United States;
(2) The approximate functions and services of the aquatic resource being impacted, such as habitat, aquifer recharge, pollutant attenuation, sediment conveyance, flood storage, etc.;
(3) The permanence of the project's impacts on the resource; and
(4) The potential long-term effects of the action on remaining functions and services of the impacted aquatic resource.

Examples of mitigation that may be appropriate include, but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource functions and services;

replacing the loss of aquatic resource functions and services by creating, restoring, or enhancing similar functions and services; or using other methods to offset project impacts.

Should the DE require mitigation, a mitigation plan shall be submitted that follows the requirements in the *South Pacific Division Regional Compensatory Mitigation and Monitoring Guidelines* (or a subsequent set of guidelines or requirements, should these be superseded). https://www.spd.usace.army.mil/Portals/13/docs/regulatory/mitigation/MitMon.pdf. Mitigation ratios will be calculated in accordance with the Quality Management System procedure titled *South Pacific Division Regulatory Program Standard Operating Procedure for Determination of Mitigation Ratios*.

The DE will utilize a watershed-based approach to establish compensatory mitigation requirements in association with use of this RGP to the extent appropriate. 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. In implementing this approach, the DE will consider the importance of landscape position and resource type of mitigation projects for the sustainability of aquatic resource functions within the watershed.

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, and the DE will consider any mitigation (See General Condition 2.b. above) the applicant has included.

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 Department of the Army permit.

3. **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 and/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, tires, tire shreds, etc.), and material discharged must be free from toxic pollutants in toxic amounts. Tires and broken concrete with rebar are not considered suitable fill and may not be used. All asphalt, unbroken concrete, drilling fluids and other construction materials must be properly handled and contained to prevent releases into waters of the United States (See Section 307 of the Clean Water Act)

4. **Authorized Work**: Work not described in permit application documentation but deemed necessary after a field assessment is not authorized until the application is amended via notification to the Corps and the applicant has received written authorization from the Regulatory project manager via regular mail, electronic mail or facsimile transmission.

   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 United States 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.

5. **Access to Site**: You must allow representatives from the Corps 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, and tribal water quality.

7. **Water Quality Certification**:

   For Permittees on Non-tribal Land: Water Quality Certification (WQC) was

requested from the New Mexico Environment Department Surface Water Quality Bureau (NMED-SWQB). NMED –SWQB issued WQC on June 26, 2019 (attached), and all certification conditions are incorporated herein by reference. For permittees on non-tribal land, non-compliance with the NMED-SWQB WQC conditions may result in enforcement action including suspension or revocation of authorization to work under this RGP.

For Permittees on Tribal Lands: WQC was requested from the 14 Native American tribes in New Mexico that have been granted WQC authority by EPA. WQC was not issued by these tribes; therefore, individual WQC must be requested from the tribes for projects on these tribal lands. These tribes are:

- Pueblo of Acoma
- Pueblo of Isleta
- Pueblo of Laguna
- Pueblo of Nambe
- Picuris Pueblo
- Pueblo of Pojoaque
- Pueblo of Sandia
- Pueblo of Santa Ana
- Ohkay Owingeh
- Pueblo of Santa Clara
- Taos Pueblo
- Pueblo of Tesuque
- Navajo Nation
- Ute Mountain Ute Tribe

The U.S. Environmental Protection Agency (EPA) provides Section 401 WQC for tribal lands in New Mexico where the tribe does not have WQC authority. Individual WQC must be requested from EPA for projects on these tribal lands. The nine tribes that do not have water quality certifying authority are:

- Pueblo of Cochiti
- Jemez Pueblo
- Pueblo of San Felipe
- Pueblo of San Ildefonso
- Zia Pueblo
- Santa Domingo/Kewa Pueblo
- Zuni Pueblo
- Mescalero Apache
- Jicarilla Apache

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).

As appropriate, the Corps will consult with the U.S. Fish and Wildlife Service (USFWS) on specific requests to perform work under this RGP 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 USFWS.

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 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 Corps Regulatory Program officials, 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 special conditions added by the DE.

11. **Erosion and Siltation Controls**: Best Management Practices (BMPs) must be utilized 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 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 of the watercourse, must be stabilized at the earliest practicable date to preclude additional damage to the project area through erosion or siltation.

Work in the stream channel should be limited to periods of no flow. Although this RGP is applicable to ephemeral channels, unexpected flows could occur during construction—especially if conducted during the monsoon season. As such, the permittee shall incorporate flow diversion BMPs into the construction plan for any projects that will be constructed during the monsoon season or other times when significant flows are expected to occur (e.g., spring runoff).

12. **Stream Channelization**: This RGP does not authorize blockage or filling of an existing stream meander. The Corps will prohibit channelization, except for minor channelization or alignments in the vicinity of stream crossings.

13. **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 reconfiguration of the original corrective action, or appropriate mitigation as determined through coordination with the permittee and the appropriate Federal and State agencies.

14. **Removal of Temporary Fills**: Temporary fills shall be removed in their entirety and the affected areas returned to pre-existing elevations and revegetated with appropriate native riparian vegetation common to the area. Should revegetation be necessary, a revegetation and monitoring plan consistent with the requirements in the MMG shall be submitted with the PCN. Monitoring should be conducted for a time period sufficient to ensure revegetation to adequate herbaceous, shrub or tree canopy maturity. For herbaceous revegetation, this is generally no less than two years. For mature riparian tree canopy, monitoring for no less than five years is typically required.

15. **Removal of Vegetation**: Vegetation removal shall be limited to that which is necessary to ensure functionality of the implemented project. All removal of riparian or wetland vegetation must be fully described in 2.b.(2)(e) above.

16. **Bank Stabilization:** These activities must meet the following criteria:

    a. No material is placed in excess of the minimum needed for erosion protection.

b. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark of the watercourse, unless the DE waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects.

c. The single and complete bank stabilization project shall not exceed 2,000 feet in length along a stream bank. NOTE: For projects that include bank stabilization in multiple locations, the total linear feet per bank, regardless of separation into independent sections, is 2,000 feet.

d. The size of the bank stabilization measures shall be large enough to withstand expected high flow velocities and turbulence to prevent utilized materials from dislodging.

e. In most cases, the slope steepness of the bank stabilization should not exceed one foot vertical for two feet horizontal. However, to accommodate the situation where stabilization is needed in confined urban areas, the Corps may approve bank stabilization that exceeds the specified maximum slope steepness.

f. The upstream and downstream ends of the stabilization features shall be keyed into the bank to prevent removal by high flows. The toe of the bank stabilization shall also be buried in order to prevent scouring and subsequent slumping of the material. Scour depth studies may be required to ensure adequate toe depth. Self-launching rip-rap may also be employed to satisfy this condition.

17. **Grade Control Structures:** These activities must meet the following criteria:

a. Material size shall be large enough to withstand expected high flow velocities and associated turbulence.

b. All grade control structures shall be keyed into the surrounding depositional environment (e.g., stream bank) and protected by large rock or other suitable material to prevent them from being bypassed through scouring and undercutting or lateral migration during high flows. The distance that grade control structures are keyed into the bank shall be based on the size of the material used for the specific project and associated with the stream's hydrograph.

c. Construction or placement of fill materials for a grade control structure should start at both banks and proceed toward the middle of the stream. Materials placed on the banks shall not extend above the bankfull elevation of the stream unless the applicant demonstrates that

placement above the bankfull elevation is appropriate based on the channel hydraulics.

d. Construction equipment shall access the stream at the fewest possible locations to minimize disturbance to the aquatic environment and riparian areas.

18. **Installation of Flow Deflectors:** These activities must meet the following criteria unless an alternate design is justified and approved:

    a. Flows shall not be directed to erode the opposite bank of the waterway.

    b. The maximum extension of any deflector into a waterway shall not exceed 25 percent of the bankfull channel width.

    c. Deflectors shall be spaced along the bank to prevent scouring or scalloping of the bank between the structures.

    d. Deflectors must be securely anchored (or keyed) into the bank in order to protect against undercutting, circumvention, or dislocation of the structures by high flows. CAUTION: Logs are especially susceptible to damage during high flows and must be adequately anchored with large rock or steel cables to prevent them from becoming dislodged. If unraveled, these materials can cause damage downstream (e.g., block bridge openings, form new channel bars, etc.).

    e. Trees for deflector construction shall not be obtained from a riparian or wetland source.

19. **Sediment/Stilling Basins:** These structures must meet the following criteria:

    a. Proposals must include an analysis of the effects of the proposed structure on the downstream receiving water's aquatic environment, i.e. whether the downstream reach is aggrading or degrading, the effect of the proposed structure on aquatic habitat, and any significant changes to channel morphology in the receiving water.

    b. Storm water should be conveyed to and from the basin in a manner that minimizes erosion potential. The outfall of the basin must be stabilized to prevent scour, and an emergency spillway should be provided to safely convey large flood events.

    c. Plans must include features designed to prevent clogging of outlets and pipes

d. A maintenance and inspection plan shall be submitted with the application and must include inspection of the basin after each storm event to ensure proper drainage from the collection pool and determine the need for structural repairs. The maintenance and inspection plan shall also include the following actions, at a minimum: Replace material eroded from embankments or dams immediately. Locate sediment basins in an area that is easily accessible to maintenance crews for removal of accumulated sediment. Remove sediment from the basin when the storage capacity has reached approximately 50 percent. Remove trash and debris from around dewatering devices promptly after rainfall events.

20. **Water Quality Improvement Features:** These structures must meet the following criteria:

    a. These structures must be constructed in a manner to withstand expected high flow velocities and associated turbulence, as well as necessary scour prevention improvements to avoid structure bypass and undermining.

21. **Other:** 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-14-01:**

   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.

Kelly Allen,
Acting Chief, Regulatory Division September 6, 2019

NEW MEXICO
ENVIRONMENT DEPARTMENT

Harold Runnels Building
1190 Saint Francis Drive, PO Box 5469
Santa Fe, NM 87502-5469
Telephone (505) 827-2855
www.env.nm.gov

Michelle Lujan Grisham
Governor

Howie C. Morales
Lt. Governor

James C. Kenney
Cabinet Secretary

Jennifer J. Pruett
Deputy Secretary

June 26, 2019

Ms. Susan Nall
Acting Regulatory Division Chief
U.S. Army Corps of Engineers
Albuquerque District
Regulatory Division, CESPA-RA
6200 Jefferson St. NE
Albuquerque, NM 87109

Re: Clean Water Act Section 401 Water Quality Certification: Regional General Permit (RGP) NM-14-01: For Stream Stabilization and Water Quality Improvement Projects in Urban Ephemeral Channels Within the State of New Mexico. Action Number SPA-2013-00565-ABQ

Dear Ms. Nall:

The New Mexico Environment Department (NMED) has examined the draft Regional General Permit (RGP) indicated above under Sections 404 and 401 of the federal Clean Water Act (CWA). According to the application, RGP NM-14-01 would authorize discharges of dredged or fill material into ephemeral channels determined to be Waters of the United States within urbanized areas for stream stabilization and water quality improvement activities. The RGP is applicable to ephemeral channels located in urban/developed environments within the geographical boundaries of the Albuquerque District in the State of New Mexico. This RGP is not applicable to segments of ephemeral channels located within undeveloped environments, even though they may convey flows downstream to altered watersheds. Examples of work that may be undertaken under this permit, upon authorization by the District Engineer (DE), include but are not limited to:

(1) Bank stabilization projects that exceed the thresholds for Nationwide Permit (NWP) 13 and are determined by the Corps to result in minimal impacts to the aquatic environment.

(2) Construction of grade control structures, energy dissipaters, and flow deflection structures.

(3) Installation of water quality improvement features (e.g. debris containment or removal structures, sediment settling basins).

(4) Any combination of these types of activities if the proposed undertaking will result in minimal impacts to the aquatic environment.

Conditional Section 401 Certification:

A state Water Quality Certification is required by CWA §401 to ensure that the permit is consistent with state law, and complies with the state Water Quality Standards (20.6.4 New Mexico Administrative Code (NMAC) amendments effective on August 11, 2017), the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

Pursuant to State regulations for permit certification (20.6.2.2002 NMAC), NMED issued a public notice of this activity and announced a public comment period, posted on the SWQB web site https://www.env.nm.gov/surface-water-quality/public-notices/ on March 28, 2019. The public comment period ended on April 27, 2019. One public comment from the New Mexico Department of Game and Fish was received, addressed to the Corps. The comment emphasized the importance of ephemeral streams as wildlife habitat, e.g. arroyo banks that provide nesting habitat for burrowing owls (*Athene cunicularia*) and bank swallows (*Riparia riparia*), and recommended to the Corps that a general condition be included to protect these habitats.

The following conditions are necessary to assure compliance with the applicable provisions of CWA §§301, 302, 303, 306, and 307 and with applicable requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable Water Quality Standards and the Water Quality Management Plan and will be in compliance with the Antidegradation Policy. The State of New Mexico certifies that the discharge will comply with these provisions and requirements upon inclusion of the following conditions in the permit:

1. Activities in surface waters of the state covered by RGP NM-14-01 require notification to the NMED Surface Water Quality Bureau. The notification must include: 1) detailed construction plans (including proposed in-channel excavations and temporary diversions); 2) a description of potential adverse water quality impacts (including turbidity, which is a measurement of the amount of suspended material in water, as well as oil, grease, or hydraulic fluid, and all other potential contaminants); 3) a description of methods to be used to prevent water quality impacts (including detailed Best Management Practices, which must be designed to minimize sediment, oil, grease, and other pollutants from entering the water); 4) any surface water monitoring procedures; and 5) for any unavoidable surface water impacts, conceptual mitigation plans.

2. Projects that alter the natural stream channel size or shape must describe how the modified hydraulic geometry will be stable and how the natural processes of bank formation and maintenance will be supported.

3. Bank stabilization projects that do not incorporate native vegetation or other bioengineered design techniques must describe why such alternatives were not selected as a potentially less damaging and practicable alternative.

4. Stormwater management structures that are located within natural channels, such as sediment basins, must describe why "off-line" alternatives were not selected as a potentially less damaging and practicable alternative.

5. Fuel, oil, hydraulic fluid, lubricants, and other petrochemicals must not be stored within the 100-year floodplain and must have a secondary containment system capable of containing twice the volume of the product. Appropriate spill clean-up materials such as booms and absorbent pads must be available on-site at all times during construction.

6. All heavy equipment used in the project area must be pressure washed and/or steam cleaned before the start of the project and inspected daily for leaks. A written log of inspections and maintenance must be completed and maintained throughout the project period. Leaking equipment must not be used in or near surface water. Refuel equipment at least 100 feet from surface water.

7. Work in the stream channel should be limited to periods of no flow.

8. Temporary crossings should be restricted to a single location and perpendicular to and at a narrow point of the channel to minimize disturbance. Heavy equipment should be operated from the bank or work platforms and not enter surface water. Heavy equipment must not be parked within the stream channel. Directional borehole (horizontal) drilling must be used instead of open-cut trenching for the placement of utility lines or other buried structures crossing the channel.

9. All asphalt, concrete, drilling fluids and muds, and other construction materials must be properly handled and contained to prevent releases to surface water. Poured concrete must be fully contained in mortar-tight forms and/or placed behind non-erodible cofferdams to prevent contact with surface or ground water. Appropriate measures must be used to prevent wastewater from concrete batching, vehicle wash-down or aggregate processing entering the watercourse. Dumping of any waste materials in or near watercourses is prohibited.

10. Protective measures must be used to prevent blast, ripped or excavated soil or rock from entering surface water. Construction excavation dewatering discharges are to be uncontaminated and include all practicable erosion control measures and turbidity control techniques.

11. Work or the use of heavy equipment in wetlands must be avoided or minimized unless the impacts are to be mitigated.

12. All areas adjacent to the watercourse that are disturbed because of the project, including temporary access roads, stockpiles and staging areas, must be restored to pre-project elevations. Disturbed areas outside the channel that are not otherwise physically protected from erosion must be reseeded or planted with native vegetation. Stabilization measures including vegetation are required at the earliest practicable date, but by the end of the first full growing season following construction. Appropriate riparian and/or wetland species must be used in areas that support such vegetation. Plantings must be monitored and replaced for an overall survival rate of at least 50 percent by the end of the second growing season. Once established, native plants adapted to the site must be able to thrive with no supplemental water or treatment.

13. A copy of this Certification must be kept at the project site during all phases of construction. All contractors involved in the project must be provided a copy of this certification and made aware of the conditions prior to starting construction.

14. The NMED must be notified at least five days before starting construction to allow time to schedule monitoring or inspections. The NMED must be notified immediately if the project results in an exceedance of applicable Standards.

If you have any questions regarding this Section 401 Water Quality Certification, please contact Abe Franklin of my staff at 505 827-2793.

Sincerely,

Abe Franklin for

Shelly Lemon
Chief
Surface Water Quality Bureau

SL:ak

xc: Lauren Poulos, Region 6, U.S. Environmental Protection Agency
Mathew Wunder, New Mexico Department of Game and Fish
U.S. Fish and Wildlife Service
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