



ALBUQUERQUE DISTRICT
U.S. ARMY CORPS OF ENGINEERS

REGIONAL GENERAL PERMIT (RGP) NM/WEST TX-14-02

SEDIMENT AND DEBRIS REMOVAL ACTIVITIES THAT LOWER THE RISK OF FLOOD IMPACTS IN WATERSHEDS DAMAGED BY WILDFIRE AND OTHER SIGNIFICANT DISTURBANCES

EFFECTIVE DATE: August 6, 2014

EXPIRATION DATE: August 6, 2019

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

PERMIT NUMBER: Regional General Permit (RGP) No. NM/West TX-14-02 (Corps File No. SPA-2014-00174-LCO)

PERMITTEE: Local, State, Tribal or Federal agencies.

AREA OF COVERAGE: Within the State of New Mexico and in those areas of west Texas in which the District has jurisdiction.

PROJECTS AUTHORIZED: This RGP authorizes sediment and debris removal activities in waters of the United States undertaken by local, state, tribal or federal government agencies that lower the risk of flood impacts in watersheds damaged by wildfire and other significant disturbances such as flooding. Authorized activities include restoring flow conveyance/channel geometry to pre-flood event dimensions by removing accumulated sediment and debris, associated sloping and minor stabilization of vertical banks to prevent collapse, and temporary access roads associated with the removal activity.

Activities are limited to 1,500 linear feet as measured along the bank. A waiver of the 1,500 linear feet limit may be granted in severely flood damaged watersheds where aquatic functions in the subject channel have been severely compromised by sediment/debris accumulation or in other areas where the applicant demonstrates the project results in no more than a minimal impact.

Documentation must be provided which verifies the proposed work will not increase pre-event channel capacity. In areas where no pre-event data is available, the applicant must provide a basis for determining the pre-event channel capacity.

Activities that are **NOT** authorized by this RGP include:

- Work that increases channel capacity beyond pre-flood dimensions.
- Activities that channelize or re-align the channel, or cut-off meanders.
- Levee building activities except as described in General Condition 17.

- Removal of vegetation from within the channel without Corps approval, except that shallow rooted upland-type vegetation, snags, and woody fire debris may be removed from within the channel to mitigate hazards.
- Discharges into wetlands or destruction of wetlands through excavation, ditching or other hydrologic manipulation.

Activities authorized by this permit may require compensatory mitigation. Where compensatory mitigation is required, compensatory mitigation plans will be developed by the applicant, approved by the Corps, and coordinated with the applicable resource agencies on a case-by-case basis. In urgent situations, final approval of mitigation plans by the Corps may be subsequent to approval of the requested work. However, a conceptual mitigation plan must be provided with the application.

Before project authorization is granted under this RGP, it must be in compliance with the General Conditions of this RGP.

Each activity will be evaluated and, in some cases, may be authorized by nationwide permits or other regional general permits or may be exempt from regulation under Section 404(f)(1) of the Clean Water Act. For any activity that the District Engineer determines to have more than minimal environmental effects, individually or cumulatively, or that may be contrary to the public interest, an individual permit may be required.

This RGP **does not** authorize flood control or emergency work in advance of permit verification.

This RGP may only be used in basins with documented watershed perturbations, such as wildfire and/or flooding, which have significantly increased stream bed aggradation above the baseline condition.

DEFINITIONS:

Riparian vegetation is vegetation within the riparian area or the stream and is generally made up of species of herbs, trees or shrubs that thrive in proximity to water.

Riparian areas are lands adjacent to streams and lakes. Riparian areas are transitional between terrestrial and aquatic ecosystems and provide a variety of ecological functions and services and help improve or maintain local water quality.

GENERAL CONDITIONS OF THIS RGP:

1. **Application and Project Completion Timeframes:** The time limit for **applying** for flood related repair activities is two **(2) years** following the flood event. The District will consider waivers of the two year time limit for extreme cases in which there has been a wildfire in the watershed and watershed recovery efforts limit the effectiveness of projects completed within a two year timeframe.

The time limit for **completing** the work authorized by this RGP is **one year** from the permit verification date. If additional time will be needed to complete the authorized activity, a written request for a time extension must be submitted to the Corps at least **45 days** before the permit expires. The request should include justification for an extension.

2. Notification/Communication:

- a. **Timing of Notification:** The applicant must notify the District Engineer (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 DE. Notification should be sent to:

NM/TX Branch Chief via fax at 505-342-3678 or mail/electronic mail at:

U.S. Army Corps of Engineers
Albuquerque District
Regulatory Division, CESPARD
4101 Jefferson Plaza NE
Albuquerque, NM 87109
SPA-RD-NM@usace.army.mil
SPA-RD-TX@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.
 - (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) Photos of the project site.
 - (f) Pre-event Google Earth maps.
 - (g) A discussion of the direct and indirect adverse environmental effects of the activity.
 - (h) Location of disposal site for excavated material.
 - (i) Type of equipment to be used.
 - (j) Identification/delineation of wetlands.
 - (k) Description of impacts to vegetation and wildlife.
 - (l) Mitigation Plan (if applicable).
 - (m) Maintenance Plan (if applicable).
 - (n) 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 plan for proposed stream fill or drainage activities.

(6) A written statement that the permittee agrees to abide by the terms and conditions of the permit.

c. **Form of Notification:** The Nationwide Permit Pre-Construction Notification (PCN) Form, available from the District's website at: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/NWP.aspx>, may be used as the notification. Regardless of the form of notification, that applicant must provide all of the information required in General Condition 2.b. Items (1)-(6) 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 if necessary to offset impacts to aquatic resource functions. Factors that the DE will consider when determining the suitability of appropriate and practicable mitigation will include, but are not limited to:

- (1) The approximate functions and values of the aquatic resource being impacted, such as habitat value, 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 purpose. 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 and values; or using other methods to offset project impacts.

The DE will utilize a watershed-based approach to establish compensatory mitigation requirements in association with use of this RGP to the extent appropriate and practicable. 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.

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 or an explanation as to why compensatory mitigation should not be required.

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 permit.

3. **Certificate of Completion:** 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.

4. **Suitable Material:** This RGP authorizes the removal of sediment and debris and does not authorize the discharge of fill material other than associated sloping and stabilization of vertical banks to prevent collapse and temporary access roads. Materials discharged to waters of the United States must be native or non-manmade. Discharges consisting of broken concrete, used tires, trash, car bodies or other unsuitable material is not authorized by this permit, and material discharged must be free of toxic pollutants in toxic amounts. Discharged material must not be placed in a manner that will be eroded by normal or expected high flows (properly anchored trees may be used in low energy areas).

5. **Best Management Practices:**
 - a. Where appropriate and practicable, objects that create roughness in the stream, such as riparian vegetation and boulders, should be left in the channel to slow water and reduce damaging effects of erosion. Vegetation within the stream provides hydraulic roughness which reduces flow velocity and severity. Where appropriate, in-stream vegetation and undeveloped floodplain areas can help absorb flood flows and should be planned for in managing flood flows. By allowing the flood flows to overtop embankments in the right locations, flows will be diverted, dissipated, detained, and decreased. Large, shallow rooted trees growing within the stream channel may be removed to prevent them from being dislodged during floods and creating downstream hazards.
 - b. Efforts must be taken to avoid removing natural structural materials that protect or armor the stream bed because such removal may expose material that is more susceptible to erosion and headcuts.
 - c. Soil Erosion and Sediment Controls. Temporary soil erosion and sediment controls must be used and maintained in effective operating condition during construction.
 - d. Management of Water Flows. Work in the stream channel should be limited to periods of no or low flow. In the event that storm flows or runoff events are forecasted during construction, work in the channel must cease and measures must be taken to remove temporary piles within the channel.

6. **Authorized Work:** Work not described in permit application documentation but deemed necessary after a field assessment is not authorized unless coordinated with the Regulatory project manager and approved in writing (i.e., electronic mail or facsimile transmission, memo to the record, etc.).
7. **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.
8. **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.
9. **Water Quality Certification:**

For Permittees on Non-tribal Land in New Mexico:

A state Water Quality Certification is required by CWA §401 to ensure that the permit is consistent with state law (State of New Mexico, Standards for Interstate & Intrastate Surface Waters, New Mexico Water Quality Control Commission, 20.6.4 New Mexico Administrative Code (NMAC) amendments effective on June 5, 2013) and complies with the state Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy. Pursuant to 20.6.2.2002 NMAC, the New Mexico Environment Department (NMED) issued a public notice of this activity and announced a public comment period and posted on the Surface Water Quality Bureau (SWQB) website www.nmenv.state.nm.us/swqb/WQA/Notice on June 4,, 2014. The public comment period ended on July 7,, 2014. No public comments were received. The SWQB issued conditional certification for the RGP dated on July 22, 2014.

Certification is required by the Clean Water Act (CWA) §401 to ensure that the NWP's are consistent with state law, comply with the state Water Quality Standards (20.6.4 NMAC), the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy. This certification applies to activities subject to State of New Mexico jurisdiction. The following conditions are necessary to assure compliance with the applicable provisions of the 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.

Conditional Section 401 Certification of RGP:

1. Activities in intermittent and perennial surface waters of the state require notification to the NMED Surface Water Quality Bureau (SWQB). Applicants are encouraged to

provide to SWQB the same Pre-Construction Notification that they submit to the Corps, as described in the RGP General Condition 2. The notification must include: 1) 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 potential adverse effects on aquatic habitat and channel stability; 4) 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); 5) any surface water monitoring procedures; and 6) for any unavoidable surface water impacts, conceptual mitigation plans. Notifications for emergency projects may be FAXed to 505-827-0160, Attn: Neal Schaeffer.

2. 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.
3. 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.
4. Work in the stream channel should be limited to periods of no flow. Work in flowing water must have prior approval by the SWQB. Requests for such approval must describe planned methods to minimize turbidity and to avoid spills.
5. 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 must be operated from the bank or work platforms and not enter surface water, unless otherwise approved in writing by SWQB. Heavy equipment must not be parked within the stream channel. Requests for such approval of deviations must include a description of planned methods to minimize turbidity and avoid spills.
6. Unless otherwise approved by SWQB, flowing water must be temporarily diverted around the work area but remain within the existing channel to minimize erosion and turbidity and to provide for aquatic life movement. Diversion structures must be non-erodible, such as sand bags, concrete barriers, or channel lined with geotextile or plastic sheeting (dirt cofferdams generally are not acceptable diversion structures). Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity, to avoid spills, and to provide a continuous zone of passage for aquatic life through or around the project area in which the water quality meets all applicable criteria including turbidity.
7. Work or the use of heavy equipment in wetlands must be avoided or minimized unless the impacts are to be mitigated. Unless otherwise approved by SWQB, wetland crossings must be restricted to a single location and constructed perpendicular to and at a narrow point of the wetland. Requests for such approval of

deviations must include descriptions of planned methods to minimize turbidity and avoid spills. Wetland vegetation and excavated material (top soil) must be retained and reused to improve seeding success. Permeable fills should be designed and installed when practicable, and flows to wetlands must not be permanently disrupted. Fill materials must be clean and consist of coarse material with minimal fines. Ditches or culverts in wetlands must have properly designed, installed and maintained siltation or sedimentation structures at the outfall.

8. During demolition of structures within Waters of the State, materials must be kept out of the channel. To the extent practicable, impermeable containment material (e.g., plastic sheet, canvas, tarpaulins or other catchment devices) must be secured under the structure and on the banks to capture any debris that may fall into the stream channel. Any debris that falls onto the containment area or channel must be properly disposed in accordance with the New Mexico Solid Waste Regulations (20.9.1 NMAC).
9. Bridges, culverts and structures at stream crossings must be properly designed, installed and maintained to allow passage of sediment, bedload, and woody debris, and to prevent erosion problems or diversion of the stream from its natural channel. Unless otherwise approved by SWQB, projects must not alter the natural stream channel size or shape (width, depth, gradient, direction or meander pattern), streamflow velocity (sediment transport rates), or water flow capacity. Requests for such approval of deviations must include descriptions of planned methods to minimize turbidity and avoid spills, as well as to stabilize modified hydraulic geometry.
10. Culverts at stream crossings must be designed and installed to prevent upstream headcutting, downstream channel incision, and erosion of the streambanks or the crossing. Culverts should be designed to pass 1 00-year flow events. Culvert design must allow for the passage of fish and other aquatic organisms. The road grade at culvert stream crossings must prevent the diversion of the stream from its channel in the event of culvert failure due to plugging or the exceedence of capacity. If the flow overtops the road, it must return to its natural channel instead of running down the road into a new channel.
11. Excavated trenches must be backfilled and compacted to match the bulk density and elevation of the adjacent undisturbed soil. Construction excavation dewatering discharges are to be uncontaminated and include all practicable erosion control measures and turbidity control techniques.
12. Unless otherwise approved by SWQB, the slope steepness for riprap installation should not exceed one foot vertical for two feet horizontal. The use of a filter between the bank revetment and soil is generally necessary.
13. Unless otherwise approved by SWQB, 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. Destruction of riparian or riverine vegetation, especially mature cottonwoods, shall be avoided to the maximum extent practicable.
14. A copy of this Certification must be kept at the project site during all phases of construction.

15. All contractors involved in the project must be provided a copy of this certification and made aware of the conditions prior to starting construction.

Section 402 comment:

Activities that disturb one acre or more may require a permit from EPA under Section 402 (NPDES) of the Clean Water Act. The permittee should submit the appropriate application to EPA 14 days prior to initiating construction. In the case of emergency operations, you must apply no later than 30 days after the start of construction and are considered provisionally covered under the terms and conditions of the EPA issued general permit immediately, and fully covered 14 calendar days after EPA has acknowledged receipt of your application (Notice of Intent, or NOI), unless EPA notifies you that your authorization has been delayed or denied. For additional information, contact:

EPA Region 6
1445 Ross Avenue
Suite 1200
Dallas, Texas 75202
Ph: 800-887-6063 or 214-665-2760 if calling from outside Region 6

For Permittees on Non-tribal Land in Texas:

GENERAL: This certification, issued pursuant to the requirements of Title 30, Texas Administrative Code, Chapter 279, is restricted to the work described in the July 14, 2014, Environmental Assessment and Statement of Findings and shall be concurrent with the Corps of Engineers (COE) permit. This certification may be extended to any minor revision of the COE permit when such change(s) would not result in an impact on water quality. The Texas Commission on Environmental Quality (TCEQ) reserves the right to require full joint public notice on a request for minor revision. The applicant is hereby placed on notice that any activity conducted pursuant to the COE permit which results in a violation of the state's surface water quality standards may result in an enforcement proceeding being initiated by the TCEQ or a successor agency.

STANDARD PROVISIONS: These following provisions attach to any permit issued by the COE and shall be followed by the permittee or any employee, agent, contractor, or subcontractor of the permittee during any phase of work authorized by a COE permit.

1. The water quality of wetlands shall be maintained in accordance with all applicable provisions of the Texas Surface Water Quality Standards including the General, Narrative, and Numerical Criteria.
2. The applicant shall not engage in any activity which will cause surface waters to be toxic to man, aquatic life, or terrestrial life.

3. Permittee shall employ measures to control spills of fuels, lubricants, or any other materials to prevent them from entering a watercourse. All spills shall be promptly reported to the TCEQ by calling the State of Texas Environmental Hotline at 1-800-832-8224.
4. Sanitary wastes shall be retained for disposal in some legal manner. Marinas and similar operations which harbor boats equipped with marine sanitation devices shall provide state/federal permitted treatment facilities or pump out facilities for ultimate transfer to a permitted treatment facility. Additionally, marinas shall display signs in appropriate locations advising boat owners that the discharge of sewage from a marine sanitation device to waters in the state is a violation of state and federal law.
5. Materials resulting from the destruction of existing structures shall be removed from the water or areas adjacent to the water and disposed of in some legal manner.
6. A discharge shall not cause substantial and persistent changes from ambient conditions of turbidity or color. The use of silt screens or other appropriate methods is encouraged to confine suspended particulates.
7. The placement of any material in a watercourse or wetlands shall be avoided and placed there only with the approval of the Corps when no other reasonable alternative is available. If work within a wetland is unavoidable, gouging or rutting of the substrate is prohibited. Heavy equipment shall be placed on mats to protect the substrate from gouging and rutting if necessary.
8. Dredged Material Placement: Dredged sediments shall be placed in such a manner as to prevent any sediment runoff onto any adjacent property not owned by the applicant. Liquid runoff from the disposal area shall be retained on-site or shall be filtered and returned to the watercourse from which the dredged materials were removed. Except for material placement authorized by this permit, sediments from the project shall be placed in such a manner as to prevent any sediment runoff into waters in the state, including wetlands.
9. If contaminated spoil that was not anticipated or provided for in the permit application is encountered during dredging, dredging operations shall be immediately terminated and the TCEQ shall be contacted by calling the State of Texas Environmental Hotline at 1-800-832-8224. Dredging activities shall not be resumed until authorized by the Commission.

10. Contaminated water, soil, or any other material shall not be allowed to enter a watercourse. Noncontaminated storm water from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
11. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in the disturbance of one or more acres, must be controlled and authorized under Texas Pollutant Discharge Elimination System (TPDES) general permit TXR150000. A copy of the general permit, application (notice of intent), and additional information is available at:
http://www.tceq.texas.gov/permitting/stormwater/wq_construction.html or by contacting the TCEQ Storm Water & Pretreatment Team at (512) 239-4671.
12. Upon completion of earthwork operations, all temporary fills shall be removed from the watercourse/wetland, and areas disturbed during construction shall be seeded, riprapped, or given some other type of protection to minimize subsequent soil erosion. Any fill material shall be clean and of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters.
13. Disturbance to vegetation will be limited to only what is absolutely necessary. After construction, all disturbed areas will be revegetated to approximate the pre-disturbance native plant assemblage.
14. Where the control of weeds, insects, and other undesirable species is deemed necessary by the permittee, control methods which are nontoxic to aquatic life or human health shall be employed when the activity is located in or in close proximity to water, including wetlands.
15. Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the water, or otherwise interfere with reasonable use of the water in the state.
16. Surface water shall be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms, putrescible sludge deposits, or sediment layers which adversely affect benthic biota or any lawful uses.
17. Surface waters shall be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of reservoirs, lakes, and bays.

18. The work of the applicant shall be conducted such that surface waters are maintained in an aesthetically attractive condition and foaming or frothing of a persistent nature is avoided. Surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse.
19. This certification shall not be deemed as fulfilling the applicant's/permittee's responsibility to obtain additional authorization/approval from other local, state, or federal regulatory agencies having special/specific authority to preserve and/or protect resources within the area where the work will occur.

For Permittees on Tribal Lands:

Water Quality Certification (WQC) was requested from the Native American tribes in New Mexico that have WQC authority and from EPA Region 6 for tribes that do not have certification authority. WQC was not received from any tribe or from EPA. For work on tribal lands, the applicant should contact the tribe prior to commencing work to obtain individual WQC.

10. **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 permit 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 FWS or from their website at <http://www.fws.gov/angered/>.

11. **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 the Corps Regulatory Branch 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.

12. **Regional and Case-by-Case Conditions:** The activity must comply with any special conditions added by the District Engineer.
13. **Stream Channelization:** The Corps will not authorize blockage or filling of an existing stream meander in this RGP. The Corps will prohibit channelization, except for minor channelization or alignments in the vicinity of stream crossings.
14. **Removal of Temporary Fills:** Temporary stockpiles within water of the United States must be completely removed from the channel within 24 hours. Other temporary fills associated with the project, such as access roads or coffer dams, shall be removed in their entirety and the affected areas returned to pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation appropriate for the area within 30 days of the end of construction.
15. **Compliance with Other Laws:** The permittee must comply with all Federal, State and local applicable regulations and ordinances.
16. **All dredged or excavated materials:** with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.
17. Dredged sediment may not be discharged within the 100 year base flood elevation (BFE), as defined by FEMA. If the 100 year BFE data is not available, then sediment discharges must adhere to a 100 foot setback from the closest stream bank as identified by the bank top crest elevation. Construction of bank top levees using dredged sediment is not authorized by this permit except where sediment is used to repair levees damaged by the depositional event using the same cross sectional dimensions and footprint present at the time of the depositional event. Appropriate measures must be taken to maintain floodplain connectivity to minimize downstream flood impacts.

FURTHER INFORMATION:

1. **Congressional Authorities:** Activities conducted under this RGP are authorized pursuant to:
 - (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. §403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. **Limits of authorization under RGP No. NM-14-02:**

- 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.

ALLAN E. STEINLE
Chief, Regulatory Division

DATE