

# USACE Acequia Workshop

How to prepare Exempt/Permit Requests

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US Army Corps of Engineers

One Team ★★★ Destined For Greatness



# Introduction

- Clean Water Act Section 404 permitting
- Exemptions to Section 404
  - ▶ Irrigation exemption
- Request an exemption or permit
  - ▶ Information needed
  - ▶ Drawing examples
- Summary - Questions



# Clean Water Act

- Passed by Congress in 1972 via major amendments to the 1948 Federal Water Pollution Control Act.
  - ▶ Major amendments in 1977 and 1987
    - 1977 incorporated the exemptions
  - ▶ 1976 case law and regulations extended jurisdiction from navigable waters to non-navigable tributaries



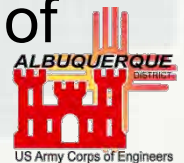
# Clean Water Act – Section 404

- Regulates discharges of dredged or fill material into waters of the U.S.
  - ▶ Fill is: earthen material, rock, structures, concrete, riprap, other non-trash material used to facilitate construction of a purposed feature within a waterway
  - ▶ Requires a permit from the Corps of Engineers



# Clean Water Act- Section 404

- Two types of permits – Nationwide and Individual
  - ▶ NWPs ~50 issued every five years (2017)
    - Our analysis and public noticing already completed
    - Minimal impacts through acreage thresholds and regional conditions
    - Regional conditions for New Mexico require notification for many instances
    - Permittee receives verification letter indicating proposed activity meets terms and conditions of NWP





# Clean Water Act Section 404

## ► NWPs, con't

- Requires Section 401 water quality certification from certifying authority (either tribe or state)
- Corps must fulfill federal obligations on endangered species and cultural resources (Endangered Species Act and National Historic Preservation Act) – may require additional info from applicant
- General conditions for compliance include protection of aquatic life movements, management of water flows, soil erosion and sediment controls



# Clean Water Act Section 404

- Individual permits
  - ▶ Larger projects, non-minimal effects
  - ▶ Public notice
  - ▶ Alternatives analysis
  - ▶ Corps has its own NEPA process
  - ▶ Can only permit least environmentally-damaging, but practicable alternative



# Section 404 Exemptions

- Six exemptions added in 1977 amendments:
  - ▶ Normal farming, silviculture and ranching
  - ▶ Maintenance or emergency repair
  - ▶ Maintenance and construction of stock ponds/irrigation ditches
  - ▶ Construction of sedimentation basins at construction sites
  - ▶ State 208 program
  - ▶ Farm, forest, temporary mining roads





# Section 404 Exemptions

- Exceptions:
  - ▶ Exempt activity results in discharges containing toxic pollutants
  - ▶ Exempt activity converts an area of a water to a use to which it was not previously subject, flow and/or circulation of waters impaired or reduced – both parts must apply



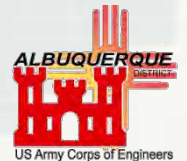
# Section 404 Exemptions

- Recapture, two-part test, con't
  - ▶ If the activity would convert an area of waters of the U.S. into a use to which it was not previously subject (e.g. wetland to upland, wetland to open water, etc), but it would not impair the flow and/or circulation or reduce the reach of the waters, then the recapture provision does not apply, and vice versa.



# Section 404 Exemptions

- Local examples:
  - ▶ Small sand berms capturing some, but not all flow at existing diversion points have been determined exempt
  - ▶ Reconstruction of existing diversions generally exempt
  - ▶ Acequia-ditch maintenance generally exempt
  - ▶ Infiltration gallery installation generally exempt



# Section 404 Exemptions

- Local examples:
  - ▶ Establishing new diversions generally not exempt
  - ▶ Moving diversion point and/or diverting entire stream flow generally not exempt
  - ▶ Channelizing river some distance upstream of diversion point generally not exempt
  - ▶ Multi-purpose diversions/ditches (irrigation + domestic, municipal, industrial, recreation, other) generally not exempt



# Santa Fe County Resolution

- Resolution to assist acequias
- Work may need a permit/may be exempt
- County may require documentation from Corps to reduce liability
- County should only conduct work described in above documentation – additional work may require additional permitting or other review by Corps



# Exemption/Permit Request

- We generally want to know:
  - ▶ The footprint of what you're going to do within the waterway
  - ▶ The material you are going to use
  - ▶ How you are going to do what you are proposing, construction-wise (backhoe? front-end loader? utilizing material from onsite? bringing fill in from another location?)





# Exemption/Permit Request

- We generally want to know (con't):
  - ▶ A cross-section and plan view of what your project will look like
  - ▶ A location map (print a reasonable view from google earth and mark the location)
  - ▶ Who is the applicant (they need to sign request)?
  - ▶ Who will be doing the work?

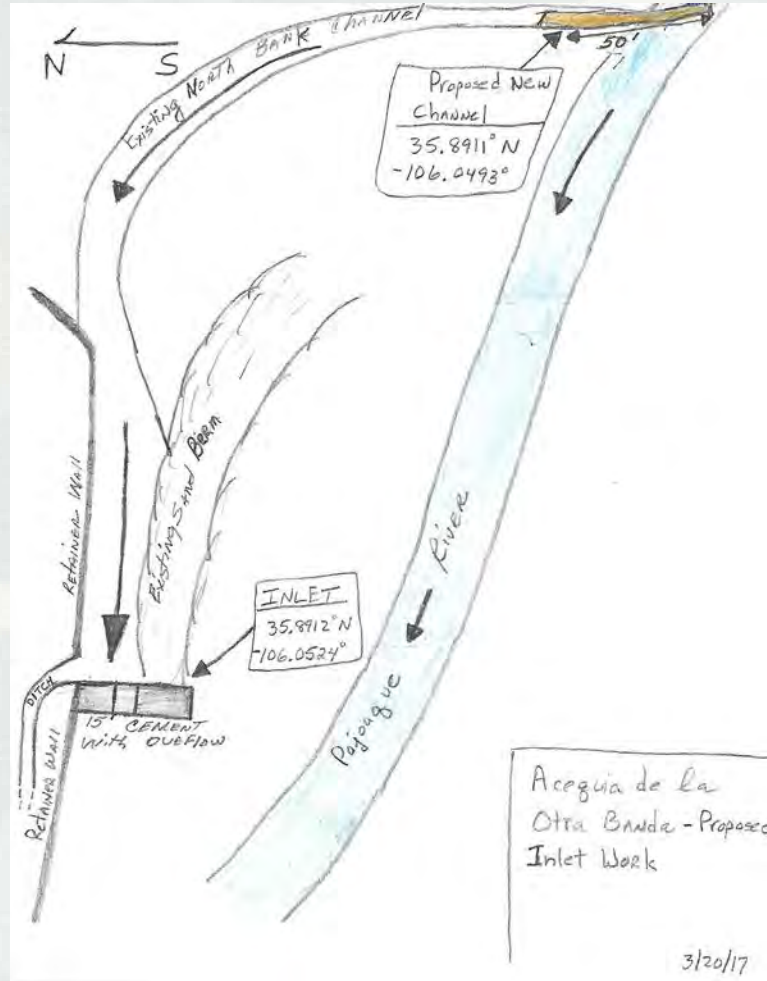


# Exemption/Permit Request

- We generally want to know (con't):
  - ▶ When will the work be done?
  - ▶ Have you applied for water quality certification from the certifying authority?
  - ▶ If on tribal land, do you have authorization from Pueblo to conduct the work?
  - ▶ PCN Checklist Guide



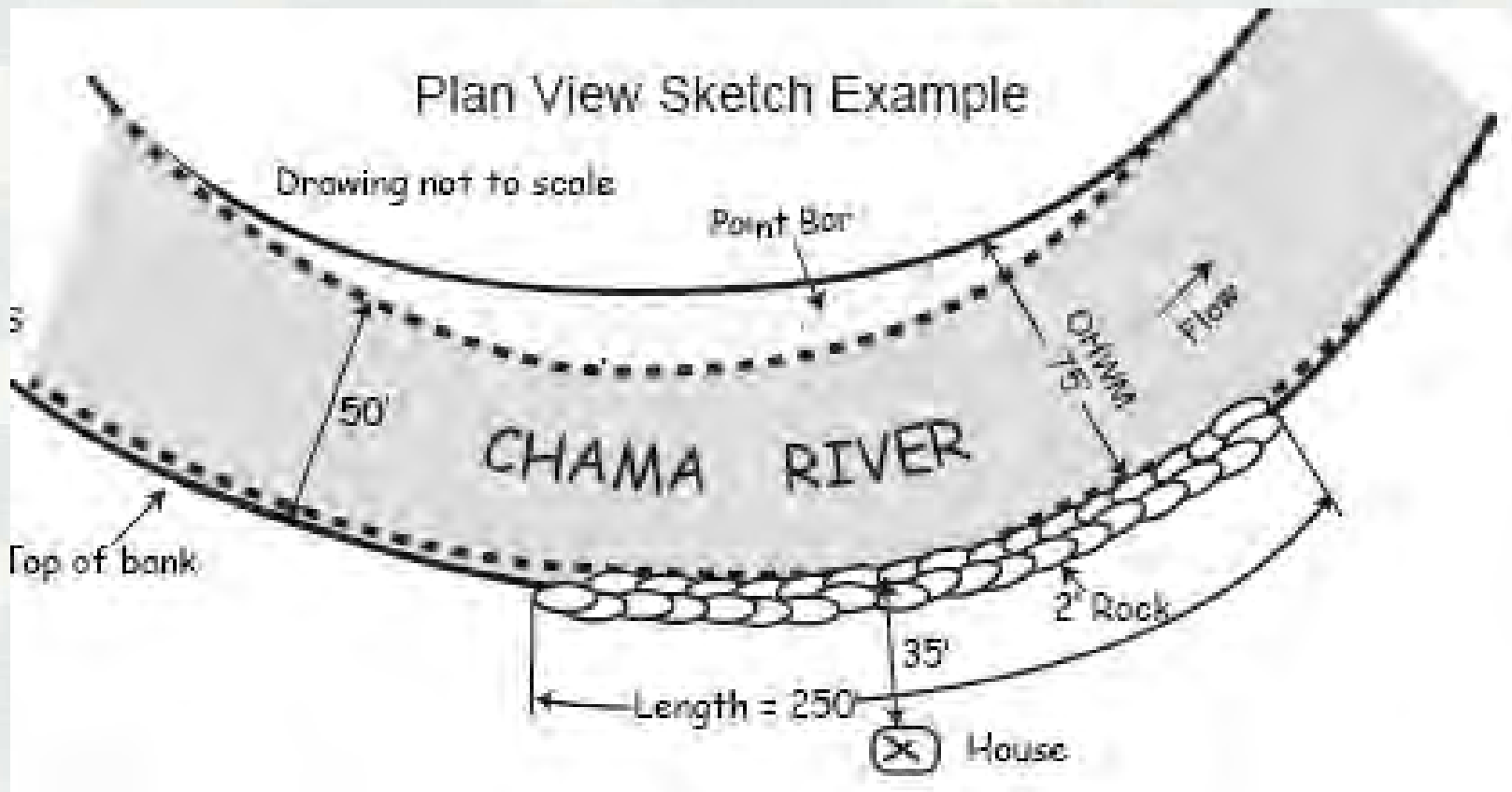
# Example Diagram



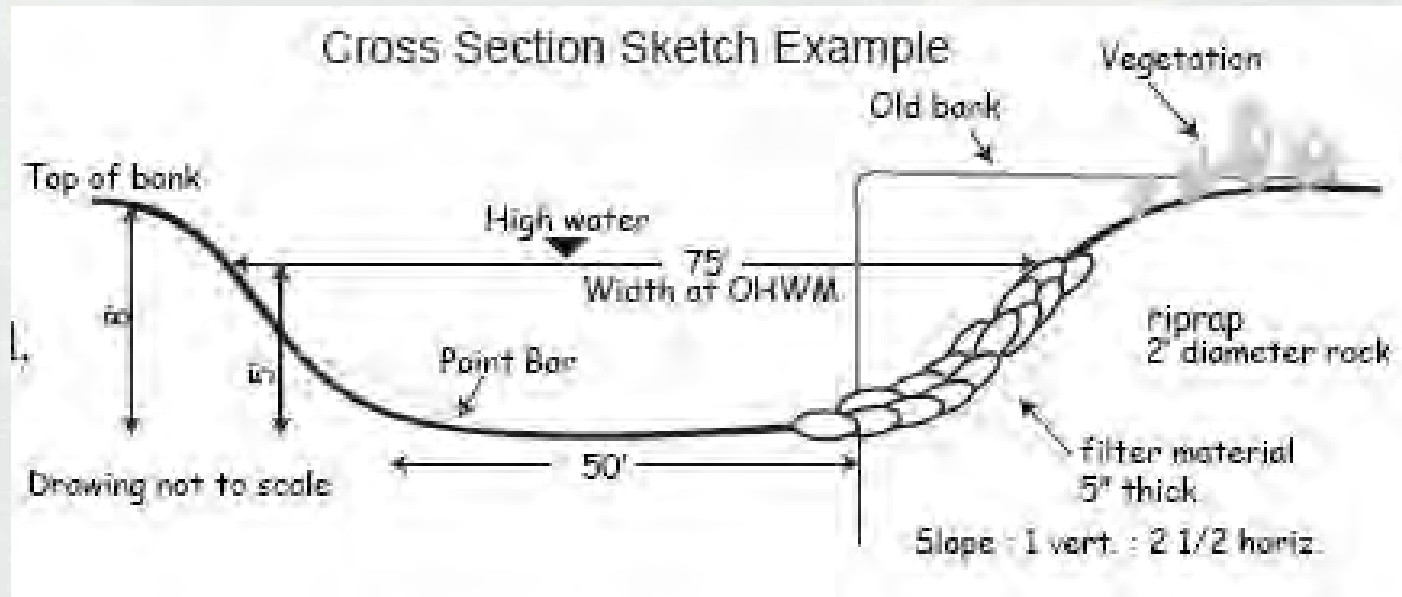
# Example Diagram



# Example Diagram



# Example Diagram





# Summary

- Clean Water Act Section 404
- Exemptions
- Submitting requests for permit/exemption
- Questions?



# Contacts/Links

- Tribal Lands in Santa Fe County
  - ▶ Kelly Allen, 505-342-3216,  
[Kelly.E.Allen@usace.army.mil](mailto:Kelly.E.Allen@usace.army.mil)
- Non-Tribal Lands in Santa Fe County
  - ▶ Deanna Cummings, 505-342-3280,  
[Deanna.L.Cummings@usace.army.mil](mailto:Deanna.L.Cummings@usace.army.mil)
- <http://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/>

