



**US Army Corps  
of Engineers®  
Albuquerque District**

# **SPECIAL PUBLIC NOTICE**

**Date: December 19, 2024**      **Information on Jurisdiction, Exempt Activities, and  
Permit Review Procedures for Ditches**

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**SUBJECT:** The U.S. Army Corps of Engineers (Corps), Albuquerque District is issuing this public notice to inform the public and stakeholders about the types of irrigation and drainage ditches that are considered jurisdictional; about what permitting exemptions apply to construction and maintenance of irrigation and drainage ditches; and about the Corps' permitting process for non-exempt activities in ditches that are considered waters of the United States (WOTUS).

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 United States. 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.

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## **Definitions of Ditches**

The definitions of a "ditch", an "irrigation ditch", and a "drainage ditch" can be found within the 2020 *Joint Memorandum to the Field Between the Corps and the U.S. Environmental Protection Agency (USEPA) Concerning Exempt Construction or Maintenance of Irrigation Ditches and Exempt Maintenance of Drainage Ditches Under Section 404 of the Clean Water Act* ([Joint Memo, 2020](#)).

1. Ditch (general): a constructed or excavated channel used to convey water.
2. Irrigation Ditch: a ditch that either conveys irrigation water to an ultimate irrigation use or place of use, or that moves and/or conveys irrigation water away from irrigated lands.
3. Drainage Ditch: a ditch where increased drainage of a particular land area or infrastructure is at least part of the designed purpose. This includes the following use categories: Agriculture, transportation (e.g., roadsides, railroads), mosquito abatement, and stormwater management.

## **When are Ditches Considered WOTUS?**

A ditch that conveys at least seasonal surface flow directly to a WOTUS generally meets the definition of tributary and is therefore a WOTUS. If a ditch does not provide surface return flows to a waterway, then that ditch is not a WOTUS and work within that ditch does not require authorization under Section 404 of the CWA.

Note: The Corps and the USEPA are the only agencies that can make a determination that an activity is or is not exempt and/or a subject water is excluded from the WOTUS definition.

## **What Activities are Exempt from Permitting Within Jurisdictional Ditches?**

Section 404(f) of the CWA outlines 6 different exemptions from permitting requirements for certain agricultural activities. These exemptions apply to normal farming, silviculture, and ranching operations as long as they are part of ongoing activities. Examples include plowing, seeding, cultivating, minor drainage, and the **maintenance** of dikes, **irrigation ditches**, or farm roads. Below is an outline of criteria for the construction or maintenance of irrigation ditches or maintenance (but not the construction) of drainage ditches:

Exempt activities include construction or maintenance of irrigation ditches but only the maintenance of drainage ditches under Section 404 (f) exemptions.

Examples of maintenance (applies to both irrigation and drainage ditches):

- Removal of material or vegetation, which may include dredging or recontouring to restore the ditch to its historical condition.
- Minor design adjustments, which may include modifying a ditch's cross-section, such as creating more stable, graduated slopes, provided no additional jurisdictional waters are degraded or destroyed.
- Structure repairs or replacements. Repairs to existing structures (e.g., headgates, diversion structures, other structures or equipment used for irrigation, etc.) must maintain the original purpose and capacity without increasing it. Activities not aligned with the ditch's original purpose (e.g., unrelated roadwork or pipeline crossings) are not covered by the exemption.

Example of construction (irrigation ditches only):

- Relocation of existing irrigation ditches, or similar activities. Note however, that these types of activities are subject to review under the recapture provision (see below) to determine if they would affect jurisdictional waters.

Site-specific considerations which apply for both maintenance and construction activities:

- Side casting: Dredged material placed adjacent to or near the ditch is exempt when maintaining drainage ditches or constructing/maintaining irrigation ditches, provided it does not violate the recapture provision.
- Armoring, lining, or piping: Repairs to already armored or lined ditches are exempt if they remain within the previous work footprint. New lining of ditches is considered construction for both irrigation and drainage ditches and is subject to review for Corps permit. Construction of an irrigation ditch which converts a WOTUS, including jurisdictional ditches into a pipe is a change in use of WOTUS, and by definition also a reduction in its reach, and requires a Corps permit under CWA Section 404(f)(2) (recapture provision).
- Temporary discharges of fill material: Temporary fills to facilitate exempt activities must be completely removed after project completion to maintain exemption status.

Recapture Provision:

Exempt activities lose their exemption if they convert a WOTUS into a use to which it was not previously subject and impair the flow or circulation of waters of the United States or reduce the reach of such waters in accordance with Section 404(f)(2) of the CWA ([EPA Section 404 Memorandum, 2024](#)).

For more details, consult the following resources:

- [33 CFR 323.4\(a\)\(3\)](#)
- [40 CFR 232.3\(c\)\(3\)](#)
- [Joint Memo, 2020](#)

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### **Corps Review of Ditch Activities**

The Corps utilizes the procedures outlined within the *Joint Memo, 2020* to evaluate and determine exemption qualifications. This memorandum supersedes previous USACE Regulatory Guidance Letter (“RGL”) 07-02. This memorandum provides a framework for determining the applicability of the ditch exemptions and the “recapture provision” in CWA Section 404(f)(2).

Corps Review Process:

1. The Corps will determine whether the proposed activity will occur in waters of the United States (WOTUS).
2. The Corps will determine whether the proposed activity involves a discharge of dredged and/or fill material.

3. The Corps will determine whether the proposed activity involves an “irrigation ditch” or a “drainage ditch” according to the definitions listed above in this public notice.
4. The Corps will determine whether the proposed activity is “maintenance,” which is exempt for irrigation and drainage ditches, or “construction,” which is exempt for irrigation ditches only.
5. The Corps will determine applicability of the “recapture provision.”

Supporting information needed for Corps Review of your project:

To evaluate activities that may qualify for exemption, requestors are asked to provide the following information:

1. Project description
2. Project location
3. Project purpose
4. Aquatic resource delineation/report
5. Project designs and site photos.

The Corps may require site inspections, hydrologic studies, and historical data to make jurisdictional determinations.

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### **When to Request an Approved Jurisdiction Determination?**

Approved jurisdiction determinations are discretionary and are not required prior to requesting a permit or prior to completing the work, if the activity does not require a CWA permit. Prior to requesting an approved jurisdiction determination, it is encouraged that you complete the following steps:

- 1) Assess if the activity is exempt from requiring a permit.
- 2) Assess if the ditch is a tributary to WOTUS.
- 3) Assess if there are other aquatic resources that are WOTUS within your Corps permit area.

If the activity is not exempt and, if you are unsure if the ditch is a tributary to a WOTUS or if your project involves impacts to other aquatic resources that are WOTUS within your project area and the ditch is not WOTUS, then you may need to request an approved jurisdiction determination prior to conducting your work or when you apply for your permit. Receiving an approved jurisdiction determination, provides you and others with a legal interest, to appeal the determination (33 CFR Part 331).

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For more information or to request a determination of our jurisdiction, please contact the Albuquerque District Office serving your area. Additional guidance and resources are

available online at [Albuquerque District webpage](#) and [EPA Website](#). You can contact the District offices at the following email addresses:

For projects in New Mexico and Texas: [SPA-RD-NM@usace.army.mil](mailto:SPA-RD-NM@usace.army.mil)

For projects in Colorado: [SPA-RD-CO@usace.army.mil](mailto:SPA-RD-CO@usace.army.mil)

You can use our new regulatory request system at <https://rrs.usace.army.mil> for all preapplication consultation, jurisdiction determination, or permit requests.

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This notice serves to clarify the ditch exemption under Section 404(f) and promote compliance with environmental laws while supporting agricultural productivity.

DISTRICT ENGINEER  
ALBUQUERQUE DISTRICT  
CORPS OF ENGINEERS

Enclosures

**FLOW CHART ATTACHMENT TO THE JOINT MEMORANDUM TO THE FIELD BETWEEN ARMY AND EPA CONCERNING SECTION 404(f)(1)(C) OF THE CLEAN WATER ACT**

