



*ALBUQUERQUE DISTRICT
U.S. ARMY CORPS OF ENGINEERS*

REGIONAL GENERAL PERMIT (RGP) RGP-17-02

**BUREAU OF RECLAMATION, RIO GRANDE, ELEPHANT BUTTE REACH, CHANNEL
MAINTENANCE**

EFFECTIVE DATE: 01-16-2018

EXPIRATION DATE: 01-16-2023

Sponsor and Issuing Office:

U.S. Army Corps of Engineers, Albuquerque District (District)

Area of Coverage:

The project site is located in or adjacent to the Rio Grande, Mescal Arroyo, Cuchillo Negro Creek, Arroyo Hondo, Palomas Creek and other Rio Grande tributaries within the reach between the Elephant Butte Dam channel, Section 27, T13S, R4W, Latitude 33.15386° N, Longitude -107.19256° W to the Interstate 25 Bridge south of Caballo Dam, Section 31, T16S, R4W, Latitude 32.87941° N, Longitude -107.29695° W, Sierra County, New Mexico.

Scope of Work and Authorized Materials:

Activities authorized by this RGP are as follows:

a. **Sediment Removal.** The permittee is authorized to remove annually up to approximately 60,000 cubic yards (cy) of sediment and other debris from the Rio Grande near the following tributaries: Mescal Arroyo, Cuchillo Negro Creek, Arroyo Hondo, Palomas Arroyo, Red Canyon, Ralph Edwards Park, Carrie Tingley Hill, and several unnamed smaller arroyos between the Elephant Butte Dam channel from the base to the headwaters of Caballo Reservoir and below Caballo Dam to the Interstate 25 bridge. Removal of additional quantities of sediment and debris may be approved by the U.S. Army Corps of Engineers (Corps) under this permit in the event of heavy monsoon rainfalls and debris flows. Additional quantities to be removed would be subject to prior approval by the Corps. Sediments will be removed during periods of low flow or when irrigation season flows cease from Elephant Butte Dam. Equipment used for sediment removal includes excavators, scrapers and bulldozers. Existing upland spoil areas will be used as disposal sites. During annual maintenance and sediment removal activities, the permittee will use native material in the channel to temporarily divert any surface water present around the work area. This will allow the permittee to work in the dry on half of the width of the channel at a time. After the majority of the sediments are removed from a given area, the temporary diversion barrier will be

removed. In case of emergency where there is not time to place diversion barriers, alternative methods may initially be required, such as working from the bank, to alleviate the emergency situation. The Corps and New Mexico Environment Department (NMED) would be notified at the time the emergency occurs.

b. Grade Control Structure Maintenance. Two existing grade control structures, located south of Cuchillo Negro Creek, will be maintained. An estimated 50 cy of rock rip rap may be used annually to maintain these structures. Equipment used for maintenance of existing bank protection structures includes front end loaders, bulldozers and excavators.

c. Bank Stabilization Maintenance. A maximum of 1000 cy of rock rip rap may be used annually to maintain existing bank stabilization or to construct additional new bank protection for private properties. This work would primarily occur between the Rio Grande Bridge below Elephant Butte Dam to Williamsburg where there is a patchwork of private properties with a mix of existing rip rap bank stabilization and unprotected areas. The work in these areas would occur as needed based on response to erosion caused by activities adjacent to the river, runoff and monsoonal rains. Additional quantities may be placed under this permit subject to prior approval of the Corps for the purposes of bank protection within the Rio Grande and side tributaries and arroyos as appropriate to maintain channel capacity and alignments. Discharges for maintenance work on existing bank stabilization are limited to 2 cy stone/linear foot. Discharges for new bank stabilization are limited to 3 cy stone/linear foot.

d. Temporary Rock Dike Construction: During periods of non-release from the Elephant Butte Dam, a temporary rock dike would be installed in the vicinity of the local bath houses in the Truth or Consequences reach of the Rio Grande. The approximate dimensions of the temporary dike will be 140 feet long, 5 to 8 feet high, 10 feet wide at the top, and 102 feet wide at the bottom. The front side slope would be 1.5:1 with a back slope of 10:1 (approximately 3000 cy of rock). The temporary dike will be placed and removed every year. The dike materials will be placed by front end loaders and dozers, and then removed upon resumption of irrigation flow.

Duration of the Regional General Permit:

This regional general permit authorizes activities begun within 5 years and completed within 6 years after the date of issuance, unless the permit is revoked in the interim.

Pre-Construction Notification Procedures:

- a. **Contents of Notification:** BOR's pre-construction notification shall 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:
 - ii. The purpose and need- describe nature of the project that falls within the scope of this RGP.
 - iii. Drawings or sketches on 8-1/2" x 11" paper showing the project location, the plan or top view of all work subject to Section 404, and cross-sectional or side views of the work.
 - iv. A description of waters of the United States that may be affected by the activities.

- v. Type, composition, and quantity of material to be excavated or placed (including temporary material used for cofferdams, etc).
- vi. Length, width, and depth of fill area and/or excavation area.
- vii. Photos of the project site.
- viii. A discussion of the direct and indirect adverse environmental effects of the activity.
- ix. Type of equipment to be used.
- x. Identification/delineation of wetlands.
- xi. Description of impacts to vegetation and wildlife.
- xii. Mitigation Plan (if applicable).
- xiii. Maintenance Plan (if applicable).
- xiv. 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 written statement that the permittee agrees to abide by the terms and conditions of the permit.

(5) A biological report evaluating effects on threatened and endangered species.

(6) A cultural resource report evaluating impacts to historic properties.

(7) For Work Exceeding Volume Limits specified in Activities a through d: In addition to the preconstruction notifications required above, BOR shall provide a request for waiver that explains measures to be taken to ensure the discharge will result in no more than minimal adverse environmental effects.

Erosion control activities or other activities which exceed any of the volume limitations in Activities "a" through "d" may be authorized under this regional general permit after Corps review.

The information should reference Regional General Permit No. SPA-2012-00138-ABQ and be sent to:

US Army, Corps of Engineers
 Albuquerque District, Las Cruces Field Office
 200 E. Griggs Street
 Las Cruces, NM 88001
 Telephone: (575) 652-4574

The Corps of Engineers may add special conditions to ensure that adverse environmental impacts are minimal, or may decide that an individual permit application is required. Within 45 days of receiving a completed notification including all environmental clearances, the Corps of Engineers will review the proposal and inform the permittee if the work may proceed under this regional general permit. The work cannot proceed until the Corps of Engineers has provided written approval.

- b. **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. above.

General Conditions of This RGP:

1. **Application and Project Completion Timeframes:** BOR must complete all authorized work within **one year** from the annual notification date. If BOR requires additional time to complete the authorized activity, BOR must submit a written request for a time extension to the Corps at least **45 days** before the authorization expires. The request should include justification for an extension.
2. **Notification:** BOR is required to provide preconstruction notification to the Corps for activities which fall within the above Activities "a" through "d" above in accordance with "Pre-Construction Notification Procedures" above. Notification must be provided on an annual basis prior to construction and after flow has ceased for the calendar year.
3. **Annual Reporting:** BOR shall submit an annual report of maintenance and mitigation activities to the Corps of Engineers, Albuquerque District Regulatory Division, by November before maintenance activities occur that year. The report shall include at a minimum, the type, location, and acreage or cubic yardage of each maintenance and mitigation activity performed, and what mitigation activities occurred and location. The report will include a citation of the Section 404 RGP Number NM-17-02 and the Action Number SPA-2012-00138-ABQ. BOR will continue to coordinate annual meetings with the Corps, U.S. Fish and Wildlife Service (USFWS), and the New Mexico Environment Department in conjunction with the annual report.
4. **Suitable Material:** Discharges consisting of broken concrete, used tires, trash, car bodies or other unsuitable material are 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.
5. **Spoil Material:** Spoil placement sites will be selected to minimize impacts on existing vegetation and will not occur in any special aquatic site, including wetlands. Spoil areas will be selected to blend, to the extent practicable, with the surroundings. All current spoil areas have been cleared with NHPA. No new spoil area will be developed without prior notification to the Corps detailing the proposed location and the reason for creating a new spoil area.
6. **Management of Water Flows during Construction:** Maintenance activities shall be performed by BOR after the cessation of irrigation flows. Emergency actions to maintain channel flows during the irrigation season are authorized but must be done during low flow conditions or by temporarily diverting flows into a temporary channel.
7. **Best Management Practices:** BOR must employ temporary soil erosion and sediment controls for each project. Temporary soil erosion and sediment controls must be used and maintained in effective operating condition during construction.
8. **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.).

9. **Vegetation:** BOR shall avoid impacting existing vegetation to the extent practicable and replace vegetation removed as part of authorized bank stabilization projects to prevent erosion and maintain stream buffers. Lost woody riparian vegetation will be both replaced at a 2:1 ratio to promote survival and protected from wildlife or livestock damage. Plantings shall include only native species. Non-native, invasive plant species that volunteer will be removed from the project site, with a performance standard of less than 25% cover non-native, based on a survey conducted as part of the annual monitoring.
10. **Access to Site:** BOR shall set up an onsite meeting annually with state and federal agencies to jointly examine the permitted locations within this reach of the Rio Grande and to discuss each year's proposed maintenance activities and the details of each year's mitigation activities, if any.
11. **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.
12. **Water Quality Certification:**

Conditional 401 Certification of the RGP:

The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 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 anti-degradation 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. 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.
2. 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.
3. Work in the stream channel should be limited to periods of low flow except in emergency situations as stipulated above.
4. Temporary crossings should be restricted to specific designated locations. Heavy equipment must not be parked within the stream channel.
5. If flowing water must be temporarily diverted around the work area, it shall remain within the existing channel to minimize erosion and turbidity and to provide for aquatic life movement.
6. Work or the use of heavy equipment in wetlands must be avoided or minimized unless the

impacts are to be mitigated.

7. 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.
8. NMED-SWQB must be notified at least five days before starting construction to allow time to schedule monitoring or inspections. NMED-SWQB must be notified immediately if the project results in an exceedance of applicable water quality standards.
9. Reclamation will coordinate annual meetings with the Corps, U.S. Fish and Wildlife Service (USFWS), and NMED to review planned work prior to implementation. Reclamation will submit an annual report to the Corps that includes sediment quantities removed and quantities of rock riprap added for grade control repairs and bank stabilization (new projects and maintenance of existing). The annual report will also describe any compensatory mitigation performed that year.
13. **Regional and Case-by-Case Conditions:** Each activity authorized under this RGP must comply with all general conditions and any special conditions added by the District Engineer.
14. **Temporary Storage of Excavated Materials in Channel:** Material resulting from trench excavation may be temporarily side cast into waters of the U.S. for up to 30 days provided that the material is not placed in a manner that will allow it to be dispersed by currents or other forces. In the event that storm flows or runoff events are forecasted, measures must be taken to immediately remove the material within the channel.
15. **Bank Stabilization:** BOR must maintain existing bank stabilization. If repair is required, fills will not exceed 2 cy/linear foot. New bank stabilization structures may be proposed for Corps authorization and will not exceed 3 cy/linear foot of stone. The combined volume of stone used each year will not exceed 1,000 cy.
16. **Mitigation:** For each new bank stabilization structure, the BOR will notify the Corps so the Corps can determine if compensatory mitigation is required. Potential mitigation methods include but are not limited to placement of boulder structures for fish habitat, or the removal of salt cedar or other invasive species and revegetation with native species. If mitigation is required, BOR shall submit a complete mitigation plan that meets the requirements of current District Mitigation and Monitoring Guidelines available at: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/Mitigation.aspx> and the Mitigation Rule (33 CFR 332) will be submitted to the Corps for approval. Approval of the plan is required prior to the impact (i.e. prior to initiation of the bank stabilization project).
17. **Work in Wetlands:** In wetlands, the top 6 to 12 inches of a trench should generally be backfilled with topsoil retained from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect).
18. **Stream Channelization:** Stream channelization is prohibited. Reconstruction of the BOR's 1985 channel design profile for this reach of the Rio Grande is not authorized under this permit. Significant alterations to meanders and backwaters must be prevented.

19. **Removal of Temporary Fills:** BOR shall remove temporary fills associated with the project, such as access roads or coffer dams in their entirety within 14 days and the affected areas must be returned to pre-existing elevations and revegetated with appropriate native riparian or wetland vegetation appropriate for the area.
20. **Dredged or excavated materials:** With the exception of that authorized herein, BOR shall place dredged or excavated material on an upland disposal site and in a defined area not classified as a wetland, above the ordinary high water line to prevent the return of such materials to the waterway.
21. **Energy Dissipation:** BOR must use energy dissipation measures when necessary to prevent erosion downstream of permitted structures/fill. Design of energy dissipation structures must be based on site specific flow conditions, scour potential and channel erosion resistance.
22. **Channel Instability:** BOR must address the potential for channel instability in the annual notification and project plans and provide design counter measures that are appropriate for the site (e.g. downstream apron, incorporation of rock refusals into the bank, etc).
23. **Compliance with Other Laws:** The permittee must comply with all Federal, State and local applicable regulations and ordinances.
24. **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 BOR, 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.

25. **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). This permit does not authorize BOR to take an endangered species. In order to legally take a listed species BOR must have separate authorization under the ESA.

As appropriate, the BOR will consult with the USFWS on specific proposals 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 a non-jeopardy Biological Opinion (BO). Any authorization under this permit is conditional on BOR's compliance with the all of the mandatory terms and conditions associated with the incidental take of the BO, which terms and conditions shall be incorporated by reference in any authorization.

26. **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.

Further Information:

Congressional Authorities:

Activities conducted under this RGP are authorized pursuant to:

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

Limits of authorization under RGP No. 17-02:

- This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- This permit does not grant any property rights or exclusive privileges.
- This permit does not authorize any injury to the property or rights of others.
- This permit does not authorize interference with any existing or proposed Federal project.

Limits of Federal Liability:

In issuing this permit, the Federal Government does not assume any liability for the following:

- Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- 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.
- Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- Design or construction deficiencies associated with the permitted work.
- Damage claims associated with any future modification, suspension, or revocation of this permit.

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.

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:

- Failure to comply with the terms and conditions of this permit.
- 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.
- Significant new information becomes available which this office did not consider in reaching the original public interest decision.
- 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