



**US Army Corps
of Engineers®**

Fort Worth District

Joint Public Notice

Number: CESWF-20-RGP-8 (SWF-2019-00349)

Activity: Boat Ramps and Minor Facilities

Issue Date: October 8, 2019

Expiration Date: November 7, 2019

This public notice is to inform you of the proposed reissuance of Regional General Permit (RGP) 8 which allows the discharge of dredge and/or fill material into waters of the U.S. as well as other activities in navigable waters. a proposal for work in which you might be interested and to solicit your comments to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in the process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

**JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS,
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AND
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**

SUBJECT: Evaluation of the proposed re-issuance of a U. S. Army Corps of Engineers (USACE) Regional General Permit (RGP) under Section 404 of the Clean Water Act (CWA) for discharges of dredged or fill material into waters of the United States and Section 10 of the Rivers and Harbors Act of 1899 for work in, or affecting, navigable waters of the United States and application for water quality certification under Section 401 of the CWA for Section 404 discharges associated with the construction, operation, modification and/or maintenance of boat ramps, minor structures and facilities, and associated dredging. Expansion of existing facilities is included provided they were not previously approved under this general permit and exceed overall limits. The primary change proposed for the RGP is to limit its applicability to the Fort Worth District area of responsibility. An RGP may not be used to authorize work subject to regulation under Section 404 of the CWA until water quality certification has been issued or waived.

PERMIT NUMBER: This version of the proposed Regional General Permit 8 has been designated CESWF-20-RGP-8 (2019-00349) in the Fort Worth District. The existing RGP expires January 27, 2020.

LOCATION: The provisions of this regional general permit would be applicable to all waters of the United States, including all navigable waters of the United States, in the Fort Worth District of the USACE, within the states of Texas and Louisiana (see "Location of Work" and Appendixes B and C of the Proposed Regional General Permit). The Fort Worth District includes the Sabine River watershed in Sabine, De Soto, and Caddo Parishes in the State of Louisiana.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification from the States of Texas and Louisiana.

PROJECT DESCRIPTION: This proposed RGP, if issued, would continue to provide Department of the Army authorization for recurring work that causes no more than minimal individual and cumulative adverse environmental impacts. An RGP serves to reduce administrative procedures and expedite decisions for routine permit actions. The attached information and appendices detail the proposed scope of activities to be covered, location, terms and conditions, and notification requirements associated with the proposed permit.

PUBLIC INTEREST REVIEW FACTORS: The proposed RGP will be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U.S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U.S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to authorize this RGP will be based on an evaluation of the probable impact, including cumulative impact, of the proposal on the public interest. That decision will reflect the national

concerns for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposal. Any comments received will be considered by the USACE in determining whether to adopt the proposed RGP. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposal.

STATE WATER QUALITY CERTIFICATION: The Texas Commission of Environmental Quality (TCEQ) is responsible for certification of work under Section 401 of CWA for activities to be approved under this permit for Section 404 of the CWA.

Actions under this RGP require certification from TCEQ for work within the state of Texas that is subject to Section 404 of the Clean Water Act. Concurrently with the processing of this Department of the Army proposal, the TCEQ is reviewing this proposal under Section 401 of the Clean Water Act, and Title 31, Texas Administrative Code Section 279.1-.13 to determine if the work authorized by this RGP would comply with State water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. **Any comments concerning the application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087.** The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with the proposed RGP is made available for review in the TCEQ's Austin Office. The complete application must be reviewed in the USACE's office. The TCEQ may conduct a public hearing to consider all comments concerning water quality if requested in writing. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

Louisiana Department of Environmental Quality (LDEQ) water quality certification is required for work within the state of Louisiana that is subject to Section 404 of the CWA. Concurrent with processing of this application, the LDEQ is reviewing this proposal under Section 401 of the CWA and in accordance with Louisiana Revised Statutes of 1950, Title 30, Chapter 11, Part IV, Section 2074 A(3) to determine if the work would comply with State water quality standards and other applicable provisions of the CWA. By virtue of an agreement between the USACE and the LDEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the LDEQ a decision on water quality certification under such act. **Any comments concerning the application for water quality certification in Louisiana must be submitted, using the applicant's name and the above LDEQ water quality certification application number as reference, to the Certifications Coordinator, Water Pollution Control Division, Office of Environmental Services, Louisiana Department of Environmental Quality, P. O. Box 4313, Baton Rouge, LA 70821-4313.** The public comment period extends 30 days from the publication date of this notice. A copy of the public notice with a description of work is available for review between 8:00 a. m. and 4:30 p. m. weekdays at the LDEQ office at 602 N. 5th Street, Baton Rouge, Louisiana 70802. Copies may be obtained upon payment of cost of printing. A final decision on state of Louisiana water quality certification will be made within 60 days after the date of this notice.

THREATENED AND ENDANGERED SPECIES: No authorization would be granted under this RGP for an activity that is likely to jeopardize the continued existence of an endangered or threatened species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Any activity that may affect an endangered or threatened species would require review by the USACE and consultation with the U. S. Fish and Wildlife Service.

NATIONAL REGISTER OF HISTORIC PLACES: The USACE will take into account the impact of activities authorized by this RGP on cultural resources listed, or eligible for listing, in the National Register of Historic Places (NRHP). If known or previously unknown cultural resources are encountered during work authorized by this permit, the permittee shall notify the appropriate USACE district and the resources shall be avoided until the USACE can assess their eligibility for listing in the NRHP. Sites determined to be eligible for listing in the NRHP shall be mitigated in consultation with the USACE. Cultural resources include prehistoric and historic archeological sites, and areas or structures of cultural interest that occur in the permit area.

SOLICITATION OF COMMENTS: This public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request.

The District Engineer will determine whether the issues raised are substantial and should be considered in his decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location of the hearing.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before November 7, 2019, the closing date of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the closing date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Chandler Peter, Regulatory Branch, CESWF-DE-R, U.S. Army Corps of Engineers, P.O. Box 17300, Fort Worth, Texas 76102. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth during regular business hours, Monday through Friday. Telephone inquiries may be directed to Mr. Peter at (817) 886-1736.

DISTRICT ENGINEERS
FORT WORTH DISTRICT
CORPS OF ENGINEERS

PROPOSED REGIONAL GENERAL PERMIT (RGP) - 8

BOAT RAMPS AND MINOR FACILITIES

AUTHORIZED ACTIVITIES, LIMITATIONS AND CRITERIA

Work authorized by this Regional General Permit 8 is limited to the discharge of dredged and/or fill material into waters of the United States (U.S.), including wetlands, and work in, or affecting navigable waters of the U.S., associated with the construction, operation, modification and/or maintenance of boat ramps, minor structures and facilities, and associated dredging. Expansion of existing facilities is included provided they were not previously approved under this general permit and exceed overall limits. Activities that may be authorized by this RGP include, but are not limited to:

SCOPE OF WORK

1. **Boat Ramps:** Work authorized for boat ramps by this RGP is limited to the construction and maintenance of hard surfaced inclined plane ramps for the purpose of launching boats for public, private, and commercial use.

Limitations associated with Boat Ramps include:

- No more than a total of 500 cubic yards of dredge and/or fill material may be placed below the ordinary high water mark in the construction of a boat ramp.
- Dredge material is restricted to native soils obtained at the work site. Fill material may be imported from an upland source and consist of dirt, concrete, sand, gravel, rock, and/or other coarse aggregate.
- Use of asphalt below the ordinary high water mark is not authorized.

2. **Minor Structures and Facilities:** Work authorized for minor structures and facilities by this RGP is limited to the construction and maintenance of boat docks, boathouses, fishing piers, walkways, boat stalls, boat slips, ski jumps, swimming platforms, mooring devices and similar features for public, private, and commercial use. Appurtenant structures to docks, piers, walkways and boat stalls, such as bulkheads and stairways, are also authorized by this RGP.

Limitations for Minor Structures and Facilities include:

- Boat docks, boathouses, fishing piers, walkways, boat stalls, boat slips, ski jumps, swimming platforms, and mooring devices must be pile-supported or floating structures.
- Ski jumps, swimming platforms and similar features must be marked so as to be clearly visible to boat traffic, including reflective markers for night visibility. They must also be constructed and anchored to prevent their dislocation or submergence by wave or wind action as well as water level fluctuations.
- Navigable clearance must be maintained around the jump or platform.

- Structures built in waterways shall not unreasonably interfere with navigation or disrupt visibility in a channel.
- No structure can extend into the waterway more than 1/5 of the total width of the waterway or exceed 300 feet, whichever is less, measured perpendicular to the bank.

3. **Dredging:** Work authorized for dredging associated with the construction, operation, modification or maintenance of boat ramps, minor structures and facilities, as well as boat access, is authorized by this RGP. Maintenance of previously dredged areas to pre-existing lines and grades is also included.

Limitations associated with Dredging include:

- a. Dredging for boat slips and/or stalls may not exceed 50 feet in width including top of the side slope.
 - b. Dredging for boat lanes to access boat slips, docks, and other minor structures may not exceed 15 feet in width including top of the side slope and may not exceed 300 feet in length. Lanes must be located to avoid and minimize impacts to wetlands.
 - c. Dredging for boat lanes to access boat ramps may not exceed 50 feet in width including top of the side slope and may not exceed 300 feet in length.
 - d. No more than 500 cubic yards may be dredged in open waters or wetlands in the wet.
 - e. No more than 1500 cubic yards may be dredged in reservoirs and lakes below the ordinary high water mark when the area is dry due to water variation/fluctuation.
 - f. Dredge material excavated with actions authorized under this RGP may be discharged below the ordinary high water mark provided it is not within wetlands or a shallow littoral zone (OHW to a depth of 3 feet) in reservoirs and lakes.
 - g. Dredge material discharged below the ordinary high water mark must be placed in such a manner that it does not result in land reclamation and/or interfere with navigation in navigable waterways.
 - h. Dredged areas must result in positive and connected drainage to the main waterbody to avoid trapping of aquatic species but also must not be designed to eliminate waters of the U.S.
4. **Temporary Fills and Structures:** Temporary fills, including cofferdams, platforms, and structures associated with constructing features authorized by this permit are included in this RGP. Material may be temporarily placed for construction into waters of the United States for up to 90 days provided that the material is placed in a manner that will not allow it to be dispersed by currents or other forces. Permittees shall remove all excess material, including dredge material not to be left in the water body, and temporary fill and structures placed in waters of the United States, including wetlands, to upland areas and stabilize all exposed slopes and stream banks immediately upon completion of construction. Areas affected by temporary fills and/or structures shall be returned to preconstruction conditions or better, including revegetation with native vegetation. All material removed must be placed

at least 50 feet from any water of the United States, including wetlands, and adequately contained to prevent the return to any water of the United States, including wetlands. This RGP does not authorize construction storage and staging areas for undertaking authorized work within waters of the United States.

CRITERIA APPLICABLE TO ALL ACTIONS

1. The discharges and work shall not cause the impact of greater than one (1) acre of waters of the United States for each single and complete project. "Impact of waters of the United States" is defined as "waters of the United States that are permanently or temporarily adversely affected by filling, flooding, excavation, or drainage because of the regulated activity."
2. Conversion of wetlands to open water due to dredging cannot exceed 0.5 acres.
3. Adverse impacts to waters of the United States, including wetlands, shall be avoided and minimized to the extent practicable.
4. All fills and structures authorized by this RGP must comply with the General Conditions contained in Appendix A.
5. Compensatory mitigation shall be provided for unavoidable adverse impacts to waters of the United States, including wetlands, when appropriate and practicable. Conversion of wetlands to open water due to dredging shall be mitigated. See Appendix D for details.
6. Preconstruction Notification (PCN): Prior to construction, a prospective permittee must notify the USACE of the proposed work, in accordance with the requirements of the "Preconstruction Notifications" as detailed in Appendix E. Prior to construction, a prospective permittee must notify the USACE in accordance with the requirements of the PCN Submittal section below if the discharge or work would:
 - a) involve a Section 10 water (except for Toledo Bend Reservoir provided actions are authorized by the Sabine River Authority of Texas and/or Louisiana in accordance with their Shoreline Management Plan);
 - b) cause the loss of greater than 1/10 acre of waters of the U.S. "Loss of waters of the U.S." is defined as waters of the U.S. that are filled or permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity;
 - c) result in the loss of wetlands or littoral zone;
 - d) result in permanent or temporary adverse effects to forested wetlands (e.g., clearing of trees in forested wetland);
 - e) have the potential to affect, or be in the vicinity of, or be in designated critical habitat of, a species listed, or proposed for listing, as threatened or endangered

in the Endangered Species Act (except for Toledo Bend Reservoir provided actions are authorized by the Sabine River Authority of Texas and/or Louisiana in accordance with their Shoreline Management Plan);

f) have the potential to affect any historic property listed, or eligible for listing in, the National Register of Historic Places (except for Toledo Bend Reservoir provided actions are authorized by the Sabine River Authority of Texas and/or Louisiana in accordance with their Shoreline Management Plan);

g) occur within any of the following habitat types or specific areas:

a) wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia spp.*), sundews (*Drosera spp.*), and sphagnum moss (*Sphagnum spp.*);

b) baldcypress-tupelo swamps: wetlands comprised predominantly of baldcypress trees (*Taxodium distichum*), and water tupelo trees (*Nyssa aquatica*), that are occasionally or regularly flooded by fresh water. Common associates include red maple (*Acer rubrum*), swamp privet (*Forestiera acuminata*), green ash (*Fraxinus pennsylvanica*) and water elm (*Planera aquatica*). Associated herbaceous species include lizard's tail (*Saururus cernuus*), water mermaid weed (*Proserpinaca spp.*), buttonbush (*Cephalanthus occidentalis*) and smartweed (*Polygonum spp.*). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185);

c) the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention;

d) the Comal River, the San Marcos River, the Pecos River, the Canadian River, and Lake Casa Blanca; or

e) critical habitat for the Houston toad (*Bufo houstonensis*); Devils River minnow (*Dionda diabolis*) – the Devils River and San Felipe Creek Watersheds in Val Verde County, Texas; and or Leon Springs pupfish (*Cyprinodon bovinus*) – Leon Creek from the Diamond Y Spring to a point one mile northeast of the Texas Highway 18 crossing approximately 10 miles north of Fort Stockton, in Pecos County; or

h) result in the modification or alteration of any Corps of Engineer Federal project(s) that are either locally or federally maintained and for work that would occur within the conservation pool or flowage easement of any Corps of Engineers lake project. PCN's cannot be deemed complete until such time as the Corps has made a determination relative to 33 USC Section 408, 33 CFR Part 208, Section 208.10.

APPENDIX A

GENERAL CONDITIONS

REGIONAL GENERAL PERMIT CESWF-19-RGP-8

1. In verifying authorization under this regional general permit (RGP), the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to verifying authorization, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.
2. Structures and activities authorized by this RGP shall comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.
3. This RGP is not an approval of the design features of any authorized project or an implication that such project is adequate for the intended purpose: a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. This RGP does not grant any property rights or exclusive privileges; does not authorize any injury to the property or rights of others; and does not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. This RGP does not relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located.
4. This RGP may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that such action would be in the public interest.
5. Modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.
6. This RGP does not authorize interference with any existing or proposed Federal project, and does not entitle the permittee to compensation for damage or injury to the structures or activities authorized herein that may result from existing or future operations undertaken by the United States in the public interest.
7. No attempt shall be made by permittees to prevent the full and free public use of any navigable water of the United States.
8. Permittees shall not cause any unreasonable interference with navigation.
9. Permittees shall conduct the activities in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment,

including adverse impacts to migratory waterfowl breeding areas, spawning areas, and trees, particularly hard-mast-producing trees such as oaks and hickories. Permittees shall seek to maintain existing buffers around waters of the United States, including primarily streams and wetlands and create and/or expand buffers around waters of the United States when practicable.

10. All fills and structures above the existing ground elevation in waters of the United States shall minimize adverse impacts to local hydrology. Projects shall not promote the drainage of waters of the United States or cause unnecessary impoundment of water.

11. Permittees shall allow the District Engineer and his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the activity is being performed in accordance with the terms and conditions of this RGP.

12. Permittees must evaluate the effect that the proposed work would have on historic and prehistoric properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) prior to the initiation of work. If a known historic property would be affected, the permittee shall notify the USACE and shall not conduct any work in the permit area that would affect the property until the requirements of 33 CFR Part 325, Appendix C, have been satisfied. If a previously unknown historic property is encountered during work authorized by this RGP, the permittee shall immediately notify the USACE and avoid further impact to the site until the USACE has verified that the requirements of 33 CFR Part 325, Appendix C, have been satisfied.

13. Materials to be placed into waters of the United States are restricted to clean native soils and concrete, sand, gravel, rock, other coarse aggregate, and other suitable material. All material used shall be free of toxic pollutants in toxic quantities.

14. Permittees shall coordinate all construction activities in federally maintained channels and/or waterways for required setback distances with the USACE prior to application for a permit.

15. Permittees shall place all heavy equipment working in wetlands on mats, or take other appropriate measures to minimize soil disturbance.

16. Activities that are likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or that are likely to destroy or adversely modify the critical habitat of such species are not authorized. Permittees shall notify the District Engineer if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

17. Permittees shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area.

18. Permittees shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the activity is to temporarily impound water.

19. Permittees shall properly maintain all structures and fills to ensure public safety.

20. Permittees shall insure that projects have no more than minimal adverse impacts on public water supply intakes.

21. Stream realignment is not authorized by this RGP.

22. Permittees shall design facilities to be stable against the forces of flowing water, wave action, and the wake of passing vessels.

23. All soil-disturbing activities shall be conducted in a manner that will minimize the extent and duration of exposure of unprotected soils. Appropriate erosion and siltation controls shall be used and maintained in effective operating condition during and after construction until all exposed soil is permanently stabilized. Measures to control erosion and run-off, such as berms, silt screens, sedimentation basins, revegetation, mulching, and similar means, shall be implemented. All damage resulting from erosion and/or sedimentation shall be repaired.

24. Permittees are not authorized to discharge dredged or fill material into waters of the United States for purposes of disposal into, or reclamation of, an aquatic area, such as a wetland.

25. Permittees shall not use a jet barge or similar equipment for trench excavation.

26. Channel and boat lane construction and maintenance are not authorized by this RGP.

27. Permittees shall mark structures or fills in navigable waters, when appropriate, so that their presence will be known to boaters.

28. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

29. Permittees are responsible for compliance with all terms and conditions of this RGP for all activities within the Department of the Army permit area of a project authorized by this RGP, including those taken on behalf of the permittee by other entities such as contractors and subcontractors. Permittees assume all liabilities associated with fills and impacts that are incurred by individuals and/or organizations working on contracts with the permittee. Before beginning the work authorized herein or directing a contractor to perform such work, permittees shall ensure that all parties read, understand and comply with the terms and conditions of this permit.

30. Permittees shall conduct dredging and excavation activities with landbased equipment rather than from the water body whenever practicable.

31. Permittees shall not construct facilities designed or used for human habitation nor those that include sewage or fuel handling facilities.

32. Permittees must comply with Federal Emergency Management Agency (FEMA), or FEMA-approved local floodplain development requirements in the placement of any permanent above-grade fills in waters of the United States, including wetlands, within the 100-year floodplain. The 100-year floodplain will be identified through FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps. A permanent above-grade fill is a discharge of dredged or fill material into waters of the United States, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by nationwide permits 3, 25, 36, etc., are not included.

33. To satisfy Texas Commission on Environmental Quality (TCEQ) water quality certification requirements for all projects to which Section 401 water quality certification by the TCEQ applies, the permittee must use at least one best management practice (BMP) from each of the first three categories of on-site water quality management and comply with item d. concerning contaminated dredged material below to satisfy TCEQ water quality certification requirements. Descriptions of the BMPs may be obtained from the TCEQ by calling (512) 239-5366, by calling one of the Corps district regulatory offices identified in the "PRECONSTRUCTION NOTIFICATIONS" section of this RGP, or from the USACE, Fort Worth District, web site at <http://www.swf.usace.army.mil/regulatory/>. The TCEQ-required BMPs are as follows:

a. Erosion Control

Disturbed areas must be stabilized to prevent the introduction of sediment to adjacent wetlands or water bodies during wet weather conditions (erosion). *At least one* of the following best management practices (BMPs) must be maintained and remain in place until the area has been stabilized.

- Temporary Vegetation
- Blankets/Matting
- Mulch
- Sod

b. Post-Construction TSS Control

After construction has been completed and the site is stabilized, total suspended solids (TSS) loadings shall be controlled by *at least one* of the following BMPs.

- Retention/Irrigation
- Extended Detention Basin
- Vegetative Filter Strips

- Constructed Wetlands
- Wet Basins

c. Sedimentation Control

The project area must be isolated from adjacent wetlands and water bodies by the use of BMPs to confine sediment. *At least one* of the following BMPs must be maintained and remain in place until project completion.

- Sand Bag Berm
- Silt Fence
- Triangular Filter Dike
- Rock Berm
- Hay Bale Dike

Dredged material shall be placed in such a manner that prevents sediment runoff into water in the state, including wetlands. Water bodies can be isolated by the use of one or more of the required BMPs identified for sedimentation control. These BMPs must be maintained and remain in place until the dredged material is stabilized.

Hydraulically dredged material shall be disposed of in contained disposal areas. Effluent from contained disposal areas shall not exceed a TSS concentration of 300 mg/l.

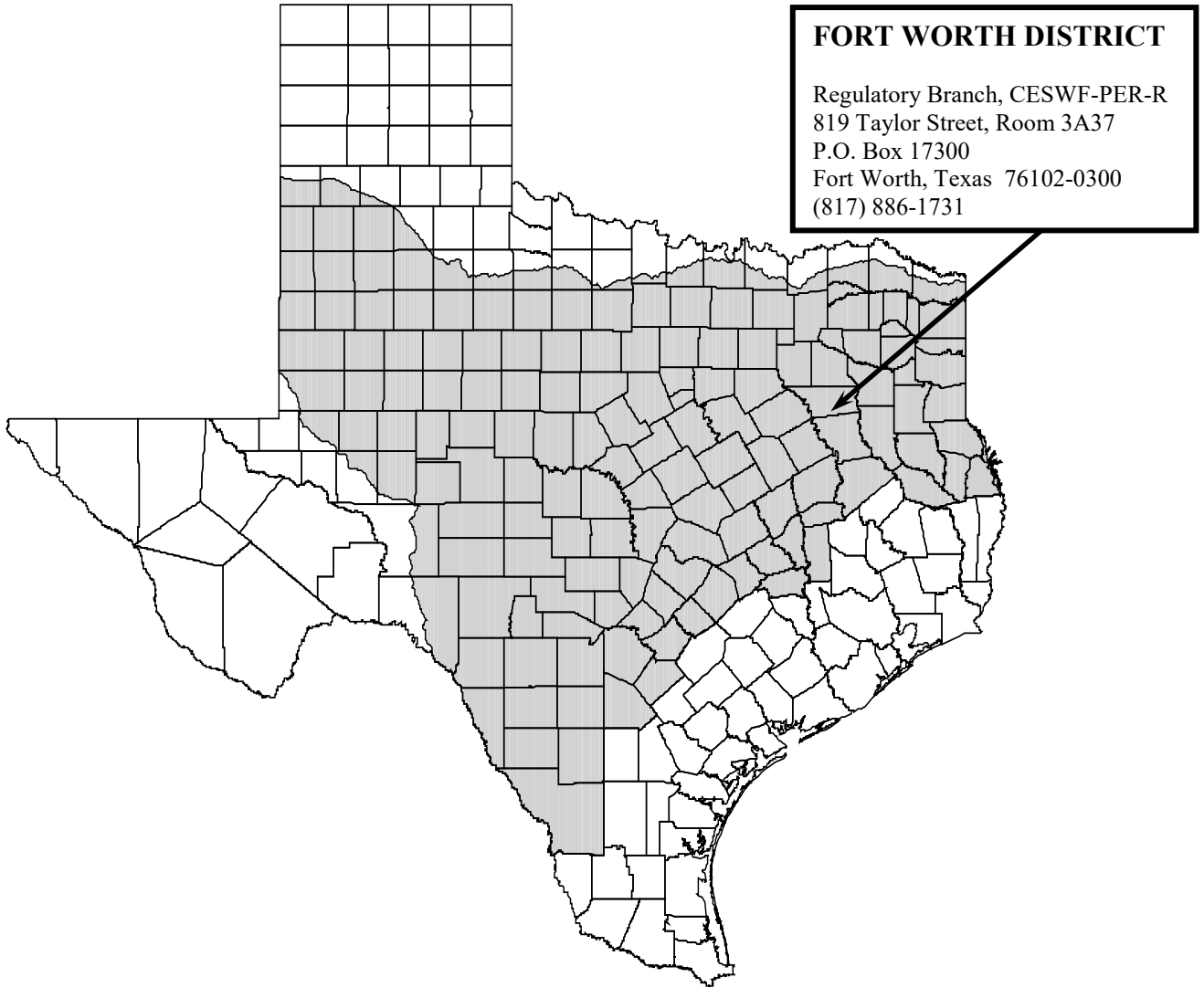
d. Contaminated Dredged Material

If contaminated dredge material that was not anticipated or provided for in the permit application is encountered during dredging, operations shall cease immediately. Pursuant to 26.039 (b) of the Texas Water Code, the individual operating or responsible for the dredging operations shall notify the commission's emergency response team at (512) 463-7727 as soon as possible, and not later than 24 hours after the discovery of the material. The applicant shall also notify the Corps that activities have been temporarily halted. Contaminated dredge material shall be remediated or disposed of in accordance with TCEQ rules. Dredging activities shall not be resumed until authorized in writing by the Commission.

Contaminated dredge material is defined as dredge material which has been chemically, physically, or biologically altered by man-made or man-induced contaminants which include, but are not limited to solid waste, hazardous waste and hazardous waste constituent as those terms are defined by 30 TAC Chapter 335, Pollutants as defined by Texas Water Code 26.001 and Hazardous Substances as defined in the Texas Health and Safety Code, 361.003.

APPENDIX B

**CORPS DISTRICTS IN TEXAS
WHERE RGP 8 IS APPLICABLE**



APPENDIX C

NAVIGABLE WATERS OF THE U.S.

For purposes of Section 10 of the Rivers and Harbors Act of 1899, the following sections of rivers, including their lakes and other impoundments, are considered to be navigable waters of the U.S. that fall within the jurisdiction of the Fort Worth, Albuquerque, and Tulsa Districts of the U.S. Army Corps of Engineers in the states of Texas and Louisiana.

ANGELINA RIVER: From the Sam Rayburn Dam in Jasper County upstream to U. S. Highway 59 in Nacogdoches and Angelina counties and all U. S. Army Corps of Engineers lands associated with B. A. Steinhagen Lake in Tyler and Jasper counties, Texas.

BIG CYPRESS BAYOU: From the Texas-Louisiana state line in Marion County, Texas, upstream to Ellison Creek Reservoir in Morris County, Texas.

BRAZOS RIVER: From the point of intersection of Grimes, Washington, and Waller counties upstream to Whitney Dam in Hill and Bosque counties, Texas.

COLORADO RIVER: From the Bastrop-Fayette County line upstream to Longhorn Dam in Travis County, Texas.

NECHES RIVER: U. S. Army Corps of Engineers lands associated with B. A. Steinhagen Lake in Jasper and Tyler counties, Texas.

RED RIVER: From Denison Dam on Lake Texoma upstream to Warrens Bend which is 7.25 miles northeast of Marysville, Texas, and from the U. S. Highway 71 bridge north of Texarkana, Texas, to the Oklahoma-Arkansas Border.

RIO GRANDE: From the Zapata-Webb county line upstream to the point of intersection of the Texas-New Mexico state line and Mexico.

SABINE RIVER: From the point of intersection of the Sabine-Vernon parish line in Louisiana with Newton County, Texas upstream to the Sabine River-Big Sandy Creek confluence in Upshur County, Texas.

SULPHUR RIVER: From the Texas-Arkansas state line upstream to Wright Patman Dam in Cass and Bowie counties, Texas.

TRINITY RIVER: From the point of intersection of Houston, Madison, and Walker counties upstream to Riverside Drive in Fort Worth, Tarrant County, Texas.

APPENDIX D

COMPENSATORY MITIGATION AND RESTORATION PLANS FOR LOSSES OF WATERS OF THE U.S.

U.S. Army Corps of Engineers (USACE) evaluation of a project proposal submitted for authorization under this permit includes a determination of whether the applicant has taken sufficient measures to **mitigate** the project's likely adverse impacts to the aquatic ecosystem (See USACE Compensatory Mitigation for Losses of Aquatic Resources; Final Rule: Federal Register, Vol. 73, No. 70, Thursday, April 10, 2008, and USACE district website for more detailed information). Applicants should employ the following three-step sequence in mitigating likely adverse project impacts: 1) take appropriate and practicable measures to **avoid** potential adverse impacts to the aquatic ecosystem; 2) employ appropriate and practicable measures to **minimize** unavoidable adverse impacts to the aquatic ecosystem; and 3) undertake appropriate and practicable measures to **compensate** for adverse impacts to the aquatic ecosystem that cannot be reasonably avoided or minimized. **Compensatory mitigation**, then, is the restoration, enhancement, creation, or preservation of wetlands and other waters of the U.S. to compensate for adverse impacts to the aquatic ecosystem that cannot reasonably be avoided or minimized.

COMPENSATORY MITIGATION PLANS

Compensatory mitigation should replace those aquatic system functions that would be lost or impaired because of the proposed activity. The appropriate type and amount of compensatory mitigation depends on the nature and extent of the project's likely adverse impact on those functions performed by the aquatic area(s) that would be impacted. These functions include, but are not limited to, flood storage and conveyance; providing habitat for fish, aquatic organisms, and other wildlife, including endangered species; sediment and erosion control; groundwater recharge; nutrient removal; water supply; production of food, fiber, and timber; and recreation. Compensatory mitigation should also be commensurate with the scope and degree of the anticipated impacts and be practicable in terms of cost, existing technology, and logistics, in light of the overall project purpose.

In general, preference is given to the use of mitigation banks due to reduced risk and uncertainty commonly associated with permittee-responsible compensatory mitigation. For Permittee Responsible Mitigation (PRM), in-kind compensatory mitigation is preferable to out-of-kind and should occur as close to the location of the adverse impacts as practicable, generally in the same watershed. However, environmentally preferable out-of-kind and/or off-site compensatory mitigation may be acceptable. In some cases, it is appropriate to provide partial compensation at one location, such as the impact site, with the remainder occurring at an off-site location.

Normally, restoration or enhancement of wetland functions is preferable to wetland creation because the probability of successfully restoring or enhancing wetlands is greater than the probability of successfully creating new wetlands, and restoration and enhancement activities are less likely to impact upland and open water habitats. The

preservation of existing wetlands is appropriate as compensatory mitigation only in exceptional situations.

PRM plans submitted with PCNs must include, but not be limited to:

- a) a thorough description of the proposed mitigation area including baseline data documenting ecological condition;
- b) a description of all proposed work and structures such as grading, fills, excavation, plantings, and water level control structures;
- c) plan and cross-section drawings of pertinent work and structures;
- d) a statement explaining how adverse impacts to local hydrology will be minimized; and
- e) a proposal for monitoring the success of the proposed mitigation plan. Generally, monitoring should continue for at least five years after mitigation activities are completed, providing planting survival and ecological success requirements have been achieved.

To achieve long-term success of a mitigation plan, an appropriate real estate arrangement, such as a conservation easement, may be required. More information may be found at 33 CFR 332.4(c)(1-14).

APPENDIX E

PRE-CONSTRUCTION NOTIFICATION (PCN) REQUIREMENT AND REVIEW PROCEDURES

For activities requiring a PCN, the prospective permittee shall not begin the activity until notified in writing by the USACE that the project meets the terms and conditions of the RGP, and any special conditions added by the USACE. The USACE will respond as promptly as practicable to all PCNs. For activities not requiring a PCN, the prospective permittee may commence construction when it can ensure that all terms and conditions of this RGP can be met. For all submittals, the USACE will notify the permit applicant whether the proposed project meets or does not meet the terms and conditions of this RGP.

Prior to construction, a prospective permittee must notify the USACE in accordance with the requirements of the PCN Submittal section below if the discharge or work would:

- i) involve a Section 10 water (except for Toledo Bend Reservoir provided actions are authorized by the Sabine River Authority of Texas and/or Louisiana in accordance with their Shoreline Management Plan);
- j) cause the loss of greater than 1/10 acre of waters of the U.S. "Loss of waters of the U.S." is defined as waters of the U.S. that are filled or permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity;
- k) result in the loss of wetlands or littoral zone;
- l) result in permanent or temporary adverse effects to forested wetlands (e.g., clearing of trees in forested wetland);
- m) have the potential to affect, or be in the vicinity of, or be in designated critical habitat of, a species listed, or proposed for listing, as threatened or endangered in the Endangered Species Act (except for Toledo Bend Reservoir provided actions are authorized by the Sabine River Authority of Texas and/or Louisiana in accordance with their Shoreline Management Plan);
- n) have the potential to affect any historic property listed, or eligible for listing in, the National Register of Historic Places (except for Toledo Bend Reservoir provided actions are authorized by the Sabine River Authority of Texas and/or Louisiana in accordance with their Shoreline Management Plan);
- o) occur within any of the following habitat types or specific areas:
 - a) wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia spp.*), sundews (*Drosera spp.*), and sphagnum moss (*Sphagnum spp.*);

- b) baldcypress-tupelo swamps: wetlands comprised predominantly of baldcypress trees (*Taxodium distichum*), and water tupelo trees (*Nyssa aquatica*), that are occasionally or regularly flooded by fresh water. Common associates include red maple (*Acer rubrum*), swamp privet (*Forestiera acuminata*), green ash (*Fraxinus pennsylvanica*) and water elm (*Planera aquatica*). Associated herbaceous species include lizard's tail (*Saururus cernuus*), water mermaid weed (*Proserpinaca spp.*), buttonbush (*Cephalanthus occidentalis*) and smartweed (*Polygonum spp.*). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185);
- c) the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention;
- d) the Comal River, the San Marcos River, the Pecos River, the Canadian River, and Lake Casa Blanca; or
- e) critical habitat for the Houston toad (*Bufo houstonensis*); Devils River minnow (*Dionda diabolis*) – the Devils River and San Felipe Creek Watersheds in Val Verde County, Texas; and or Leon Springs pupfish (*Cyprinodon bovinus*) – Leon Creek from the Diamond Y Spring to a point one mile northeast of the Texas Highway 18 crossing approximately 10 miles north of Fort Stockton, in Pecos County; or
- p) result in the modification or alteration of any Corps of Engineer Federal project(s) that are either locally or federally maintained and for work that would occur within the conservation pool or flowage easement of any Corps of Engineers lake project. PCN's cannot be deemed complete until such time as the Corps has made a determination relative to 33 USC Section 408, 33 CFR Part 208, Section 208.10.

PCN SUBMITTALS

PCNs submitted to the USACE for verification of authorization under this RGP must be in writing and include a description of the project, proposed construction schedule, and the name, address and telephone number of a point of contact who can be reached during normal business hours. The information may be assembled and submitted in a format convenient to the applicant. All pages, including maps, drawings, figures, sheets, etc., must be on 8 ½ by 11-inch paper or fold easily to 8 ½ x 11-inch dimensions. The detail of the information should be commensurate with the size and environmental impact of the project. The description of the project must include at least the following information:

1. The purpose of, and need for, the project.
2. A delineation, determination, and characterization of waters of the U.S., including wetlands, in the area that would be affected by the proposed work, and a description of the project's likely impact on the aquatic environment. Delineations of wetlands must be

conducted using the “Corps of Engineers Wetland Delineation Manual”, USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987 (on-line edition available at <http://www.swf.usace.army.mil/pubdata/environ/regulatory/jurisdiction/wlman87.pdf>), including all supplemental guidance. The supplemental guidance is included in the on-line version and may also be obtained from your USACE district office. Determinations of waters of the U.S. must be conducted using regulations and guidance applicable at the time of the preconstruction notification (currently “U. S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook,” dated June 5, 2007). Include the width and depth of the water body and the waterward distance of any structures from the existing shoreline.

3. A vicinity map, or maps, on copies of 7.5-minute U. S. Geological Survey (USGS) quadrangle maps, county maps, scaled aerial photographs, or other suitable maps, clearly showing the location of all temporary and permanent elements of the project, including the drilling pad, reserve and mud pit(s), production and storage facilities, access road(s), pipeline(s), coffer dam(s), equipment ramp(s), borrow pit(s), disposal area(s), staging area(s), etc. The map(s) must show the project area in relation to nearby wells, access roads, highways and other roads, and other pertinent features. The distance to the nearest well site (restored or unrestored) must be shown on the map or provided in other discussions about the proposed activity. A ground survey is not required to obtain this map information. Identify all base maps, e.g. Fort Worth, Texas 7.5-minute USGS quadrangle, etc.

4. Plan, profile, and cross-section views of all work (fills, excavations, structures, etc.), both permanent and temporary, in, or adjacent to, waters of the U.S., including wetlands, and a description of the proposed activities and structures, including the drilling pad, reserve and mud system (including the type of drilling fluid being used) and pit(s), production and storage facilities, access road(s), pipeline(s), coffer dam(s), equipment ramp(s), borrow pit(s), disposal area(s), staging area(s), and other project related areas within the USACE permit area(s). This is to include the acreage of wetlands and/or linear feet of stream to be adversely impacted by all project features. The permit area(s) includes all waters of the U.S. affected by activities associated with the project, as well as any additional area of non-waters of the U.S. in the immediate vicinity of, directly associated with, and/or affected by, activities in waters of the U.S. The USACE permit area(s) includes associated drilling pads, reserve and mud pits, production and storage facilities, access roads, pipelines, coffer dams, equipment ramps, borrow pits, disposal areas, staging areas, etc. in most cases where they are proposed associated with an exploration and/or production well. The description of the proposed access roads must include such information as the height, width, and length of the road, width of the cleared right-of-way, location of each crossing of a water of the U.S., size and spacing of culverts and bridges, and location and dimensions of roadside borrow ditches.

5. The volume of material proposed to be discharged into, and excavated from, waters of the U.S. and the proposed type and source of the material.

6. A written discussion of the alternatives considered and the rationale for selecting the proposed alternative. The PCN must also include documentation that the amount of area impacted is the minimum necessary to accomplish the project.

7. An assessment of the adverse and beneficial effects, both permanent and temporary, of the proposed work and documentation that the work would result in no more than a minimal adverse impact on the aquatic environment.

8. Documentation that the amount of area impacted is the minimum necessary to accomplish the project and, in cases where the activity would result in a change to pre-construction elevations and/or contours and/or drainage patterns, a description of the anticipated impacts of the changes, the reason(s) that the changes are necessary, and documentation that the changes would not result in more than minimal adverse impact on the aquatic environment.

9. A detailed mitigation plan presenting appropriate and practicable measures planned: a) to avoid and minimize adverse impacts to the aquatic environment, particularly associated with temporary elements of the proposed project, and b) to compensate for the remaining unavoidable adverse impacts to the aquatic environment. If compensatory mitigation for unavoidable adverse impacts to the aquatic environment is not proposed, the application must include documentation that the proposed work would have minimal adverse impact on the aquatic environment without compensatory mitigation, why compensatory mitigation would be inappropriate and/or impracticable, and that compensatory mitigation should not be required. The mitigation plan must include a description of proposed appropriate and practicable actions that would restore, enhance, protect, and/or replace the functions and values of the aquatic environment unavoidably lost in the permit area because of the proposed work. See Appendix D for more information.

10. A restoration plan for any temporary impacts to waters of the U.S. This plan may be included as part of the detailed mitigation plan (See Appendix D) but need to be notated as restoration.

11. An assessment documenting whether any species listed as endangered or threatened under the Endangered Species Act might be affected by, or found in the vicinity of, the USACE permit area(s) for the proposed project. Coordination with the FWS concerning the potential impact of the entire project on endangered and threatened species is encouraged.

12. An assessment documenting whether any cultural resources, particularly those historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), would be affected by, or are in the vicinity of, the USACE permit area(s) for the proposed project (See Appendix A, General Condition 12).

13. The applicant should include any other relevant information, including information on hydrology and hydraulics.

Early coordination with the USACE, well before a final PCN is submitted, is beneficial in many cases.

Address PCNs and inquiries concerning proposed activities to:

Fort Worth District: Regulatory Division, U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-DE-R, P.O. Box 17300, Fort Worth, TX 76102-0300, telephone: (817) 886-1731, website address: <http://www.swf.usace.army.mil/missions/regulatory.aspx>

EVALUATION AND VERIFICATION PROCEDURES FOR PCNs

For all discharges within the habitat types or areas listed in this Appendix, Section 6 a-e above, the USACE will coordinate with the resource agencies as specified in the most current Nationwide Permit (NWP) general condition on notification (currently General Condition 32(d), Federal Register, Vol. 82, No. 4, January 6, 2017).

For activities in the State of Louisiana, the USACE will provide a copy of the PCN to the USFWS, Lafayette Ecological Services Office, and the Louisiana Department of Wildlife (LDWF) and Fisheries P. O. Box 98000, Baton Rouge, Louisiana 70898-9000, (225) 765-2800, Permit Coordinator for a 10-calendar day review. The review period will commence on the date that the USFWS-Lafayette and LDWF receive the PCN.

For activities requiring a PCN, the prospective permittee shall not begin the activity until notified in writing by the USACE that the project meets the terms and conditions of the RGP, and any special conditions added by the USACE. In those cases involving PCN, the USACE will notify the permit applicant whether the proposed project meets or does not meet the terms and conditions of this RGP.

It is the permit applicant's responsibility to ensure that all authorized structures and activities continue to meet the terms and conditions set forth herein; failure to abide by them will constitute a violation of the Clean Water Act and/or the Rivers and Harbors Act of 1899. Projects outside the scope of this RGP may be considered for authorization by individual permit.

This RGP shall become effective on the date of the signature of the District Engineer, or their authorized representative(s), and will automatically expire five years from that date unless the permit is modified, revoked, or extended before that date. Verifications by the USACE that an activity is authorized by this RGP are valid until the expiration date of this RGP unless this RGP is modified, revoked, or extended before that date. Activities that have been verified by the USACE as authorized under this RGP, and have commenced, i.e. are under construction, or are under contract to commence, by the verification expiration date, will remain authorized provided the activity is completed within twelve months of the date of expiration, modification, or revocation of the RGP, or by another date determined by the USACE for the specific case, whichever is later,

unless discretionary authority is exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

Compliance Certification: For cases where a PCN is required, permittees shall submit a written compliance report to the USACE within 120 days after completion of all work that includes the following:

- a. a statement addressing whether the authorized work and mitigation required to date have been implemented in accordance with the USACE authorization, including all general and special conditions;
- b. a summary of all construction and mitigation activities associated with the project that have occurred, including documentation of the completion of all work and compliance with all terms and conditions of the permit;
- c. a comparison of the pre- and post-construction conditions of the project area;
- d. a detailed description of all impacts that have occurred to waters of the United States;
- e. a map showing the final configuration of restored, enhanced, created and preserved waters of the United States, including wetlands;
- f. a presentation of the species of plants, number and acreage of vegetation planted, final topographic elevations of the project, and a map describing the location of the plantings;
- g. a discussion about whether disturbed areas, such as borrow ditches, road embankments, stream banks, road crossings, and temporary impact areas are revegetating adequately and not suffering erosion damage;
- h. photographs and maps as appropriate to illustrate the information presented.

The prospective permittee shall not begin any activity requiring preconstruction notification until notified in writing by the USACE that the activity is authorized under this RGP with any special conditions imposed by the USACE. The USACE will respond as promptly as practicable to all PCNs.