

**DEPARTMENT OF THE ARMY  
REGIONAL GENERAL PERMIT 7**

**CONSTRUCTION AND MAINTENANCE OF FLOOD CONTROL FACILITIES  
CLARK COUNTY, NEVADA**

**EFFECTIVE DATE:**  
**September 1, 2007**

**EXPIRATION DATE:**  
**September 1, 2012**

The District Engineer, Sacramento District, U.S. Army Corps of Engineers, hereby re-issues Regional General Permit 7 (reference Public Notice No. SPK-2007-300). This general permit was developed to authorize construction and maintenance flood control activities in waters of the United States, including wetlands, in Clark County, Nevada.

**Scope of Work:** Regional General Permit 7 (RGP 7) authorizes discharges of dredged or fill material in waters of the United States (waters) in Clark County, Nevada, for construction of new flood control facilities and routine maintenance of existing flood control facilities. Activities authorized by RGP 7 will be funded by or built in accordance with the Clark County Regional Flood Control District (CCRFCDD) program. Individual project impacts may not exceed a total of 2 acres of impacts to wetlands or 5 acres of total impacts to waters of the U.S., including wetlands.

The authorized work must be completed in accordance with the conditions stated herein. Activities that do not qualify under the criteria or do not conform to the terms and conditions of RGP 7 will require other Department of the Army authorization prior to commencing work within waters of the United States.

The applicant shall notify the Corps prior to the start of the project in accordance with notification procedures described in the Special Conditions section. New construction projects must offer the least-damaging practicable alternative, including mitigation when required by this General Permit.

**AUTHORITY:** Regional General Permit 7 is issued under the authority of Section 404 of the Clean Water Act (33 USC 1344), in accordance with provisions of "Regulatory Programs of the Corps of Engineers," 33 CFR 323.2 (h) for activities which are substantially similar in nature and which cause only minimal individual and cumulative environmental impacts.

**DEFINITIONS:** The following definitions are applicable for the purpose of this permit:

**Alternatives** - The applicant must demonstrate that the proposed fill into waters of the United States is unavoidable and the least environmentally-damaging practicable alternative (LEDPA). Where appropriate, consideration shall be given to alternative channel

configurations that could accommodate restoration of native habitat and adjacent vegetated buffers and to available alternative linings such as vegetation, riprap and gabions or combinations thereof. The applicant's chosen alternative must be practicable, considering costs, existing technology, and logistics in light of the overall project purpose, and must be designed in conformance with the *Clark County Regional Flood Control District (CCRFCD) Hydrologic Criteria and Drainage Design Manual*.

**Individual Permit** - A type of standard permit that is issued following a public notice and full public interest review of the permit application, to include distribution of the public notice to all known interested persons and an evaluation of all comments and information received. The Corps goal is to complete processing of a standard individual permit within 60 days to 120 days, unless additional time is needed to extend the comment period, to conduct a public hearing, to prepare environmental documents, or to comply with other Federal laws.

**Letter of Permission** - An expedited process for a standard permit, wherein a public notice is not issued and the permit decision is made within 45 days. A Letter of Permission (LOP) is used only for projects with minor impacts where the applicant performs a thorough pre-application coordination among regulatory and resource agencies.

**Mitigation** - Mitigation includes first, avoiding impacts, second, taking steps to minimize impacts, and lastly, compensating for any remaining unavoidable impacts to the extent appropriate and practicable. For unavoidable impacts to channels, washes and wetlands, depending on the type of activity and location, this General Permit may require creation or restoration of wetland habitat or restoration and preservation of desert washes with riparian habitat. The applicant will submit a detailed proposal to restore, enhance and preserve wetlands and/or wash habitat upon application for review. Mitigation plans shall include the mitigation location and design drawings, vegetation plans, final success criteria, implementation schedule, monitoring schedule, financial assurances and a contingency plan presented in the format of the San Francisco and Sacramento Districts' *Mitigation and Monitoring Proposal Guidelines*, dated December 30, 2004. Minimum monitoring requirements for compensatory mitigation projects involving the creation, restoration, and/or enhancement of aquatic resources will be submitted to the St. George Regulatory Field Office for compliance/review as specifically outlined in USACE Regulatory Guidance Letter 06-03. When applicable, evidence of an appropriate in-lieu fee or mitigation bank purchase agreement must be provided to the Corps prior to authorization under RGP 7.

**Project** - Work must commence within 2 years of RGP 7 authorization and be completed within 3 years, or by the expiration date of the reissued RGP 7, whichever comes first. Projects approved under RGP 7 will have up to one year after the expiration of this permit to complete construction. The permit for those projects remains valid while the proponent remains in full compliance with the terms and conditions of this permit.

**New Facilities** - All new flood control facilities including any addition of fill into waters of the U.S. that expands the original footprint of existing flood control facilities.

### **Routine Maintenance Activities –**

- cleaning and reshaping earthen channels to original contours of previously authorized dimensions;
- repair of lined channels;
- repair of erosion control structures;
- cleaning detention and debris basins, culverts and bridges;
- mechanical control and removal of vegetation via excavation;
- cleaning via excavation and repair of inlet/outlet structures;
- placing temporary fills for BMPs;
- construction access and dewatering.

**Section 8 Facility Specific Analysis (Section 8)** - The Bureau of Land Management, in cooperation with the U.S. Army Corps of Engineers, prepared the *Clark County Regional Flood Control District Flood Control Master Plan Final Environmental Impact Statement (FEIS)* (1990) and the *Supplemental Programmatic Environmental Impact Statement Clark County Regional Flood Control District 2002 Master Plan Update (SEIS)* (2004). Each report utilized a programmatic approach to identify and analyze potential impacts. In addition to containing an overall analysis of the entire CCRFCD Master Plan, the reports contain a procedure for a site- and facility-specific impact analysis. This procedure was originally outlined in Section 14 of the FEIS and was revised as Section 8 in the SEIS. The Record of Decision of the CCRFCD Flood Control Master Plan SEIS requires the preparation of environmental analysis using the procedure described in Section 8 of the SEIS. A Section 8 analysis will be prepared for all new construction authorized under this General Permit for the area covered by the SEIS. For new construction outside of the SEIS project area, a comparable site-specific impact analysis incorporating all elements in Section 8 of the EIS will be prepared and submitted to the Corps for approval.

**Section 401 Water Quality Certification** - In accordance with Section 401 of the Clean Water Act, any applicant requiring a Corps permit to fill waters of the United States must provide evidence of State certification that the proposed activity will not violate State and Federal water quality standards. The certification is based on a finding made by The Nevada Division of Environmental Protection, Bureau of Water Quality Planning, that the proposed Section 404 discharge will comply with all pertinent water quality standards. Any requirements of Section 401 Water Quality Certification or waiver of certification will be a condition of the General Permit authorization.

**Waters of the United States** - Waters of the U.S. include intrastate lakes, rivers, streams (including intermittent and ephemeral streams), wetlands, sloughs, wet meadows, playa lakes, natural ponds, and tributaries of these waters determined to be jurisdictional under Section 404 of the Clean Water Act by the Corps of Engineers, where their use, degradation, or destruction could affect interstate or foreign commerce. Intermittent and ephemeral streams (and their adjacent wetlands) that demonstrate confined flow and a surface water connection to another jurisdictional water body or stream may be considered waters of the U.S.

**COMPENSATORY MITIGATION:** Mitigation for unavoidable impacts to waters of the United States including wetlands will be required as follows:

**Maintenance Projects:**

*Existing Concrete-lined Channels and other concrete structures:* **No mitigation required.**

*Earthen Channels* supporting wetlands: Project work outside of Las Vegas Beltway including outlying areas in Clark County may require mitigation for maintenance activities through a case-by-case determination by the Corps. Inside the Beltway, no mitigation will be required for maintenance activities, provided adverse project impacts to wetlands are temporary and less than 2 acres. No compensatory mitigation will be required for maintenance of existing flood control or storm water management facilities previously authorized by a Corps permit or which were constructed by the Corps and turned over to a local sponsor for maintenance.

**New Construction:** Per federal regulation, compensatory mitigation will be required for all new construction that would adversely and permanently impact waters of the United States. The applicant will be responsible for designing and submitting an appropriate plan for review by USACE and appropriate resource agencies such as USFWS and USEPA. Because of a regional lack of private lands and available water resources, the applicant will be free to develop a plan that effectively creates, restores, enhances, or preserves (or any combination thereof) aquatic resources of the region or watershed. The applicant will also have the option of purchasing credits from local in-lieu fee programs and mitigation banks as they are approved by the resource agencies and become available.

**NOTIFICATION:** The applicant must submit a pre-construction notification to the Corps prior to initiating any work under RGP 7.

For projects that qualify as maintenance activities as identified above, the notification will consist of faxing or mailing a two-page form (Appendix 2) to the Corps' St. George Regulatory Office. The notification must be **received** 10 calendar days prior to initiation of work.

For projects involving new construction, the notification shall follow procedures outlined in Special Condition 1(a)-1(m) below. The notification must be submitted to the St. George Regulatory Office a minimum of 45 days prior to the beginning of work.

If the Corps does not provide written objections, make a determination of the need for additional project/mitigation information, or provide project-specific conditions within 10 days from the date the complete application was received for routine maintenance activities, or within 45 days for applications for new construction projects, the work and mitigation as proposed is authorized under this General Permit.

For emergency situations when work needs to be performed immediately, notification must be faxed to the St. George Regulatory Office (FAX: 435-986-3981) and followed with a telephone call (435-986-3979) to verify that work may proceed under authority of this

General Permit. Emergency work will also require approval of the Nevada Division of Environmental Protection and other state and local jurisdictions.

All projects authorized by RGP 7 must comply with all applicable general and special conditions of this General Permit.

### **SPECIAL CONDITIONS:**

1. *For new construction*, including expansion of the footprint of an existing facility and lining of earthen channels, the applicant shall submit a completed and signed Department of the Army application, **ENG Form 4345**, for the proposed activity at least 45 days prior to initiation of work in waters of the United States. The notification shall be mailed to the St. George Regulatory Office, 321 North Mall Drive, Suite L-101, St. George, Utah 84790. The project description shall include:

(a) location and identification of the affected water(s), to include the latitude and longitude of the site and a location map with sufficient detail to clearly identify the exact location and extent of the project.

(b) volume and type of material to be placed into waters of the United States;

(c) total area of waters of the United States to be directly and indirectly affected;

(d) representative pre-construction photographs of the project site;

(e) a description of the site's existing environmental resources (a Section 8 Facility-Specific Analysis or facility-specific environmental assessment can be used);

(f) a description of any environmental impacts that are expected to occur including a discussion of impacts to biological, ground water, and water quality functions at the project site, a description of best management practices to be used, and an evaluation of effects to Federally-listed threatened or endangered species (In part, a Section 8 Facility-Specific Analysis or facility-specific environmental assessment can be used);

(f) consideration of alternatives (including avoidance and minimization measures) demonstrating that the proposed fill into waters of the United States is unavoidable and the least environmentally-damaging practicable alternative (in part, the facility design or alternatives summary memorandum can be used);

(h) dewatering plan, if applicable;

(i) proposed construction schedule;

(j) any other information pertinent to the stream channel or wash involved;

(k) a list of all other permits and authorizations as required by law, ordinance, or regulation;

(l) a mitigation and monitoring plan and/or a proposal to purchase credits at an approved in-lieu fee program or mitigation bank;

(m) for new construction projects affecting greater than one-half (0.5) acre of waters of the United States, including wetlands, the applicant shall send a courtesy notification package to NDEP, NDOW, USFWS, and USEPA. If agencies have comments or objections to provide, they shall provide these comments to the Corps within 20 days of receiving the project information. Notification for routine maintenance work is described in Special Condition 2 below.

2. *For routine maintenance activities*, the applicant shall mail or fax a completed and signed notification form (Appendix 2) to the Corps at least 10 calendar days prior to initiation of project construction. Upon request or when wetlands are impacted, the Corps will fax a copy of this form to the resource and regulatory agencies.

3. *For both maintenance activities and new construction project areas supporting habitat for migratory birds*, clearing of land (or other surface disturbance) shall be timed to avoid the bird breeding season which occurs approximately March through August. Destruction of nests with eggs or young is a violation of the Migratory Bird Treaty Act (15USC 701-718h). Under the Act, active nests of migratory birds may not be harmed, nor may migratory birds be killed.

Further, if clearing of habitat cannot be performed outside the breeding season, a qualified biologist shall survey the area prior to land clearing. If active nests are located, or if other evidence of nesting is observed (i.e., mated pairs, territorial defense activities, birds carrying nesting materials or transporting food), a protective buffer shall be delineated and the entire area shall be avoided to prevent destruction or disturbance to nests until they are no longer active. The applicant shall contact USFWS for additional information.

4. *For both maintenance activities and new construction*, erosion and siltation controls (Best Management Practices, BMPs) must be used and maintained throughout the construction period until all disturbed areas are stabilized. If straw bales are selected as a BMP, they shall be certified as weed free. The permittee shall submit photographs of best management practices used during construction and post-construction photographs within 30 days of project completion to demonstrate the project was constructed in accordance with the conditions of RGP 7.

5. A Department of the Army Individual Permit or Letter of Permission will be required for activities where the District Engineer determines that more than minimal impacts may occur as a result of the proposed work. In addition, this General Permit does not apply to work that may impact a Federal enforcement action or to work where construction is initiated prior to satisfying all the terms and conditions of this General Permit.

6. To ensure that RGP 7 does not result in significant direct, indirect, and cumulative adverse effects to waters of the United States, the Corps in coordination with USFWS, USEPA, NDOW, and NDEP will make yearly inspections of permitted projects to assess the success and effectiveness of the required mitigation and to review pending construction projects and their associated mitigation. The Corps will coordinate the review with CCRFCD and will solicit the participation of the resource and regulatory agencies. **(Note that the Corps may elect to inspect a representative sample of projects in the event that an exceptionally large number of projects are authorized within a single year.)**

7. The fill activity must be part of a single and complete project.

## **GENERAL CONDITIONS:**

1. This General Permit is proposed to expire on **September 1, 2012**, unless modified, extended or revoked.
2. No activity is authorized which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places until the Corps has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Corps if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places.
3. If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this General Permit, the permittee must immediately notify the Corps. The Corps 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.
4. No activity is authorized which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for listing or which is likely to destroy or adversely modify the critical habitat of such species, as identified under the Federal Endangered Species Act (ESA). The prospective permittee shall notify the Corps if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is authorized.
5. The permittee must maintain the activity authorized by this General Permit in good condition and in conformance with the terms and conditions of this General Permit, and is not relieved of this requirement if the permittee abandons the permitted activity, unless the permittee makes a good faith transfer to a third party. All proposals to transfer project responsibility to a third party shall be coordinated and approved by the Corps prior to such transfer. Should the permittee wish to cease to maintain the authorized activity or desire to abandon it without a good faith transfer, the permittee must obtain authorization from the Corps which may require restoration of the area.
6. The permittee must allow representatives from this office to inspect all authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of the General Permit.
7. Limits of this authorization:
  - a. This General Permit does not obviate the need to obtain other Federal, state, or

local authorizations required by law.

b. This General Permit does not grant any property rights or exclusive privileges.

c. This General Permit does not authorize any injury to the property or rights of others.

d. This General Permit does not authorize interference with any existing or proposed Federal projects.

8. Limits of Federal Liability. In issuing this General Permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

**ADDITIONAL INFORMATION:** Most documents referenced in RGP 7, including ENG Form 4345, are available from the Sacramento District Regulatory Program website at <http://www.spk.usace.army.mil/cespk-co/regulatory/> and the Clark County Regional Flood Control District Website at <http://www.ccrfcd.com>.

*Issued for and behalf of Colonel Thomas C. Chapman, P.E., District Engineer*

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Michael S. Jewell  
Chief, Regulatory Branch

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Date

2 Attachments

Appendix 1: Agency Contacts

Appendix 2: Faxable Notification Form

## **APPENDIX 1 -- AGENCY CONTACTS**

### **U.S. Army Corps of Engineers**

St. George Regulatory Office  
321 North Mall Drive, Suite L-101  
St. George, Utah 84790-7314  
Phone: (435) 986-3979/1961  
Fax: (435) 986-3981  
Attention: Steve Roberts

### **U.S. Fish and Wildlife Service**

Southern Nevada Field Office  
701 North Torrey Pines Drive  
Las Vegas, Nevada 89130  
Phone: (702) 515-5230  
Fax: (702) 515-5231  
Attention: Amy Lavoie

### **U.S. Environmental Protection Agency**

Region IX, Wetlands Section  
75 Hawthorne Street  
San Francisco, California 94105-3901  
Phone: (415) 972-3474  
Fax: (415) 947-3537  
Attention: Elizabeth Goldman

### **Nevada State Historic Preservation Office**

Capitol Complex, 100 Stewart Street  
Carson City, Nevada 89710  
Phone: (775) 684-3448  
Fax: (775) 684-3442  
Attention: Rebecca Palmer

### **Nevada Division of Environmental Protection**

Bureau of Water Quality Planning  
333 West Nye Lane, Room 138  
Carson City, Nevada 89706-0851  
Phone: (775) 687-4670  
Fax: (775) 687-6396  
Attention: Glen Gentry

### **Nevada Division of Wildlife**

Southern Region Office  
4747 West Vegas Drive  
Las Vegas, Nevada 89808  
Phone: (702) 486-5127  
Fax: (702) 486-5133  
Attention: Bradley Hardenbrook

**APPENDIX 2  
FLOOD CONTROL FACILITY ROUTINE MAINTENANCE  
GENERAL PERMIT 7 NOTIFICATION**

**RESPONSIBLE PARTY (PERMITTEE):**

NAME:

AGENCY:

ADDRESS:

CONTACT NAME:

PHONE:

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**PROJECT/CHANNEL/FACILITY NAME:**

**LOCATION:**

FROM (Street Name):

TO (Street Name):

**WORK ACTIVITY AREA:**

CHANNEL LENGTH (Feet) \_\_\_\_\_

WIDTH (Feet) \_\_\_\_\_

FACILITY AREA (Acres) \_\_\_\_\_

**TYPE OF MAINTENANCE (check all that apply):**

\_\_\_ Vegetation Clearing

\_\_\_ Reshape Earthen Channel

\_\_\_ Debris/Sediment Removal  
sediment disposal area \_\_\_\_\_

\_\_\_ Clear/Flush Culvert & Bridges

\_\_\_ Repair Lined Channel describe: \_\_\_\_\_

\_\_\_ Temporary Fills For Construction, Access, Dewatering & Bmp's

\_\_\_ Other describe: \_\_\_\_\_

**ESTIMATED TIME FRAME:**

Begin Date: \_\_\_\_\_ End Date: \_\_\_\_\_

\_\_\_\_\_ Work area does not support habitat for migratory birds.

\_\_\_\_\_ Work area supports habitat for migratory birds; work is timed to avoid the bird breeding season.

\_\_\_\_\_ Work area supports migratory birds; biological survey has been completed and sensitive areas will be avoided.

Ten days prior to starting work sign and fax this form to the U.S. Army Corps of Engineers St. George Regulatory Office, **FAX: (435) 986-3981**. Inform this office of any substantial changes from planned maintenance or any unusual events encountered. Thank you for your cooperation.

Contact: Steve Roberts, Chief, St. George Regulatory Office  
321 North Mall Drive, Suite L-101, St. George, Utah 84790-7314, Phone 435-986-3979