

PROPOSED

REGIONAL GENERAL PERMIT NUMBER 04

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

EFFECTIVE DATE: **TBD**

EXPIRATION DATE: **TBD**

Number: SPK-2007-00300

Issued by: U.S. Army Engineer District, Sacramento Corps of Engineers, 1325 J Street, Room 1480, Sacramento, California 95814-2922

Permittee: Clark County Regional Flood Control District
600 S Grand Central Parkway, Suite 300
Las Vegas, Nevada 89106

Authorities: 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 involving a discharge of dredged or fill material into waters of the United States which are substantially similar in nature and which cause only minimal individual and cumulative environmental impacts.

Purpose: The purpose of the Regional General Permit (RGP) is to implement an expedited permit review process for flood control activities conducted in accordance with the Clark County Regional Flood Control District's (CCRFCD) Master Plan which require a Department of the Army (DA) under Section 404 of the Clean Water Act for the discharge of dredged or fill material into waters of the U.S.).

Location: This Regional General Permit applies to all activities associated with the Clark County (Nevada) Regional Flood Control District (CCRFCD) Master Plan. This RGP is applicable to waters of the U.S. (WOUS) limited to jurisdictional streams, drainage ditches, channels and wetlands within the boundaries of Clark County, Nevada.

Description of Activities and Scope of Work Authorized by this General Permit: The RGP 7 is a modification of the RGP 7 issued on September 1, 2007, (Corps Public Notice No. 200700300), and is intended to authorize fill activities needed to construct and maintain flood control facilities funded by, or built in accordance with, the Clark County Regional Flood Control District (CCRFCD) program under one permit. The proposed RGP 7 is also intended to streamline the permitting process for all activities related to construction and maintenance of flood control facilities, provide mitigation certainty for new construction projects, and authorize minor impact activities which do not qualify for issuance under a Nationwide Permit. Activities that would qualify for processing through the proposed RGP 7 are fill activities resulting in unavoidable relatively minor impacts and, therefore, do not warrant more detailed processing.

The discharge of dredged and/or fill material into waters of the U.S. for each individual project is limited to the following:

This RGP authorizes impacts of up to 1.0 acres of wetland habitat within the Las Vegas Valley (Figure 1).

This RGP authorizes impacts of up to 5000-linear feet for perennial waters within the urban boundary of Las Vegas, shown on Figure 1, which includes those waters that are now perennial based on urban run-off and waste-water discharge. Ephemeral drainages within the urban boundary are limited to 7500-linear feet of impact. Outside of the urban boundary of Las Vegas, impacts to ephemeral drainages would be limited to 1000-linear feet.

In Eastern Clark County, the two major perennial waters are the Muddy and Virgin Rivers. These systems drain large areas predominantly within public ownership, and as such, are in relatively good condition with impacts limited to grazing, farming and recreational activities. Impacts to the Muddy and Virgin Rivers would be limited to 500-linear feet of waters with up to 750-linear feet with the use of bioengineering techniques (General Condition 10) incorporated into the project design. Ephemeral drainages within the urban boundary of the city of Mesquite would be limited to 2500-linear feet of impact (Figure 2). Anything outside of the urban boundary that exceeds 500-linear feet of impact would require alternative permitting options such as a Nationwide, Letter of Permission or a Standard Permit.

In Boulder City activities could be approved under this RGP for up to 5000-linear feet for perennial or seasonal washes and 7500-linear feet for ephemeral drainages inside the urban boundary (Figure 3). Areas outside of the urban boundary would be limited to 1000-linear feet of impact.

In Laughlin, the ephemeral drainages that drain to the Colorado River could be approved under this RGP for up to 7500-linear feet (Figure 4). Areas outside of the urban boundary would be limited to 1000-linear feet of impact. Impacts to perennial or seasonal washes within the urban boundary of Laughlin may be approved for up to 2500-linear feet.

There may be other areas within the unincorporated portions of Clark County that may require flood control. The Overton/Logandale area has been subject to damage of infrastructure and residential areas during flood events. Projects on the Muddy River would be limited to 500-linear feet of impacts to the waterway with up to 750-linear feet of impacts with the use of bioengineering techniques incorporated into the project design. This area may require additional mitigation for impacts to Southwestern Willow flycatcher through USFWS.

The authorized work must be completed in accordance with the terms and conditions stated herein. Activities that do not meet the terms and conditions of RGP 7 will require other Department of the Army authorization.

Permit Conditions:

1. This RGP will expire on **TBD (5 years from the date of issuance)**. If this RGP is not modified or reissued by the expiration date, it automatically expires and becomes null and void. Activities which have commenced (i.e. are under construction) or are under contract to commence in reliance upon this RGP will remain authorized until the project is complete.
2. The applicant shall submit a pre-construction notification (PCN) to the Corps prior to initiating any activity under this General Permit. For projects involving new construction or maintenance activities that exceed the original footprint of the flood control facilities, notification shall follow procedures outlined in general conditions listed in 4(a)-1(i) below and must be submitted to the St. George Regulatory Office a minimum of 60 days prior to the beginning of work.
3. The following information is required in order to be considered a complete application:
 - a. Construction of New Facilities and Maintenance Activities that exceed the footprint of the existing structure. For activities in waters of the U.S. involving the construction of new facilities, including expansion of the footprint of an existing facility and lining earthen channels, and maintenance activities that do not qualify for an exemption, the applicant shall submit a completed and signed Department of the Army application PCN or the ENG Form 4345 with the supplemental information for the proposed activity at least 60 days prior to initiation of work in waters of the United States. The application shall include:
 - 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 affected. This includes all areas at or below the ordinary high water mark (OHWM) of a drainage and adjacent wetlands. The OHWM should be clearly marked on a cross section view;
4. The applicant shall address alternatives to the proposed project that would have fewer adverse effects to the aquatic environment, and provide information on the practicability of each alternative based on costs, logistics and existing technology in light of the overall project purpose. Where appropriate, the alternatives information shall include alternative channel configurations that would result in fewer impacts to 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 the least environmentally damaging practicable alternative, and must be designed in conformance with the *Clark County Regional Flood Control District (CCRFCD) Hydrologic Criteria and Drainage Design Manual*;

5. **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). The reports utilized a programmatic approach to identify and analyze potential impacts of CCRFCD flood control projects on the environment. In addition to 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 DATE, 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 shall be prepared for all new construction authorized under this RGP 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 shall be prepared and submitted to the Corps for approval.
6. Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. Waters should be delineated using the Aquatic Resources Delineation guidance of the Sacramento District 2001 minimum standards, using the current Corps approved delineation manual and any appropriate supplements to the manual. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high water mark, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. All drawings for activities located within the boundaries of the Sacramento District shall comply with the September 15, 2010 Special Public Notice: Map and Drawing Standards for the Sacramento District Regulatory Division, (available on the Sacramento District Regulatory Division website at: www.spk.usace.army.mil/Regulatory);
7. Numbered and dated pre-project color photographs showing a representative sample of waters proposed to be impacted on the site, and all waters of the U.S. proposed to be avoided on and immediately adjacent to the project site. The compass angle and position of each photograph shall be identified on the plan-view drawing(s);
8. A description of existing environmental resources (a Section 8 Facility-Specific Analysis or facility-specific environmental assessment can be used); 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. Biological information sufficient for the Corps to initiate consultation for federally-listed species which may be affected by the project, or

documentation demonstrating compliance with the Endangered Species Act (if other lead federal agency);

9. Archaeological Survey, when applicable, containing the required information as outlined in the document "Sacramento District Regulatory Branch Guidelines for Compliance with Section 106 of the National Historic Preservation Act 1966", or documentation demonstrating compliance with Section 106 of the National Historic Preservation Act (if other lead federal agency).
10. Consideration of alternatives 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;
11. Impacts to the Muddy and Virgin Rivers would be limited to 500-linear feet of waters with up to 750-linear feet with the use of bioengineering techniques incorporated into the project design. Bioengineered bank stabilization is defined as integrating living woody and herbaceous materials with organic and inorganic materials to increase the strength and structure of the soil (Bentrup and Hoag 1998). Bioengineered bank stabilization structures are suitable for many low order streams where the channel is not rapidly aggrading or degrading, and there is sufficient space to reshape the eroding bank to an appropriate angle. Bioengineered bank stabilization activities are not suitable in some types of waterways and not appropriate under certain circumstances. The Corps of Engineers does not advocate any particular stabilization method and Prospective permittees should consult a professional engineer when considering using this RGP. Furthermore, while a bioengineered bank stabilization structure can effectively reduce erosion at a particular site, it cannot overcome poor land management practices in the watershed that contribute to channel instability. Because there are numerous bioengineering techniques available that may require more time to become established than traditional bank stabilization, it is important that each structure is carefully designed with a comprehensive understanding of the site and the watershed conditions.
12. Dewatering plan, if applicable;
13. Proposed construction schedule;
14. Any other information pertinent to the stream channel or wash involved;
15. A list of all other permits and authorizations as required by law, ordinance, or regulation;
16. 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 RGP may require compensatory mitigation, including but not limited to, creation/restoration of wetland habitats and/or restoration and preservation of desert washes with riparian habitat. Mitigation for project

impacts authorized under this RGP may include, but is not limited to, the use of pre-purchased mitigation credits acquired from a Corps approved in-lieu fee program or mitigation bank. For proposed permittee-responsible compensatory mitigation, the applicant shall submit, to the St. George Regulatory Field Office, for review and approval, a detailed Mitigation and Monitoring Plan (MMP) to restore, enhance and preserve waters of the U.S. upon application. The MMP shall be in compliance with the requirements of 33 CFR 332 and include, at a minimum, the mitigation location and design drawings, vegetation plans, final performance standards, implementation schedule, length of monitoring period, 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 "Contents of Monitoring Reports" attached to this document. . When applicable, evidence of an appropriate in-lieu fee or mitigation bank purchase agreement must be provided to the Corps prior to commencing any work authorized under this RGP;

17. For all temporary fills, the PCN shall include a description of the proposed temporary fill, including the type and amount of material to be placed, the area proposed to be impacted, and the proposed plan for restoration of the temporary fill area to pre-project contours and conditions, including a plan for the revegetation of the temporary fill area, if necessary. In addition, the PCN shall include the reason(s) why avoidance of temporary impacts is not practicable.
18. For the construction of new facilities and maintenance activities affecting greater than one-half (0.5) acre of wetlands and/or greater than 500-linear feet of waters of the United States, the applicant shall submit a cd with the permit application and supporting documents to the Corps for distribution to Nevada Department of Environmental Protection (NDEP), Nevada Department of Wildlife (NDOW), U.S. Fish and Wildlife Service (USFWS), and U.S. Environmental Protection Agency (USEPA). If agencies have comments or objections, they shall provide these comments to the Corps within 20 days of receiving the project information.
19. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must stop work and immediately notify this office of what you have found. We 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.
20. If the PCN is complete as per the information requested in #3, the Corps will notify the applicant in writing (email or letter) within 5 working days of a complete application, whether or not the project appears to qualify for authorization under this RGP. If the PCN is incomplete the Corps will notify in writing (email or letter) within 5 working days with a request for specific information to complete the application.

21. The permittee is responsible for all authorized work and ensuring that all contractors and workers are made aware and adhere to the terms and conditions of the permit authorization. The permittee shall ensure that a copy of the permit authorization and associated drawings are available and visible for quick reference at the site until all construction activities are completed.
22. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity or sell the property associated with this permit. You may make a good faith transfer to a third party. If the permittee sells the property associated with a RGP permit verification, the permittee may transfer the RGP permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the RGP permit verification must be attached to the letter, and the letter must contain the following statement and signature:
23. "When the structures or work authorized by this RGP permit are still in existence at the time the property is transferred, the terms and conditions of this RGP permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."
-

(Transferee)

(Date)

24. For all activities resulting in temporary fill within waters of the U.S., the permittee shall:
- a. Place a horizontal marker (e.g. fabric, certified weed free straw, etc.) to delineate the existing ground elevation of the waters temporarily filled during construction; and
 - b. Remove all temporary fill within 30 days following completion of construction activities.
25. Within 90 days following completion of construction activities, the permittee shall submit as-built drawings of the work conducted on the project site and any on-site and/or off-site compensatory mitigation, preservation, and/or avoidance area(s), along with a signed Compliance Certification. The as-builts shall include a plan-view drawing of the location of the authorized work footprint (as shown on the permit drawings), with an overlay of the work as constructed in the same scale as the permit drawings. The drawing shall show all areas of ground disturbance, wetland impacts, structures, and the boundaries of any on-site and/or off-site mitigation or avoidance areas. Please note that any deviations from the work as authorized, which result in additional impacts to waters of the U.S., must be coordinated with the St. George Regulatory office prior to impacts.

26. The permittee shall clearly identify the limits of disturbance in the field with highly visible markers (e.g. construction fencing, flagging, silt barriers, etc.) prior to commencement of construction activities within waters of the U.S. The permittee shall maintain such identification properly until construction is completed and the soils have been stabilized. The permittee is prohibited from any activity (e.g. equipment usage or materials storage) that impacts waters of the U.S. outside of the permit limits (as shown on the permit drawings).
27. The permittee shall allow Corps representatives to inspect the authorized activity and any mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the RGP verification. The permittee will be notified in advance of an inspection.
28. For project areas supporting habitat for migratory birds, activities in waters of the U.S. that involve clearing of land (or other surface disturbance) shall be timed to avoid the bird breeding season (March through August) to the maximum extent practicable. Destruction of nests with eggs or young is a violation of the Migratory Bird Treaty Act (15USC 701-718h). The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.
29. Erosion and siltation controls (Best Management Practices, BMPs) shall 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 this RGP.
30. A Department of the Army Standard Permit shall be required for activities where the District Engineer determines impacts to aquatic resources may be more than minimal, individually or cumulatively, as a result of the proposed work. In addition, this RGP 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 RGP.
31. Fill material must be clean and free of contaminants and noxious plants. Unsuitable fill material includes, but is not limited to, vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires, concrete with exposed rebar.
32. To ensure activities authorized under this RGP do not result in more than minimal impacts to waters of the U.S., the Corps, in coordination with USFWS, USEPA, NDOW, and NDEP will perform an annual inspection of recently permitted activities and assess the success and effectiveness of the required compensatory mitigation. The Corps will also review future planned construction activities and proposed mitigation. The Corps

will coordinate the review with CCRFCD and will solicit the participation of the resource and regulatory agencies.

33. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.
34. No activities authorized under this RGP or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
35. No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under this RPG which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
36. You shall maintain any activity authorized by this RGP in good condition and in conformance with the terms and conditions of this permit. Should you wish to cease to maintain the authorized activity or should you desire to abandon it, you must obtain a modification of this permit from this office, which may require restoration of the area.
37. **Section 401 Water Quality Certification** – For any project resulting in a discharge of dredged or fill material into waters of the U.S., the applicant for this RGP shall obtain a Water Quality Certification, or waiver, under Section 401 of the Clean Water Act from the Nevada Division of Environmental Protection, Bureau of Water Quality Planning. Any requirements of Section 401 Water Quality Certification or waiver of certification shall be a condition of the RGP authorization.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to: Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability. In issuing this 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.
4. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

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 you comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail 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 you for the cost.

6. **Extensions.** The permit duration, as described above, establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Activities not meeting the terms and conditions of this permit may be authorized through another type of permit from the Corps, such as a Nationwide or Standard Permit. The Corps will determine on a case-by-case basis whether an activity has a more than minimal impact, individually or cumulatively, on the aquatic environment or may be contrary to the public interest. The Corps may include additional special conditions to verification under this permit to ensure the activity has minimal impact.

CONTACTS AND ADDITIONAL INFORMATION:

U.S. Army Corps of Engineers, Sacramento District

St. George Regulatory Office
196 E. Tabernacle Street Room 30
St. George, Utah 84770
Phone: (435) 986-3979
Fax: (435) 986-3981
Attention: Patricia L. McQueary
Patricia.l.mcqueary@usace.army.mil

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: Leilani Takano

U.S. Environmental Protection Agency, Region IX
Wetlands Office (WTR-8)
75 Hawthorne Street
San Francisco, California 94105-3901
Phone: (415) 972-3463
Fax: (415) 947-3537
Attention: Robert Leidy

Nevada State Historic Preservation Office
901 S. Stewart Street, Suite 5004
Carson City, NV 89701-4285
Phone: (775) 684-3448
Fax: (775) 684-3442
Attention: Rebecca Palmer

Nevada Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701-5249
Phone: (775) 687-4670
Fax: (775) 687-6396
Attention: Jean Stone

Nevada Division of Wildlife
Southern Region Office
4747 Vegas Drive
Las Vegas, NV 89108
Phone: (702) 486-5127
Fax: (702) 486-5133
Attention: Bradley Hardenbrook