



US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

Public Notice

Public Notice Number: 200025081

Date: October 18, 2001

Comments Due: November 16, 2001

In reply, please refer to the Public Notice Number

TO WHOM IT MAY CONCERN:

SUBJECT: The Sacramento District proposes to issue General Permit Number 7 (GP7)

PURPOSE: The proposed GP7 is intended to bring 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 GP7 is also intended to streamline permitting process for routine maintenance activities, provide mitigation certainty for new construction projects, and authorize minor impact activities which do not qualify for Nationwide permit. Activities that would qualify for processing through the proposed GP7 are fill activities resulting in unavoidable minor impacts, and therefore do not warrant more detailed processing.

Originally proposed under the name GP009 in August 2000, this proposed permit has been revised and modified based on public and agency comment and renamed GP7.

SCOPE OF WORK: The proposed General Permit GP7 would authorize discharges of dredged or fill material for construction of new flood control facilities and routine maintenance up to 2 acres of wetlands impacts and 5 acres of total impacts to waters of the United States. Routine maintenance includes:

- cleaning and reshaping earthen channels
- repair of lined channels
- repair of erosion control structures
- cleaning detention and debris basins, culverts and bridges
- mechanically control and removal of vegetation
- cleaning and repair of inlet/outlet structures
- placing temporary fills for BMP's, construction access and dewatering

The applicant shall notify the Corps prior to the start of the project. New construction projects must offer the least damaging practicable alternative including mitigation when required by this permit.

AUTHORITY: This General Permit 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 320-330).

DEFINITIONS: For the purpose of these actions, the following definitions are applicable:

Alternatives - the applicant must demonstrate that their proposed fill into waters of the United States is unavoidable and the least environmentally-damaging practicable alternative. Where appropriate, consideration shall be given to alternative channel configurations that can accommodate restoration of native habitat and adjacent vegetated buffers, and to available alternative linings such as vegetation, riprap and gabions. The applicant's chosen alternative must be capable of being done, considering costs, existing technology, and logistics in light of the overall project purpose, and designed in conformance with *CCRFC D Hydrologic Criteria and Drainage Design Manual*.

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

Letter of Permission - An expedited process for a standard permit, where a public notice is not issued and permit decision is made within 45 days. 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 avoiding impacts, taking steps to minimize impacts, and compensating for any remaining unavoidable impacts to the extent appropriate and practicable. For unavoidable impacts to channels and washes, depending on the type of activity and location, this General Permit may require creating wetland habitat or preservation of desert washes with riparian habitat. The applicant can elect to purchase credits/units from the Clark County-sponsored In-lieu Fee program. Alternatively, the applicant can provide mitigation without using the in-lieu program when a detailed mitigation and monitoring plan is developed by the applicant and approved by the Corps in coordination with the U.S. Fish and Wildlife Service. The plan shall include mitigation location and design drawings, vegetation plans, and final success criteria, implementation schedule, monitoring schedule, and contingency plan presented in the format of the Sacramento District's *Habitat Mitigation and Monitoring Proposal Guidelines*, dated October 25, 1996. The mitigation plan shall be approved by the Corps or evidence of in-lieu fee purchase must be provided to the Corps prior to any work authorized by this permit.

Section 14 Facility Specific Analysis - The Bureau of Land Management, in cooperation with the U.S. Army Corps of Engineers, prepared the *Clark County Regional Flood Control District Master Plan Final Environmental Impact Statement (FEIS)* (1990). This FEIS utilized a programmatic approach to identify and analyze potential impacts. In addition to containing an overall analysis of the entire CCRFC D master Plan, it also contains a procedure for a more site- and facility-specific analysis. This procedure is outlined in Section 14 of the FEIS. The Record of Decision of the CCRFC D Flood Control Master Plan FEIS requires the preparation of environmental analysis utilizing the procedure described in Section 14 of the FEIS.

Section 401 Water Quality Certification - In accordance with Section 401 of the Clean Water Act, any applicant requiring a Corps permit to fill into waters of the United States must request State certification that the proposed activity will not violate State and Federal water quality standards. The certification is based on a finding made by 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 - All waters such as intrastate lakes, rivers, streams (including intermittent streams and ephemeral streams which are connected to a larger tributary), wetlands, sloughs, wet meadows, playa lakes, natural ponds, and tributaries of these waters use, degradation, or destruction could affect interstate or foreign commerce.

HABITAT MITIGATION:

Mitigation for unavoidable impacts will be required for the impacts:

New Construction (incl. expanding footprint of existing facilities and lining earthen channels)

Earthen channels with year-round nuisance flow, cleared/devoid of vegetation:
creation of wetlands habitat 1/2:1 ratio of filled wetted area.

Earthen channels with wetland vegetation:
creation of wetlands habitat at 3:1 ratio of impacted wetland area.

Dry Washes supporting native desert riparian shrubs and trees (e.g. desert willow, mesquite, etc.):
preservation of similar wash at 1:1 lineal feet of impacted length

Maintenance

Earthen Channels supporting wetlands- project work outside of Las Vegas Beltway including outlying areas in Clark County may require mitigation for lost habitat through a case-by-case determination by the Corps. Inside the Beltway, no wetlands habitat mitigation will be required provided impacts are less than 2 acres.

NOTIFICATION:

The applicant must submit notification to the Corps. Notification for maintenance projects consists of a faxable one-page form (Appendix 1) submitted 5 days prior to work. Notification for new construction shall follow procedures outlined in Special Condition a(1)-a(11) submitted 45 days prior to work. If the Corps does not provide written objections, make a determination for the need for additional mitigation, or provide project specific conditions within forty-five (45) days from the date the complete application was received, the work as proposed is authorized under this permit.

All projects must comply with all applicable general and special conditions of the permit. Work may require approval of the Nevada Division of Environmental Protection and other state and local jurisdictions.

PROPOSED SPECIAL CONDITIONS:

a. For new construction including expansion of the footprint of an existing facility and lining earthen channels, the applicant shall submit a completed and signed Department of the Army application form Eng Form 4345, with a description of the proposed activity at least forty-five (45) days prior to initiation of work in waters of the United States. The project description shall include:

- (1) volume and type of material to be placed into waters of the United States;
- (2) total area of waters of the United States to be directly and indirectly affected;
- (3) representative pre-construction photographs of the project site;
- (4) a description of existing environmental resources, (Section 14 Facility Specific Analysis can be used);
- (5) a description of any environmental impacts that are expected to occur including methods to avoid, minimize, or mitigate adverse impacts to biological, ground water, and water quality functions at the project site, including a description of best management practices to be used, and an evaluation of effects to Federally- listed species (In part, Section 14 Facility Specific Analysis can be used);
- (6) consideration of alternatives demonstrating 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).
- (7) dewatering plan, if applicable;
- (8) proposed construction schedule;
- (9) any other information pertinent to the stream channel or wash involved;
- (10) a list of all other permits and authorizations as required by law, ordinance, or regulation.
- (11) For projects affecting greater than 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 project information.

b. For routine maintenance activities, the applicant shall FAX a completed and signed notification form to the Corps. The Corps will fax a copy of this form to the resource and regulatory agencies upon their request or when wetlands are impacted.

c. For project areas supporting habitat of 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.

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 (mated pairs, territorial defense, carrying nesting material, transporting food) is observed, a protective buffer should be delineated and the entire area avoided to prevent destruction or disturbance to nests until they are no longer active. The applicant shall contact USFWS for additional information.

d. Erosion and siltation controls (best management practices) 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 thirty (30) days of project completion to demonstrate the project was constructed in accordance with the conditions of GP7.

e. For activities where the District Engineer determines that more than minimal impacts may occur as a result of the proposed work, a Department of the Army individual permit or Letter of Permission will be required. 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.

f. To ensure that GP7 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 NDE will make yearly inspection of permitted projects and assess the success and effectiveness of the required mitigation, and review anticipated pending projects construction projects and their associated mitigation. The Corps will coordinate the review with CCRFCD, and solicit the participation of the resource and regulatory agencies.

g. The fill activity is a part of a single and complete project.

PROPOSED GENERAL CONDITIONS:

1. This General Permit is proposed to expire on January 1, 2007, unless modified, extended or revoked.
2. The permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit, and is not relieved of this requirement if the permittee abandons the permitted activity, unless the permitted makes a good faith transfer to a third party. Should the permittee wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, the permittee must obtain authorization from the Corps, which may require restoration of the area.
3. 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.
4. If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this 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.
5. 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). 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.

6. The permittee must allow representatives from this office to inspect the 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 permit.

7. 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.

8. 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.

OTHER INFORMATION

Nevada Division of Environmental Protection proposes to issue Section 401 Water Quality Certification for activities authorized through this General Permit. Conditions of certification would be incorporated into GP7, and therefore, applicants will not need to request individual certification from NDEP.

REQUEST FOR PUBLIC COMMENT:

Interested parties are invited to submit written comments regarding the proposed GP7 on or before **November 16, 2001**. Any person may request, in writing, within the comment period specified in this notice that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

The decision whether to issue GP7 will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers 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 proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, or condition this proposal. 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 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 proposed activity.

If additional information is required, please write to Ms. Nancy Kang at our Nevada Field Office, C. Clifton Young Federal Building, 300 Booth Street, Room 2103, Reno, Nevada 89509, telephone (775) 784-5304, FAX (775) 784-5306.

Michael J. Conrad, Jr.
Colonel, Corps of Engineers
District Engineer

AGENCY CONTACTS**U.S. Army Corps of Engineers**

Nevada Regulatory Office
C. Clifton Young Federal Building
300 Booth Street, Room 2103
Reno, Nevada 89509
Phone: (775) 784-5304
Fax: (775) 784-5306
Attention: Nancy Kang

(Note: The Corps expects to open a field office to service southern Nevada. The contact address will be revised at that time.)

U.S. Fish and Wildlife Service

Las Vegas Suboffice
1510 Decatur
Las Vegas, Nevada 89502-5093
Phone: (702) 647-5230
Fax: (702) 617-5231
Attention: Erik Orsak or Cynthia Martinez

U.S. Environmental Protection Agency

Region IX, Wetlands Section
75 Hawthorne Street
San Francisco, California 94105-3901
Phone: (415) 744-1995
Fax: (415) 744-1078
Attention: Kathleen Dadey

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

