



Public Notice

Public Notice Number: 200275211

Date: May 20, 2002

Comments Due: June 10, 2002

US Army Corps
of Engineers

Sacramento District
1325 J Street
Sacramento, CA 95814-2922

In reply, please refer to the Public Notice Number

TO WHOM IT MAY CONCERN:

SUBJECT: Application for a Department of the Army permit under authority of Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to maintain 1.22 acres of non-permitted wetland impact and 0.28 acre of unsuccessfully recovered wetland (related to Corps permit 199875321 for groundwater collection), and impact an additional 0.18 acre of wetlands associated with a new Kokanee salmon raceway at the Roaring Judy Fish Hatchery. The new work also involves the placement of five rock check dam structures in the East River and 365 feet of riverbank protection associated with the new raceway diversion, as shown in the attached drawings.

APPLICANT: Mr. Norm Erthal
Colorado Division of Wildlife
Engineering Department
6060 North Broadway
Denver, CO 80216
(970) 641-0190 (Mr. Terry Robinson, Hatchery Manager)

APPLICANT'S AGENT: Walsh Environmental Scientists and Engineers, LLC
4888 Pearl East Circle, Suite 108
Boulder, Colorado 80301
Attention: Mr. Allen Crockett
(303) 443-3282

LOCATION: The project site is located within and adjacent to the East River at the Colorado Division of Wildlife (CDOW) Roaring Judy Fish Hatchery within the SE 1/4 of Section 26, and the NE 1/4 of Section 35, Township 15 South, Range 85 West, approximately 3 miles northwest of the Town of Almont on Highway 135, Gunnison County, Colorado.

PURPOSE: The purpose for this application is twofold:

- 1) To obtain after-the-fact permit authorization for 1.50 acres of wetland impact (1.22 acres + 0.28 acre in above "SUBJECT" header) associated with noncompliance of Corps permit number 199875321, and

2) To deliver river water to new raceways downstream from existing trout raceways to improve the return rate of adult salmon from the East River into the hatchery facility (thereby reducing the need to capture and excessively handle the fish and improve egg number and quality) and allow CDOW to manage the salmon separately from the rest of the facility (thereby reducing the potential for introduction of diseases into the hatchery).

BACKGROUND: The Roaring Judy Fish Hatchery facility has a long history of Corps permit and enforcement actions. These actions include permits 199575061 and 199575459 (after-the-fact GP42 issued for unauthorized channelization of the East River); 199875112 (GP37 and GP45 for rock weir in East River); 199875321 (NW3, NW12 and NW18 for groundwater collection system); and 199975327 (GP37 for Kokanee salmon baskets). This individual permit application includes an after-the-fact permit request for unauthorized impacts to 1.22 acres of wetlands and an additional 0.28 acre of unsuccessful recovered wetlands that were previously authorized as temporary wetland impacts under permit 199875321. In order to accept an individual permit application for the unauthorized work, the applicant signed a tolling agreement with the Corps of Engineers that "tolls" or temporarily sets aside the statute of limitations related to violation timeframes.

In addition to this unauthorized work, this application also proposes new impacts totaling 0.18 acre of wetlands impacts and work within the East River for new raceway construction.

PROJECT DESCRIPTION: There are two basic components to the project. The first consists of the construction of a new diversion structure (0.04 acre of wetland impact) at the East River to supply water to a new Kokanee salmon raceway. This component includes riprap armoring and check dam construction within the East River (1,975 cubic yards) and impacts to a small wetland area at the site of the proposed salmon raceway (0.14 acre). The second component of this project is the already completed construction of two buildings, extension of an existing roadway (total of 1.22 acres of unauthorized impacts), and compensation for the unsuccessful recovery of previously authorized impacts (0.28 acre) that resulted from construction of a shallow groundwater collection and conveyance system. Total wetland impact associated with this project is **1.68 acres**. These impacts do not include the placement of rock check structures and riprap within the East River.

MITIGATION: Proposed mitigation for existing unauthorized impacts, unsuccessful recovered wetlands of previously permitted impacts, and proposed new impacts to wetlands consists of:

1. Purchasing 1.04 acres of wetland credit from Gunnison WetBank (1.5:1 mitigation for the unauthorized construction of two buildings impacting 0.69 acre of wetlands),
2. Enhancing 7.5 acres of an expansive meadow complex south of the hatchery facilities and east of the East River, referred to as the "South Meadow" complex.

ALTERNATIVES TO PROPOSED MITIGATION PLAN: The Corps of Engineers recommended achieving some amount of mitigation in the form of wetland creation. Originally, a concept was developed for wetland creation in a nonwetland meadow located south of the hatchery access road and east of the East River, referred to as the "Big East Meadow". This concept was considered by the applicant, but not pursued. Additional information on the alternatives and rationale for the currently proposed mitigation plan is provided below.

1. Acquisition of Wetland Mitigation Credits from Gunnison WetBank - The two unauthorized building structures resulted in permanent loss of 0.69 acres of wetlands, including areas of protracted inundation that supported sedge/rush and willow shrub habitat. Alternative mitigation measures considered for these impacts included:

- a) Wetland creation in the "Big East Meadow" located 500 feet east of the impact area. This would cause some additional wetland impacts and loss of good quality native habitat.
- b) Regrading areas of higher microtopography in extensive "South Meadow". This would cause some additional wetland impacts and probably not improve overall wetland function of the wetland/nonwetland mosaic.
- c) Including this impact in the in-place enhancement (by cessation of agriculture) of the "South Meadow" wetland/nonwetland mosaic. This would not satisfy the Corps recommendation that the mitigation plan include some wetland creation or acquisition of credits from an approved mitigation bank.

Therefore, purchase of 1.04 acres of wetland credits from Gunnison WetBank (a 1.5:1 ratio for 0.69 acre of impact) was deemed by the applicant as the most effective and cost-efficient means of meeting the Corps recommendation and ensuring mitigation success.

2. In-place Enhancement of the "South Meadow" Wetland/Nonwetland to Offset Additional Existing Impacts - These impacts include 0.81 acre permanent wetland loss in a formerly irrigated agricultural meadow northeast of the facility. Much of the wetland portion of that meadow was in decline due to cessation of irrigation during original delineation in spring 1998. The following measures were considered but rejected:

- a) Mitigation in the meadow where impacts occurred is infeasible because of currently unsuitable hydrology. CDOW does not wish to resume irrigation because of concerns about interference with newly installed groundwater well complex and potential for contamination by whirling disease.
- b) Creating wetland in the "Big East and South Meadows" are discussed above.
- c) Including these impacts in the mitigation credits from Gunnison WetBank would eliminate onsite mitigation from the plan. The Corps prefers onsite mitigation where practicable.

Therefore, it was concluded that in-place enhancement of wetland/nonwetland in the "South Meadow" would be appropriate mitigation (at a 5:1 ratio) for unpermitted impacts and unsuccessful temporary impacts in the north facility.

3. Inclusion of Proposed New Impacts with In-Place Enhancement of "South Meadow" - A total of 0.18 acres of new impacts would result from construction of the proposed Kokanee salmon raceways. Mitigation for this impact was included with in-place enhancement of the "South Meadow" wetland/nonwetland mosaic for the following reasons:

- a) No onsite wetland creation areas were identified, except for "Big East Meadow" and regrading portions of the "South Meadow", both of which were rejected.
- b) This impact could have been included in the acquisition of mitigation credits from Gunnison WetBank, but the Corps prefers onsite mitigation where practicable.

AREA DESCRIPTION: The Roaring Judy Hatchery is located on the East River drainage about three miles north of Almont on the west side of Highway 135. At this site, the East River is at an elevation of around 8,150 feet msl and drains approximately 300 square miles. The U.S. Geological Survey has a stream gage located downstream at Almont (with over 90 years of data) that indicates average annual flow range of 65 cubic feet per second (cfs) from December-March to 1,371 cfs in June. The high flow of record occurred on June 15, 1921, measuring 6,500 cfs. This site has been influenced by agricultural and grazing purposes. Habitat ranges from riverine, to riparian and shrub wetlands, to meadow areas.

ADDITIONAL INFORMATION: The applicant has requested water quality certification from the Colorado Department of Public Health and Environment, Water Quality Control Division in accordance with Section 401 of the Clean Water Act. Written comments on water quality certification should be submitted to Mr. Phil Hegeman, Planning and Standards Section, Colorado Department of Public Health and Environment, Water Quality Control Division, 4300 Cherry Creek Drive South, Denver, Colorado, 80222-1530, on or before **June 10, 2002**.

The Colorado Department of Public Health and Environment, Water Quality Control Division also reviews each project with respect to the anti-degradation provision in state regulations. For further information regarding anti-degradation provision, please contact Mr. Hegeman at the Colorado Department of Public Health and Environment, Water Quality Control Division, telephone (303) 692-3518.

The latest published version of the National Register of Historic Places and its monthly supplements have been reviewed and there are no places either listed or recommended as eligible which would be affected. No further cultural resources review is warranted because the permit area has been extensively modified by previous work.

This activity would not affect any threatened or endangered species or their critical habitat. The District Engineer has made this determination based on information provided by the applicant and on the Corps' preliminary investigation.

Interested parties are invited to submit written comments on or before **June 10, 2002**. 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 a permit 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.

For activities involving 404 discharges, a permit will be denied if the discharge does not comply with the Environmental Protection Agency's Section 404(b) (1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria, a permit will be granted unless the District Engineer determines it would be contrary to the public interest.

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, condition or deny a permit for 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 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 proposed activity.

Written comments on this permit application should be submitted to the District Engineer at the address listed above. Please furnish a copy of your written comments to the attention of Susan Bachini Nall, Western Colorado Regulatory Office, U.S. Army Engineer District, Sacramento, 402 Rood Avenue, Room 142, Grand Junction, Colorado 81501-2563. For further information, please contact Ms. Nall, at telephone number 970-243-1199, extension 16, or email Susan.Nall@usace.army.mil.

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

Enclosures: 7 Drawings