



US Army Corps  
of Engineers

Sacramento District  
1325 J Street  
Sacramento, CA 95814-2922

# Public Notice

Public Notice Number: 200375024

Date: February 5, 2003

Comments Due: March 7, 2003

In reply, please refer to the Public Notice Number

## TO WHOM IT MAY CONCERN:

**SUBJECT:** The Corps of Engineers, Sacramento District is soliciting comments on the proposed reissuance of **Regional General Permit number 057** for projects that are beneficial to the recovery of the Colorado River endangered fish species (**Recovery Program for the Endangered Fishes of the Upper Colorado**). This permit, which expired on December 23, 2002, would be issued under the authorities of Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). A copy of the proposed regional general permit is enclosed.

**LOCATION:** This regional general permit would be applicable to waterways and adjacent wetlands within Colorado and Utah which are within the boundaries of the Sacramento District and are currently designated or classified by the U.S. Fish and Wildlife Service (FWS) as "critical" and/or occupied habitat of the Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xrauchen texanus*), humpback chub (*Gila cypha*) or bonytail chub (*Gila elegans*). The regional general permit may include additional waters of the United States not currently designated or classified as critical and/or occupied if projects within these waters may have an appreciable beneficial effect on recovery of any of the endangered fish species. Waters recognized by the Corps of Engineers as habitat occupied by the Upper Colorado River endangered fish species are listed in the enclosed copy of the proposed regional general permit.

**SCOPE OF WORK:** Refer to the enclosed copy of the proposed regional general permit.

**ADDITIONAL INFORMATION:** In the State of Colorado, water quality certification under Section 401 of the CWA is certified by statute. Pursuant to CRS 25-8-302 (1)(f), regional general and nationwide general permits under Section 404 of the CWA are certified without additional best management practices or other conditions. Further action on general permits by the applicant or the State of Colorado, Department of Health, Water Quality Control Division is not required.

The Sacramento District is requesting water quality certification from the State of Utah, Utah Division of Water Quality in accordance with Section 401 of the CWA. Written comments on water quality certification in Utah should be submitted to Mr. William Moellmer, Utah Division of Water Quality, Post Office Box 144870, Salt Lake City, Utah 84114-4870 on or before **March 7, 2003**.

If your comments concern certification on Tribal lands located in Colorado or Utah, please contact Mr. James E. Luey, Ph.D, U.S. Environmental Protection Agency (EPR-EP) 999 18th Street, Suite 500, Denver, Colorado 80202-2466 on or before **March 7, 2003**.

The latest published version of the National Register of Historic Places and its monthly supplements will be reviewed for each project proposed for authorization under this regional general permit. A determination will be made as to whether places either listed or recommended as eligible would be

affected and whether further cultural review is warranted. The Corps of Engineers, by copy of this public notice, is hereby initiating consultation with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act, as amended to determine effects to threatened or endangered species and their occupied habitat as a result of any Federal action proposed in this regional general permit.

The Corps of Engineers is specifically soliciting public comment concerning any additional permit activities and special conditions that should be made in and a part of a regional general permit, if issued. Interested parties are invited to submit written comments on or before **March 7, 2003**. 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 the regional general permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activities 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 also 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 the activities proposed in the regional general permit. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, or condition the regional general permit. 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 activities.

Written comments on this regional general permit should be submitted to the District Engineer at the address listed above. Please furnish a copy of your comments to the attention of Mr. Ken Jacobson, Chief, Colorado/Gunnison Basin Regulatory Office, U.S. Army Engineer District, Sacramento, 402 Rood Avenue, Room 142, Grand Junction, Colorado 81501-2563. For further information, please contact Mr. Jacobson at telephone number (970) 243-1199, extension 11 or email [Ken.Jacobson@usace.army.mil](mailto:Ken.Jacobson@usace.army.mil).

Michael J. Conrad, Jr.  
Colonel, US Army  
District Engineer

Enclosures: GP057

**PROPOSED****REGIONAL GENERAL PERMIT NUMBER 057  
PROJECTS BENEFICIAL TO THE RECOVERY OF  
THE UPPER COLORADO ENDANGERED FISH SPECIES**

EFFECTIVE DATE:

EXPIRATION DATE:

In accordance with Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) the District Engineer, U.S. Army, Corps of Engineers, Sacramento District, hereby authorizes certain discharges of dredged and fill material associated with projects beneficial to the recovery of the Upper Colorado Endangered Fish Species. This Regional General Permit is applicable to any Federal, state or local government agency, quasi-public agency, conservancy group, private interest group or individual(s) with a project that is beneficial to the "Recovery Program for the Endangered Fishes of the Upper Colorado," as determined by the U.S. Fish and Wildlife Service.

**LOCATION:** This Regional General Permit (RGP) is applicable to waterways and adjacent wetlands in the states of Colorado and Utah within the boundaries of Sacramento District, Corps of Engineers. This area encompasses all waterways and adjacent wetlands currently occupied or susceptible to occupation by the Upper Colorado Endangered Fish species in the states of Colorado and Utah. In accordance with the Endangered Species Act (16 U.S.C. et. seq.) and after discussion with the U.S. Fish and Wildlife Service, the Corps of Engineers, Sacramento District identifies the following waters as critical or occupied habitat for the Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), humpback chub (*Gila cypha*) or bonytail chub (*Gila elegans*) [Refer to the attached map]:

1. The **YAMPA RIVER** from the Green River confluence to the Town of Hayden, Colorado at the confluence of Dry Creek.
2. The **GREEN RIVER** from Browns's Park to the confluence with the Colorado River.
3. The **DUCHESNE RIVER** from river mile 15.0 to the confluence with the Green River.
4. The **PRICE RIVER** from river mile 37.8 to the confluence with the Green River.
5. The **SAN RAFAEL RIVER** from Utah state highway 24 bridge to the confluence with the Green River.
6. The **COLORADO RIVER** from Lake Powell to the Colorado state highway 13 bridge at the City of Rifle, Colorado.
7. The **GUNNISON RIVER** from the confluence with the Colorado River to the Hartland dam near the City of Delta, Colorado.
8. The **WHITE RIVER** from the confluence with the Green River to the Colorado state highway 13 bridge near the Town of Meeker, Colorado.
9. The **SAN JUAN RIVER** from Lake Powell to the New Mexico state line.
10. The **LITTLE SNAKE RIVER** from the confluence with the Yampa River to the Wyoming state line.

**NOTIFICATION AND APPROVAL PROCEDURES:** Anyone proposing to perform work authorized by this permit must provide the following information to the Corps of Engineers prior to commencing work in waters of the United States:

1. The name, address, and telephone number of the applicant responsible for the work and the owner of the affected property, if other than the applicant.
2. A written description of the proposed work including the purpose and need; composition and volume of dredged and fill material; dimensions of fills or structures; disposal site for material, types and numbers of equipment to be used; a wetland delineation in accordance with Corps of Engineers methodology, if wetlands are involved; direct and indirect adverse environmental effects of the activity; and any other pertinent or supporting data.
3. A written legal description of the project location including: section, township and range. If known, include the UTM coordinates or latitude and longitude of the project site.
4. The names, addresses, and telephone numbers of adjacent property owners.
5. A complete set of drawings with dimensions of the proposed project which includes the following:
  - a. The project location, including the fill sites and disposal site locations. A photocopied excerpt from a USGS quadrangle, county road map or equivalent is acceptable.
  - b. A plan or top view of the project site clearly depicting structures and fill sites.
  - c. Typical cross-section or end views of all structures and fills.

The drawings should be prepared on 8 1/2-inch by 11 1/2-inch bond paper, and include all pertinent dimensions such as height, width, length, and depth. A bar scale should be included with each drawing.

6. If the project is located on Tribal lands, you must obtain "water quality certification" under Section 401 of the Clean Water Act from the U.S. Environmental Protection Agency.

For assistance concerning water quality certification on Tribal Lands, contact the Chief, State Programs Management Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2466, telephone number (303) 312-6192.

Your written notification requesting approval under this RGP must include a completed Application for a Department of the Army permit (ENG FORM 4345). The application, supporting information and drawings should be mailed to the appropriate Corps of Engineers Office depending upon whether the project is located in Colorado or Utah.

**Colorado:** Corps of Engineers, Sacramento District  
Colorado/Gunnison Basin Regulatory Offices  
402 Rood Avenue, Room 142  
Grand Junction, Colorado 81501-2563  
Telephone: (970) 243-1199, Fax: (970) 241-2358

**Utah:** Corps of Engineers, Sacramento District  
Intermountain Regulatory Section  
1403 South 600 West  
Bountiful, Utah 84010  
Telephone: (801) 295-8380, Fax: (801) 295-8842

Within 30 days of receiving a complete written notification, the Corps of Engineers under normal circumstances, will review your proposal and inform you in writing, if the project may proceed under the authorization given in this RGP. You may not proceed with your project until notified by the Corps of Engineers. If you proceed without approval by the Corps of Engineers, you may be subject to penalties under the law.

**SCOPE OF WORK:** The Corps of Engineers regulates the discharge of dredged and fill material in waters of the United States under Section 404 of the Clean Water Act and various work in navigable waters of the United States under Section 10 of the River and Harbor Act. The Corps of Engineers has the authority to issue regional general permits for activities that are substantially similar in nature and cause only minimal individual and cumulative environmental impacts. This RGP covers the discharges of dredged and fill material associated projects in waters of the United States within Colorado and Utah which have minimal environmental effects and are beneficial to the recovery of the Upper Colorado Endangered Fish Species. This includes, but is not limited to fills and structures associated with the following projects, contingent upon the concurrence of the owner or proprietor of the affected project site:

1. Breaching or removal of levees, dikes, berms, riprap or other fills that are barriers to fish movement.
2. Construction of levees, dikes, berms, and placement of riprap to inhibit fish movement or protect habitat.
3. Excavation of channels from flood plain depressions, ponds, abandoned gravel pits, lakes or wetlands to the active channel of a stream to facilitate fish movement.
4. Development of controlled floodplain backwater facilities for experimental manipulation, including inlet and outlet works and instream elevation control structures.
5. Construction or placement of fish screens, fish harvest kettles, pump station facilities, scientific measurement devices and fill barriers.
6. Isolation of backwater areas to facilitate eradication or prevention of non-native fish species escapement.
7. Excavation of sediments to improve storage capacity, drainage, or fish collection.
8. Construction of road access, and boat launch and retrieval facilities.
9. Construction of fish passageways or ladders, hatcheries, other propagation facilities and refugia ponds.
10. Maintenance and/or rehabilitation of fills and structures appurtenant or functionally related to the above-mentioned activities.

Any project authorized by this RGP may not cause the loss of more than 0.5 acre of wetlands. Changes in wetland type due to project implementation will be given favorable consideration in determining wetland impact acreage. The impact acreage limitation includes loss of wetlands due to the discharge of dredged or fill material, plus any wetlands that are adversely affected by flooding or draining as a result of the project. The Corps of Engineers may authorize impact to more than 0.5 acre of wetland impact if the project complies with the other terms and conditions of the permit and the adverse environmental impacts are minimal. Authorization of impacts to wetlands in excess of 0.5 acre will only be considered after coordination with other Federal and state agencies. The Corps of Engineers evaluation may determine that wetland mitigation is required for any project, and may add special conditions to ensure that environmental impacts are minimal.

**THIS REGIONAL GENERAL PERMIT IS SUBJECT TO THE FOLLOWING GENERAL CONDITIONS:**

1. Upon notification from the Corps of Engineers that work being performed does not comply with the scope of work or conditions of the permit, the responsible party shall take immediate steps, as directed by the Corps of Engineers, to bring the work into compliance with this RGP.
2. This permit does not authorize any damage to existing bank stabilization work which could cause

accelerated erosion or unstable effects on stream channels.

3. If your project is located on Tribal Lands, Section 401 Water Quality certification provided by the Environmental Protection Agency, must accompany your permit application.
4. All instream work shall be performed during low water periods and the use of heavy equipment, especially in flowing water, shall be conducted in a manner to prevent pollution and release of contaminants, and to minimize turbidity and sedimentation.
5. Unless otherwise authorized by the Corps of Engineers, all dredged material in excess of incidental fallback shall be deposited in an upland disposal site, and sufficiently removed and isolated to prevent re-entry into waters of the United States.
6. The discharge of dredged and fill material in waterfowl breeding areas shall be avoided to the maximum extent practicable.
7. The discharge of dredged and fill material in waters of the United States shall be minimized or avoided to the maximum extent practicable unless the District Engineer has approved a compensatory mitigation plan for the specifically regulated activity.
8. Activities authorized under this RGP shall not jeopardize a listed species as identified under the Endangered Species Act, or **destroy or adversely modify** their critical habitat.
9. Activities which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places (Register) are not authorized by this RGP until the Corps of Engineers has complied with the provisions of Title 33, CFR, Part 325, Appendix C. The applicant must notify the Corps of Engineers if the 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 Register. The proposed activities shall not commence until notified by the Corps of Engineers that the requirements of the National Historic Preservation Act have been satisfied and that the activities are authorized. Information concerning the location and existence of historic resources can be obtained from the Colorado or Utah State Historic Preservation Officer as appropriate.
10. Discharge material shall not consist of unsuitable material in any amount [e.g., trash, debris, bituminous concrete (asphalt), automotive bodies or parts, etc.], and must be free of toxic pollutants in toxic amounts.
11. A discharge shall not occur in proximity to a public water supply unless approval is given by the controlling water provider and all required mitigation measures are implemented to offset adverse effects.
12. Activities occurring in a component of the National Wild and Scenic River system, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, are not authorized by this RGP.
13. A discharge shall not impair or interfere with the ability of any group or individual to exercise the use of an appropriated or decreed water right. An activity may not impair reserved Tribal rights including, but not limited to reserved water rights and treaty fishing and hunting rights.
14. This RGP does not obviate the need to obtain other Federal, state or local authorizations as required by law, does not grant any property rights or exclusive privileges, does not authorize any injury to the property rights of others, and does not authorize interference with any existing or proposed federal project.
15. In issuing this RGP and giving approval to perform work under this RGP, the Federal government does not assume any liability for 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; damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activities authorized by this RGP; design or construction deficiencies associated with the permitted work; or damage claims associated with any future modification, suspension, or revocation of this RGP.

16. You must allow representatives from the Corps of Engineers 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 this RGP.

17. You must comply with all general conditions, special conditions and any required mitigation measures added by the Corps of Engineers.

18. Within 30 days after project completion, you must provide the Corps of Engineers with a signed statement confirming that the project was performed according to the general conditions of the RGP and any required special conditions or mitigative measures.

19. You must maintain the activities authorized by this RGP in good condition and in conformance with the terms and conditions of this RGP. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party provided you obtain a transfer of this authorization from the Corps of Engineers to the new owner or proprietor.

20. The Corps of Engineers may re-evaluate its decision on any authorization given in accordance with this RGP at any time circumstances may warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

- a. Your failure to comply with the terms and conditions of the permit;
- b. The information provided by you in support of your application proves to be false, incomplete, or inaccurate; and
- c. Significant new information surfaces which the Corps of Engineers did not consider in reaching a decision on your project.

Such re-evaluation 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 contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with 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 the Corps of Engineers, and if you fail to comply with such a directive, the Corps of Engineers may in certain situations (as specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

21. Upon receiving approval to perform work under this RGP, you will have **two (2) years** to complete the work. If additional time is required, you must seek an extension of time from the Corps of Engineers. Your request for an extension of time must be provided to the Corps at least **60 days** prior to your authorized permit expiration date.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Issued for and in behalf of Colonel Michael J. Conrad, Jr., District Engineer