



**US Army Corps
of Engineers**
Fort Worth District

Joint Public Notice

Number: CESWF-08-RGP-11

Activity: Exploration and Production Wells

Date: November 5, 2008

REGIONAL GENERAL PERMIT

EXPLORATION AND PRODUCTION WELLS

Interested parties are hereby notified that, in accordance with 33 CFR 322.2(f), 323.2(h), and 325.2(e)(2) published in the Federal Register November 13, 1986, the Fort Worth, Tulsa, and Albuquerque districts of the U. S. Army Corps of Engineers (USACE) are issuing this regional general permit (RGP) to authorize the work described herein pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

The purpose of this RGP is to expedite authorization of recurring work that would have minimal adverse impact on the aquatic environment. This RGP contains provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require an individual permit. However, compliance with the conditions contained in this RGP does not guarantee authorization of the work under this RGP. Work or structures that would have unacceptable impacts on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this permit are prohibited unless authorized by a separate permit.

The proposed RGP was referenced in the public notice dated October 6, 2006, as CESWF-06-RGP-11 for the Fort Worth district (SWF), TXG30009 for the Tulsa district (SWT), and 2006 00527 for the Albuquerque district (SPA). The RGP is now designated CESWF-08-RGP-11 in SWF, TXG30009 in SWT, and 2006 00527 in SPA and replaces RGP SWF-01-RGP-11 in SWF, TXG30009 in SWT, and 2001 00047 in SPA.

SCOPE OF WORK

Work authorized by this RGP is limited to the discharge of dredged or fill material into waters of the United States (U.S.), including wetlands, and work in, or affecting navigable waters of the U.S., associated with the construction and operation of exploration and production wells for oil, gas, and water and their supporting fills and structures. Activities that may be authorized by this RGP include, but are not limited to, the construction of drilling pads, reserve and mud pits, access roads, dikes, levees, and production facilities, production and storage facilities, pipelines, coffer dams, equipment ramps, borrow pits, disposal areas, and staging areas associated with exploration and production wells. Impacts to waters of the U.S., including wetlands, shall be avoided and minimized through the use of practicable alternatives. Stream channelization is not allowed. For the purpose of this RGP, stream channelization is the manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. Realignment of streams that is not stream channelization is allowed only if no practicable alternative exists and appropriate compensatory mitigation is provided, and is restricted to a maximum of 500 linear feet. Appropriate and practicable compensatory mitigation shall be required for unavoidable adverse impacts to waters of the U.S. This RGP does not authorize activities

that would have more than minimal adverse impacts on the aquatic environment or cause more than minimal reduction in the reach of waters of the U.S.

The activities listed above are authorized by this RGP provided they meet all of the following criteria:

1. Well Site: The discharge of dredged and fill material associated with mechanized land clearing and leveling and for the construction of drilling pads, reserve, mud, and brine pits, water pits, dikes, containment levees, and associated facilities is limited to an area of 2.5 acres within waters of the U.S., not including areas for production facilities and access roads. However, both the size of the well site and the amount of dredged and fill material discharged into waters of the U.S., including that necessary for access roads, must be the minimum necessary to accomplish the work. A well site with multiple wells may be authorized provided the limits identified for the well site are not exceeded. In cases where oil-based drilling muds are being used in the drilling operation, containerized mud systems must be used instead of open surface pits. In cases where water-based drilling muds are being used, permittees must use containerized mud systems, where practicable. Containment levees must be constructed around drilling operations and borrow material used to construct drilling operation containment levees must be obtained from inside the levee if the material is suitable for such use. All pits shall be suitably lined with an impervious material. Permittees shall avoid waters of the U.S., including wetlands, in selecting the location of well sites where practicable alternative sites exist. This permit does not authorize any well site located in a water of the U.S., where any feature of that well site is within 600 feet of any remaining feature of another well site (restored or unrestored) located in a water of the U.S. (see "Drilling Termination" and "Well Abandonment" sections below), or within 1,200 feet of the toe of any levee, dike, dam or other work built with Federal funds for flood control or water supply, or by any state or local government without written approval from the appropriate agency. The measurement to determine the above distances shall be between the closest points of the two features in question, e.g., two well sites, a well site and a levee, a well site and a dam. Production facilities, access roads, flow lines, and other features are not considered part of the well site. All fill material placed into waters of the U.S. shall be clean, of suitable quality, and free of contaminants in toxic quantities.

2. Access Roads: Adverse impacts to waters of the U.S., including wetlands, caused by the construction of access roads and turn-arounds shall be minimized by such means as taking the shortest practicable route through waters of the U.S., utilizing existing roads, following previously disturbed areas to the maximum extent practicable, and limiting the width of ground disturbance in constructing access roads and turn-arounds to the minimum amount necessary. The clearing of vegetation for access road rights-of-way in waters of the U.S. must be the minimum necessary and in no case shall exceed a width of 40 feet. Turn-arounds up to 90 feet in diameter may be constructed in waters of the U.S. at one-mile intervals along access roads. Crossings of waters of the U.S. shall be avoided where practicable alternatives exist. Roads shall be designed to pass low flows and expected high flows and not interfere with the migration of aquatic organisms or create impoundments.

All access roads raised above the existing ground elevation in waters of the U.S. must be suitably bridged or culverted to minimize adverse impacts to local drainage patterns. Roads shall not promote the drainage of waters of the U.S. or cause unnecessary impoundment of water. Bridges or culverts for roads in wetlands shall be spaced no further than 500 feet apart and placed at least at all surface drainages. Bridges and culverts shall be sized to adequately pass low flows and expected high flows. Roadside borrow ditches shall not be continuous; each section of ditch shall be no longer than 300 feet and shall be separated from adjacent sections of ditch by at least 50 feet of unexcavated ground.

3. Production Facilities: Production facilities shall be located outside of wetlands whenever practicable to minimize adverse impacts to the aquatic environment, provide easier access to these facilities, reduce flood damage, and lessen the potential for contaminating surface water. Production facilities that must be

located in wetlands should be centrally located to service as many wells as practicable. The clearing of vegetation and discharges in waters of the U.S. for storage and production facilities is limited to 1 acre. Storage and production equipment shall be properly diked to contain spills and leakage. Production pipelines constructed through waters of the U.S. should follow previously disturbed areas such as access roads, fence lines, and utility line rights-of-way as much as practicable to minimize adverse impacts to the aquatic environment.

4. Erosion and Water Control: All soil-disturbing activities shall be conducted in a manner that will minimize the extent and duration of exposure of unprotected soils. Measures to control erosion and runoff, such as berms, silt screens, sedimentation basins, revegetation, mulching, composting, and similar means, shall be taken as necessary. Damage resulting from sedimentation and/or erosion shall be repaired.

5. Drilling Termination: Upon completion of drilling activity, a thorough and extensive cleanup operation shall be conducted, including removing from the drilling site to an upland disposal site all saltwater, drilling mud, brine, hydrocarbons, and any substances considered toxic under federal regulations. Only equipment and supplies necessary for operation of the well shall remain onsite. All pits shall be filled within 90 days following the termination of drilling. The disposal of drilling mud and control of accidental spills and discharges shall comply with all applicable federal and state regulations. The portion of the pad, and all other fills and structures, that are no longer needed for well operation and maintenance shall be removed and the area restored to preconstruction elevations, contours, and conditions within 90 days following the termination of drilling to the maximum extent practicable, unless an alternative resolution is specifically identified by the permit applicant and authorized by the USACE. The drilling termination restoration plan shall be provided to the USACE as part of the preconstruction notification (PCN) if required (see "PRECONSTRUCTION NOTIFICATIONS"). Restoration shall generally include the re-establishment of the appropriate hydrology, soils, and vegetation, including native grass and forb herbaceous ground cover and native trees and shrubs that are suitable for the site. For cases where a USACE PCN is required, permittees shall submit an interim written compliance report to the USACE within 120 days after drilling termination that includes, at a minimum, the following:

a. a discussion of how the authorized work and mitigation required to date has been done in accordance with the USACE authorization, including all general and special conditions;

b. a summary of all construction and mitigation activities that occurred associated with the project, including documentation of the completion of all work and compliance with all terms and conditions of the permit;

c. a comparison of the post-construction conditions of the project area to the pre-construction conditions of the area;

d. a detailed description of all impacts to waters of the U.S.;

e. a map showing the configuration of waters of the U.S., including wetlands, restored after drilling termination;

f. details of the restoration of waters of the U.S., including wetlands, after drilling termination, addressing hydrology, soils, and vegetation;

g. a discussion about whether disturbed areas, such as borrow areas, road embankments, stream banks, road crossings, and temporary impact areas are revegetating adequately and not suffering erosion damage;

- h. the status of the well, whether abandoned or producing; and
- i. maps and photographs, as appropriate, to illustrate the information presented.

When the performance standards for the drilling termination restoration plan have been met, permittees shall submit a final written compliance report, following the format prescribed above for the interim compliance report, that documents full compliance with the performance standards.

6. Well Abandonment: Wells shall be plugged and capped in accordance with state regulations prior to abandonment. Unless alternative activities are specifically authorized by the USACE, all drilling pads, dikes, levees, structures, and their foundations and access roads, shall be removed and mud and reserve pits filled. The areas shall be returned to preconstruction conditions, or better, and protected against erosion by suitable means. Fill material removed from the site shall not be placed in a water of the U.S. without USACE authorization. The restoration of abandoned well sites shall be completed within 90 days of the date the well is plugged, unless an alternative resolution is specifically authorized by the USACE. The well abandonment restoration plan shall be provided to the USACE as part of the preconstruction notification (PCN) if required (see "PRECONSTRUCTION NOTIFICATIONS"). Restoration shall include the re-establishment of the appropriate hydrology, soils, and vegetation, including native grass and forb herbaceous ground cover and native trees and shrubs that are suitable for the site, wherever practicable. For cases where USACE notification is required, permittees shall submit an interim written compliance report to the USACE within 120 days after well abandonment that includes the following, at a minimum:

- a. a discussion of how the authorized work and required mitigation required to date has been done in accordance with the USACE authorization, including all general and special conditions;
- b. a summary of all construction and mitigation activities that occurred associated with the project, including documentation of the completion of all work and compliance with all terms and conditions of the permit;
- c. a comparison of the post-construction conditions of the project area to the pre-construction conditions of the area;
- d. a detailed description of all impacts to waters of the U.S.;
- e. a map showing the configuration of waters of the U.S., including wetlands, restored after well abandonment;
- f. details of the restoration of waters of the U.S., including wetlands, after well abandonment, addressing hydrology, soils, and vegetation;
- g. a discussion about whether disturbed areas, such as borrow ditches, road embankments, stream banks, road crossings, and impact areas are revegetating adequately and not suffering erosion damage; and
- h. maps and photographs, as appropriate, to illustrate the information presented.

When the performance standards for the well abandonment restoration plan have been met, permittees shall submit a final written compliance report documenting compliance. If well abandonment occurs at

the same time as drilling termination, then only one interim and one final compliance report are required provided they are adequate.

7. Sidecasting: Material resulting from trench excavation may be temporarily sidecast into waters of the U.S. for up to three months provided that the material is not placed in a manner that will allow it to be dispersed by currents or other forces. The District Engineer may extend the period of side-casting to a period not to exceed 180 days, where appropriate. In wetlands, the top 6 to 12 inches of a trench should generally be backfilled with topsoil from the trench.

8. Adverse impacts to waters of the U.S., including wetlands, shall be avoided and minimized to the extent practicable through the use of alternatives that have less adverse impact on the aquatic environment. Projects shall be designed to pass low flows and expected high flows, to not interfere with the migration of aquatic organisms, avoid the creation of impoundments, and maintain the preconstruction conditions to the extent practicable.

9. All fills and structures above the existing ground elevation in waters of the U.S. shall be constructed and placed so as to minimize adverse impacts to local hydrology. Projects shall not promote the drainage of waters of the U.S. or cause unnecessary impoundment of water.

10. Best management practices shall be used to the maximum extent practicable to minimize the discharge of pollutants and sediment in stormwater runoff to protect water quality. All soil-disturbing activities shall be conducted in a manner that will minimize the extent and duration of exposure of unprotected soils. Appropriate erosion and siltation controls shall be used and maintained in effective operating condition during and after construction until all exposed soil is permanently stabilized. Measures to control erosion and run-off, such as berms, silt screens, sedimentation basins, revegetation, mulching, and similar means, shall be implemented. All damage resulting from erosion and/or sedimentation shall be repaired.

11. Compensatory mitigation shall be provided for unavoidable adverse impacts to waters of the U.S., including wetlands, when appropriate.

12. Preconstruction Notification (PCN): Prior to construction, a prospective permittee must notify the USACE in accordance with the requirements of the "Preconstruction Notifications" section below if the discharge or work would:

a. cause the loss of greater than 1/10 acre of waters of the U.S. "Loss of waters of the U.S." is defined as waters of the U.S. that are filled or permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity;

b. result in permanent or temporary adverse effects to forested wetlands;

c. require stream realignment;

d. have the potential to affect, or be in the vicinity of, or be in designated critical habitat of, a species listed, or proposed for listing, as threatened or endangered in the Endangered Species Act (see also Appendix A, General Condition 15);

e. occur within any of the following habitat types or specific areas:

1) wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia spp.*), sundews (*Drosera spp.*), and sphagnum moss (*Sphagnum spp.*);

2) baldcypress-tupelo swamps: wetlands comprised predominantly of baldcypress trees (*Taxodium distichum*), and water tupelo trees (*Nyssa aquatica*), that are occasionally or regularly flooded by fresh water. Common associates include red maple (*Acer rubrum*), swamp privet (*Forestiera acuminata*), green ash (*Fraxinus pennsylvanica*) and water elm (*Planera aquatica*). Associated herbaceous species include lizard's tail (*Saururus cernuus*), water mermaid weed (*Proserpinaca spp.*), buttonbush (*Cephalanthus occidentalis*) and smartweed (*Polygonum spp.*). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185);

3) the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention;

4) the Comal River, the San Marcos River, the Pecos River, the Canadian River, and Lake Casa Blanca; or

5) critical habitat for the Concho Water snake (*Nerodia hateri paucimaculata*) - including areas of the Concho and Colorado Rivers and Ivie (Stacy) Reservoir; Houston toad (*Bufo houstonensis*); Devils River minnow (*Dionda diabolis*) – the Devils River and San Felipe Creek Watersheds in Val Verde County, Texas; and or Leon Springs pupfish (*Cyprinodon bovinus*) – Leon Creek from the Diamond Y Spring to a point one mile northeast of the Texas Highway 18 crossing approximately 10 miles north of Fort Stockton, in Pecos County. (see also Appendix A, General Condition 15); or

f. have the potential to affect any historic property listed, or eligible for listing in, the National Register of Historic Places (see also Appendix A, General Condition 12).

For activities requiring a PCN, the prospective permittee shall not begin the activity until notified in writing by the USACE that the project meets the terms and conditions of the RGP, and any special conditions added by the USACE. In all cases, the USACE will notify the permit applicant whether the proposed project meets or does not meet the terms and conditions of this RGP. The USACE will respond as promptly as practicable to all PCNs.

CONDITIONS OF THE RGP

In addition to the limitations in the scope of work, work authorized by this RGP is subject to the general conditions listed in Appendix A. References in the general conditions to "completion of construction" refer to completion of work within the permit area for the activity. Also, for projects requiring water quality certification, projects are subject to the conditions of the water quality certification that applies.

LOCATION OF WORK

The provisions of this RGP will be applicable to all waters of the U.S., including all navigable waters of the U.S., within the regulatory boundaries of the Fort Worth, Tulsa, and Albuquerque districts of the USACE, within the states of Texas and Louisiana (see Appendixes B and C of the RGP), with the following exception:

From the Precinct Line Road crossing of the West Fork Trinity River in Tarrant County, Texas, to the State Highway 34 crossing of the Trinity River in Kaufman County, Texas, dredged material cannot be

used for cofferdams, equipment ramps, or similar structures. Dredged material may only be used for backfill in those projects where the trench has been completely de-watered. In such cases, dredged material can only be used to within two feet of the top of the trench and must be covered by two feet of clean fill material. Material excavated from these sections of the river must be properly disposed of at an upland site and covered to prevent re-entry into the river or contamination of surface or ground water. The location of all disposal sites must be included in the application for authorization.

The Fort Worth District includes the Sabine River watershed in Sabine, De Soto, and Caddo Parishes in the State of Louisiana.

WATER QUALITY CERTIFICATION

The Railroad Commission of Texas (RRC) has granted certification pursuant to Section 401 of the CWA, for the activities associated with the exploration, development, and production, including pipeline transportation, of oil, gas, or geothermal resources that may result in a discharge to waters of the United States, that activities conducted under this RGP comply with applicable water quality laws conditional on the addition of language recommended in its water quality certification letter to the USACE dated April 17, 2007, or some version thereof. The specified language has hereby been added relative to RRC water quality certification (see General Condition 34 in Appendix A, and Appendix E).

The Texas Commission on Environmental Quality (TCEQ) has certified pursuant to Section 401 of the CWA and Title 30, Texas Administrative Code, Chapter 279, for the activities for which it is responsible, that activities conducted under this RGP should not result in a violation of established Texas Water Quality Standards provided reasonable best management practices are included and followed (See General Condition 35 in Appendix A, and Appendix E).

The Louisiana Department of Environmental Quality (LDEQ) has stated that the requirements for Water Quality Certification for the State of Louisiana have been met in accordance with LAC 33:IX.1507.A-E., that the placement of fill material will not violate the water quality standards of Louisiana provided for under LAC 33:IX.Chapter 11, and that the LDEQ has issued water quality certification (see Appendix E).

AUTHORIZATION FROM OTHER AGENCIES

This RGP does not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law. The permittee is responsible for obtaining any additional federal, state, or local permits or approvals that may be required, including, but not limited to:

1. Any work that would be conducted on lands or in waters under the jurisdiction of any municipal, state, or federal entity, including special purpose districts, such as river authorities, created under the state constitution, may require a permit, lease or other enabling instrument from that agency.
2. Projects involving government property at USACE reservoirs require submission of detailed design information to the reservoir manager and USACE approval for the proposed activity to occur on government property, including a real estate consent to easement.
3. Activities within a 100-year floodplain may require a floodplain development permit from the local floodplain administrator or, in Texas, the TCEQ Flood Management Unit, (512) 239-4771 (see Appendix A, general condition 31). In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.

4. Projects involving construction of a bridge or equivalent thereof across a navigable water of the United States may require authorization from the Commander, Eighth Coast Guard District (ob), Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 501 Magazine Street, New Orleans, Louisiana 70130-3396.

5. Activities outside the USACE permit area that may affect a federally-listed endangered or threatened species or its critical habitat could require permits from the U.S. Fish and Wildlife Service (FWS) to prevent a violation of the Endangered Species Act under Section 9. For further information, contact the U. S. Fish and Wildlife Service in Arlington: Stadium Centre Building, 711 Stadium Drive East, Suite 252, Arlington, Texas 76011, (817) 277-1100, <http://www.fws.gov/southwest/es/arlingtontexas/>; Austin: Compass Bank Building, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (512) 490-0057, <http://www.fws.gov/southwest/es/austintexas/>; Corpus Christi: TAMU-CC, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 994-9005, <http://www.fws.gov/southwest/es/corpuschristitexas/>; Houston: 17629 El Camino Real, Suite 211, Houston, Texas 77058, (281) 286-8282, <http://www.fws.gov/southwest/clearlakes/>; or Lafayette: 646 Cajundome Boulevard, Suite 400, Lafayette, Louisiana 70506, (337) 291-3100, <http://www.fws.gov/lafayette> .

6. When streambed materials such as sand, shell, gravel and marl would be disturbed or removed from state-owned waters in Texas, the permittee may be required to obtain a permit from the Texas Parks and Wildlife Department (TPWD), 4200 Smith School Road, Austin, Texas 78744. All activities occurring on lands owned or managed by the TPWD require a signed agreement from that agency prior to commencing operations.

7. All activities in Texas located on lands under the jurisdiction of the Texas General Land Office (GLO), 1700 North Congress Avenue, Austin, Texas 78701-1495, must have prior approval from that office. The placement of structures onto state-owned streambeds, state-owned uplands, or coastal state-owned lands in Texas may require the issuance of a lease or easement from the GLO.

8. In accordance with the federal Clean Water Act and Texas statute, a point source discharge of pollutants from an outfall structure associated with oil and gas exploration, development, and production must be authorized, conditionally authorized, or specifically exempted from regulation by the U. S. Environmental Protection Agency (EPA), Region 6, Water Quality Protection Division (6WQ), 1445 Ross Avenue, Dallas, Texas 75202, and the Railroad Commission of Texas, Oil and Gas Division, 1701 North Congress Avenue, P. O. Box 12967, Austin, Texas 78711-2967, respectively. In accordance with the federal Clean Water Act and Texas statute, a point source discharge of pollutants from an outfall structure associated with activities other than oil and gas exploration, development, and production must be authorized, conditionally authorized, or specifically exempted from regulation under the terms of the Texas Pollutant Discharge Elimination System (TPDES) program through the TCEQ, Water Quality Division (MC-150), P. O. Box 13087, Austin, Texas 78711-3087.

9. Storm water runoff from construction activities other than those associated with oil and gas exploration, development, and production that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in a disturbance of one or more acres, must be controlled and authorized under Texas Pollutant Discharge Elimination System (TPDES) general permit TXR150000. A copy of the general permit, application (notice of intent), and additional information is available at: <http://www.tceq.state.tx.us/permitting/waterperm/wwperm/construct.html> or by contacting the TCEQ Storm Water & Pretreatment Team at (512) 239-4433. Section 323 of the Energy Policy Act of 2005 clarified that under Section 402(1)(2) of the Clean Water Act most stormwater discharges from construction activities associated with oil and gas field operations are exempt from the requirement to obtain an NPDES permit for stormwater discharges. Section 323 also prohibited EPA from requiring – or

requiring a state to require – an NPDES permit for stormwater discharges from construction activity associated with oil and gas field operations, except in situations when the construction-related activity results in the discharge of a hazardous substance or oil in “reportable” quantities, or in situations when the discharge of a pollutant other than sediment contributes to a violation of an applicable water quality standard.

10. Activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas prior to the refining of such oil or the use of such gas in manufacturing or as a fuel, as described in Texas Natural Resource Code Annotated §91.101, may require authorization from the Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, the Federal Energy Regulatory Commission, 3125 Presidential Parkway, Suite 300, Atlanta, Georgia 30340, and/or the Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495.

11. Activities involving the discharge of drilling muds, drill cuttings, or produced brine into waters of the State of Louisiana must have a permit from the Louisiana Department of Environmental Quality, Office of Environmental Services, P. O. Box 82135, Baton Rouge, Louisiana 70884-2135.

12. The use of scrap tires for bank stabilization and erosion control requires notification of the TCEQ Waste Tire Recycling Program, P. O. Box 13087, Austin, Texas 78711-3087.

13. The construction, operation, maintenance, or connection of facilities at the borders of the U.S. are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official. Activities that would require such authorization and would affect an international water in Texas, including the Rio Grande, Amistad Reservoir, Falcon Lake, and all tributaries of the Rio Grande, may require authorization from the International Boundary and Water Commission, The Commons, Building C, Suite 310, 4171 North Mesa Street, El Paso, Texas 79902.

14. Activities that may affect state-listed rare, threatened, or endangered species. For a rare, threatened, and endangered species review in the State of Texas, submit projects to: Wildlife Habitat Assessment, Texas Parks and Wildlife Department, 3000 South IH 35, Suite 100, Austin, Texas 78704.

15. Activities in the recharge zone of the Edwards Aquifer and activities in the contributing zone of the Edwards Aquifer that disturb more than 5 acres of land under Edwards Aquifer rules require a Water Pollution Abatement Plan. For further information contact the Edwards Aquifer Authority, 1615 North St. Mary’s Street, San Antonio, Texas 78215

PRECONSTRUCTION NOTIFICATIONS

Preconstruction notifications (PCNs) requesting verification from the USACE of authorization under this RGP must be in writing and include a description of the project, proposed construction schedule, and the name, address and telephone number of a point of contact who can be reached during normal business hours. The information may be assembled and submitted in a format convenient to the applicant. All pages, including maps, drawings, figures, sheets, etc., must be on 8 ½ by 11-inch paper or fold easily to 8 ½ x 11-inch dimensions. The detail of the information should be commensurate with the size and environmental impact of the project. The description of the project must include at least the following information:

1. The purpose of, and need for, the project.

2. A delineation, determination, and characterization of waters of the U.S., including wetlands, in the area that would be affected by the proposed work, and a description of the project's likely impact on the aquatic environment. Delineations of wetlands must be conducted using the "Corps of Engineers Wetland Delineation Manual", USACE Waterways Experiment Station Wetlands Research Program Technical Report Y-87-1, dated January 1987 (on-line edition available at (<http://www.swf.usace.army.mil/pubdata/enviro/regulatory/jurisdiction/wlman87.pdf>), including all supplemental guidance. The supplemental guidance is included in the on-line version and may also be obtained from your USACE district office. Determinations of waters of the U.S. must be conducted using regulations and guidance applicable at the time of the preconstruction notification (currently "U. S. Army Corps of Engineers Jurisdictional Determination Form Instructional Guidebook," dated June 5, 2007). Include the width and depth of the water body and the waterward distance of any structures from the existing shoreline.
3. A vicinity map, or maps, on copies of 7.5-minute U. S. Geological Survey (USGS) quadrangle maps, county maps, scaled aerial photographs, or other suitable maps, clearly showing the location of all temporary and permanent elements of the project, including the drilling pad, reserve and mud pit(s), production and storage facilities, access road(s), pipeline(s), coffer dam(s), equipment ramp(s), borrow pit(s), disposal area(s), staging area(s), etc. The map(s) must show the project area in relation to nearby wells, access roads, highways and other roads, and other pertinent features. The distance to the nearest well site (restored or unrestored) must be shown on the map or provided in other discussions about the proposed activity. A ground survey is not required to obtain this map information. Identify all base maps, e.g. Fort Worth, Texas 7.5-minute USGS quadrangle, etc.
4. Plan, profile, and cross-section views of all work (fills, excavations, structures, etc.), both permanent and temporary, in, or adjacent to, waters of the U.S., including wetlands, and a description of the proposed activities and structures, including the drilling pad, reserve and mud system (including the type of drilling fluid being used) and pit(s), production and storage facilities, access road(s), pipeline(s), coffer dam(s), equipment ramp(s), borrow pit(s), disposal area(s), staging area(s), and other project related areas within the USACE permit area(s). The permit area(s) includes all waters of the U.S. affected by activities associated with the project, as well as any additional area of non-waters of the U.S. in the immediate vicinity of, directly associated with, and/or affected by, activities in waters of the U.S. The USACE permit area(s) includes associated drilling pads, reserve and mud pits, production and storage facilities, access roads, pipelines, coffer dams, equipment ramps, borrow pits, disposal areas, staging areas, etc. in most cases where they are proposed associated with an exploration and/or production well. The description of the proposed access roads must include such information as the height, width, and length of the road, width of the cleared right-of-way, location of each crossing of a water of the U.S., size and spacing of culverts and bridges, and location and dimensions of roadside borrow ditches.
5. The volume of material proposed to be discharged into, and excavated from, waters of the U.S. and the proposed type and source of the material.
6. A written discussion of the alternatives considered and the rationale for selecting the proposed alternative as the least environmentally damaging practicable alternative. Practicable alternatives that do not involve a discharge into a special aquatic site, such as wetlands, are presumed to have less adverse impact on the aquatic ecosystem, unless clearly demonstrated otherwise. The PCN must also include documentation that the amount of area impacted is the minimum necessary to accomplish the project.
7. An assessment of the adverse and beneficial effects, both permanent and temporary, of the proposed work and documentation that the work would result in no more than a minimal adverse impact on the aquatic environment.

8. Documentation that the amount of area impacted is the minimum necessary to accomplish the project and, in cases where the activity would result in a change to pre-construction elevations and/or contours and/or drainage patterns, a description of the anticipated impacts of the changes, the reason(s) that the changes are necessary, and documentation that the changes would not result in more than minimal adverse impact on the aquatic environment.

9. A detailed mitigation plan presenting appropriate and practicable measures planned: a) to avoid and minimize adverse impacts to the aquatic environment, particularly associated with temporary elements of the proposed project, and b) to compensate for the remaining unavoidable adverse impacts to the aquatic environment. If compensatory mitigation for unavoidable adverse impacts to the aquatic environment is not proposed, the application must include documentation that the proposed work would have minimal adverse impact on the aquatic environment without compensatory mitigation, why compensatory mitigation would be inappropriate and/or impracticable, and that compensatory mitigation should not be required. The mitigation plan must include a description of proposed appropriate and practicable actions that would restore, enhance, protect, and/or replace the functions and values of the aquatic environment unavoidably lost in the permit area because of the proposed work. See Appendix D for more information.

10. A drilling termination and well abandonment site restoration plan. This plan may be included as part of the detailed mitigation plan.

11. An assessment documenting whether any species listed as endangered or threatened under the Endangered Species Act might be affected by, or found in the vicinity of, the USACE permit area(s) for the proposed project. Coordination with the FWS concerning the potential impact of the entire project on endangered and threatened species is encouraged. (See contact information, including website addresses, for FWS offices in "AUTHORIZATION FROM OTHER AGENCIES" section above and Appendix A, General Condition 15).

12. For projects in the State of Louisiana, the comments of the Louisiana Department of Wildlife and Fisheries, P. O. Box 9800, Baton Rouge, Louisiana 70898-9000, (225) 765-2800 on the proposed project.

13. An assessment documenting whether any cultural resources, particularly those historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP), would be affected by, or are in the vicinity of, the USACE permit area(s) for the proposed project (See Appendix A, General Condition 12).

14. The applicant should include any other relevant information, including information on hydrology and hydraulics.

Early coordination with the USACE, well before a final PCN is submitted, is beneficial in many cases.

Address PCNs and inquiries concerning proposed activities to the appropriate district office (see Appendix B for boundaries of district offices):

Fort Worth District: Regulatory Branch, U.S. Army Corps of Engineers, Fort Worth District, ATTN: CESWF-PER-R, P.O. Box 17300, Fort Worth, TX 76102-0300, telephone: (817) 886-1731, website address: <http://www.swf.usace.army.mil/regulatory>

Albuquerque District: El Paso Regulatory Office, U.S. Army Corps of Engineers, Albuquerque District, ATTN: CESPA-RD-NM-EP, P.O. Box 6096, Fort Bliss, TX 79906-0096,

telephone: (915) 568-1359, website address:
<http://www.spa.usace.army.mil/reg/>

Tulsa District: Regulatory Office, U. S. Army Corps of Engineers, Tulsa District, ATTN: CESWT-RO, 1645 South 101st East Avenue, Tulsa, OK 74128-4609, telephone: (918) 669-7400, website address: <http://www.swt.usace.army.mil/permits/permits.cfm>

EVALUATION AND VERIFICATION PROCEDURES

For all discharges within the habitat types or areas listed below, the USACE will coordinate with the resource agencies as specified in the Nationwide Permit (NWP) general condition on notification (currently General Condition 27(d), Federal Register, Vol. 72, No. 47, Monday, March 12, 2007). The habitat types and areas are:

1. wetlands, typically referred to as pitcher plant bogs, that are characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia sp.*), sundews (*Drosera sp.*), and sphagnum moss (*Sphagnum sp.*);
2. baldcypress-tupelo swamps: wetlands comprised predominantly of baldcypress trees (*Taxodium distichum*), and water tupelo trees (*Nyssa aquatica*), that are occasionally or regularly flooded by fresh water. Common associates include red maple (*Acer rubrum*), swamp privet (*Forestiera acuminata*), green ash (*Fraxinus pennsylvanica*) and water elm (*Planera aquatica*). Associated herbaceous species include lizard's tail (*Saururus cernuus*), water mermaid weed (*Proserpinaca spp.*), buttonbush (*Cephalanthus occidentalis*) and smartweed (*Polygonum spp.*). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Washington, D.C. 20014. Library of Congress Catalog Card No. 80-54185);
3. the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention;
4. the Comal River, the San Marcos River, the Pecos River, the Canadian River and Lake Casa Blanca;
5. critical habitat for the Concho water snake (*Nerodia hateri paucimaculata*), including areas of the Concho and Colorado Rivers and Ivie (Stacy) Reservoir; Houston toad (*Bufo houstonensis*); Devils River minnow (*Dionda diabolis*) – the Devils River and San Felipe Creek Watersheds in Val Verde County, Texas; Leon Springs pupfish (*Cyprinodon bovinus*) – Leon Creek from the Diamond Y Spring to a point one mile northeast of the Texas Highway 18 crossing approximately 10 miles north of Fort Stockton, in Pecos County. (See also Appendix A, General Condition 15).

For activities in the State of Louisiana, the USACE will provide a copy of the PCN to the USFWS, Lafayette Ecological Services Office for a 10-calendar day review. The review period will commence on the date that the USFWS-Lafayette receives the PCN.

For activities not requiring a PCN, the prospective permittee may commence construction when it can ensure that all terms and conditions of this RGP can be met. For activities requiring a PCN, the prospective permittee shall not begin the activity until notified in writing by the USACE that the project meets the terms and conditions of the RGP, and any special conditions added by the USACE. In all cases, the USACE will notify the permit applicant whether the proposed project meets or does not meet the terms and conditions of this RGP. The USACE will respond as promptly as practicable to all PCNs.

For activities in the State of Louisiana, the USACE will provide a copy of the PCN to the USFWS, Lafayette Ecological Services Office for a 10-calendar day review. The review period will commence on the date that the USFWS-Lafayette receives the PCN.

For activities not requiring a PCN, the prospective permittee may commence construction when it can ensure that all terms and conditions of this RGP can be met. For activities requiring a PCN, the prospective permittee shall not begin the activity until notified in writing by the USACE that the project meets the terms and conditions of the RGP, and any special conditions added by the USACE. In all cases, the USACE will notify the permit applicant whether the proposed project meets or does not meet the terms and conditions of this RGP. The USACE will respond as promptly as practicable to all PCNs.

It is the permit applicant's responsibility to ensure that all authorized structures and activities continue to meet the terms and conditions set forth herein; failure to abide by them will constitute a violation of the Clean Water Act and/or the Rivers and Harbors Act of 1899. Projects outside the scope of this RGP may be considered for authorization by individual permit.

This RGP shall become effective on the date of the signature of the District Engineers, or their authorized representative(s), and will automatically expire five years from that date unless the permit is modified, revoked, or extended before that date. Verifications by the USACE that an activity is authorized by this RGP are valid until the expiration date of this RGP unless this RGP is modified, revoked, or extended before that date. Activities that have been verified by the USACE as authorized under this RGP, and have commenced, i.e. are under construction, or are under contract to commence, by the verification expiration date, will remain authorized provided the activity is completed within twelve months of the date of expiration, modification, or revocation of the RGP, or by another date determined by the USACE for the specific case, whichever is later, unless discretionary authority is exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:
FOR THE DISTRICT ENGINEERS:

 5 Nov 2008

Christopher W. Martin
Colonel, U. S. Army
District Commander
Fort Worth District

Anthony Funkhouser
Colonel, U. S. Army
District Commander
Tulsa District

Kimberly M. Colloton
Lieutenant Colonel, U. S. Army
District Commander
Albuquerque District

APPENDIX A

GENERAL CONDITIONS

REGIONAL GENERAL PERMIT

EXPLORATION AND PRODUCTION WELLS

1. In verifying authorization under this regional general permit (RGP), the Department of the Army has relied in part on the information provided by the permittee. If, subsequent to verifying authorization, such information proves to be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.
2. Permittees shall ensure that all structures and activities authorized by this RGP comply with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring restoration of the site or other remedial action.
3. This RGP is not an approval of the design features of any authorized project or an implication that such project is adequate for the intended purpose: a Department of the Army permit merely expresses the consent of the Federal Government to conduct the proposed work insofar as public rights are concerned. This RGP does not grant any property rights or exclusive privileges; does not authorize any injury to the property or rights of others; and does not authorize any damage to private property, invasion of private rights, or any infringement of federal, state or local laws or regulations. This RGP does not relieve the permittee from the requirement to obtain a local permit from the jurisdiction within which the project is located.
4. This RGP may be modified or suspended in whole or in part if it is determined that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. The authorization for individual projects may also be summarily modified, suspended, or revoked, in whole or in part, upon a finding by the District Engineer that such action would be in the public interest.
5. Modification, suspension or revocation of the District Engineer's authorization shall not be the basis for any claim for damages against the United States.
6. This RGP does not authorize interference with any existing or proposed federal project, and does not entitle the permittee to compensation for damage or injury to the structures or activities authorized herein that may result from existing or future operations undertaken by the U.S. in the public interest.
7. No attempt shall be made by permittees to prevent the full and free public use of any navigable water of the U.S.
8. Permittees shall not cause any unreasonable interference with navigation.
9. Permittees understand and agree that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without

expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

10. Permittees shall make every reasonable effort to conduct the activities in a manner that will minimize any adverse impact of the work on water quality, fish and wildlife, and the natural environment, including adverse impacts to migratory waterfowl breeding areas, spawning areas, and trees, particularly hard-mast-producing trees such as oaks and hickories. Permittees shall normally maintain existing buffers around waters of the U.S. and create and/or expand buffers around waters of the U.S. when practicable. Compensatory mitigation plans for projects in, or near, streams, other open waters, or wetlands shall normally include provisions for the establishment, maintenance, and legal protection, e.g. conservation easements, deed restrictions, of vegetated buffers to those waters.

11. Permittees shall allow the District Engineer, and/or his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the activity is being performed in accordance with the terms and conditions of this RGP.

12. Permittees must evaluate the effect that the proposed work would have on historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) prior to the initiation of work. Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest that occur in the permit area. If a known historic property would be encountered, the permittee shall notify the USACE and shall not conduct any work in the permit area that would affect the property until the requirements of 33 CFR Part 325, Appendix C, and 36 CFR Part 800 have been satisfied. If a previously unknown historic property is encountered during work authorized by this RGP, the permittee shall immediately notify the USACE and avoid further impact to the site until the USACE has verified that the requirements of 33 CFR Part 325, Appendix C, and 36 CFR Part 800 have been satisfied.

13. Materials to be placed into waters of the U.S. are restricted to clean native soils and concrete, sand, gravel, rock, other coarse aggregate, and other suitable material that are free of toxic pollutants in toxic quantities.

14. Permittees shall coordinate all construction activities in federally-maintained channels and/or waterways for required setback distances with the USACE prior to application for a permit.

15. Activities that are likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), or that are likely to destroy or adversely modify the critical habitat of such species are not authorized. Permittees shall notify the District Engineer if any federally-listed threatened or endangered species or critical habitat may be affected by, or is in the vicinity of, the project and shall not begin work until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized.

16. Discharges of drilling muds, drill cuttings, and produced brine into waters of the State of Louisiana must have the appropriate authorization from the Louisiana Department of Environmental Quality.

17. Permittees shall place all heavy equipment working in wetlands on mats, or take other appropriate measures to minimize soil disturbance.

18. Permittees shall use and maintain appropriate erosion and siltation controls in effective operating condition during construction, and permanently stabilize all exposed soil at the earliest practicable date using native vegetation to the maximum extent practicable. Permittees shall remove all excess material and temporary fill and structures placed in waters of the U.S., including wetlands, to upland areas and

stabilize all exposed slopes and stream banks immediately upon completion of construction. Permittees shall return all areas affected by temporary fills and/or structures to preconstruction conditions or better, including revegetation with native vegetation. All material removed must be placed at least 100 feet from any water of the U.S., including wetlands, and adequately contained to prevent the return to any water of the U.S., including wetlands.

19. Permittees shall not significantly disrupt the movement of those species of aquatic life indigenous to the water body or those species that normally migrate through the project area.

20. Permittees shall not permanently restrict or impede the passage of normal or expected high flows unless the primary purpose of the activity is to temporarily impound water or for authorized detention ponds for stormwater management.

21. Permittees shall properly maintain all structures and fills to ensure public safety.

22. Permittees shall ensure that projects have no more than minimal adverse impacts on public water supply intakes.

23. Stream channelization is not authorized by this RGP. For the purpose of this RGP, stream channelization is the manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. Realignment of streams that is not stream channelization is allowed only if no practicable alternative exists and appropriate compensatory mitigation is provided, and is restricted to a maximum of 500 linear feet.

24. Permittees shall design facilities to be stable against the forces of flowing water, wave action, and the wake of passing vessels.

25. Permittees are not authorized to discharge dredged or fill material into waters of the U.S. for purposes of disposal into, or reclamation of, an aquatic area, such as a wetland.

26. Permittees shall not use a jet barge or similar equipment for trench excavation.

27. Permittees shall mark structures and fills, particularly in navigable waters of the U.S., when appropriate, so that their presence will be known to boaters.

28. Permittees shall mark intake and/or outfall structures and other fills and structures in navigable waters, when appropriate, so that boaters will notice their presence.

29. This permit does not authorize work in a park, wildlife management area, refuge, sanctuary, or similar area administered by a federal, state or local agency without that agency's approval.

30. Permittees are responsible for compliance with all terms and conditions of this RGP for all activities within the Department of the Army permit area of a project authorized by this RGP, including those taken on behalf of the permittee by other entities such as contractors and subcontractors. Permittees assume all liabilities associated with fills and impacts that are incurred by individuals and/or organizations working under contracts with the permittee. Before beginning the work authorized herein, or directing a contractor to perform such work, permittees shall ensure that all parties read, understand and comply with the terms and conditions of this permit. The USACE strongly encourages preconstruction meetings for all construction activities of the project.

31. Permittees shall conduct dredging and excavation activities with land based equipment rather than from the water body whenever practicable.

32. Permittees must comply with Federal Emergency Management Agency (FEMA), or FEMA-approved local floodplain development requirements in the placement of any permanent above-grade fills in waters of the U.S., including wetlands, within the 100-year floodplain. The 100-year floodplain will be identified through FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps. A permanent above-grade fill is a discharge of dredged or fill material into waters of the U.S., including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the water body to dry land. Structural fills authorized by nationwide permits 3, 25, 36, etc., are not included.

33. For all discharges proposed for authorization in Dallas, Denton, and Tarrant Counties, in the State of Texas, that are within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986), permittees shall meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements. A copy of these guidelines is available upon request from the Fort Worth District and at the District website at <http://www.swf.usace.army.mil/regulatory>.

34. To satisfy Railroad Commission of Texas (RRC) water quality certification requirements for all projects to which Section 401 water quality certification by the RRC applies, the permittee must demonstrate that activities that are not water dependent do not have a practicable alternative and may not consider compensatory mitigation an alternative.

35. To satisfy Texas Commission on Environmental Quality (TCEQ) water quality certification requirements for all projects to which Section 401 water quality certification by the TCEQ applies, the permittee must use at least one best management practice (BMP) from each of the first three categories of on-site water quality management and comply with item d. concerning contaminated dredged material below to satisfy TCEQ water quality certification requirements. Descriptions of the BMPs may be obtained from the TCEQ by calling (512) 239-5366, by calling one of the Corps district regulatory offices identified in the "PRECONSTRUCTION NOTIFICATIONS" section of this RGP, or from the USACE, Fort Worth District, web site at <http://www.swf.usace.army.mil/regulatory>. The TCEQ-required BMPs are as follows:

a. Erosion Control

Disturbed areas must be stabilized to prevent the introduction of sediment to adjacent wetlands or water bodies during wet weather conditions (erosion). *At least one* of the following best management practices (BMPs) must be maintained and remain in place until the area has been stabilized.

- Temporary Vegetation
- Blankets/Matting
- Mulch
- Sod

b. Post-Construction TSS Control

After construction has been completed and the site is stabilized, total suspended solids (TSS) loadings shall be controlled by *at least one* of the following BMPs.

- Retention/Irrigation
- Extended Detention Basin
- Vegetative Filter Strips
- Constructed Wetlands
- Wet Basins

c. Sedimentation Control

The project area must be isolated from adjacent wetlands and water bodies by the use of BMPs to confine sediment. *At least one* of the following BMPs must be maintained and remain in place until project completion.

- Sand Bag Berm
- Silt Fence
- Triangular Filter Dike
- Rock Berm
- Hay Bale Dike

Dredged material shall be placed in such a manner that prevents sediment runoff into water in the state, including wetlands. Water bodies can be isolated by the use of one or more of the required BMPs identified for sedimentation control. These BMPs must be maintained and remain in place until the dredged material is stabilized.

Hydraulically dredged material shall be disposed of in contained disposal areas. Effluent from contained disposal areas shall not exceed a TSS concentration of 300 mg/l.

d. Contaminated Dredged Material

If contaminated dredge material that was not anticipated or provided for in the permit application is encountered during dredging, operations shall cease immediately. Pursuant to 26.039 (b) of the Texas Water Code, the individual operating or responsible for the dredging operations shall notify the commission's emergency response team at (512) 463-7727 as soon as possible, and not later than 24 hours after the discovery of the material. The applicant shall also notify the Corps that activities have been temporarily halted. Contaminated dredge material shall be remediated or disposed of in accordance with TCEQ rules. Dredging activities shall not be resumed until authorized in writing by the Commission.

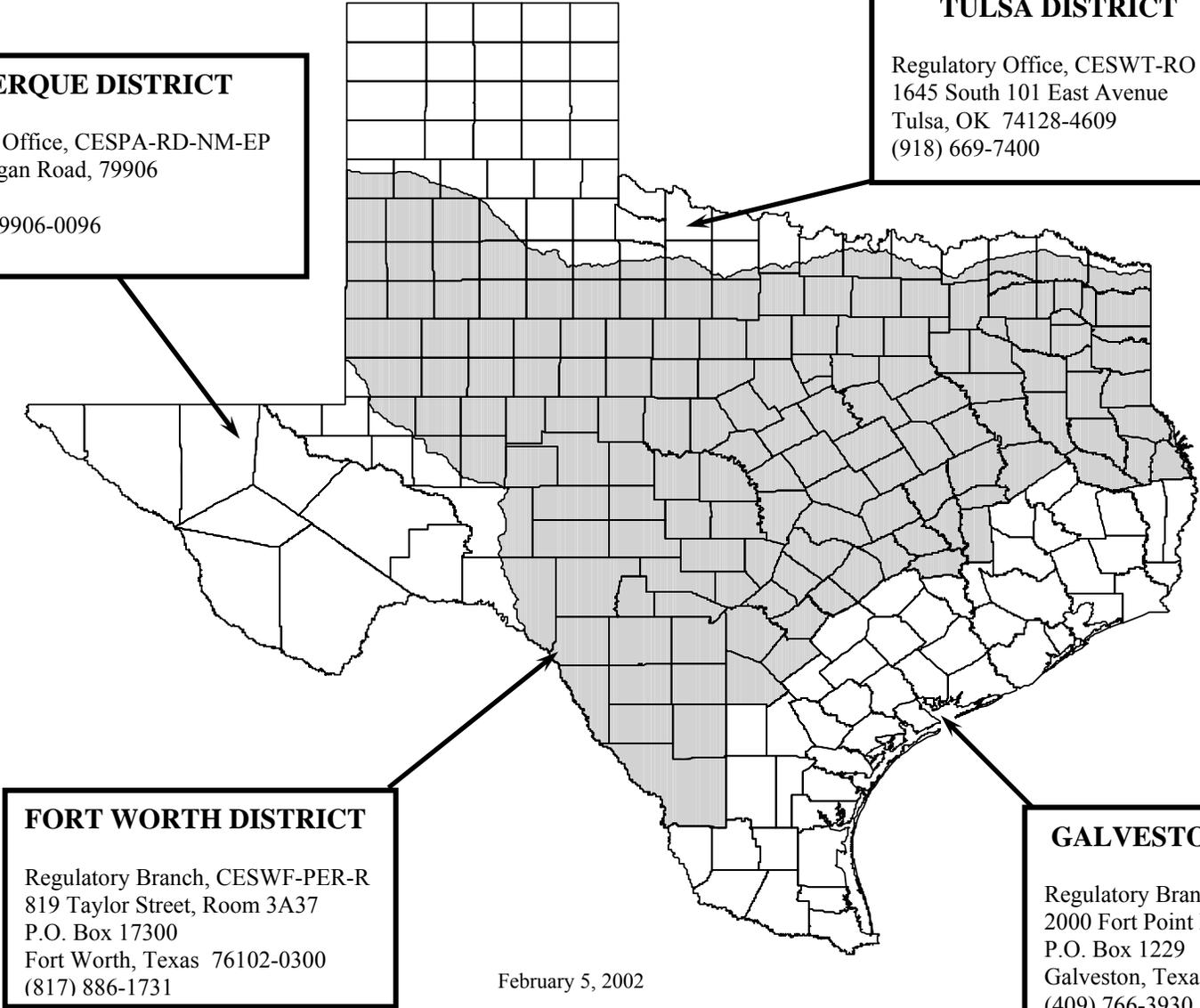
Contaminated dredge material is defined as dredge material which has been chemically, physically, or biologically altered by man-made or man-induced contaminants which include, but are not limited to solid waste, hazardous waste and hazardous waste constituent as those terms are defined by 30 TAC

Chapter 335, Pollutants as defined by Texas Water Code 26.001 and Hazardous Substances as defined in the Texas Health and Safety Code, 361.003.

APPENDIX B

ALBUQUERQUE DISTRICT
El Paso Regulatory Office, CESP-RD-NM-EP
Building 6380 Morgan Road, 79906
P.O. Box 6096
Fort Bliss, Texas 79906-0096
(915) 568-1359

TULSA DISTRICT
Regulatory Office, CESWT-RO
1645 South 101 East Avenue
Tulsa, OK 74128-4609
(918) 669-7400



FORT WORTH DISTRICT
Regulatory Branch, CESWF-PER-R
819 Taylor Street, Room 3A37
P.O. Box 17300
Fort Worth, Texas 76102-0300
(817) 886-1731

GALVESTON DISTRICT
Regulatory Branch, CESWG-PE-R
2000 Fort Point Road
P.O. Box 1229
Galveston, Texas 77553-1229
(409) 766-3930
Note: This RGP is not applicable to the Galveston District

February 5, 2002

APPENDIX C

NAVIGABLE WATERS OF THE U.S.

For purposes of Section 10 of the Rivers and Harbors Act of 1899, the following sections of rivers, including their lakes and other impoundments, are considered to be navigable waters of the U.S. that fall within the jurisdiction of the Fort Worth, Albuquerque, and Tulsa districts of the U.S. Army Corps of Engineers in the states of Texas and Louisiana.

ANGELINA RIVER: From the Sam Rayburn Dam in Jasper County upstream to U. S. Highway 59 in Nacogdoches and Angelina counties and all U. S. Army Corps of Engineers lands associated with B. A. Steinhagen Lake in Tyler and Jasper counties, Texas.

BIG CYPRESS BAYOU: From the Texas-Louisiana state line in Marion County, Texas, upstream to Ellison Creek Reservoir in Morris County, Texas.

BRAZOS RIVER: From the point of intersection of Grimes, Washington, and Waller counties upstream to Whitney Dam in Hill and Bosque counties, Texas.

COLORADO RIVER: From the Bastrop-Fayette county line upstream to Longhorn Dam in Travis County, Texas.

NECHES RIVER: U. S. Army Corps of Engineers lands associated with B. A. Steinhagen Lake in Jasper and Tyler counties, Texas.

RED RIVER: From Denison Dam on Lake Texoma upstream to Warrens Bend which is 7.25 miles northeast of Marysville, Texas, and from the U. S. Highway 71 bridge north of Texarkana, Texas, to the Oklahoma-Arkansas Border.

RIO GRANDE: From the Zapata-Webb county line upstream to the point of intersection of the Texas-New Mexico state line and Mexico.

SABINE RIVER: From the point of intersection of the Sabine-Vernon parish line in Louisiana with Newton County, Texas upstream to the Sabine River-Big Sandy Creek confluence in Upshur County, Texas.

SULPHUR RIVER: From the Texas-Arkansas state line upstream to Wright Patman Dam in Cass and Bowie counties, Texas.

TRINITY RIVER: From the point of intersection of Houston, Madison, and Walker counties upstream to Riverside Drive in Fort Worth, Tarrant County, Texas.

APPENDIX D

MITIGATING ADVERSE IMPACTS TO WATERS OF THE U.S.

U.S. Army Corps of Engineers (USACE) evaluation of a project proposal submitted for authorization under this permit includes a determination of whether the applicant has taken sufficient measures to **mitigate** the project's likely adverse impacts to the aquatic ecosystem (See USACE Compensatory Mitigation for Losses of Aquatic Resources; Final Rule: Federal Register, Vol. 73, No. 70, Thursday, April 10, 2008, and USACE district website for more detailed information). Applicants should employ the following three-step sequence in mitigating likely adverse project impacts: 1) take appropriate and practicable measures to **avoid** potential adverse impacts to the aquatic ecosystem; 2) employ appropriate and practicable measures to **minimize** unavoidable adverse impacts to the aquatic ecosystem; and 3) undertake appropriate and practicable measures to **compensate** for adverse impacts to the aquatic ecosystem that cannot be reasonably avoided or minimized. **Compensatory mitigation**, then, is the restoration, enhancement, creation, or preservation of wetlands and other waters of the U.S. to compensate for adverse impacts to the aquatic ecosystem that cannot reasonably be avoided or minimized.

Compensatory mitigation should replace those aquatic system functions that would be lost or impaired because of the proposed activity. The appropriate type and amount of compensatory mitigation depends on the nature and extent of the project's likely adverse impact on those functions performed by the aquatic area(s) that would be impacted. These functions include, but are not limited to, flood storage and conveyance; providing habitat for fish, aquatic organisms, and other wildlife, including endangered species; sediment and erosion control; groundwater recharge; nutrient removal; water supply; production of food, fiber, and timber; and recreation. Compensatory mitigation should also be commensurate with the scope and degree of the anticipated impacts and be practicable in terms of cost, existing technology, and logistics, in light of the overall project purpose.

In general, preference is given to the use of mitigation banks due to reduced risk and uncertainty commonly associated with permittee-responsible compensatory mitigation. For permittee-responsible compensatory mitigation, in-kind compensatory mitigation is preferable to out-of-kind and should occur as close to the location of the adverse impacts as practicable, generally in the same watershed. However, environmentally preferable out-of-kind and/or off-site compensatory mitigation may be acceptable. In some cases, it is appropriate to provide partial compensation at one location, such as the impact site, with the remainder occurring at an off-site location.

Normally, restoration or enhancement of wetland functions is preferable to wetland creation because the probability of successfully restoring or enhancing wetlands is greater than the probability of successfully creating new wetlands, and restoration and enhancement activities are less likely to impact upland and open water habitats. The preservation of existing wetlands is appropriate as compensatory mitigation only in exceptional situations.

Compensatory mitigation plans should include a thorough description of the proposed mitigation area; a description of all proposed work and structures such as grading, fills, excavation, plantings, and water level control structures; plan and cross-section drawings of pertinent work and structures; a statement explaining how adverse impacts to local hydrology will be minimized; and a proposal for monitoring the success of the proposed mitigation plan. Generally, monitoring should continue for at least five years after mitigation activities are completed, providing planting survival and ecological success requirements have been achieved. To achieve long-term success of a mitigation plan, an appropriate real estate arrangement, such as a conservation easement, may be required.

APPENDIX E

Mr. Stephen Brooks, Branch Chief
Attachment 1 – Dredge and Fill Certification
USACE Permit Application Number CESWF-08-RGP-11
Page 1 of 3
October 13, 2008

WORK DESCRIPTION: As described in the public notice dated July 10, 2008.

SPECIAL CONDITIONS: None

GENERAL: This certification, issued pursuant to the requirements of Title 30, Texas Administrative Code, Chapter 279, is restricted to the work described in the [Enter date of the SOF], Environmental Assessment and Statement of Findings and shall be concurrent with the Corps of Engineers (COE) permit. This certification may be extended to any minor revision of the COE permit when such change(s) would not result in an impact on water quality. The Texas Commission on Environmental Quality (TCEQ) reserves the right to require full joint public notice on a request for minor revision. The applicant is hereby placed on notice that any activity conducted pursuant to the COE permit which results in a violation of the state's surface water quality standards may result in an enforcement proceeding being initiated by the TCEQ or a successor agency.

STANDARD PROVISIONS: These following provisions attach to any permit issued by the COE and shall be followed by the permittee or any employee, agent, contractor, or subcontractor of the permittee during any phase of work authorized by a COE permit.

1. The water quality of wetlands shall be maintained in accordance with all applicable provisions of the Texas Surface Water Quality Standards including the General, Narrative, and Numerical Criteria.
2. The applicant shall not engage in any activity which will cause surface waters to be toxic to man, aquatic life, or terrestrial life.
3. Permittee shall employ measures to control spills of fuels, lubricants, or any other materials to prevent them from entering a watercourse. All spills shall be promptly reported to the TCEQ by calling the State of Texas Environmental Hotline at 1-800-832-8224.
4. Sanitary wastes shall be retained for disposal in some legal manner. Marinas and similar operations which harbor boats equipped with marine sanitation devices shall provide state/federal permitted treatment facilities or pump out facilities for ultimate transfer to a permitted treatment facility. Additionally, marinas shall display signs in appropriate locations advising boat owners that the discharge of sewage from a marine sanitation device to waters in the state is a violation of state and federal law.
5. Materials resulting from the destruction of existing structures shall be removed from the water or areas adjacent to the water and disposed of in some legal manner.
6. A discharge shall not cause substantial and persistent changes from ambient conditions of turbidity or color. The use of silt screens or other appropriate methods is encouraged to confine suspended particulates.
7. The placement of any material in a watercourse or wetlands shall be avoided and placed there only with the approval of the Corps when no other reasonable alternative is available. If work within a wetland is unavoidable, gouging or rutting of the substrate is prohibited. Heavy equipment shall be placed on mats to protect the substrate from gouging and rutting if necessary.

Mr. Stephen Brooks, Branch Chief
Attachment 1 – Dredge and Fill Certification
USACE Permit Application Number CESWF-08-RGP-11
Page 2 of 3
October 13, 2008

8. **Dredged Material Placement:** Dredged sediments shall be placed in such a manner as to prevent any sediment runoff onto any adjacent property not owned by the applicant. Liquid runoff from the disposal area shall be retained on-site or shall be filtered and returned to the watercourse from which the dredged materials were removed. Except for material placement authorized by this permit, sediments from the project shall be placed in such a manner as to prevent any sediment runoff into waters in the state, including wetlands.
9. If contaminated spoil that was not anticipated or provided for in the permit application is encountered during dredging, dredging operations shall be immediately terminated and the TCEQ shall be contacted by calling the State of Texas Environmental Hotline at 1-800-832-8224. Dredging activities shall not be resumed until authorized by the Commission.
10. Contaminated water, soil, or any other material shall not be allowed to enter a watercourse. Noncontaminated stormwater from impervious surfaces shall be controlled to prevent the washing of debris into the waterway.
11. Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in the disturbance of one or more acres, must be controlled and authorized under Texas Pollutant Discharge Elimination System (TPDES) general permit TXR150000. A copy of the general permit, application (notice of intent), and additional information is available at: http://www.tceq.state.tx.us/nav/permits/wq_construction.html or by contacting the TCEQ Storm Water & Pretreatment Team at (512) 239-4671.
12. Upon completion of earthwork operations, all temporary fills shall be removed from the watercourse/wetland, and areas disturbed during construction shall be seeded, riprapped, or given some other type of protection to minimize subsequent soil erosion. Any fill material shall be clean and of such composition that it will not adversely affect the biological, chemical, or physical properties of the receiving waters.
13. Disturbance to vegetation will be limited to only what is absolutely necessary. After construction, all disturbed areas will be revegetated to approximate the pre-disturbance native plant assemblage.
14. Where the control of weeds, insects, and other undesirable species is deemed necessary by the permittee, control methods which are nontoxic to aquatic life or human health shall be employed when the activity is located in or in close proximity to water, including wetlands.
15. Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the water, or otherwise interfere with reasonable use of the water in the state.
16. Surface water shall be essentially free of floating debris and suspended solids that are conducive to producing adverse responses in aquatic organisms, putrescible sludge deposits, or sediment layers which adversely affect benthic biota or any lawful uses.

Mr. Stephen Brooks, Branch Chief
Attachment 1 – Dredge and Fill Certification
USACE Permit Application Number CESWF-08-RGP-11
Page 3 of 3
October 13, 2008

17. Surface waters shall be essentially free of settleable solids conducive to changes in flow characteristics of stream channels or the untimely filling of reservoirs, lakes, and bays.
18. The work of the applicant shall be conducted such that surface waters are maintained in an aesthetically attractive condition and foaming or frothing of a persistent nature is avoided. Surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottoms of the watercourse.
19. This certification shall not be deemed as fulfilling the applicant's/permittee's responsibility to obtain additional authorization/approval from other local, state, or federal regulatory agencies having special/specific authority to preserve and/or protect resources within the area where the work will occur.



RAILROAD COMMISSION OF TEXAS

OIL AND GAS DIVISION

April 17, 2007

U S ARMY CORPS OF ENGINEERS
REGULATORY BRANCH (CESWF-EV-R)
P O BOX 17300
FORT WORTH TX 76102-0300
ATTN PRESLEY HATCHER

RECEIVED
APR 23 2007

Re: U.S Army Corps of Engineers, Proposed Regional General Permit
Exploration and Production Wells

Fort Worth District CESWF-06-RGP-11
Tulsa District TXG30009
Albuquerque District 2006 00527

PH

Dear Mr. Hatcher:

The Railroad Commission of Texas (RRC) has examined the above referenced proposed permit in response to the public notice issued October 6, 2006. The RRC is the certifying agency for federal permits authorizing activities associated with the exploration, development, and production, including pipeline transportation, of oil, gas, or geothermal resources that may result in a discharge to waters of the United States.

I have examined the proposed permit and identified no conflicts between the proposed permit and applicable state water quality laws with two small modifications. In order to avoid releases of pollutants, we recommend that containment levees be required around any drilling operation. In addition, in order to avoid potential environmental impacts, particularly increases in suspended sediment concentrations, any stream realignment authorized under this general permit should be reviewed carefully by the USACE and should be allowed only after conclusive justification by the applicant that there is no other practicable alternative, including directional drilling, and that the effects will be minimal.

The draft permit acknowledges that, under state law, a point source discharge of pollutants from an outfall structure associated with oil and gas exploration, development, and production must be authorized, conditionally authorized, or specifically exempted from regulation by the Railroad Commission of Texas, Oil and Gas Division. However, Number 7 under "Authorizations from other agencies," states that "Storm water runoff from construction activities that result in a disturbance of one or more acres, or are a part of a common plan of development that will result in a disturbance of one or more acres, must be controlled and authorized under Texas Pollutant Discharge Elimination System (TPDES) general permit TXR150000." TPDES permits authorize only those discharges for which the Texas Commission on Environmental Quality has jurisdiction. Under state law, the Railroad Commission of Texas has jurisdiction over storm water runoff from construction activities associated with exploration and production activities.

Furthermore, Section 323 of the Energy Policy Act of 2005, which was signed into law on August 8, 2005, clarified the scope of oil and gas-related activities that are exempt from the requirement to obtain an NPDES permit for storm water discharges established by Section 402(l)(2) of the Clean Water Act to include most storm water discharges from construction activities associated with oil and gas field operations and prohibited EPA from requiring – or requiring a state to require - an NPDES permit for storm water discharges from construction activity associated with oil and gas field operations, except in situations when the construction-related activity results in the discharge of a hazardous substance or oil in “reportable” quantities or in situations when the discharge of a pollutant other than sediment contributes to a violation of an applicable water quality standard. However, we recommend that the permit strongly encourage application of best management practices for oil and gas field activities and operations to minimize the discharge of pollutants and sediment in storm water runoff to protect water quality.

My review indicates that, based on the information contained in the proposed permit and public notice, with the addition to the permit of language to address the issues discussed above, there is a reasonable assurance that the activity will be conducted in a manner that will not violate any applicable water quality requirements. Therefore, certification of the referenced proposed permit for compliance with applicable water quality laws is hereby granted conditional on addition of the recommended language or some version thereof.

Please call me at (512)463-7308 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Savage". The signature is fluid and cursive, with the first name "Leslie" written in a larger, more prominent script than the last name "Savage".

Leslie Savage, Water Quality Certification Coordinator
Oil & Gas Division
Railroad Commission of Texas

Cc: U.S. Army Corps of Engineers, Albuquerque District (via facsimile 915/568-1359)
U.S. Army Corps of Engineers, Tulsa District (via facsimile 918/669-7373)
John Tintera, Assistant Director of Technical Permitting
Jill Hybner, Deputy Assistant Director of Technical Permitting
Larry Hanneschlager, Chemist



DEPARTMENT OF ENVIRONMENTAL QUALITY

KATHLEEN BABINEAUX BLANCO

GOVERNOR

MIKE D. McDANIEL, Ph.D.

SECRETARY

November 6, 2006

Department of the Army- Corps of Engineers, Fort Worth District
P.O. Box 17300
Fort Worth, TX 76102-0300

Attention: Elliott Carman

RE: Water Quality Certification (JP 060719-01/AI 104997/CER 20060001)
Renewal of Regional General Permit 11

Dear Mr. Carman:

The Department has reviewed your application to extend the time limit of activities, located within the shared boundaries of the Fort Worth District and the State of Louisiana, covered under Regional General Permit 11 (RGP-11) for five additional years.

The requirements for Water Quality Certification have been met in accordance with LAC 33:IX.1507.A-E. Based on the information provided in your application, we have determined that the placement of the fill material will not violate the water quality standards of Louisiana provided for under LAC 33:IX.Chapter 11. Therefore, the Department has issued a Water Quality Certification.

Sincerely,

Thomas R. Griggs
Engineer Manager

TRG/jjp

NOV 13 2006

ENVIRONMENTAL SERVICES

: PO BOX 4313, BATON ROUGE, LA 70821-4313

P:225-219-3181 F:225-219-3309

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