Public Notice

US Army Corps of Engineers
Fort Worth District

Number: CESWF-09-RGP-8 & SPA-2009-00240-ABQ

Activity: Boat Ramps and Minor Facilities

Date: May 6, 2009

This public notice is to inform you of a proposal for work in which you might be interested and to solicit your comments to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in the process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands.* The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

U.S. Army Engineer District
Regulatory Branch
PO Box 17300
Fort Worth, TX 76102-0300
(817)886-1731

U.S. Army Engineer District
Albuquerque Regulatory Office
4101 Jefferson Plaza NE
Albuquerque, NM 87109
(505)342-3283

JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS

TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

RAILROAD COMMISSION OF TEXAS

AND

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

SUBJECT: Evaluation of a proposed Department of the Army Regional General Permit under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899 and application for water quality certification under Section 401 of the CWA for discharges of dredged or fill material associated with the construction and maintenance of boat ramps and minor facilities.

APPLICATION NUMBER: The enclosed "Proposed Regional General Permit, Boat Ramps and Minor Facilities" has been designated as CESWF-09-RGP-8 in the Fort Worth District and SPA-2009-00240-ABQ in the Albuquerque District.

DATE ISSUED: May 6, 2009

LOCATION: The provisions of this regional general permit will be applicable to all waters of the United States within the regulatory boundaries of the Fort Worth and Albuquerque districts in the states of Texas and Louisiana (see attached map, Appendix A).

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification from the states of Texas and Louisiana.

PROJECT DESCRIPTION: This proposed regional general permit, if issued, would provide Department of the Army authorization for recurring work that causes only minor individual and cumulative adverse environmental impacts. A regional general permit serves to reduce administrative procedures and expedite decisions in routine permit actions. The enclosed "Proposed Regional General Permit, Boat Ramps and Minor Facilities" details the scope, location, terms and conditions, and application procedures pertinent to obtaining authorization under the proposed permit. This permit would succeed CESWF-02-RGP-8 in the Ft. Worth District and 2001 00594 in the Albuquerque District, which was due to expire on 29 September, 2008, but has been extended to 31 July 2009. The proposed permit reflects minor changes made to the previous permit and a new requirement for mitigating unavoidable adverse impacts to the aquatic ecosystem.

PUBLIC INTEREST REVIEW FACTORS: The proposed regional general permit will be reviewed in accordance with 33 CFR 320-330, the Regulatory Programs of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404 (b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns for both protection and utilization

of important resources. The benefits 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 its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE in determining whether to issue, issue with modifications or conditions, or not issue this 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 activity.

STATE WATER QUALITY CERTIFICATION: Texas Commission on Environmental Quality (TCEQ) certification is required for activities within the state of Texas except those associated with the exploration, development, or production of oil, gas, or geothermal resources, as described in Tex. Nat. Res. Code Ann. §91.101. Concurrent with the processing of this Department of the Army proposal, the TCEQ is reviewing this proposal under Section 401 of the Clean Water Act, and Title 31, Texas Administrative Code Section 279.1-.13 to determine if the work authorized by this proposed regional general permit would comply with state water quality standards. By virtue of an agreement between the USACE and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such authorities. **Any comments concerning this application for TCEQ water quality certification must be submitted to: 401 Coordinator-MC-150, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087**. The public comment period extends 30 days from the publication date of this notice. A copy of the public notice with a description of work is made available for review in the TCEQ's Austin office. The TCEQ may conduct a public hearing to consider comments concerning water quality if requested in writing. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor or persons represented by the requestor; and a description of how the application, if granted, would adversely affect such interest.

Railroad Commission of Texas (RCT) certification is required for activities associated with the exploration, development, or production of oil, gas, or geothermal resources, as described in Tex. Nat. Res. Code Ann. §91.101. Concurrent with the processing of this Department of the Army proposal, the RCT is reviewing this proposal under Section 401 of the Clean Water Act and Title 16, Texas Administrative Code, Section 3.93, to determine if the work authorized by this proposed regional general permit would comply with applicable water quality laws and regulations. By virtue of an agreement between the USACE and the RCT, this public notice is also issued for the purpose of advising all known interested persons that here is pending before the RCT a decision on water quality certification under the above authorities. Upon receipt of a written request prior to the expiration of the public comment period, the RCT may conduct a public hearing to receive comments concerning impacts of the proposed project on water quality. **Written comments concerning this request for RCT water quality certification and any written request for a public hearing may be submitted to the Assistant Director for**

Environmental Services, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the person making the request; and a brief description of how the proposal would adversely affect such interest. The public comment period extends 30 days from the date of the publication of this notice.

Louisiana Department of Environmental Quality (LDEQ) water quality certification is required for work within the state of Louisiana that is subject to Section 404 of the CWA. Concurrent with processing of this application, the LDEQ is reviewing this proposal under Section 401 of the CWA and in accordance with Louisiana Revised Statutes of 1950, Title 30, Chapter 11, Part IV, Section 2074 A(3) to determine if the work would comply with State water quality standards and other applicable provisions of the CWA. By virtue of an agreement between the USACE and the LDEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending before the LDEQ a decision on water quality certification under such act. **Any comments concerning the application for water quality certification in Louisiana must be submitted, using the above permit application number as reference, to the Certifications Coordinator, Water Pollution Control Division, Office of Water Resources, Louisiana Department of Environmental Quality, P. O. Box 82215, Baton Rouge, LA 70884.** The public comment period extends 20 days from the publication date of this notice. A copy of the public notice with a description of work is available for review between 8:00 a.m. and 4:30 p.m. weekdays at the LDEQ office at 7290 Bluebonnet, Baton Rouge, Louisiana 70810. Copies may be obtained upon payment of cost of printing. A final decision on state of Louisiana water quality certification will be made within 60 days after the date of this notice.

THREATENED AND ENDANGERED SPECIES: No authorization will be granted under this regional general permit for an activity that is 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, or for an activity that is likely to destroy or adversely modify the critical habitat of such species.

NATIONAL REGISTER OF HISTORIC PLACES: The impact of activities authorized by this regional general permit on cultural resources listed, or eligible for listing, in the National Register of Historic Places (NRHP), shall be taken into account by the USACE prior to the initiation of work. If previously unknown cultural resources are encountered during work authorized by this permit, the appropriate USACE district shall be notified and the resources avoided until the USACE can assess their eligibility for listing in the NRHP. Sites determined to be eligible for listing in the NRHP shall be mitigated in consultation with the USACE. Cultural resources include prehistoric and historic archeological sites, and areas or structures of cultural interest which occur in the permit area.

SOLICITATION OF COMMENTS: This public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location of the hearing.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before June 6, 2009, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the closing date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. David Madden Regulatory Branch, CESWF-PER-R; U. S. Army Corps of Engineers; P.O. Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 4A17 of the Federal Building at 819 Taylor Street in Fort Worth during regular business hours, Monday through Friday. Telephone inquiries should be directed to Mr. Madden at (817) 886-1741.

DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS

DISTRICT ENGINEER
ALBUQUERQUE DISTRICT
CORPS OF ENGINEERS

PROPOSED REGIONAL GENERAL PERMIT

BOAT RAMPS AND MINOR FACILITIES

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 and Albuquerque Districts of the U. S. Army Corps of Engineers (USACE) propose to authorize 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 Regional General Permit (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 has been designated CESWF-09-RGP-8 in the Fort Worth District and SPA-2009-00240-ABQ in the Albuquerque District. This RGP replaces RGP SWF-96-RGP-8 in the Fort Worth District and 2001 00594 in the Albuquerque District for Boat Ramps and Minor Facilities. CESWF-02-RGP-8 originally was set to expire on September 23, 2008, but has been extended until July 15, 2009.

SCOPE OF WORK

Work authorized by this regional general permit is limited to the discharge of dredged or fill material into waters of the United States, including wetlands, and the placement of structures and performance of work in navigable waters of the United States, associated with the construction and maintenance of boat ramps and minor facilities as described below. Maintenance is defined as:

1. the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill authorized by 33 CFR 330.3, provided the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards that are necessary to make repair, rehabilitation, or replacement, are allowed provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement changes are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This RGP authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction

or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the USACE, provided the permittee can demonstrate funding, contract, or similar delays; or

2. the removal of accumulated sediments and debris in the vicinity of, and within, existing structures (e.g., bridges, culverted road crossings, etc.) and the placement of new rip rap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 200 feet in any direction from the structure. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. All excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the USACE. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the USACE.

Activities that may be authorized by this RGP include the following:

1. **Boat Ramps:** Work authorized for boat ramps by this permit is limited to the construction and maintenance of hard surfaced inclined plane ramps for the purpose of launching boats for public, private, and commercial use. No more than a total of 500 cubic yards of material may be dredged or filled below the ordinary high water mark in the construction of a boat ramp. Such material is restricted to native soils obtained at the work site and concrete, sand, gravel, rock, or other coarse aggregate and must be free of contaminants. Use of asphalt below the ordinary high water mark is not authorized. All dredged and fill material utilized shall be of suitable quality and free of toxic pollutants in toxic quantities.

2. **Minor Facilities:** Work authorized for minor facilities by this RGP is limited to the construction and maintenance of minor facilities such as boat docks, boathouses, fishing piers, walkways, boat stalls, boat slips, ski jumps, underwater fish attractors, and appurtenant structures such as shoreline walls, mooring devices, and stairways within 50 feet of either side of the facility, for public, private, and commercial use. Structures built in waterways shall not unreasonably interfere with navigation or disrupt visibility in a channel.

a. Boat docks, boathouses, fishing piers, and walkways are limited to pile-supported or floating structures.

b. Boat slips or stalls may not exceed 50 feet in width. Any excavation or filling for boat slips must be adequately stabilized to prevent erosion. Any excavation for boat slips may not extend waterward beyond 30 feet from the end of the structure.

c. Ski jumps must be maintained in good condition and marked so as to be clearly visible to boat traffic, including reflective markers for night visibility. Navigable clearance must be maintained around the jump. Ski jumps must be constructed and anchored to prevent their dislocation or submergence by wave action or water level fluctuations.

d. No more than a total of 50 cubic yards of material may be dredged from waters of the United States in the construction or maintenance of minor facilities or appurtenant structures.

e. No more than a total of 50 cubic yards of dredged or fill material, exclusive of that associated with dredging, may be discharged below the ordinary high water mark during the construction of minor facilities or appurtenant structures including all permanent and temporary fills. The fill material that may be used is restricted to native soils obtained at the work site, concrete, sand, gravel, rock, or other coarse aggregate. All dredged or fill material utilized must be free of waste metal products, organic materials, unsightly debris, etc., and toxic pollutants in toxic quantities.

f. Underwater fish attractors may be placed when and where needed to provide more favorable habitat for diverse fish populations provided this is the sole purpose for the discharge. All placement sites on reservoirs or lakes must be coordinated with the administrative agency of the water body and the exact location of the site recorded. Materials authorized for the construction of fish attractors include any large coarse material at least two inches in diameter that will not degrade water quality. These materials include but are not limited to wood, automobile tires, pipe (metal, clay, concrete, or plastic), broken concrete, brick, rock, rip rap, gravel, brush, or hay bales. Sufficient ballast or anchorage must be used to prevent material from floating and becoming a boating hazard. All material discharged into the water must be free of toxic pollutants in toxic quantities. The discharge of material must be limited to an area of 0.5 acre at any one location within the water body. All structures must provide a minimum five foot clearance below the normal low water surface to preclude interference with navigation.

This RGP does not authorize activities that would have substantial adverse impacts on the aquatic environment or cause a substantial reduction in the reach of waters of the United States.

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

1. The discharges and work shall not cause the loss of greater than one (1) acre of waters of the United States for each single and complete project. "Loss of waters of the United States" is defined as “waters of the United States that are filled or permanently adversely affected by flooding, excavation, or drainage as a result of the regulated activity.”

2. Adverse impacts to waters of the United States, including wetlands, shall be avoided and minimized to the extent practicable through the use of practicable 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 upstream and downstream flow conditions to the extent practicable.

3. All fills and structures above the existing ground elevation in waters of the United States shall minimize adverse impacts to local hydrology. Projects shall not promote the drainage of waters of the United States or cause unnecessary impoundment of water.

4. 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.

5. Compensatory mitigation shall be provided for unavoidable adverse impacts to waters of the United States, including wetlands, when appropriate and practicable.

6. Preconstruction Notification: Prior to construction, a prospective permittee must notify the USACE of the proposed work 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 United States;

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

c. occur within any of the following habitat types:

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.); or

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);

d. occur within:

1) the area of Caddo Lake within Texas that is designated as a “Wetland of International Importance” under the Ramsar Convention; or

2) the Comal River, the San Marcos River, the Pecos River, Lake Casa Blanca or within areas identified as critical habitat for the Concho water snake (*Nerodia hateri paucimaculata*) including areas of the Concho and Colorado Rivers and Ivie Reservoir, Houston toad (*Bufo houstonensis*), or the Arkansas River shiner (*Notropis girardi*).

or if :

e. a structure would extend into the waterway more than 1/5 of the total width of the waterway or exceed 50 feet, whichever is less, perpendicular to the bank.

7. For cases where USACE preconstruction notification (PCN) is required, permittees shall submit a written compliance report to the USACE within 120 days after completion of all work that includes the following:

a. a statement addressing whether the authorized work and mitigation required to date have been implemented in accordance with the USACE authorization, including all general and special conditions;

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

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

d. a detailed description of all impacts that have occurred to waters of the United States;

e. a map showing the final configuration of restored, enhanced, created and preserved waters of the United States, including wetlands;

f. a presentation of the species of plants, number and acreage of vegetation planted, final topographic elevations of the project, and a map describing the location of the plantings;

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

h. photographs and maps as appropriate to illustrate the information presented.

The prospective permittee shall not begin any activity requiring preconstruction notification until notified in writing by the USACE that the activity is authorized under this RGP with any special conditions imposed by the USACE. 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 Department of the Army work in, and adjacent to, waters of the United States, including wetlands. 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 regional general permit will be applicable to all waters of the United States, including all navigable waters of the United States, in the Fort Worth and Albuquerque Districts of the USACE, within the states of Texas and Louisiana (see Appendixes B and C of the Proposed Regional General Permit). The Fort Worth District includes the Sabine River watershed in Sabine, De Soto, and Caddo Parishes in the State of Louisiana.

WATER QUALITY CERTIFICATION

State water quality certification under Section 401 of the Clean Water Act for the proposed RGP is currently being sought from the Texas Commission on Environmental Quality (TCEQ) (TCEQ), the Railroad Commission of Texas (RRC), and the Louisiana Department of Environmental Quality.

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. 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.

2. 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.

3. Any work that would be conducted on lands or in waters under the jurisdiction of any river authority or other operating agency may require a permit from that agency.

4. 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.

5. 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 also general condition 31). In addition, evidence that the project meets non-encroachment restrictions in regulatory floodways may be required.

6. In accordance with the Federal Clean Water Act and Texas statute, a point source discharge of pollutants from an outfall structure 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.

7. Activities such as clearing, grading, and excavation that would disturb five or more acres of land may require a National Pollutant Discharge Elimination System (NPDES) storm water management permit from the U.S. Environmental Protection Agency (EPA), Region 6, Water Quality Protection Division (6WQ), 1445 Ross Avenue, Dallas, Texas 75202 or a TPDES storm water management permit from the TCEQ, Water Quality Division (MC-150), P. O. Box 13087, Austin, Texas 78711-3087.

8. 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.

9. 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.

10. The construction, operation, maintenance, or connection of facilities at the borders of the United States 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.

11. 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://arlingtontexas.fws.gov ; **Austin**: Compass Bank Building, 10711 Burnet Road, Suite 200, Austin, Texas 78758, (512)490-0057, http://ifw2es.fws.gov/austintexas/ ; **Corpus Christi**: TAMU-CC, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512)994-9005, http://ifw2es.fws.gov/corpuschristitexas/ ; or **Houston**: 17629 El Camino Real, Suite 211, Houston, Texas 77058, (713)286-8282, http://ifw2es.fws.gov/clearlaketexas .

12. Activities 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.

PRECONSTRUCTION NOTIFICATIONS

Preconstruction notifications (PCNs) requesting verification from the USACE of authorization under this RGP must include a written 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. 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 and description of wetlands and other waters of the United States 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.wes.army.mil/el/wetlands/wlpubs.html) (currently includes guidance dated October 7, 1991, and March 6, 1992), including all regional supplemental guidance. In addition, include the width and depth of the water body and the waterward distance of any structures from the existing shoreline.

3. A vicinity map (e.g., county map, USGS topographic map, etc.) showing the location of all temporary and permanent elements of the project, including any associated borrow pit(s), disposal site(s), staging area(s), etc. This map, or an additional map, must show the project area in relation to nearby highways and other roads, and other pertinent features. A ground survey is not required to obtain this information. (All maps and drawings must be submitted on 8½ by 11 inch sheets.)

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 United States, including wetlands, and a description of the proposed activities and structures, such as the dimensions and/or locations of roads (both temporary and permanent), coffer dams, equipment ramps, borrow pits, disposal areas, staging areas, haul roads, and other project related areas within the USACE permit area(s). The permit area(s) includes all waters of the United States affected by activities associated with the project, as well as any additional area of non-waters of the United States in the immediate vicinity of, directly associated with, and/or affected by, activities in waters of the United States. The USACE permit area(s) includes associated borrow pits, disposal areas, staging areas, etc. in many cases. (All maps and drawings must be submitted on 8½ by 11 inch sheets.)

5. The volume of material proposed to be discharged into and/or excavated from waters of the United States 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 application 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. A compensatory mitigation plan for unavoidable adverse impacts to the aquatic environment. This 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 ecosystem unavoidably lost in the permit area because of the proposed work (see Appendix D).

9. 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 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 Texas in "AUTHORIZATION FROM OTHER AGENCIES" section above.

10. A discussion 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 for the proposed project.

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

When a PCN is required, early coordination with the USACE, well before a final PCN is submitted, is beneficial in most 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

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) 568-0236

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 13(e), Federal Register, Vol. 67, No. 10, Tuesday, January 15, 2002, and Vol. 67, No. 30, Wednesday, February 13, 2002, and Vol. 67, No. 37, Monday, February 25, 2002). 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); and

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

For activities not requiring a PCN, construction may commence when the applicant can ensure that all terms and conditions of this RGP can be met. For activities requiring a PCN, construction may commence only upon written notification by the District Engineer, or his designee, that the project meets the terms and conditions of the RGP. 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 insure 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 regional general permit can be considered for authorization by individual permit.

This permit 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. Activities that have commenced, i.e. are under construction, or are under contract to commence in reliance upon this permit will remain authorized provided the activity is completed within twelve months of the date of this permit's expiration, modification, or revocation, unless discretionary authority is exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

APPENDIX A

GENERAL CONDITIONS

REGIONAL GENERAL PERMIT CESWF-09-RGP-8

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. Structures and activities authorized by this RGP shall 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 United States 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 United States.

8. Permittees shall not cause any unreasonable interference with navigation.

9. Permittees shall 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 seek to maintain existing buffers around waters of the United States, including primarily streams and wetlands and create and/or expand buffers around waters of the United States when practicable. Compensatory mitigation plans for projects in, or near, streams or other open waters shall normally include provisions for the establishment, maintenance, and legal protection, e.g. deed restrictions, conservation easements, of vegetated buffers to those waters.

10. Permittees shall allow the District Engineer and 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.

11. 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, 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, have been satisfied.

12. Materials to be placed into waters of the United States are restricted to clean native soils and concrete, sand, gravel, rock, other coarse aggregate, and other suitable material. All material used shall be free of toxic pollutants in toxic quantities.

13. 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.

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

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, 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 listed species or critical habitat might 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 Endangered Species Act have been satisfied and that the activity is authorized.

16. 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.

17. 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.

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

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

20. Stream realignment is not authorized by this RGP.

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

22. Permittees shall remove all excess material and temporary fill and structures placed in waters of the United States, including wetlands, to upland areas and stabilize all exposed slopes and stream banks immediately upon completion of construction. Material may be temporarily sidecast into waters of the United States for up to 90 days provided that the material is placed in a manner that will not allow it to be dispersed by currents or other forces. Areas affected by temporary fills and/or structures shall be returned to preconstruction conditions or better, including revegetation with native vegetation. All material removed must be placed at least 50 feet from any water of the United States, including wetlands, and adequately contained to prevent the return to any water of the United States, including wetlands.

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

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

25. Channel and boat lane construction and maintenance are not authorized by this RGP.

26. Permittees shall mark structures or fills in navigable waters, when appropriate, so that their presence will be known to boaters.

27. 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.

28. 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 on 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.

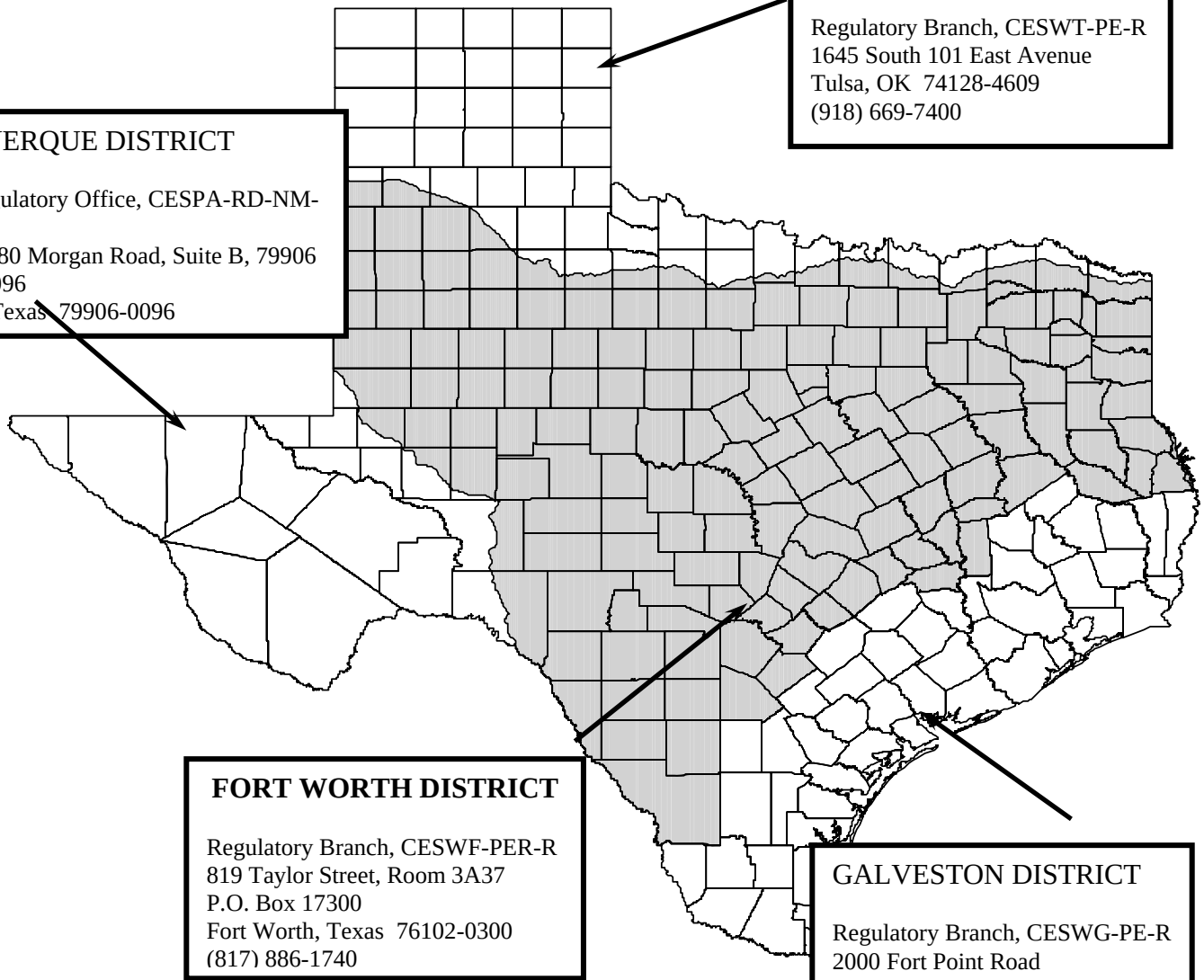
29. Permittees shall conduct dredging and excavation activities with landbased equipment rather than from the water body whenever practicable.

30. Permittees shall not construct facilities designed or used for human habitation nor those that include sewage or fuel handling facilities.

31. 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 United States, 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 United States, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by nationwide permits 3, 25, 36, etc., are not included.

32. For all discharges proposed for authorization in Dallas, Denton, and Tarrant Counties 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 www.swf.usace.army.mil/regulatory/.

Appendix B
U.S. Army Corps of Engineers Districts within the State of Texas



TULSA DISTRICT

Regulatory Branch, CESWT-PE-R
1645 South 101 East Avenue
Tulsa, OK 74128-4609
(918) 669-7400

ALBUQUERQUE DISTRICT

El Paso Regulatory Office, CESPA-RD-NM-EP
Building 6380 Morgan Road, Suite B, 79906
P.O. Box 6096
Fort Bliss, Texas 79906-0096

FORT WORTH DISTRICT

Regulatory Branch, CESWF-PER-R
819 Taylor Street, Room 3A37
P.O. Box 17300
Fort Worth, Texas 76102-0300
(817) 886-1740

GALVESTON DISTRICT

Regulatory Branch, CESWG-PE-R
2000 Fort Point Road
P.O. Box 1229
Galveston, Texas 77553-1229
(409) 766-3930

March 10, 2009

APPENDIX C

NAVIGABLE WATERS OF THE UNITED STATES

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 United States 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 UNITED STATES

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. 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 United States 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 amount and type 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.

According to the Compensatory Mitigation for Losses of Aquatic Resources-Final Rule published in the Federal Register Vol. 73, No. 70, April 10, 2008, pp 19594-19705, mitigation bank credits are the preferable method of compensatory mitigation. However, with adequate justification, in-kind compensatory mitigation or out-of-kind mitigation would be considered if it occurs as close to the location of the adverse impacts as practicable, generally in the same watershed. 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.

On-site and off-site compensatory mitigation plans should include the factors as listed in the Compensatory Mitigation for Loss of Aquatic Resources-Final Rule referenced above. This would 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 requirements have been achieved. To achieve long-term success of a mitigation plan, an appropriate real estate arrangement, such as a notice of restriction, may be required.