



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

# Public Notice

**Number:** CESWF-09-RGP-12

**Activity:** Modification and Alterations of Corps of Engineers Projects

**Date:** February 24, 2010

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The purpose of this public notice is to inform you of the issuance of Regional General Permit CESWF-09-RGP-12 on February 24, 2010. The permit will expire on February 23, 2015, unless it is previously revoked, modified, or extended.

## **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**

Congress directed the U.S. Army Corps of Engineers 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

## **REGIONAL GENERAL PERMIT**

### **MODIFICATION AND ALTERATIONS OF CORPS OF ENGINEERS PROJECTS**

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 District of the U. S. Army Corps of Engineers (USACE) is issuing this Regional General Permit (RGP) to authorize the work described herein pursuant to Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act of 1899 (Section 10).

The purpose of this RGP is to eliminate unnecessary duplication of work where the environmental consequences of the action are individually and cumulatively minimal. 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. 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.

#### **SCOPE OF WORK**

Activities authorized by this RGP are limited to the discharge of dredged or fill material into waters of the United States, including wetlands, and work in, or affecting navigable waters of the United States, associated with modification and alterations of Corps of Engineers projects that receive USACE approval under 33 USC 408 (Section 408) and meet the conditions of this permit. The Section 408 project approval process includes, but is not limited to, a written request by the non-Federal interests for approval of the project; a physical and functional description of the existing project; a detailed description of the proposed project, including proposed modifications to the existing federal project; the purpose/need for the modification; a description of any related ongoing Corps studies/efforts in the watershed; a Public Interest Determination; appropriate National Environmental Policy Act (NEPA) documentation (Environmental Impact Statement (EIS) or Environmental Assessment (EA)); any Administrative Record; a discussion of indirect effects; a discussion of Executive Order 11988 considerations; and a Technical Analysis, to include; (a) sufficient detail to ensure technical adequacy of the design, (b) changes in water surface profiles and flow distribution, (c) assessment of anticipated local and system-wide resultant impacts, i.e., impacts on system integrity, (d) upstream and downstream impacts of the proposed alterations, including potential impacts to existing floodplain management and water control management plans of Federal projects within the basin, and (e) a discussion of residual risk.

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

1. The Regulatory element of the USACE responsible for authorizing permits under Section 404 and Section 10 is involved in the Section 408 project approval process.

2. For projects that involve direct and indirect impacts resulting in the cumulative loss of greater than 0.5 acre of waters of the United States, the Section 408 project review process must include a 40 CFR Part 230; 404(b)(1) analysis.

3. 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.

4. Appropriate and practicable compensatory mitigation shall be required for unavoidable adverse impacts to waters of the U.S. as defined in 33 CFR Part 332 Compensatory Mitigation for Losses of Aquatic Resources; Final Rule: Federal Register, Vol. 73, No. 70, Thursday, April 10, 2008.

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

a. 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.*);

b. 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);

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

For all discharges within these habitat types or areas, 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).

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. (Appendix D)

## **LOCATION OF WORK**

The provisions of this RGP will be applicable to all waters of the United States, including all navigable waters of the United States, within the regulatory boundaries of the Fort Worth District of the USACE within the state of Texas (see Appendixes B and C).

## **WATER QUALITY CERTIFICATION**

The Texas Commission on Environmental Quality (TCEQ) has certified pursuant to Section 401 of the Clean Water Act (CWA) and Title 30, Texas Administrative Code, Chapter 279, for activities for which it is responsible, and that result in the loss of less than 0.5 acres of waters of the state, that activities conducted under this RGP should not result in a violation of established Texas Water Quality Standards provided that the Standard Provisions are followed (Appendix D). For projects that result in the loss of greater than 0.5 acre of water of the United States, Section 401 water quality certification will be obtained during the Section 408 review process.

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 will comply with applicable water quality laws (Appendix D).

## **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 Texas Water Development Board (TWDB) at (512) 463-6418 (see Appendix A, general condition 28). 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/>; or Houston: 17629 El Camino Real, Suite 211, Houston, Texas 77058, (281) 286-8282, <http://www.fws.gov/southwest/clearlakes/>.
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. 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. The use of scrap tires for bank stabilization and erosion control is not recommended. If used for fill or restoration, scrap tires must be split, quartered, or shredded.

12. 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.

13. 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.

14. 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

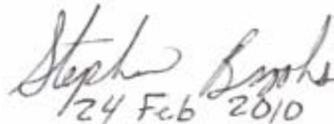
## EVALUATION AND VERIFICATION PROCEDURES

The prospective permittee may commence construction when it can ensure that all terms and conditions of this RGP are met. Upon request, the USACE will notify the permit applicant whether the proposed project meets or does not meet the terms and conditions of this RGP.

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 Engineer, 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 ENGINEER:

A handwritten signature in cursive script that reads "Stephen Brooks" with the date "24 Feb 2010" written below it.

Richard J. Muraski, Jr.  
Colonel, U. S. Army  
District Commander  
Fort Worth District

## **APPENDIX A**

### **GENERAL CONDITIONS**

#### **REGIONAL GENERAL PERMIT**

##### **MODIFICATION AND ALTERATIONS OF CORPS OF ENGINEERS PROJECTS**

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. No attempt shall be made by permittees to prevent the full and free public use of any navigable water of the U.S.
7. Permittees shall not cause any unreasonable interference with navigation.
8. 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.

9. 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.

10. 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.

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, 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.

12. 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.

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. 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.

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

16. 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.
17. 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.
18. 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.
19. Permittees shall properly maintain all structures and fills to ensure public safety.
20. Permittees shall ensure that projects have no more than minimal adverse impacts on public water supply intakes.
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 not use a jet barge or similar equipment for trench excavation.
23. 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.
24. 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.
25. 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.
26. 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.

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

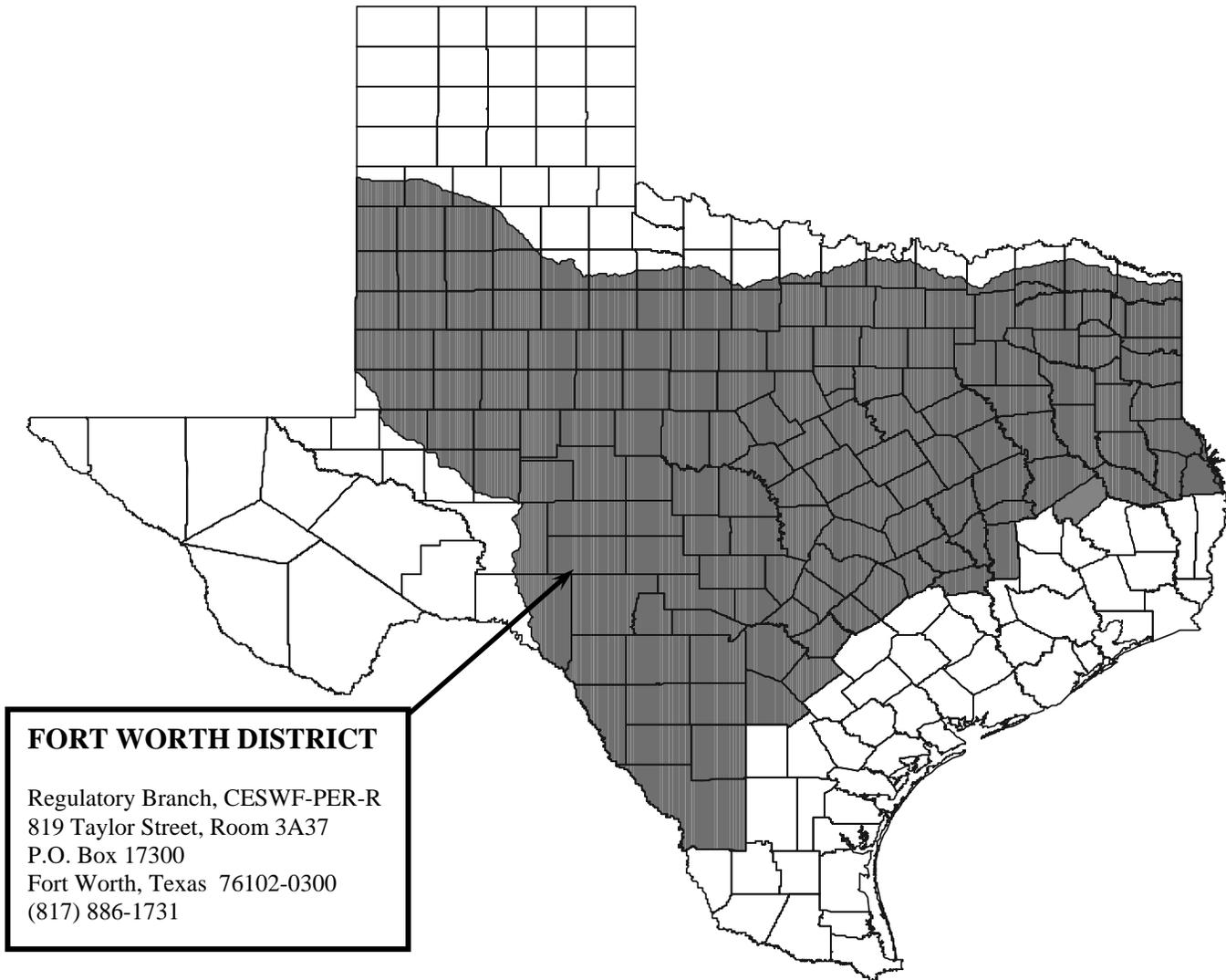
28. Permittees must comply with Federal Emergency Management Agency (FEMA), or FEMA-approved local floodplain development requirements in the placement of any permanent above-grade fills in waters of the U.S., including wetlands, within the 100-year floodplain. The 100-year floodplain will be identified 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.

29. 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>.

**APPENDIX B**

**FORT WORTH DISTRICT REGULATORY JURISDICTION MAP FOR TEXAS**

**THE SHADING INDICATES THE AREA WHERE RGP-12 IS AUTHORIZED FOR USE**



## 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

Mr. Stephen Brooks, Branch Chief  
Attachment 1 – Dredge and Fill Certification  
USACE Permit Application Number CESWF-09-RGP-12  
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**WORK DESCRIPTION:** As described in the public notice dated August 9, 2009, and the January 21, 2010, Environmental Assessment and Statement of Findings.

**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 January 21, 2010, 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.

Mr. Stephen Brooks, Branch Chief  
Attachment 1 – Dredge and Fill Certification  
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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.
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](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, ripped, 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.

Mr. Stephen Brooks, Branch Chief  
Attachment 1 – Dredge and Fill Certification  
USACE Permit Application Number CESWF-09-RGP-12  
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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.
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.

VICTOR G. CARRILLO, CHAIRMAN  
ELIZABETH A. JONES, COMMISSIONER  
MICHAEL L. WILLIAMS, COMMISSIONER



TOMMIE SEITZ  
DIRECTOR, OIL AND GAS DIVISION

# RAILROAD COMMISSION OF TEXAS

## OIL AND GAS DIVISION

February 15, 2010

MR STEPHEN BROOKS, BRANCH CHIEF  
U S ARMY CORPS OF ENGINEERS  
REGULATORY BRANCH (CESWF-EV-R)  
P O BOX 17300  
FORT WORTH TX 76102-0300

Re: USACE Permit Application Number CESWF-09-RGP-12

Dear Mr. Brooks:

The Railroad Commission of Texas (RRC) has examined the above referenced proposed permit in response to the public notice issued August 6, 2009. 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. I also have reviewed the certification letter dated February 2, 2010, from the Texas Commission on Environmental Quality and have nothing to add. 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.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie Savage".

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

Cc: Barry G. Osborn, Regulatory Project Manager  
USACE (via email)